California Criminal and Collateral Law Changes 2023

How They May Affect You, and Frequently Asked Questions

Dear Reader,

The Office of the State Public Defender has prepared this information packet as an introduction to some of the changes in law happening in January 2023. This document is designed as a resource for you to begin your legal research. Within, you will find summaries of the law changes, language of the corresponding Senate or Assembly bills, and the revised statutes. When applicable there are Frequently Asked Question sections as well as forms you may find helpful. Your specific case may have important factors that are not covered here. While we hope this document is useful, it is not legal advice and you should always do your own research, and when possible, consult with an attorney before filing anything in your case.

Office of the State Public Defender
1111 Broadway, 10th Floor
Oakland, CA 94607

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Changes to CDCR Compassionate Release Procedure
AB 960

Amends Penal Code §§1170 & 1170.02; Adds Penal Code §§1172.2

Assembly Bill (AB) 960 is a new law beginning January 1, 2023 that requires the CDCR to recommend that an incarcerated person's sentence be recalled ***if*** that person meets certain medical criteria. (Pen. Code §1172.2(a).) This process is commonly called "compassionate release." AB960 also creates a mandatory presumption in favor of compassionate release by the court ***unless*** the incarcerated person is found to be an unreasonable risk of danger of committing a violent "super strike" felony.[1]

A copy of the law is attached. Please read it carefully. This document does not constitute legal advice and is general information.

Required Medical Criteria to be Eligible for Compassionate Release

You must meet **one** of these medical criteria for compassionate release to apply[2]:

1. You are suffering from a serious and advanced illness with an end-of-life trajectory (including metastatic solid-tumor cancer, amyotrophic lateral sclerosis, end-stage organ disease, and advanced end-stage dementia)
   –OR–
2. You are permanently medically incapacitated with a medical condition or functional impairment that renders you permanently unable to complete basic activities of daily living or have progressive end-state dementia ***and*** that condition did not exist at the time of the original sentence.

Examples of "basic activities of daily living" include bathing, eating, dressing, toileting, transferring, and ambulation. Other activities may also be considered "basic activities of daily living", even if they are not specifically mentioned within Pen. Code §1172.2(b)(2).

Some Convictions Make You Ineligible for Compassionate Release

Compassionate release ***is not available*** if you are:

- Serving a death sentence or a life without the possibility of parole (LWOP) sentence.[3]

[1] Penal Code §1172.2(a); Penal Code §1170.18.
[2] Penal Code §1172.2(b)(1) & (2).
[3] Penal Code §1172.2(o).

- Convicted of first-degree murder of a peace officer engaged in the performance of their duties or as retaliation for the performance of their duties.[4]

The CDCR Process for Compassionate Release as of January 1, 2023[5]

The first step is for a CDCR physician to determine that you have a medical prognosis that meets the medical criteria (listed above). That physician then notifies the Chief Medical Executive. This notification is mandatory.

The referral from the physician to the Chief Medical Executive makes several other things happen. The Chief Medical Executive must determine whether they agree with the medical prognosis. If they **agree**, they must then notify the Warden. This notification is mandatory.

Once the referral from the physician is made to the Chief Medical Executive, the CDCR **must** refer the matter to the court for compassionate release consideration within 45 days. This referral is mandatory. The CDCR is not required to notify your attorney, but your right to counsel is triggered by the CDCR notice to the court. The judge will appoint counsel (give you a lawyer) if you are indigent. Most individuals in prison are indigent.

When a Warden gets notice from the Chief Medical Executive that you meet the medical criteria for compassionate release, the Warden must notify you and your designated family member or agent within 48 hours. This notification is mandatory. If you are mentally unfit, the warden must contact your emergency contact and provide this same information.

Throughout the compassionate release process, the Warden must provide updated information regarding medical condition and progress within the process to you and your family member or agent.

What Happens in Court in Compassionate Release Cases[6]

There ***must*** be a hearing in front of a judge in your county of conviction within 10 days of the CDCR's recommendation for compassionate release. This hearing is to determine whether your sentence should be recalled. This hearing will be conducted by the same judge that handled the original sentence unless that judge is unavailable.

A recommendation from the CDCR to the court triggers your right to counsel. If you are indigent, the court ***must*** appoint a lawyer to represent you.

[4] Penal Code §1170.02.
[5] Penal Code §1170.02(d)-(f).
[6] Penal Code §1172.2(b), (c), (i), (k) & (l).

There is a presumption in favor of resentencing and receiving compassionate release once the case is referred to court. The only way the judge can deny compassionate release is if they find that you pose an unreasonable risk of danger of committing a violent "super-strike" felony.

If the court grants compassionate release, it will send an order to the CDCR and you ***must*** be released within 48 hours. You can agree to a longer period in custody before release.

At time of release, the Warden ***must*** make sure you have:

- a discharge medical summary
- full medical records
- state identification
- parole / PRCS medications
- all property.

Any additional records not contained in this list ***must*** be sent to your forwarding address.

How You or Your Family Can Ask for Compassionate Release

You or your family can also start this process by making a request for compassionate release directly to the Chief Medical Executive. A contact list of Chief Medical Executives is included with this reference sheet. Please be advised that the contact list was last updated July 2020, so the information may be outdated.

When a request is made directly to the Chief Medical Executive, the CDCR ***must*** follow the same procedure to determine if you meet the medical criteria for compassionate release. [7]

[7] Penal Code §1172.2(f).

Denial of Compassionate Release Can Be Challenged

Reason for Denial	What to File	Appeals Process	Court Review Possible
CDCR physician will not determine whether you have a diagnosis that meets the medical criteria -or- Physician / Chief Medical. Executive decides you do not meet the medical criteria	30 days to file a Health Care Grievance CDCR Form 602-HC	If grievance is denied, an appeal may be filed to the Headquarters (Sacramento) level	After "exhausting administrative remedies", a writ of habeas corpus can be filed in the trial court in the county of conviction
CDCR medical staff find that you have a diagnosis that meets the medical criteria but other CDCR staff do not timely refer the case to the court	60 days to file an Administrative Grievance CDCR Form 602-0	If grievance is denied, an appeal may be filed to the Headquarters (Sacramento) level CDCR Form 602-2	After "exhausting administrative remedies", a writ of habeas corpus can be filed in the trial court in the county of supervision
The judge denied compassionate release	Notice of Appeal form (CR-120)	60 days to file a notice of appeal in the sentencing court	The Court of Appeal will appoint an attorney and review the case

Compassionate Release Also Applies to Individuals in County Jails

The provisions of this law apply equally to incarcerated individuals in county jail custody pursuant to Penal Code §1170(h).[8]

[8] §1172.2(n).

FREQUENTLY ASKED QUESTIONS

The following is not legal advice specific to your case. It is your responsibility to do legal research or contact a lawyer to determine if you are eligible for relief.

Q: I have a medical condition. Can this law help me?

A: It depends on what medical condition you have, but your health must be so poor that you are either going to die soon or you cannot take care of basic daily living activities by yourself. The law names the following medical conditions:

- solid-tumor cancer,
- amyotrophic lateral sclerosis,
- end-stage organ disease
- advanced end-stage dementia

Other medical conditions may also qualify. In some circumstances, you cannot have had the medical condition at the time of your original sentence. This means you must have developed this medical condition after you were incarcerated, or possibly that your medical condition has gotten much worse since your incarceration began.

Q: Do I need to be serving a sentence in prison to use this law?

A: No. The new law applies to those serving time in county jails or CDCR.

Q: Can only a CDCR physician start the compassionate release process?

A: No. If you believe you qualify for compassionate release, you may start the process yourself by contacting the Chief Medical Executive at your facility. Additionally, if your family or another person on the outside believes you qualify for compassionate release, they may also start the process by contacting the Chief Medical Executive at your facility. A list of Chief Medical Executives at CDCR facilities is included with this factsheet.

Q: If I am granted compassionate release, when will I get out?

A: If the judge grants you compassionate release, the CDCR will have 48 hours to release you once they received the order from the judge. The only way this can be delayed is if you agree to a delay for some reason such as coordination of housing and/or medical needs in the community. When you are released, you may be required to serve a period of parole.

Q: I am serving a life sentence. Can I get compassionate release?

A: It depends. If you are serving a life sentence because you were convicted of first-degree murder of a police officer engaged in the performance of their duties or as retaliation for the

performance of their duties, you cannot get compassionate release. The only other exclusions are for persons serving a death sentence or an LWOP sentence. If you are serving any other kind of life sentence, you are eligible for compassionate release so long as you meet the medical criteria.

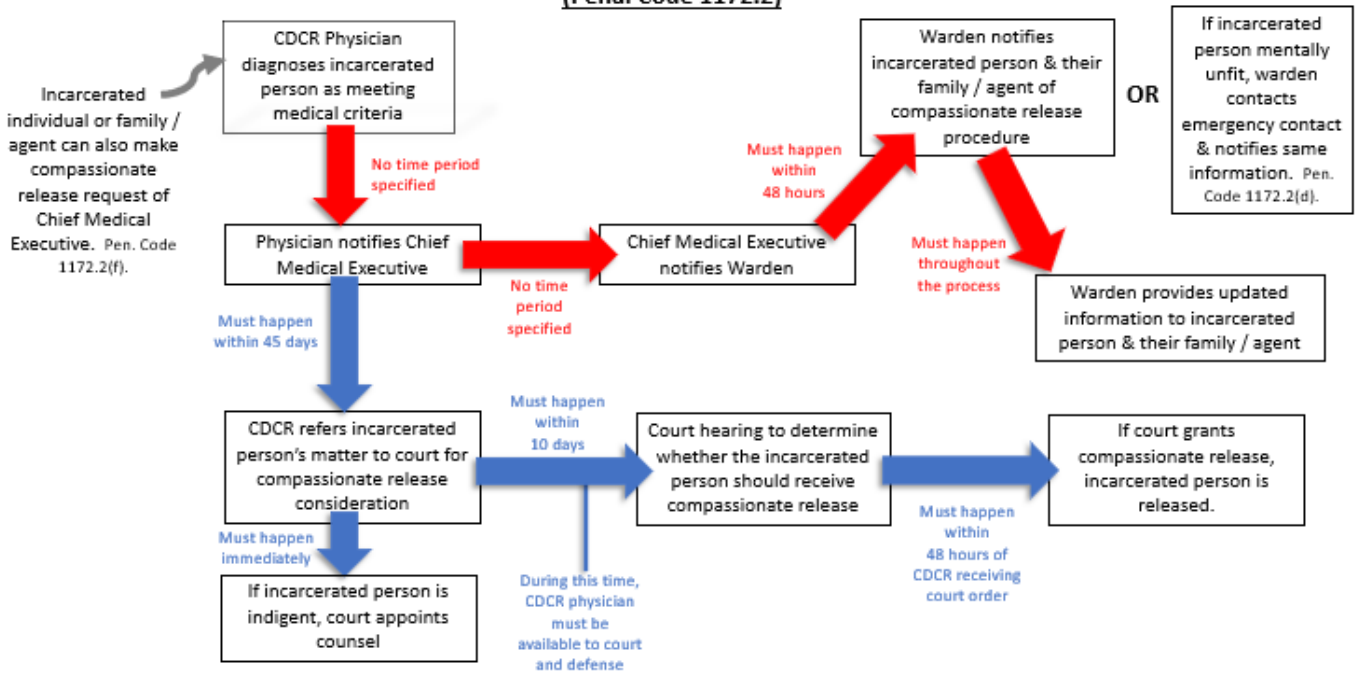
Q: What does "currently pose an unreasonable risk of danger of committing a violent 'super-strike felony" mean?

A: During the compassionate release hearing, the court would have to make a finding, based on evidence before it, that you currently present an unreasonable risk of danger of committing a "super strike" as defined in Pen. Code §667(e)(2)(C)(iv). If the judge determines, based on evidence, that you pose an unreasonable risk of committing one of these offenses, you will be denied compassionate release.

Q: What if I'm in a coma or otherwise unconscious? Will the compassionate release process go on without me?

A: Yes. The CDCR process can start without you. The case can be referred to the court for resentencing without you, and a lawyer will still be appointed and represent you at any hearing. If your medical condition is so bad that you are "mentally unfit", the compassionate release process will proceed anyway. If you are ultimately granted compassionate release, you will be released from prison even if you are in a coma or otherwise unconscious for all or a part of the process.

Compassionate Release Timeline (Penal Code 1172.2)



TEXT OF PENAL CODE §1172.2

(a) Notwithstanding any other law and consistent with paragraph (1) of subdivision (a) of Section 1170, if the statewide chief medical executive, in consultation with other clinical executives, as needed, determines that an incarcerated person satisfies the medical criteria set forth in subdivision (b), the department shall recommend to the court that the incarcerated person's sentence be recalled.

(b) There shall be a presumption favoring recall and resentencing under this section if the court finds that the facts described in paragraph (1) or (2) exist, 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, based on the incarcerated person's current physical and mental condition.

(1) The incarcerated person has a serious and advanced illness with an end-of-life trajectory. Examples include, but are not limited to, metastatic solid-tumor cancer, amyotrophic lateral sclerosis (ALS), end-stage organ disease, and advanced end-stage dementia.

(2) The incarcerated person is permanently medically incapacitated with a medical condition or functional impairment that renders them permanently unable to complete basic activities of daily living, including, but not limited to, bathing, eating, dressing, toileting, transferring, and ambulation, or has progressive end-stage dementia, and that incapacitation did not exist at the time of the original sentencing.

(c) Within 10 days of receipt of a positive recommendation by the department, the court shall hold a hearing to consider whether the incarcerated person's sentence should be recalled.

(d) Any physician employed by the department, or their designee, who determines that an incarcerated person has a serious and advanced illness with an end-of-life trajectory or has a medical condition or functional impairment that renders them permanently medically incapacitated shall notify the chief medical executive of the prognosis. If the chief medical executive concurs with the prognosis, they shall notify the warden. Within 48 hours of receiving notification, the warden or the warden's representative shall notify the incarcerated person of the recall and resentencing procedures, and shall arrange for the incarcerated person to designate a family member or other outside agent to be notified as to the incarcerated person's medical condition and prognosis, and as to the recall and resentencing procedures. If the incarcerated person is deemed mentally unfit, the warden or the warden's representative shall contact the incarcerated person's emergency contact and provide the information described in subdivision (b).

(e) The department shall refer the matter to the court for recall and resentencing within 45 days of the primary physician's, or their designee's, diagnosis and referral to the chief medical executive.

(f) The warden or the warden's representative shall provide the incarcerated person and their family member, agent, or emergency contact, as described in subdivision (d), updated information throughout the recall and resentencing process with regard to the incarcerated person's medical condition and the status of the incarcerated person's recall and resentencing proceedings.

(g) Notwithstanding any other provisions of this section, the incarcerated person or their family member or designee may independently request consideration for recall and resentencing by contacting the chief medical executive at the prison. Upon receipt of the request, the chief medical executive and the warden or the warden's representative shall follow the procedures described in subdivision (d). If the department determines that the incarcerated person satisfies the criteria set forth in subdivision (b), the

department shall recommend to the court that the incarcerated person's sentence be recalled. The department shall submit a recommendation for release within 45 days.

(h) Any recommendation for recall submitted to the court by the department shall include one or more medical evaluations, a postrelease plan, and findings pursuant to subdivision (b).

(i) If possible, the matter shall be heard before the same judge of the court who sentenced the incarcerated person.

(j) The referring physician or their designees from the department shall be available to the court or defense counsel as necessary throughout the recall and resentencing proceedings.

(k) Upon recommendation to the court for recall of sentence, the incarcerated person shall have the right to counsel and, if indigent, the right to court appointed counsel.

(l) If the court grants the recall and resentencing application, the incarcerated person shall be released by the department within 48 hours of receipt of the court's order, unless a longer time period is agreed to by the incarcerated person. At the time of release, the warden or the warden's representative shall ensure that the incarcerated person has each of the following in their possession: a discharge medical summary, full medical records, state identification, parole or postrelease community supervision medications, and all property belonging to the incarcerated person. After discharge, any additional records shall be sent to the incarcerated person's forwarding address.

(m) The secretary shall issue a directive to medical and correctional staff employed by the department that details the guidelines and procedures for initiating a recall and resentencing procedure. The directive shall clearly state that any incarcerated person who has a serious and advanced illness with an end-of-life trajectory or who is found to be permanently medically incapacitated is eligible for recall and resentencing consideration, and that recall and resentencing procedures shall be initiated upon that prognosis.

(n) The provisions of this section shall be available to an incarcerated person who is sentenced to a county jail pursuant to subdivision (h) of Section 1170. For purposes of those incarcerated persons, "secretary" or "warden" shall mean the county correctional administrator and "chief medical executive" shall mean a physician designated by the county correctional administrator for this purpose.

(o) This section does not apply to an incarcerated person sentenced to death or a term of life without the possibility of parole.

(p) Beginning January 1, 2024, the California Judicial Council shall publicly release an annual report on the compassionate release program based on records provided by the department pursuant to this section and subsequent court records. The report shall include, but is not limited to, all of the following:

(1) The number of people who were referred to the court for recall and resentencing disaggregated by race, ethnicity, age, gender identity and further disaggregated by the type of criteria on which the referral was based. The report shall identify the following categories of criteria for recall and resentencing referrals:

(A) A serious and advanced illness with an end-of-life trajectory.

(B) Functional impairment.

(C) Cognitive impairment.

(2) The number of people released by the court pursuant to this section, disaggregated by race, ethnicity, age, and gender identity.

(3) The number of people denied resentencing sought pursuant to this section disaggregated by race, ethnicity, age, and gender identity.

(4) Number of people who pass away before completing the recall and resentencing process disaggregated by race, ethnicity, age, and gender identity.

(5) Number of people denied resentencing sought pursuant to this section for lack of release plans with data disaggregated by race, ethnicity, age, and gender identity.

(6) Number of cases pending decision with data disaggregated by race, ethnicity, age, and gender identity.

Court Required to Dismiss / Redesignate Marijuana Convictions
AB 1706

Amends Health & Safety Code §11361.9

Proposition 64 was passed by California votes in 2016, and it legalized marijuana use by adults 21 years of age or older. Beginning January 1, 2019, a statewide process for automatic review of convictions that may qualify for relief under Proposition 64 began. As part of this process, prosecuting agencies were given until a July 1, 2020 to review cases and decide whether to request a hearing to challenge Proposition 64 relief.

Assembly Bill (AB) 1706 requires all convictions eligible for relief under Proposition 64 that were not challenged by the prosecution as of July 1, 2020 to be ***automatically*** recalled, dismissed, and/or redesignated by order of the court. The trial court must make this order no later than March 1, 2023. Additionally, the California Department of Justice (DOJ) must update the criminal history information database with these changes by July 1, 2023. The DOJ must conduct an awareness campaign so that individuals that may be affected by this process learn of methods to verify updates in their criminal history.

A copy of the law is attached. Please read it carefully. This document does not constitute legal advice and is general information.

FREQUENTLY ASKED QUESTIONS

The following is not legal advice specific to your case. It is your responsibility to do legal research or contact a lawyer to determine if you are eligible for relief.

Q: What do the terms "recall", "dismissal", and "redesignation" mean?

A: To "recall" a sentence means to reverse it. A marijuana-related sentence will be recalled if you are still serving your sentence (you are still in prison, county jail, on probation, parole, mandatory supervision or post-release community supervision). After a marijuana-related sentence is recalled, a judge can either resentence you to a lesser sentence or dismiss the conviction. The law determines what will happen to the marijuana-related conviction after it has been recalled.

To "dismiss" a conviction means to remove it for some purposes. A conviction that has been dismissed usually will not show up on background checks for employment. However, the

conviction will still be on your criminal record and can be viewed by (and used by) prosecuting agencies in the future. A marijuana-related conviction can be dismissed (if the law allows) at any time. You do not have to be serving your sentence to receive this relief.

To "redesignate" a conviction means to convert the conviction from a felony to a misdemeanor or from a misdemeanor to an infraction. A marijuana-related conviction can be redesignated once you have completed your sentence. The law determines how a marijuana-related conviction will be redesignated.

Q: What marijuana-related crimes are eligible for automatic recall, dismissal, or redesignation by March 1, 2023?

A: Crimes eligible for relief include Health & Safety Code §11357 (possession of marijuana or concentrated cannabis; possession of marijuana on school grounds), §11358 (cultivation of marijuana); §11359 (possession of marijuana with intent to sell), and §11360 (marijuana sales). Please be aware that not all marijuana-related convictions are eligible for this relief. Specifically, smoking or ingesting marijuana or marijuana products in a CDCR facility is still a crime.

Q: How do I know if I my sentence or conviction will be recalled, dismissed or redesignated?

A: It depends on what crime is on your record and whether you are still serving your sentence or if your sentence is complete. Some marijuana-related crimes are no longer crimes under California law. Some were reduced from misdemeanors to infractions. Some were reduced from felonies to misdemeanors.

If you were convicted of a marijuana-related crime that is no longer a crime in California, and you are still serving your sentence (you are still in prison, county jail, on probation, parole, mandatory supervision or post-release community supervision) your sentenced will be recalled and the crime will be dismissed as legally invalid. If you were instead convicted of a crime that has since been reduced in seriousness either to an infraction or a misdemeanor, and you are still serving your sentence, your sentence will be recalled and the judge will resentence you to the correct charge. If your sentence is complete (you are no longer in custody or on supervision of any kind), your conviction can be dismissed or redesignated within the meaning of the law. The law determines what will happen to the marijuana-related conviction.

Q: How do I check my criminal record to make sure my eligible marijuana-related conviction was recalled, dismissed or redesignated?

A: Individuals have the right to request a copy of their own criminal history record from the DOJ to review for accuracy and completeness. Starting July 1, 2023, if you want to check your own criminal record to make sure your marijuana-related conviction has been recalled, dismissed or redesignated, you need to fill out a form and get fingerprinted by a LiveScan

operator. There is a one-time fee waiver available for processing the form, but you will likely still have to pay the cost of getting your fingerprints done. The LiveScan operator submits the form directly to the DOJ for you.

You may also want to check the court records for your conviction. Some courts have electronic records available online (either free or for a fee). You can also go to the courthouse where you were convicted and asked to look at the record for your case. If you just want to look at the file, this should be free of charge. Courthouses often charge a fee if you want copies made of any document. Please be aware that what is contained on your criminal history record and what is contained in the record of your case at the courthouse may not be the same. The only way to know what is on your criminal history record is to follow the procedure above.

Assembly Bill No. 1706

CHAPTER 387

An act to amend Section 11361.9 of the Health and Safety Code, relating to cannabis.

[Approved by Governor September 18, 2022. Filed with Secretary of State September 18, 2022.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1706, Mia Bonta. Cannabis crimes: resentencing.

Existing law, the Control, Regulate and Tax Adult Use of Marijuana Act (AUMA), enacted by the voters at the November 8, 2016, statewide general election, regulates the cultivation, distribution, and use of cannabis for nonmedical purposes by individuals 21 years of age and older. Under AUMA, a person 21 years of age or older may, among other things, possess, process, transport, purchase, obtain, or give away, as specified, up to 28.5 grams of cannabis and up to 8 grams of concentrated cannabis. Existing law authorizes a person to petition for the recall or dismissal of a sentence, dismissal and sealing of a conviction, or redesignation of a conviction of an offense for which a lesser offense or no offense would be imposed under AUMA.

Existing law, on or before July 1, 2019, requires the Department of Justice to review the records in the state summary criminal history information database to identify past convictions that are potentially eligible for recall or dismissal of sentence, dismissal and sealing, or redesignation. Existing law gives the prosecution until July 1, 2020, to review all cases and determine whether to challenge the recall, dismissal, or sealing. Existing law requires the court to reduce or dismiss a sentence that has not been challenged by July 1, 2020.

This bill would, if a sentence was not challenged by July 1, 2020, require the court to issue an order recalling or dismissing the sentence, dismissing and sealing, or redesignating the conviction no later than March 1, 2023, and would require the court to update its records accordingly and to notify the Department of Justice. The bill would require the Department of Justice, on or before July 1, 2023, to complete the update of the state summary criminal history information database, and ensure that inaccurate state summary criminal history is not reported, as specified. The bill would require the department to conduct an awareness campaign so that individuals that may be impacted by this process become aware of methods to verify updates to their criminal history. The bill would make a conviction, arrest, or other proceeding that has been sealed pursuant to these provisions deemed never to have occurred, as specified. The bill would, until June 1, 2024, require

the department, in consultation with the Judicial Council, to produce a quarterly joint progress report to the Legislature, as specified.

The people of the State of California do enact as follows:

SECTION 1. Section 11361.9 of the Health and Safety Code is amended to read:

11361.9. (a) On or before July 1, 2019, the Department of Justice shall review the records in the state summary criminal history information database and shall identify past convictions that are potentially eligible for recall or dismissal of sentence, dismissal and sealing, or redesignation pursuant to Section 11361.8. The department shall notify the prosecution of all cases in their jurisdiction that are eligible for recall or dismissal of sentence, dismissal and sealing, or redesignation.

(b) The prosecution shall have until July 1, 2020, to review all cases and determine whether to challenge the recall or dismissal of sentence, dismissal and sealing, or redesignation.

(c) (1) The prosecution may challenge the resentencing of a person who is still serving a sentence pursuant to this section when the person does not meet the criteria established in Section 11361.8.

(2) The prosecution may challenge the dismissal and sealing or redesignation of a person pursuant to this section who has completed their sentence for a conviction when the person does not meet the criteria established in Section 11361.8.

(3) On or before July 1, 2020, the prosecution shall inform the court and the public defender's office in their county when they are challenging a particular recall or dismissal of sentence, dismissal and sealing, or redesignation. The prosecution shall inform the court when they are not challenging a particular recall or dismissal of sentence, dismissal and sealing, or redesignation.

(4) The public defender's office, upon receiving notice from the prosecution pursuant to paragraph (3), shall make a reasonable effort to notify the person whose resentencing or dismissal is being challenged.

(d) (1) If the prosecution did not challenge the recall or dismissal of sentence, dismissal and sealing, or redesignation of a conviction on or before July 1, 2020, the conviction shall be deemed unchallenged, recalled, dismissed, and redesignated, as applicable, and the court shall issue an order, recalling or dismissing the sentence, dismissing and sealing, or redesignating the conviction in each case pursuant to Section 11361.8 no later than March 1, 2023.

(2) On or before March 1, 2023, the court shall update its records in accordance with this section, and shall report all convictions that have been recalled, dismissed, redesignated, or sealed to the Department of Justice for adjustment of the state summary criminal history information database.

(3) On or before July 1, 2023, the Department of Justice shall ensure that all of the records in the state summary criminal history information database

that have been recalled, dismissed, sealed, or redesignated pursuant to this section have been updated, and shall ensure that inaccurate state summary criminal history is not disseminated. For those individuals whose state summary criminal history information was disseminated pursuant to Section 11105 of the Penal Code in the 30 days prior to an update based on this section, and the requesting entity is still entitled to receive the state summary criminal history information, the Department of Justice shall provide a subsequent notice to the entity.

(e) The Department of Justice shall post general information on its internet website about the recall or dismissal of sentences, dismissal and sealing, or redesignation authorized in this section. The department shall conduct an awareness campaign about the recall or dismissal of sentences, dismissal and sealing, or redesignation authorized in this section, so that individuals that may be impacted by this process are informed of the process pursuant to Article 5 (commencing with Section 11120) of Chapter 1 of Title 1 of Part 4 of the Penal Code, to request their criminal history information to verify the updates or how to contact the courts, prosecution, or public defenders' offices to assist in verifying the updates. If an individual requests their criminal history information to verify updates to their criminal history made pursuant to this section, the department may provide a one-time fee waiver of its fees under Section 11123 of the Penal Code for processing and responding to the request.

(f) A conviction, arrest, or other proceeding that has been ordered sealed pursuant to Section 11361.8, is deemed never to have occurred, and the person may reply accordingly to any inquiry about the events.

(g) Courts that have previously eliminated court records covered by this article pursuant to Sections 68152 and 68153 of the Government Code are compliant with the provisions of subdivision (c) of Section 11361.5. Courts that have previously eliminated court records covered by this article pursuant to Sections 68152 and 68153 of the Government Code shall report to the Department of Justice, in a manner prescribed by the Department of Justice, that the relevant records have been destroyed and that the record are otherwise reduced, dismissed, or sealed in accordance with this section.

(h) Beginning March 1, 2023, and until June 1, 2024, the Department of Justice, in consultation with the Judicial Council, shall submit quarterly joint progress reports to the Legislature that include, but are not limited to, all of following information:

(1) Total number of cases recalled, dismissed, resentenced, sealed, and redesignated in each county, and the status of the department's update to the state summary criminal history database.

(2) Status of cases challenged by the prosecution, and all relevant statistical information regarding the disposition of the challenged cases in each county.

(3) The number of past convictions in the state summary criminal history database that are potentially eligible for recall or dismissal of sentence, dismissal and sealing, or redesignation pursuant to Section 11361.8.

(4) The status of the department's public awareness campaign to provide notification to impacted individuals.

(i) It is the intent of the Legislature that persons who are currently serving a sentence or who proactively petition for a recall or dismissal of sentence, dismissal and sealing, or redesignation pursuant to Section 11361.8 be prioritized for review.

O

Indigency Exemption for Paying Filing Fees
AB 1803

Adds Penal Code §1203.426

Beginning January 1, 2023, any person seeking some petitioned record relief and who meets certain criteria indicating indigency will *not* be required to pay any fee or cost associated with their petition. This is true whether the petition is granted or denied.

Which Petitions Are Covered?[1]

Pen. Code §1203.4	Record relief for misdemeanor or felony convictions where probation was granted and successfully completed	*Form CR-180*
Pen. Code §1203.41 (The law before 1/1/2023)	Record relief for felony convictions where time was served in county jail or on mandatory supervision	*Form CR-180*
Pen. Code §1203.41 (The expanded law after 1/1/2023)	Record relief for felony convictions where time was served in county jail, on mandatory supervision, or in state prison	*Form CR-180 will be updated to add language for state prison sentences*
Pen. Code §1203.42	Record relief for felony convictions where, if the felony had been committed after 2011, time would have been served in county jail (instead of prison)	*Form CR-180*
Pen. Code §1203.45	Record sealing relief for juvenile misdemeanor convictions	*Form JV-595*

[1] The text of Penal Code §1203.426 specifically lists sections "1203.4, 1203.41, 1203.42, and 1203.45".

What are the Criteria That Indicate Indigency (inability to pay)?

Any of the following persons will be entitled to file their petition *without paying*[2]:

1. Anyone who **receives public benefits** under one or more of the following: Supplemental Security Income (SSI); State Supplementary Payment (SSP); California Work Opportunity and Responsibility to Kids Act (CalWORKs); federal Tribal Temporary Assistance for Needy Families (Tribal TANF); Supplemental Nutrition Assistance Program (SNAP); California Food Assistance Program; General Relief (GR) or General Assistance (GA); Cash Assistance Program for Aged, Blind & Disabled Legal Immigrants (CAPI); In-Home Supportive Services (IHSS); and Medi-Cal

2. Anyone whose monthly income is 200% or less of the current poverty guidelines[3]

3. Anyone who cannot pay court fees without using moneys that would normally pay for the common necessaries of life for them and their family (must be determined by the Judge)

If a person falls in one of those three categories, they ***cannot*** be required to pay any fine, fee, or cost associated with filing a record relief petition.

[2] Gov. Code §68632.
[3] Federal Register by the U.S. Dept. of Health and Human Services (United States Code Title 42, Section 9902, paragraph (2).)

FREQUENTLY ASKED QUESTIONS

The following is not legal advice. It is your responsibility to do legal research or contact a lawyer if you need legal advice.

Q: How I do to let the court know I am indigent?

A: The law does not state **how** a person is supposed to tell the court they are indigent. Currently, people fill out a "Request to Waive Court Fees" (form FW-001) if they cannot pay the costs associated with a record relief petition. This form appears to include the same considerations as Pen. Code §1203.426.

Q: How do I know if my monthly income is 200% of the current poverty guideline?

A: The "poverty guidelines" discussed in Pen. Code §1203.426 come from the Federal Poverty Guidelines created each year by the U.S. Department of Health and Human Services. These guidelines are periodically updated, and as of November 2022 (when this reference sheet was written) the "200% of the Federal Poverty Level Guidelines" were[4]:

200% of the Federal Poverty Level Guidelines

Family Size	Annual	Monthly	Weekly
1	$27,180	$2,265	$523
2	$36,620	$3,052	$704
3	$46,060	$3,839	$886
4	$55,500	$4,625	$1,067
5	$64,940	$5,412	$1,249
6	$74,380	$6,199	$1,430
7	$83,820	$6,985	$1,612
8	$93,260	$7,772	$1,793
Each Add'l	$9,440	$787	$182

To qualify for a fee waiver, your **monthly** income needs to be at 200% of the poverty guidelines or less.

[4] www.masslegalservices.org/content/federal-poverty-guidlines-2022

Assembly Bill No. 1803

CHAPTER 494

An act to add Sections 1203.426 and 1203.427 to the Penal Code, relating to court fees.

[Approved by Governor September 23, 2022. Filed with Secretary of State September 23, 2022.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1803, Jones-Sawyer. Court fees: ability to pay.

Existing law allows certain persons convicted of a criminal offense who have successfully completed the term of probation, or term of imprisonment and supervision, to petition the court to withdraw their plea of guilty or nolo contendere and enter a plea of not guilty or, if convicted after a plea of not guilty, petition the court to set aside the verdict of guilty and dismiss the accusatory pleading, except as specified, and in the case of certain convictions that occurred when the person was under 18 years of age, to petition the court to seal the records of arrest and conviction. Under existing law, a person granted relief pursuant to these provisions is released from all penalties and disabilities resulting from the offense, except as specified. Existing law authorizes the court to impose specified fees and costs on a person who petitions for a change of plea or setting aside of a verdict pursuant to these provisions. Existing law requires the court to grant a waiver of court fees and costs to an applicant at any stage of the proceedings at both the appellate and trial court levels if the applicant meets specified standards of eligibility and application requirements, including a person who is receiving certain public benefits, such as Supplemental Security Income or Medi-Cal, or who has a monthly income of 125% or less of the current poverty guidelines, as specified.

This bill would exempt a person who meets specified criteria from being obligated to pay these fees, as specified. The bill would prohibit a court from denying relief under these provisions to an otherwise qualified person, and who meets the criteria for a waiver of court fees and costs, solely on the basis that the person has not satisfied their restitution obligations.

The bill would make certain of its provisions inoperative if Senate Bill 1106 is enacted and becomes operative.

The people of the State of California do enact as follows:

SECTION 1. Section 1203.426 is added to the Penal Code, immediately following Section 1203.425, to read:

1203.426. A person seeking relief pursuant to Sections 1203.4, 1203.41, 1203.42, and 1203.45, and who meets the criteria set forth in Section 68632 of the Government Code shall not be required to reimburse the court, the county, or any city for the actual costs of services rendered, whether or not the petition is granted and records are sealed or expunged.

SEC. 2. Section 1203.427 is added to the Penal Code, to read:

1203.427. Notwithstanding any other law, if a person otherwise qualifies to have their records sealed or expunged pursuant to this chapter, relief under this chapter shall not be denied to a person who meets the criteria set forth in Section 68632 of the Government Code and whose probation was conditioned on making victim restitution, solely on the basis that the person has not satisfied their restitution obligation.

SEC. 3. Section 2 of this bill shall not become operative if Senate Bill 1106 of the 2021–22 Regular Session is enacted and becomes operative.

O

Getting Rid of Driving Privilege Suspension for Failure to Appear in Court
AB 2746

(Repeals Vehicle Code §§40509 & 40509.5; Amends Vehicle Code §§12807, 12808, 13365 & 13365.2; Adds Vehicle Code §13364(a))

Beginning January 1, 2027, this law gets rid of the requirement that the courts notify the California Department of Motor Vehicles (DMV) when a person fails to appear in court. This law also gets rid of the requirement that DMV suspend a person's driving privilege or refuse to issue / renew a driver's license for failure to appear in court. Also beginning January 1, 2027, any suspension of a person's driving privilege for failure to appear in court will be terminated and can no longer be a barrier to the issuance or renewal of a driver's license.

This document does not constitute legal advice and is general information.

FREQUENTLY ASKED QUESTIONS

The following is not legal advice. It is your responsibility to do legal research or contact a lawyer if you need legal advice.

Q: Does this change in the law mean I will be able to get a driver's license?

A: It depends. If the only reason you were unable to get a new driver's license or renew a driver's license you already had was because of failures to appear in court, you will be able to get a driver's license beginning January 1, 2027. Be aware that sometimes a driver's license or "privilege to drive" is suspended for more than one reason. If there are other reasons for the suspension, this new law will not help you. Some common reasons for suspension include:

- Failure to maintain auto insurance
- Failure to report a car accident
- Conviction for DUI
- Too many points on your driving record
- Failure to pay court-ordered child support

Expanded Conviction Record Relief
SB 731

(Amends Penal Code §§851.93, 1203.41 & 1203.425)

This law expands automatic conviction record relief and petitioned record relief to more individuals convicted of felony offenses. This reference sheet will discuss both types of record relief. To best understand how this law has expanded these types of relief, it is helpful to know about the old laws.

Comparison of the Laws – Old versus New

Petitioned Record Relief[1] Petition to withdraw plea of guilty or no contest and enter one of not guilty after sentence completed.	
(Old) Law before SB731	*(New) Law after SB731* (starts 1/1/2023)
Only available to some persons convicted of a felony and were either (1) placed on felony probation or (2) served time in county jail. Persons who served time in state prison were ineligible.	Expanded to include some persons sentenced to state prison. **Excluded**: Any person required to register as a sex offender (Penal Code 290) is ineligible.

Automatic Conviction Relief[2] The Department of Justice is required to review criminal records in the statewide database and identify persons who are eligible for automatic conviction relief.	
Law before SB731	Law after SB731 (beginning 7/1/2023)
Automatic conviction relief only available to: (1) Some persons convicted of felony offense and placed on probation on or after 1/1/1973, whose probation was never revoked (2) Some persons convicted of infractions or misdemeanors and sentenced on or after 1/1/1973.	Automatic conviction relief expanded to include persons convicted of felony offense(s) after 1/1/2005 and placed on probation but it was revoked – or – sentenced to county jail – or – sentenced to state prison **Excluded**: Any person convicted of a felony "strike" convictions[3] or for any felony convictions that require sex registration.

[1] Penal Code §1203.41.
[2] Penal Code §1203.425.
[3] Felony strike offense are listed in Penal Code §§667.5 and 1192.7(c).

Petitioned Record Relief Under Penal Code §1203.41

Beginning January 1, 2023, a person with a prior felony conviction may petition the court for record relief even if they served time in state prison for that felony. For anyone who served time in state prison, this relief is available *only if* all the following apply[4]:

1. At least 2 years have passed since the prison sentence was completed;
2. No longer on parole or post release community supervision;
3. Not currently serving a sentence for any offense(s);
4. Not currently on probation for any other offense(s);
5. Not currently charged with any other offense(s);
   -AND-
6. Not required to register as a sex offender (Penal Code §290).

The petition must be filed in the trial court in the county of conviction.

The District Attorney (DA) must have 15 days' notice before the hearing can happen.[5] The DA can be present at the hearing, but it is not required.

The person seeking petitioned record relief may be present at the hearing, but it is not required. They may instead appear through an attorney, including a public defender.

Filing a petition will require paying a fee, even if the petition is ultimately unsuccessful. The law allows this fee to be up to $450.00.[6] Anyone who is unable to pay this fee can request a fee waiver. The court will then decide if the person has an ability to pay, and will consider the following[7]:

- A person's current financial position
- A person's likely future financial position over the next 6 months
- Likelihood the person will find a job in the next 6 months
- Any other information that might explain the person's ability to pay

If the judge believes the interests of justice would be served by granting the petition, they may do so.[8] Granting a petition is not mandatory, even if the person meets all the requirements above. The DA is allowed to object.[9] The judge is not required to deny a petition simply because the DA objects. But the judge may only grant a petition if they believe it is in the interests of justice to do so.

[4] Penal Code §1203.41(a)(2)-(3) & (10).
[5] Penal Code §1203.41(e)(1).
[6] Penal Code §1203.41(d).
[7] Penal Code §987.8(g)(2).
[8] Penal Code §1203.41(a).
[9] Penal Code §1203.41(f).

If a petition is granted for a person who entered a **plea deal**, the judge will allow their plea of guilty or no contest to be withdrawn and then enter a plea of not guilty. The charge(s) will then be dismissed.

If a petition is granted for a person who was found guilty at **trial**, the court will set aside the guilty verdict. The charge(s) will then be dismissed.

If the felony conviction could have been charged as a misdemeanor, the judge also has the power to reduce it to a misdemeanor before dismissal. The judge may only grant a reduction to a misdemeanor if it is in the interest of justice to do so.

Petitioned Record Relief Does Not Get Rid of All Consequences of the Conviction

This relief **does not** permit a person to own, possess or have in their custody or control any firearm. This relief will not stop a prosecutor from using the prior conviction in future cases. This relief does not release a person from terms and conditions of criminal protective orders that have not expired.

To fully understand all the consequences that will still apply even after a successful petition, please read Pen. Code §1203.41(b) & (g).

Automatic Conviction Relief Under Penal Code §1203.425

Beginning July 1, 2023, the Department of Justice must review statewide criminal records databases to identify persons who are eligible for automatic conviction relief. They must continue to do this every month. For automatic conviction relief to apply, both the conviction and the person must meet certain requirements.

A **person** is eligible if they meet the following criteria[10]:

1. No current case with pending criminal charges,
2. Not currently serving a sentence for any crime,
3. Not currently on probation, parole, postrelease community supervision or mandatory supervision,
4. Not required to register as a sex offender (Penal Code §290)

[10] Penal Code §1203.425(a)(1)(B)(i), (ii) & (iii).

A **conviction** is eligible if it meets the following criteria:

Felony conviction with probation completed successfully	Felony conviction with probation completed unsuccessfully - or - with county jail or state prison custody
Requirements[11]: 1. Conviction after Jan. 1, 1973 2. Resulted in probation 3. Probation was completed successfully without revocation	Requirements[12]: 1. Conviction after Jan. 1, 2005 2. Resulted in (a) probation, but unsuccessful **-OR-** (b) a county jail sentence (Penal Code §1170(h); **-OR-** (c) a state prison sentence 3. All terms of custody and supervision have been complete 4. It has been 4 years since supervision ended 5. In those 4 years, the person has not been convicted of any new felony offense **Excluded:** There is no automatic conviction relief for any felony "strike" convictions[13] or for any felony convictions that require sex registration.

A person does not have to file any petition or motion with any court to get automatic conviction relief.

Beginning July 1, 2023, when the Department of Justice determines a person and their prior conviction qualify for automatic conviction relief, they must notify the court in the county of conviction. If a person had their probation transferred to another county, the Department of Justice will notify both the court in the county of conviction, and the court of the county where probation was transferred.[14]

The only way this automatic relief will not happen is if either the prosecutor or the probation department objects. These objections must be filed in a petition to the court 90 days before the conviction is eligible for automatic relief. The objection must show that granting relief would pose a substantial threat to public safety. The court is then required to notify the person with the conviction and hold a hearing on the objection within 45 days.

[11] Penal Code §1203.425(a)(1)(B)(iv)(I).
[12] Penal Code §1203.425(a)(1)(B)(iv)(II).
[13] Felony strike offense are listed in Penal Code §§667.5 and 1192.7(c).
[14] Penal Code §1203.425(a)(2)(C)(3)(A).

Example:

Sam has a felony conviction from Los Angeles that will be eligible for automatic relief on June 2, 2024.

If the Los Angeles District Attorney or Probation Department wants to object, they **must** file their petition in Los Angeles Superior Court 90 days before automatic relief eligibility. This means the objection must be filed on or before March 4, 2024 (90 days before June 2, 2024).

The court **must** notify Sam of the objection and set a hearing date within 45 days. The last possible date for the hearing would be April 19, 2024, as this is 45 days after March 4, 2024, when the petition was filed.

At the hearing on the objection, the prosecution, the probation department and/or the person eligible for relief may all present evidence, including declarations, affidavits, police reports, copies of the person's criminal history, or any other evidence that is material, reliable, and relevant.[15]

It is the burden of the prosecution or probation department to prove that allowing relief would pose a substantial threat to public safety. The court can consider any relevant factors, including evidence about the underlying offense and the person's record of arrests and/or convictions.[16]

If the court is convinced a substantial threat to public safety exists, the person with the conviction must then prove they will suffer hardship if relief is not granted. This hardship must outweigh the threat to public safety. The court is allowed to consider any relevant factors, including any struggles that the person has already experienced related to the conviction, any struggles they will experience in the future, and evidence of their good character.[17]

At the end of the hearing, if the court grants the objection, the court must provide a report to the Department of Justice forbidding them from granting automatic conviction relief. If the objection is denied, then the person will receive automatic conviction relief on the date they are eligible.

[15] Penal Code §1203.425(b)(3).
[16] Penal Code §1203.425(b)(4).
[17] Penal Code §1203.425(b)(5).

Even if a court blocks automatic conviction relief by granting an objection, the person may still be eligible for relief under some other law, including Pen. Code §1203.41 (discussed above).[18]

Automatic Conviction Relief Does Not Get Rid of All Consequences of the Conviction

This relief **does not** permit a person to own, possess or have in their custody or control any firearm. This relief will not stop a prosecutor from using the prior conviction in future cases. This relief does not release a person from terms and conditions of criminal protective orders that have not expired.

FREQUENTLY ASKED QUESTIONS

The following is not legal advice. It is your responsibility to do legal research or contact a lawyer if you need legal advice.

Q: I did time in prison for a strike. Can I take advantage of these new laws?

A: Yes. You can file a petition for record relief under Pen. Code §1203.41 for any felony offense you served time in prison for, including strikes. The only offense exclusion is for people who must register as a sex offender.

You would not be eligible for automatic conviction relief under Pen. Code §1203.425 because that law excludes all strike offenses where a person served prison time.

Q: On January 1, 2023, I will still be on parole, but I will have been out of prison for more than 2 years. Can I file a petition for record relief under Penal Code §1203.41?

A: No. One of the requirements for petitioned record relief under Penal Code §1203.41 is that it has been two years since you *completed your sentence*. Legally, a person who is still on supervision – whether parole, postrelease community supervision, mandatory supervision or parole – has not yet completed their sentence. Supervision is considered part of the sentence. You would be eligible for this relief two years after you were discharged from parole.

[18] Penal Code §1203.425(b)(6).

Q: I have a very old felony conviction on my record and I long ago completed my prison sentence and discharged off parole. Can I petition for record relief under Penal Code §1203.41?

A: Yes. No conviction is "too old" to be eligible for petitioned record relief. The only convictions excluded from relief are for peoples with sex offender registration.

Q: How do I know if my felony conviction could have been charged as a misdemeanor?

A: Knowing whether an offense can be charged as both a felony and a misdemeanor requires looking at the law for the offense. Often, but not always, the code section will say if the offense can be charged as a felony or a misdemeanor or both by listing the amount of custody allowed. Misdemeanors can only be sentenced to up to a year in county jail. Felonies can be sentenced to custody time in prison or custody time pursuant to Penal Code §1170(h). To know if your specific offense can be reduced to a misdemeanor, it is best to get legal advice from your attorney. Some common offenses that can be charged as both felonies and misdemeanors include: Pen. Code §§245(a)(1), 245(a)(4), 422, 496, and Vehicle Code §10851.

Q: Is there a petition form I can fill out for relief under Penal Code §1203.41?

A: Yes, but the form has not yet been updated with the new law from SB731. The form should be updated before January 1, 2023. The form is titled "CR-180" and is available at state courthouses and online.

Q: During the 4 years after I fully discharged off parole, I was convicted of a new misdemeanor. Can I still get automatic conviction relief from the Department of Justice under Penal Code §1203.425?

A: Yes. During the 4-year period after you complete your sentence and supervision, the only convictions that would prevent you from receiving automatic conviction relief are felony convictions. If you are convicted of a misdemeanor or an infraction during that time, you are still eligible for relief.

If you are convicted of a felony during that 4-year period, you will not get automatic conviction relief, but you could still apply for petitioned record relief under Penal Code §1203.41 once you meet all the criteria.

State of California

PENAL CODE

Section 1203.41

1203.41. (a) If a defendant is sentenced pursuant to paragraph (5) of subdivision (h) of Section 1170, the court, in its discretion and in the interests of justice, may order the following relief, subject to the conditions of subdivision (b):

(1) The court may permit the defendant to withdraw his or her plea of guilty or plea of nolo contendere and enter a plea of not guilty, or, if he or she has been convicted after a plea of not guilty, the court shall set aside the verdict of guilty, and, in either case, the court shall thereupon dismiss the accusations or information against the defendant and he or she shall thereafter be released from all penalties and disabilities resulting from the offense of which he or she has been convicted, except as provided in Section 13555 of the Vehicle Code.

(2) The relief available under this section may be granted only after the lapse of one year following the defendant's completion of the sentence, if the sentence was imposed pursuant to subparagraph (B) of paragraph (5) of subdivision (h) of Section 1170, or after the lapse of two years following the defendant's completion of the sentence, if the sentence was imposed pursuant to subparagraph (A) of paragraph (5) of subdivision (h) of Section 1170.

(3) The relief available under this section may be granted only if the defendant is not under supervision pursuant to subparagraph (B) of paragraph (5) of subdivision (h) of Section 1170, and is not serving a sentence for, on probation for, or charged with the commission of any offense.

(4) The defendant shall be informed, either orally or in writing, of the provisions of this section and of his or her right, if any, to petition for a certificate of rehabilitation and pardon at the time he or she is sentenced.

(5) The defendant may make the application and change of plea in person or by attorney, or by a probation officer authorized in writing.

(b) Relief granted pursuant to subdivision (a) is subject to the following conditions:

(1) In any subsequent prosecution of the defendant for any other offense, the prior conviction may be pleaded and proved and shall have the same effect as if the accusation or information had not been dismissed.

(2) The order shall state, and the defendant shall be informed, that the order does not relieve him or her of the obligation to disclose the conviction in response to any direct question contained in any questionnaire or application for public office, for licensure by any state or local agency, or for contracting with the California State Lottery Commission.

(3) Dismissal of an accusation or information pursuant to this section does not permit a person to own, possess, or have in his or her custody or control any firearm

or prevent his or her conviction under Chapter 2 (commencing with Section 29800) of Division 9 of Title 4 of Part 6.

(4) Dismissal of an accusation or information underlying a conviction pursuant to this section does not permit a person prohibited from holding public office as a result of that conviction to hold public office.

(c) This section applies to any conviction specified in subdivision (a) that occurred before, on, or after January 1, 2014.

(d) A person who petitions for a change of plea or setting aside of a verdict under this section may be required to reimburse the court for the actual costs of services rendered, whether or not the petition is granted and the records are sealed or expunged, at a rate to be determined by the court not to exceed one hundred fifty dollars ($150), and to reimburse the county for the actual costs of services rendered, whether or not the petition is granted and the records are sealed or expunged, at a rate to be determined by the county board of supervisors not to exceed one hundred fifty dollars ($150), and to reimburse any city for the actual costs of services rendered, whether or not the petition is granted and the records are sealed or expunged, at a rate to be determined by the city council not to exceed one hundred fifty dollars ($150). Ability to make this reimbursement shall be determined by the court using the standards set forth in paragraph (2) of subdivision (g) of Section 987.8 and shall not be a prerequisite to a person's eligibility under this section. The court may order reimbursement in any case in which the petitioner appears to have the ability to pay, without undue hardship, all or any portion of the costs for services established pursuant to this subdivision.

(e) (1) Relief shall not be granted under this section unless the prosecuting attorney has been given 15 days' notice of the petition for relief. The probation officer shall notify the prosecuting attorney when a petition is filed, pursuant to this section.

(2) It shall be presumed that the prosecuting attorney has received notice if proof of service is filed with the court.

(f) If, after receiving notice pursuant to subdivision (e), the prosecuting attorney fails to appear and object to a petition for dismissal, the prosecuting attorney may not move to set aside or otherwise appeal the grant of that petition.

(Added by Stats. 2013, Ch. 787, Sec. 1. (AB 651) Effective January 1, 2014.)

State of California

PENAL CODE

Section 1203.425

1203.425. (a) (1) (A) Commencing July 1, 2022, and subject to an appropriation in the annual Budget Act, on a monthly basis, the Department of Justice shall review the records in the statewide criminal justice databases, and based on information in the state summary criminal history repository and the Supervised Release File, shall identify persons with convictions that meet the criteria set forth in subparagraph (B) and are eligible for automatic conviction record relief.

(B) A person is eligible for automatic conviction relief pursuant to this section if they meet all of the following conditions:

(i) The person is not required to register pursuant to the Sex Offender Registration Act.

(ii) The person does not have an active record for local, state, or federal supervision in the Supervised Release File.

(iii) Based upon the information available in the department's record, including disposition dates and sentencing terms, it does not appear that the person is currently serving a sentence for an offense and there is no indication of pending criminal charges.

(iv) Except as otherwise provided in subclause (III) of clause (v), there is no indication that the conviction resulted in a sentence of incarceration in the state prison.

(v) The conviction occurred on or after January 1, 1973, and meets either of the following criteria:

(I) The defendant was sentenced to probation and, based upon the disposition date and the term of probation specified in the department's records, appears to have completed their term of probation without revocation.

(II) The defendant was convicted of an infraction or misdemeanor, was not granted probation, and, based upon the disposition date and the term specified in the department's records, the defendant appears to have completed their sentence, and at least one calendar year has elapsed since the date of judgment.

(2) (A) Except as specified in subdivision (b), the department shall grant relief, including dismissal of a conviction, to a person identified pursuant to paragraph (1) without requiring a petition or motion by a party for that relief if the relevant information is present in the department's electronic records.

(B) The state summary criminal history information shall include, directly next to or below the entry or entries regarding the person's criminal record, a note stating "relief granted," listing the date that the department granted relief and this section. This note shall be included in all statewide criminal databases with a record of the conviction.

(C) Except as otherwise provided in paragraph (4) and in Section 13555 of the Vehicle Code, a person granted conviction relief pursuant to this section shall be released from all penalties and disabilities resulting from the offense of which the person has been convicted.

(3) (A) Commencing July 1, 2022, and subject to an appropriation in the annual Budget Act, on a monthly basis, the department shall electronically submit a notice to the superior court having jurisdiction over the criminal case, informing the court of all cases for which a complaint was filed in that jurisdiction and for which relief was granted pursuant to this section. Commencing on January 1, 2023, for any record retained by the court pursuant to Section 68152 of the Government Code, except as provided in paragraph (4), the court shall not disclose information concerning a conviction granted relief pursuant to this section or Section 1203.4, 1203.4a, 1203.41, or 1203.42, to any person or entity, in any format, except to the person whose conviction was granted relief or a criminal justice agency, as defined in Section 851.92.

(B) If probation is transferred pursuant to Section 1203.9, the department shall electronically submit a notice as provided in subparagraph (A) to both the transferring court and any subsequent receiving court. The electronic notice shall be in a mutually agreed upon format.

(C) If a receiving court reduces a felony to a misdemeanor pursuant to subdivision (b) of Section 17, or dismisses a conviction pursuant to law, including, but not limited to, Section 1203.4, 1203.4a, 1203.41, 1203.42, 1203.43, or 1203.49, it shall furnish a disposition report to the department with the original case number and CII number from the transferring court. The department shall electronically submit a notice to the superior court that sentenced the defendant. If probation is transferred multiple times, the department shall electronically submit a notice to all other involved courts. The electronic notice shall be in a mutually agreed upon format.

(D) If a court receives notification from the department pursuant to subparagraph (B), the court shall update its records to reflect the reduction or dismissal. If a court receives notification that a case was dismissed pursuant to this section or Section 1203.4, 1203.4a, 1203.41, or 1203.42, the court shall update its records to reflect the dismissal and shall not disclose information concerning a conviction granted relief to any person or entity, in any format, except to the person whose conviction was granted relief or a criminal justice agency, as defined in Section 851.92.

(4) Relief granted pursuant to this section is subject to the following conditions:

(A) Relief granted pursuant to this section does not relieve a person of the obligation to disclose a criminal conviction in response to a direct question contained in a questionnaire or application for employment as a peace officer, as defined in Section 830.

(B) Relief granted pursuant to this section does not relieve a person of the obligation to disclose the conviction in response to a direct question contained in a questionnaire or application for public office, or for contracting with the California State Lottery Commission.

(C) Relief granted pursuant to this section has no effect on the ability of a criminal justice agency, as defined in Section 851.92, to access and use records that are granted

relief to the same extent that would have been permitted for a criminal justice agency had relief not been granted.

(D) Relief granted pursuant to this section does not limit the jurisdiction of the court over a subsequently filed motion to amend the record, petition or motion for postconviction relief, or collateral attack on a conviction for which relief has been granted pursuant to this section.

(E) Relief granted pursuant to this section does not affect a person's authorization to own, possess, or have in the person's custody or control a firearm, or the person's susceptibility to conviction under Chapter 2 (commencing with Section 29800) of Division 9 of Title 4 of Part 6, if the criminal conviction would otherwise affect this authorization or susceptibility.

(F) Relief granted pursuant to this section does not affect a prohibition from holding public office that would otherwise apply under law as a result of the criminal conviction.

(G) Relief granted pursuant to this section does not release a person from the terms and conditions of any unexpired criminal protective order that has been issued by the court pursuant to paragraph (1) of subdivision (i) of Section 136.2, subdivision (j) of Section 273.5, subdivision (*l*) of Section 368, or subdivision (k) of Section 646.9. These protective orders shall remain in full effect until expiration or until any further order by the court modifying or terminating the order, despite the dismissal of the underlying conviction.

(H) Relief granted pursuant to this section does not affect the authority to receive, or take adverse action based on, criminal history information, including the authority to receive certified court records received or evaluated pursuant to Section 1522, 1568.09, 1569.17, or 1596.871 of the Health and Safety Code, or pursuant to any statutory or regulatory provisions that incorporate the criteria of those sections.

(I) Relief granted pursuant to this section does not make eligible a person who is otherwise ineligible to provide, or receive payment for providing, in-home supportive services pursuant to Article 7 (commencing with Section 12300) of Chapter 3 of Part 3 of Division 9 of the Welfare and Institutions Code, or pursuant to Section 14132.95, 14132.952, or 14132.956 of the Welfare and Institutions Code.

(J) In a subsequent prosecution of the defendant for any other offense, the prior conviction may be pleaded and proved and shall have the same effect as if the relief had not been granted.

(5) This section shall not limit petitions, motions, or orders for relief in a criminal case, as required or authorized by any other law, including, but not limited to, Sections 1203.4 and 1204.4a.

(6) Commencing July 1, 2022, and subject to an appropriation in the annual Budget Act, the department shall annually publish statistics for each county regarding the total number of convictions granted relief pursuant to this section and the total number of convictions prohibited from automatic relief pursuant to subdivision (b), on the OpenJustice Web portal, as defined in Section 13010.

(b) (1) The prosecuting attorney or probation department may, no later than 90 calendar days before the date of a person's eligibility for relief pursuant to this section,

file a petition to prohibit the department from granting automatic relief pursuant to this section, based on a showing that granting that relief would pose a substantial threat to the public safety. If probation was transferred pursuant to Section 1203.9, the prosecuting attorney or probation department in either the receiving county or the transferring county shall file the petition in the county of current jurisdiction.

(2) The court shall give notice to the defendant and conduct a hearing on the petition within 45 days after the petition is filed.

(3) At a hearing on the petition pursuant to this subdivision, the defendant, the probation department, the prosecuting attorney, and the arresting agency, through the prosecuting attorney, may present evidence to the court. Notwithstanding Sections 1538.5 and 1539, the hearing may be heard and determined upon declarations, affidavits, police investigative reports, copies of state summary criminal history information and local summary criminal history information, or any other evidence submitted by the parties that is material, reliable, and relevant.

(4) The prosecutor or probation department has the initial burden of proof to show that granting conviction relief would pose a substantial threat to the public safety. In determining whether granting relief would pose a substantial threat to the public safety, the court may consider any relevant factors including, but not limited to, either of the following:

(A) Declarations or evidence regarding the offense for which a grant of relief is being contested.

(B) The defendant's record of arrests and convictions.

(5) If the court finds that the prosecutor or probation department has satisfied the burden of proof, the burden shifts to the defendant to show that the hardship of not obtaining relief outweighs the threat to the public safety of providing relief. In determining whether the defendant's hardship outweighs the threat to the public safety, the court may consider any relevant factors including, but not limited to, either of the following:

(A) The hardship to the defendant that has been caused by the conviction and that would be caused if relief is not granted.

(B) Declarations or evidence regarding the defendant's good character.

(6) If the court grants a petition pursuant to this subdivision, the court shall furnish a disposition report to the Department of Justice pursuant to Section 13151, stating that relief pursuant to this section was denied, and the department shall not grant relief pursuant to this section. If probation was transferred pursuant to Section 1203.9, the department shall electronically submit a notice to the transferring court, and, if probation was transferred multiple times, to all other involved courts.

(7) A person denied relief pursuant to this section may continue to be eligible for relief pursuant to Section 1203.4 or 1203.4a. If the court subsequently grants relief pursuant to one of those sections, the court shall furnish a disposition report to the Department of Justice pursuant to Section 13151, stating that relief was granted pursuant to the applicable section, and the department shall grant relief pursuant to that section. If probation was transferred pursuant to Section 1203.9, the department shall electronically submit a notice that relief was granted pursuant to the applicable

section to the transferring court and, if probation was transferred multiple times, to all other involved courts.

(c) At the time of sentencing, the court shall advise a defendant, either orally or in writing, of the provisions of this section and of the defendant's right, if any, to petition for a certificate of rehabilitation and pardon.

(Amended by Stats. 2022, Ch. 58, Sec. 13. (AB 200) Effective June 30, 2022.)

Changes Related to Placement, Transfer or Travel of Individuals on Parole / PRCS
SB 990

(Amends Penal Code §3003)

Under existing law, a person released from prison on Parole or PRCS are overwhelmingly returned to the county of their last legal residence. They serve out time on parole in that same county, with few options for relocation out-of-county.

Beginning January 1, 2024, persons released from prison will have relocation options based on educational, treatment, housing or employment opportunities. These new rules will also apply to anyone already on Parole. These new rules *probably* apply to anyone released or already on postrelease community supervision (PRCS). Senate Bill 990 and Pen. Code §3003(c)(5) "strongly encourages" these rules to apply to people released on PRCS. As this law has not yet taken effect, whether these rules will actually apply to PRCS is unknown. This reference sheet is written as if these rules *will* apply to PRCS.

How to be Released "Out-of-County"

As of January 1, 2024, a person being released on Parole or PRCS **will be released out-of-county** (to some county other than the county of their last legal residence) if there is an existence of any of the following[1]:

- Post-secondary educational program (must be verified)
- Vocational training program (must be verified)
- A work offer (must be verified)
- A person's family
- Outpatient treatment
- Housing

Out-of-county placement could still be denied if there is evidence that it would present a threat to public safety. Priority is given to the safety of the community, any witness or victim.[2]

The burden of proving verification of an educational, vocational, or work opportunity is on the person being released.[3]

[1] Penal Code §3003(c)(2).
[2] Penal Code §3003(c)(1).
[3] Penal Code §3003(c)(2).

If a person is required to participate in a transitional housing program during their first year of release by the Board of Parole Hearings, that housing will take priority.

How to Transfer Parole / PRCS to Another County

As of January 1, 2024, a person applying to transfer Parole or PRCS to another county **will be allowed to transfer** for any of the following reasons[4]:

- Post-secondary educational program (must be verified)
- Vocational training program (must be verified)
- A work offer (must be verified)
- A person's family
- Inpatient treatment
- Outpatient treatment
- Housing

Transfer could still be denied if there is evidence that it would present a threat to public safety. Priority is given to the safety of the community, any witness or victim.[5]

The burden of proving verification of an educational, vocational, or work opportunity is on the person seeking transfer.[6]

The paroling authority must give a written response within 14 days of receiving a request. If the request is **denied**, the reason must be in writing and must explain why the transfer would present a threat to public safety.

How to Request Travel Out-of-County While on Parole / PRCS

As of January 1, 2024, a person's request to travel out-of-county while on Parole or PRCS **will be granted** for any of the following reasons[7]:

- Post-secondary educational program opportunity (including classes, conference, extracurricular educational activities)
- Vocational training program opportunity (including classes, conference, extracurricular educational activities)
- An employment opportunity
- Inpatient or outpatient treatment
-

[4] Penal Code §3003(c)(4).
[5] Penal Code §3003(c)(1).
[6] Penal Code §3003(c)(2).
[7] Penal Code §3003(c)(3).

A travel permit could still be denied if there is evidence that it would present a threat to public safety. Priority must be given to the safety of the community, any witness or victim.[8]
The paroling authority must provide a written response within 14 days of receiving a request. If the request is **denied**, the reason must be in writing and must explain why the travel would present a threat to public safety.

Continuing to Work for a Joint Venture Program Employer After Release

As of January 1, 2024, anyone who had a prison job working for a joint venture program and receives an employment offer upon release ***will be placed*** on Parole or PRCS to the county where the joint venture program employer is located.[9]

Other Limitations on Parole / PRCS Placement That Apply as of 1/1/2024

If a victim or witness has specifically requested additional Parole or PRCS distance and the paroling authority finds that there is a need to protect the life, safety or well-being of that victim or witness, the following restrictions will apply:

- Persons convicted of a "violent felony"[10], inflicting great bodily injury[11], **- or -** a sexual act using force[12] cannot be placed within 35 miles of the actual residence of the victim or witness[13]
- Persons conviction of stalking cannot be placed within 35 miles of the actual residence or place of employment of the victim or witness[14]

A person cannot be placed on Parole or PRCS to a location within half a mile of a school (kindergarten through 12th grade) if their conviction is for Pen. Code §§288 or 288.5 and the paroling authority determines they pose a high risk to the public.[15]

The paroling authority must also consider "equitable distribution" of individuals on Parole and PRCS when making parole decisions.[16]

[8] Penal Code §3003(c)(1).
[9] Penal Code §3003(d).
[10] Penal Code §667.5(c)(1)-(7), (11) & (16).
[11] Penal Code §§12022.53, 12022.7 or 12022.9.
[12] Penal Code §§261(a)(1) & (3)-(4); 286(f)-(g) & (i); 287(f)-(g) & (i); 288a; 289(b)-(e).
[13] Penal Code §3003(f).
[14] Penal Code §3003(h).
[15] Penal Code §3003(g).
[16] Penal Code §3003(i).

FREQUENTLY ASKED QUESTIONS

The following is not legal advice. It is your responsibility to do legal research or contact a lawyer if you need legal advice.

Q: Does my request to be placed out-of-county, transfer Parole / PRCS or to travel out-of-county need to be in writing?

A: No. The request can be made verbally or in writing. However, if you put your request in a dated letter, and make a copy, you will have documented proof that you made a request to the paroling authority.

Q: If my request to be placed out-of-county, transfer Parole / PRCS or travel out-of-county is denied, is there anything I can do?

A: Yes. If you have made a verbal or written request and that request was denied, you can file an administrative appeal within 60 days. Use CDCR Form 602.

Q: What do I need to have to prove verification of an educational, vocational, or work opportunity?

A: Pen. Code §3003 does not state what proof is required to verify an educational, vocational or work opportunity. Common sense suggest that you will need something in writing, on official letterhead, like a written job offer or a letter of acceptance to a college / university / vocational school.

Q: Does SB990 and Pen. Code §3003 change anything about placement, transfer or travel out-of-state?

A: No. Nothing about this new law affects the policies and procedures for requesting Parole or PRCS in another state.

Q: What factors will the paroling authority consider when I request out-of-county placement, transfer for travel?

A: The law requires the paroling authority to give the greatest weight to protection of the victim and community safety. Other factors considered include:

- Verified existence of a work offer
- Verified existence of your chosen educational or vocational program
- Existence of family that you have maintained strong ties with and whose support will increase your chance of being successful on parole

- Lack of necessary outpatient treatment programs in the county of your last legal residence
- Existence of a housing option, including with a relative or acceptance into a transitional housing program of your choice

There can be other factors for the paroling authority to consider beyond this list. If you have a compelling reason based on employment / vocational / educational opportunity, treatment for substance abuse or mental health, family ties, or something else that will improve your chances of being successful on parole, you should state that reason in your verbal or written request for placement, transfer or travel out-of-county.

TEXT OF PENAL CODE §3003

(As of January 1, 2024)

(a) Except as otherwise provided in this section, an inmate who is released on parole or postrelease community supervision as provided by Title 2.05 (commencing with Section 3450) shall be returned to the county that was the last legal residence of the inmate prior to the inmate's incarceration. An inmate who is released on parole or postrelease community supervision as provided by Title 2.05 (commencing with Section 3450) and who was committed to prison for a sex offense for which registration is required pursuant to Section 290, shall, through all efforts reasonably possible, be returned to the city that was the last legal residence of the inmate prior to incarceration or a close geographic location in which the inmate has family, social ties, or economic ties and access to reentry services, unless return to that location would violate any other law or pose a risk to the inmate's victim. For purposes of this subdivision, "last legal residence" shall not be construed to mean the county or city wherein the inmate committed an offense while confined in a state prison or local jail facility or while confined for treatment in a state hospital.

(b) Notwithstanding subdivision (a), an inmate may be returned to another county or city if that would be in the best interests of the public. If the Board of Parole Hearings imposing conditions of parole for inmates sentenced pursuant to subdivision (b) of Section 1168, as determined by the parole consideration panel, or the Department of Corrections and Rehabilitation setting the conditions of parole for inmates sentenced pursuant to Section 1170, decides on a return to another county or city, it shall place its reasons in writing in the parolee's permanent record and include these reasons in the notice to the sheriff or chief of police pursuant to Section 3058.6. In making its decision, the paroling authority shall consider, among others, the following factors, giving the greatest weight to the protection of the victim and the safety of the community:

(1) The need to protect the life or safety of a victim, the parolee, a witness, or any other person.

(2) Public concern that would reduce the chance that the inmate's parole would be successfully completed.

(3) The verified existence of a work offer, or an educational or vocational training program chosen by the inmate in another county.

(4) The existence of family in another county with whom the inmate has maintained strong ties and whose support would increase the chance that the inmate's parole would be successfully completed.

(5) The lack of necessary outpatient treatment programs for parolees receiving treatment pursuant to Section 2960 in the county of last legal residence.

(6) The existence of a housing option in another county, including with a relative or acceptance into a transitional housing program of choice.

(c) (1) The Department of Corrections and Rehabilitation, in determining an out-of-county commitment pursuant to this section, shall give priority to the safety of the community and any witnesses and victims.

(2) Absent evidence that parole transfer would present a threat to public safety, the inmate shall be released to the county in the location of a verified existence of a postsecondary educational or vocational training program of the inmate's choice, or of a verified existence of a work offer, the inmate's family, outpatient treatment, or housing. The burden of verifying the existence of an

educational or vocational training program or a work offer shall be on the person on parole. The Department of Corrections and Rehabilitation shall complete the parole transfer process prior to release and ensure the person is released from prison directly to the county where the postsecondary educational or vocational training program chosen by the inmate, or the work offer, the inmate's family, outpatient treatment, or housing is located. This paragraph shall not apply to placement and participation in a transitional housing program during the first year after release pursuant to a condition of parole imposed by the Board of Parole Hearings upon granting parole at a hearing conducted under Article 3 (commencing with Section 3040).

(3) Absent evidence that travel outside of the county of commitment would present a threat to public safety, a person on parole shall be granted a permit to travel outside the county of commitment to a location where the person has postsecondary educational or vocational training program opportunities, including classes, conferences, or extracurricular educational activities, an employment opportunity, or inpatient or outpatient treatment. A parole agent shall provide a written response of their decision within 14 days after receiving the request for a travel permit. If the parole agent denies the request for an out-of-county travel permit, they shall include in writing the reasons the travel would present a threat to public safety.

(4) Absent evidence that transfer to a county outside the county of commitment would present a threat to public safety, a person on parole shall be granted approval of an application to transfer residency and parole to another county where the person has a verified existence of a postsecondary educational or vocational training program chosen by the inmate, or a verified existence of a work offer, the person's family, inpatient or outpatient treatment, or housing. The burden of verifying the existence of an educational or vocational training program or a work offer shall be on the person on parole. A parole agent shall provide a written response of their decision within 14 days after receiving the request for the transfer application. If the parole agent denies the application for a transfer of parole to another county, they shall include in writing the reasons the transfer would present a threat to public safety. This paragraph shall not apply to placement and participation in a transitional housing program during the first year after release pursuant to a condition of parole imposed by the Board of Parole Hearings upon granting parole at a hearing conducted under Article 3 (commencing with Section 3040).

(5) The department and probation officers may extend paragraphs (2) through (4), inclusive, to individuals released on postrelease community supervision. The Legislature finds and declares that the department and probation officers are strongly encouraged to apply this paragraph to individuals released on postrelease community supervision.

(d) In making its decision about an inmate who participated in a joint venture program pursuant to Article 1.5 (commencing with Section 2717.1) of Chapter 5, the paroling authority shall release the inmate to the county where the joint venture program employer is located if that employer states to the paroling authority that the employer intends to employ the inmate upon release.

(e) (1) The following information, if available, shall be released by the Department of Corrections and Rehabilitation to local law enforcement agencies regarding a paroled inmate or inmate placed on postrelease community supervision pursuant to Title 2.05 (commencing with Section 3450) who is released in their jurisdictions:

(A) Last, first, and middle names.

(B) Birth date.

(C) Sex, race, height, weight, and hair and eye color.

(D) Date of parole or placement on postrelease community supervision and discharge.

(E) Registration status, if the inmate is required to register as a result of a controlled substance, sex, or arson offense.

(F) California Criminal Information Number, FBI number, social security number, and driver's license number.

(G) County of commitment.

(H) A description of scars, marks, and tattoos on the inmate.

(I) Offense or offenses for which the inmate was convicted that resulted in parole or postrelease community supervision in this instance.

(J) Address, including all of the following information:

(i) Street name and number. Post office box numbers are not acceptable for purposes of this subparagraph.

(ii) City and ZIP Code.

(iii) Date that the address provided pursuant to this subparagraph was proposed to be effective.

(K) Contact officer and unit, including all of the following information:

(i) Name and telephone number of each contact officer.

(ii) Contact unit type of each contact officer such as units responsible for parole, registration, or county probation.

(L) A digitized image of the photograph and at least a single digit fingerprint of the parolee.

(M) A geographic coordinate for the inmate's residence location for use with a Geographical Information System (GIS) or comparable computer program.

(2) Unless the information is unavailable, the Department of Corrections and Rehabilitation shall electronically transmit to the county agency identified in subdivision (a) of Section 3451 the inmate's tuberculosis status, specific medical, mental health, and outpatient clinic needs, and any medical concerns or disabilities for the county to consider as the offender transitions onto postrelease community supervision pursuant to Section 3450, for the purpose of identifying the medical and mental health needs of the individual. All transmissions to the county agency shall be in compliance with applicable provisions of the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA) (Public Law 104-191), the federal Health Information Technology for Economic and Clinical Health Act (HITECH) (Public Law 111-005), and the implementing of privacy and security regulations in Parts 160 and 164 of Title 45 of the Code of Federal Regulations. This paragraph shall not take effect until the Secretary of the United States Department of Health and Human Services, or the secretary's designee, determines that this provision is not preempted by HIPAA.

(3) Except for the information required by paragraph (2), the information required by this subdivision shall come from the statewide parolee database. The information obtained from each source shall be based on the same timeframe.

(4) All of the information required by this subdivision shall be provided utilizing a computer-to-computer transfer in a format usable by a desktop computer system. The transfer of this information shall be continually available to local law enforcement agencies upon request.

(5) The unauthorized release or receipt of the information described in this subdivision is a violation of Section 11143.

(f) Notwithstanding any other law, if the victim or witness has requested additional distance in the placement of the inmate on parole, and if the Board of Parole Hearings or the Department of Corrections and Rehabilitation finds that there is a need to protect the life, safety, or well-being of the victim or witness, an inmate who is released on parole shall not be returned to a location within 35 miles of the actual residence of a victim of, or a witness to, any of the following crimes:

(1) A violent felony as defined in paragraphs (1) to (7), inclusive, and paragraphs (11) and (16) of subdivision (c) of Section 667.5.

(2) A felony in which the defendant inflicts great bodily injury on a person, other than an accomplice, that has been charged and proved as provided for in Section 12022.53, 12022.7, or 12022.9.

(3) A violation of paragraph (1), (3), or (4) of subdivision (a) of Section 261, subdivision (f), (g), or (i) of Section 286, subdivision (f), (g), or (i) of Section 287 or of former Section 288a, or subdivision (b), (d), or (e) of Section 289.

(g) Notwithstanding any other law, an inmate who is released on parole for a violation of Section 288 or 288.5 whom the Department of Corrections and Rehabilitation determines poses a high risk to the public shall not be placed or reside, for the duration of the inmate's parole, within one-half mile of a public or private school including any or all of kindergarten and grades 1 to 12, inclusive.

(h) Notwithstanding any other law, an inmate who is released on parole or postrelease community supervision for a stalking offense shall not be returned to a location within 35 miles of the victim's or witness' actual residence or place of employment if the victim or witness has requested additional distance in the placement of the inmate on parole or postrelease community supervision, and if the Board of Parole Hearings or the Department of Corrections and Rehabilitation, or the supervising county agency, as applicable, finds that there is a need to protect the life, safety, or well-being of the victim. If an inmate who is released on postrelease community supervision cannot be placed in the inmate's county of last legal residence in compliance with this subdivision, the supervising county agency may transfer the inmate to another county upon approval of the receiving county.

(i) The authority shall give consideration to the equitable distribution of parolees and the proportion of out-of-county commitments from a county compared to the number of commitments from that county when making parole decisions.

(j) An inmate may be paroled to another state pursuant to any other law. The Department of Corrections and Rehabilitation shall coordinate with local entities regarding the placement of inmates placed out of state on postrelease community supervision pursuant to Title 2.05 (commencing with Section 3450).

(k) (1) Except as provided in paragraph (2), the Department of Corrections and Rehabilitation shall be the agency primarily responsible for, and shall have control over, the program, resources, and staff implementing the Law Enforcement Automated Data System (LEADS) in conformance with subdivision (e). County agencies supervising inmates released to postrelease community supervision pursuant to Title 2.05 (commencing with Section 3450) shall provide any information requested by the department

to ensure the availability of accurate information regarding inmates released from state prison. This information may include the issuance of warrants, revocations, or the termination of postrelease community supervision. On or before August 1, 2011, county agencies designated to supervise inmates released to postrelease community supervision shall notify the department that the county agencies have been designated as the local entity responsible for providing that supervision.

(2) Notwithstanding paragraph (1), the Department of Justice shall be the agency primarily responsible for the proper release of information under LEADS that relates to fingerprint cards.

(l) In addition to the requirements under subdivision (k), the Department of Corrections and Rehabilitation shall submit to the Department of Justice data to be included in the supervised release file of the California Law Enforcement Telecommunications System (CLETS) so that law enforcement can be advised through CLETS of all persons on postrelease community supervision and the county agency designated to provide supervision. The data required by this subdivision shall be provided via electronic transfer.

(m) This section shall become operative on January 1, 2024.

"Keeping Families Connected Act" – Free Voice Communication at CDCR Facilities
SB 1008

Adds Penal Code §2084.5

Beginning January 1, 2023, all CDCR run state prisons must provide persons in their custody with "accessible, functional voice communications services free of charge." Penal Code §2084.5(a). These voice communications must be free of any charge both for the person making the call and for the person answering the call. The CDCR is allowed to set up these free voice communication services so that they do not interfere with necessary programing. Penal Code §2084.5(a).)

A copy of the law is attached. Please read it carefully. This document does not constitute legal advice and is general information.

FREQUENTLY ASKED QUESTIONS

The following is not legal advice. It is your responsibility to do legal research or contact a lawyer if you need legal advice.

Q: What are "voice communications?"

A: The term "voice communications" is not defined in the new law. At a minimum it includes telephone calls. It may also include video conferencing, electronic messages, or other communications services.

Q: I'm incarcerated a CDCR prison. Will I get free telephone calls?

A: Yes. All state prisons operated by the CDCR must provide incarcerated persons with free voice communications.

Q: I'm incarcerated at a city or county jail. Will I get free telephone calls?

A: No. This law only requires free voice communications for CDCR facilities. This law does not include city or county jails, though there is a chance future legislation could be introduced to make calls free at the local level.

Q: Will I get free telephone calls any time I want?

A: Probably not. The law allows the CDCR to limit call times so as not to interfere with necessary prison programing.

Q: If the telephone calls are now free, will they be worse quality?

A: No. This law gives responsibility to the state's utility commission to make service quality standards, and to ensure voice communication services do not fall below these standards. Any prison phone company that provides service that falls below this standard (worse service) will be committing a crime.

Senate Bill No. 1008

CHAPTER 827

An act to add Section 2084.5 to the Penal Code, to add Section 2899 to the Public Utilities Code, and to add Section 208.1 to the Welfare and Institutions Code, relating to corrections.

[Approved by Governor September 29, 2022. Filed with Secretary of State September 29, 2022.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1008, Becker. Corrections: communications.

Existing regulation requires that a state prison provide a prisoner with use of a telephone consistent with their assigned privilege group. Existing law provides that the sheriff of each county may maintain an inmate welfare fund to be kept in the treasury of the county into which, among other funds, any rebates or commissions received from a telephone company attributable to the use of pay telephones that are primarily used by inmates, is required to be deposited. Existing law contains numerous provisions governing the incarceration and detention of juveniles, including the right to maintain and continue frequent contacts with family members through telephone calls for those confined in a facility of the Division of Juvenile Facilities.

This bill would require that a state prison, or a state, county, or city youth residential placement or detention center provide voice communication services to incarcerated persons free of charge to the person initiating and the person receiving the communication, subject to the operational discretion of the Department of Corrections and Rehabilitation in a state-operated facility, as specified. The bill would prohibit a county, city, or state agency from receiving revenue for the provision of communication services to persons in its custody. To the extent this bill would mandate that a local government provide a new program or higher level of service, the bill would impose a state-mandated local program.

Existing law vests the Public Utilities Commission with regulatory authority over public utilities, including telephone corporations. Existing law requires the commission to require telephone corporations to provide customer service to telecommunication customers that includes, but is not limited to, reasonable statewide service quality standards.

This bill would require the commission to establish service quality standards for incarcerated persons calling services, as defined, to be adhered to by communication service providers rendering services to state or local correctional or detention facilities.

Under existing law, a violation of any order, decision, rule, direction, demand, or requirement of the commission is a crime.

Because a violation of a commission action implementing this bill's requirements would be a crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for specified reasons.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

(a) There is an imperative to protect incarcerated Californians and their loved ones from detrimental practices by private corporations providing goods and services to people confined in carceral facilities throughout the state.

(b) Jail and prison telecommunications is a $1,400,000,000 industry dominated by a few corporations that charge high rates for communication. This industry is consistently diversifying the array of communications services it provides to jails and prisons, which now includes phone calls, video conferencing, electronic messages, and other communication services. Incarcerated people and their support networks must be protected from its exorbitant costs across these and future communication services.

(c) The high cost of jail and prison communications services are a significant economic drain, extracting tens of millions of dollars from low-income people and disproportionately impacting Black and Brown communities in California. Research from the Ella Baker Center for Human Rights has shown that one in three families with an incarcerated loved one goes into debt over the cost of communication and visits, and 87 percent of those carrying these costs are women, disproportionately Black and Brown women.

(d) Maintaining family and community connection and economic stability while incarcerated is key to successful reentry, and it is therefore in the interest of all Californians to reduce the economic burden associated with communication in jails and prisons. Families play a major role in reentry. Many incarcerated people will reside with their families after release. Research shows that incarcerated individuals who maintain ties with their support networks have higher success rates and lower recidivism rates upon release.

(e) Programs and services currently provided in jails and prisons are in the interest of community safety and well-being by providing education and rehabilitation, and thus must be supported by General Fund dollars rather

than commissions on communication costs paid by families with incarcerated loved ones, who are also taxpayers.

(f) There is national momentum to provide communication services in jails and prisons at no cost to incarcerated people and their support networks. New York City was the first city jail system to do so in 2018 and Connecticut was the first state prison system to do so in 2021. There are now active campaigns in more than a dozen states across the country, including Massachusetts, Michigan, New York, and Virginia, among others.

(g) There is local support for providing free communications services to incarcerated people and their loved ones. A 2019 poll commissioned by Worth Rises showed that 69 percent of Californians support free communication in jails and prisons. Additionally, the City and County of San Francisco and the County of San Diego have made all phone calls from county jails and juvenile facilities free and the County of Los Angeles has also declared its intent to do the same.

SEC. 2. Section 2084.5 is added to the Penal Code, to read:

2084.5. (a) A state prison or youth residential placement or detention center operated by the Department of Corrections and Rehabilitation shall provide persons in their custody and confined in a correctional or detention facility with accessible, functional voice communication services free of charge to the person initiating and the person receiving the communication. The Department of Corrections and Rehabilitation shall have operational discretion in implementing this subdivision such that free voice communication services do not interfere with necessary programming.

(b) A state agency shall not receive revenue from the provision of voice communication services or any other communication services to a person confined in a state correctional or detention facility.

SEC. 3. Section 2899 is added to the Public Utilities Code, to read:

2899. (a) For purposes of this section, "incarcerated persons calling services" means communication services rendered to incarcerated persons, including, but not limited to, voice communications.

(b) The commission shall establish service quality standards for incarcerated persons calling services to be adhered to by communication service providers rendering services to state or local correctional or detention facilities.

SEC. 4. Section 208.1 is added to the Welfare and Institutions Code, to read:

208.1. (a) A county or city youth residential placement or detention center shall provide persons in their custody with accessible, functional voice communication services free of charge to the person initiating and the person receiving the communication.

(b) A county or city agency shall not receive revenue from the provision of voice communication services or any other communication services to any person confined in a county or city youth residential placement or detention center.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution to the extent that the costs

that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

To the extent that this act has an overall effect of increasing certain costs already borne by a local agency for programs or levels of service mandated by the 2011 Realignment Legislation within the meaning of Section 36 of Article XIII of the California Constitution, it shall apply to local agencies only to the extent that the state provides annual funding for the cost increase. Any new program or higher level of service provided by a local agency pursuant to this act above the level for which funding has been provided shall not require a subvention of funds by the state or otherwise be subject to Section 6 of Article XIII B of the California Constitution.

However, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

O

Unpaid Restitution No Longer Barrier to Post-Conviction Petition Relief or Out-of-State Parole
SB 1106

Adds Pen. Code §1210.6; Amends Pen. Code §§17, 1203.4, 1203.4a, 1203.4b, 1203.41, 1203.42 & 1203.45; Repeals Pen. Code §11177.2

The purpose of Senate Bill (SB) 1106 is to stop judges from using any unpaid restitution or restitution fine to deny specific post-conviction petitioned record relief. Additionally, unpaid restitution can no longer be grounds to deny someone parole release to another state. This law takes effect January 1, 2023. Nothing about this bill waives or reduces restitution or restitution fines owed, but rather only removes unpaid restitution as a barrier to petitioned record relief.

This document does not constitute legal advice and is general information.

What is Restitution?

A judge will order anyone convicted of a crime to pay a restitution fine, as well as make restitution payments to a victim who suffered a financial loss due to the harm caused by the crime. A ***restitution fine*** is a specific amount of money set by law, depending on the crime. ***Restitution payments to a victim*** can be for any amount of money needed to repay them for their loss or injury. For example, a person convicted of vandalism can be ordered to pay for the cost of repairing the damaged property. If a person is convicted of an assault or battery type crime, they can be required to pay for any medical bills for the victim. In some circumstances, survivors of crime require counseling or therapy, and these costs can also be restitution.

When a judge is setting the amount (cost) of restitution that must be paid to a victim, the judge does not take into consideration whether the person convicted of the crime has an ability to actually pay this amount.

A restitution order is enforceable by the victim as a civil judgment and can be enforced in the same manner provided for any other money judgment.[1]

[1] Penal Code §§1202.4()i) & 1214(B).

What Post-Conviction Petitioned Record Relief is Included?

Anyone who petitions the court and is eligible for any of the following forms of relief, but they have an unpaid restitution or restitution fine, will benefit from the change in the law:

Pen. Code §1203.4a(a) &(b)	Record relief for misdemeanor convictions without probation or infraction convictions	*Form CR-180*
Pen. Code §1203.4(a) &(b)	Record relief for misdemeanor or felony convictions where probation was granted and successfully completed	*Form CR-180*
Pen. Code §1203.41 (The law before 1/1/2023)	Record relief for felony convictions where time was served in county jail or on mandatory supervision	*Form CR-180*
Pen. Code §1203.41 (The expanded law after 1/1/2023)	Record relief for felony convictions where time was served in county jail, on mandatory supervision, or in state prison	*Form CR-180 will be updated to add language for state prison sentences*
Pen. Code §1203.42	Record relief for felony convictions where, if committed after 2011, time would have been served in county jail	*Form CR-180*
Pen. Code §1203.4b	Record relief for convictions with successful participating in the California Conservation Camp program	*Form CR-430*
Pen. Code §17	Conviction reduction relief that reduces a misdemeanor to an infraction, or a felony to a misdemeanor	*Form CR-180*

So long as an individual meets all the requirements of any of the petitions above, failure to pay off restitution will **not** be a basis to deny relief. Each of these petitions have specific requirements, not contained in this reference sheet, and should be reviewed carefully.

Out-of-State Parole

Under current law, a person who wants to Parole to another state can do so as long as certain conditions are met.[2] However, a person could not be released to another state if restitution or a restitution fine was still owe (unpaid).[3] Beginning January 1, 2023, unpaid restitution can no longer be a barrier to out-of-state Parole. This law has been repealed (removed).

[2] Pen. Code §11177.
[3] Pen. Code §11177.2.

Racial Justice Act Retroactivity
AB 256

The original California Racial Justice Act (RJA) was created by Assembly Bill 2542. It was signed into law by the Governor in 2020. It applied only to people who were sentenced in the trial court after January 1, 2021.

Assembly Bill 256 – also called "The Racial Justice For All Act" – will make the RJA apply "retroactively." This means it will apply to people who were sentenced before January 1, 2021. But AB 256 will become retroactive in stages, starting on January 1, 2023. It will not apply to everyone until January 1, 2026.

AB 256 makes the RJA apply retroactively in four stages, from 2023 to 2026:

- **Eligible Jan. 1, 2023**: people sentenced to death or facing possible immigration consequences like deportation;
- **Eligible Jan. 1, 2024**: people in prison, in a county jail serving a sentence for a felony conviction, or in the Division of Juvenile Justice ("DJJ");
- **Eligible Jan. 1, 2025**: people no longer incarcerated, but with a felony conviction or a juvenile case that resulted in commitment to DJJ entered after 2015;
- **Eligible Jan. 1, 2026**: anyone with a felony conviction or a juvenile case that resulted in commitment to DJJ.

FREQUENTLY ASKED QUESTIONS

The following is general information only. The Office of State Public Defender cannot provide legal advice about your case at this time.

Q: **What is the Racial Justice Act?**

The RJA is a law that lets people charged with (or convicted of) a crime raise issues of bias or discrimination based on race, ethnicity, or national origin in their cases. It was created by Assembly Bill 2542 (AB 2542).

Before the RJA was signed into law, courts often only recognized bias and discrimination that was extreme and intentional. But this kind of bias has been almost impossible to prove in court. In passing AB 2542, the Legislature recognized that both explicit (intentional) bias and implicit (unintentional) bias creates harm in the criminal justice system. AB 2542 enacts new approaches to combat racial discrimination and disparities. The goal is not to blame or punish people who may have unintentionally acted with bias, but rather to make sure that everyone is treated fairly, no matter their race, ethnicity, or country of birth.

Q: **Where can I find the RJA in the California Penal Code?**

The RJA added a new section 745 to the Penal Code. That is where you will find the language of the RJA. AB 2542 also added language to sections of the Penal Code that govern habeas corpus petitions (Pen. Code, §§ 1473 & 1473.7).

Under the original RJA, only people who were sentenced on or after January 1, 2021 could raise Racial Justice Act claims in habeas corpus petitions. AB 256 will change that. It will allow people sentenced before January 1, 2021 to file habeas corpus petitions raising retroactive racial justice claims.

Q: **What kind of bias or discrimination claims does the RJA cover?**

The RJA prohibits bias or discrimination in charging, conviction, and sentencing based on a defendant's race, ethnicity, or national origin. Sentencing violations can also be based on the victim's race, ethnicity, or national origin.

Section 745 (a) includes four "pathways" to proving an RJA violation. These pathways may work separately or together to prove an RJA violation. (See Y*oung v. Superior Court of Solano* (2022) 79 Cal.App.5th 138.) The four pathways, which are described below, are set out in Penal Code section 745 (a)(1)-(a)(4).

Q: **What are the four pathways to a RJA violation?**

Two of the pathways apply when someone important to your case, like a district attorney, defense attorney, expert witness, juror, or judge said biased or racist things or acted in a way that was biased or racist, either inside or outside the courtroom.

Two of the pathways apply when there are disparities, or differences, between racial groups in charging, conviction, or sentencing. For this kind of RJA violation, you would need to show that two groups of people of different races allegedly committed similar conduct, but one racial group was either charged with more serious crimes, convicted more often, or sentenced to longer terms.

You do not need to show all of these things happened; one is enough to prove an RJA violation.

Pathway 1: Subdivision (a)(1) of Penal Code § 745.

The first pathway applies when a person important to your case used biased or racist words or conduct outside of the courtroom. General racist language or conduct is not enough; it must be toward you. But the RJA does not require that you heard the words or saw the conduct. It is a violation if one of the people listed in PC 745 (a)(1) – which includes the judge, an attorney, police officer, expert witness, or juror – says something biased about you, even if it is not said directly to you. For example, if a police officer used a racial slur about you when talking to a witness that could raise an RJA claim, even if you were not there to hear it.

Pathway 2: Subdivision (a)(2) of Penal Code § 745.

The second pathway applies when the judge, an attorney, police officer, expert witness, or juror involved in your case used biased or racist words in the courtroom. The words do not have to be spoken towards you; it is enough if they show bias towards your race, ethnicity, or national origin. It is also an RJA violation if one of these people engaged in conduct that shows bias or racism while in court proceedings.

Pathway 3: Subdivision (a)(3) of Penal Code § 745.

The third pathway applies when people in one racial group are <u>charged</u> with (or convicted of) more serious crimes than similar people in another racial group. These differences – or disparities – between racial groups must exist in the same county where you were sentenced. This pathway will require gathering information about other cases to show that there is a pattern.

Pathway 4: Subdivision (a)(4) of Penal Code § 745.

The fourth pathway applies when people in one racial group are sentenced more harshly than similar people in another racial group who have the same types of charges. It also applies if people are given longer sentences because of the race of their victim. These disparities must be in the county where you were sentenced. This pathway will require gathering information about other cases to show that there is a pattern.

Q: **What should I do if I think there was an RJA violation in my case?**

You will need to **wait** until 2024 to file a habeas corpus petition, unless you are sentenced to death or facing immigration consequences.

In the meantime, you can reach out to your trial and/or appellate attorney. Explain to them why you think there was an RJA violation in your case and ask if they will be able to represent you in a habeas corpus proceeding.

Q: **What are the remedies for a RJA violation? What happens if I "win"?**

If you prove an RJA claim, the remedy may depend on which of the four pathways were violated. If the RJA violation relates to your conviction, the court can find your conviction to be invalid and order a new trial or change your conviction to a less serious offense. If the RJA violation relates only to your sentence, you may be resentenced.

Q: Do I have to show that the RJA violation affected the outcome of my case?

Under the original RJA, a person does not need to show prejudice to get relief in the trial court. For retroactive claims under the new law (AB 256), the court must grant relief under Pathway 1 or 2 discussed above (section 745 (a)(1) and (a)(2)) unless the prosecution can show beyond a reasonable doubt that the violation did not contribute to the conviction or sentence. For Pathway 3 and 4 (section 745 (a)(3) and (a)(4) disparity claims), there is no need to show prejudice.

Q: **What should I do if I have a death sentence and think there was an RJA violation in my case?**

Please speak to your appointed attorney if you have one. If you don't have a lawyer, please contact the CAP attorney assigned to help you. We strongly recommend you do **NOT** file a pro per petition. If you do, a court may prevent you from raising other errors in your case later in another habeas corpus petition.

Q: **What if I am facing possible immigration consequences like deportation and I think there was an RJA violation in my case?**

Contact an immigration attorney or the attorney who represented you at trial. Tell him or her why you think there was an RJA violation in your case and see if they have any advice for you. You can also consider filing a habeas petition if you cannot get an attorney to help you and you are about to be deported or face other serious immigration consequences.

Q: **What if a lawyer contacts me and asks for money to file an RJA claim in my case?**

Keep in mind that no attorney, paid or not, can make you eligible for RJA relief earlier than the dates above. In fact, filing too early may get your case rejected simply because the law does not yet apply to you. Any time you hire an attorney you should ask how often they have handled similar cases and ask to see examples of their work. Beware of anything that seems too good to be true.

You might become eligible for a public defender or other free lawyer to make a claim under the RJA. Lawmakers and policymakers are still working out how people who need lawyers in 2024 will get them.

Assembly Bill No. 256

CHAPTER 739

An act to amend Sections 745 and 1473 of the Penal Code, relating to criminal procedure.

[Approved by Governor September 29, 2022. Filed with Secretary of State September 29, 2022.]

LEGISLATIVE COUNSEL'S DIGEST

AB 256, Kalra. Criminal procedure: discrimination.

Existing law prohibits the state from seeking a criminal conviction or sentence on the basis of race, ethnicity, or national origin, as specified, and, in a case in which judgment has not been entered prior to January 1, 2021, allows a petition to be filed alleging a violation of that prohibition. Existing law authorizes a court that finds a violation of that prohibition to impose specified remedies, including, among other things, vacating the conviction or sentence and ordering new proceedings.

This bill would additionally authorize that petition to be filed for cases in which a judgment was entered as final prior to January 1, 2021, as specified, and in cases in which a juvenile disposition resulted in a commitment to the Division of Juvenile Justice, as specified. The bill would, if a motion under these provisions is based on the conduct or statements by the judge, require the judge to disqualify themselves from those proceedings. The bill would additionally make other technical changes.

Existing law allows a defendant to file a motion requesting disclosure of all evidence related to a potential violation of the prohibition on seeking a criminal conviction or sentence on the basis of race, ethnicity, or national origin, and requires the court to order the records to be released upon a showing of good cause. If the records are not privileged, existing law allows the court to permit the prosecution to redact information prior to disclosure.

This bill would require the court, upon a showing of good cause, to order disclosure unless a statutory privilege or constitutional privacy right cannot be adequately protected by redaction or a protective order.

Under existing law, a conviction or sentence is unlawfully imposed on the basis of race, ethnicity, or national origin if the defendant proves, among other things, that the defendant was charged or convicted of a more serious offense than defendants of other races, ethnicities, or national origins, or received a longer or more severe sentence, and the evidence establishes that the prosecution more frequently sought or obtained convictions for more serious offenses against people who share the defendant's race, ethnicity, or national origin, as specified, or if a longer or more severe sentence was more frequently imposed on defendants of a particular race, ethnicity, or

national origin, as specified. Existing law requires this determination to be made pursuant to statistical evidence or aggregate data, as specified.

This bill would allow that evidence to include nonstatistical evidence and would require the court to consider the totality of the evidence in determining whether a significant difference in seeking or obtaining convictions or in imposing sentences has been established. The bill would require the court to consider whether systemic and institutional racial bias, racial profiling, and historical patterns of racially biased policing and prosecution may have contributed to, or caused differences observed in, the data or impacted the availability of data overall.

This bill would incorporate additional changes to Section 1473 of the Penal Code proposed by SB 467 to be operative only if this bill and SB 467 are enacted and this bill is enacted last.

The people of the State of California do enact as follows:

SECTION 1. It is the intent of the Legislature to apply the California Racial Justice Act of 2020 retroactively, to ensure equal access to justice for all.

SEC. 2. Section 745 of the Penal Code is amended to read:

745. (a) The state shall not seek or obtain a criminal conviction or seek, obtain, or impose a sentence on the basis of race, ethnicity, or national origin. A violation is established if the defendant proves, by a preponderance of the evidence, any of the following:

(1) The judge, an attorney in the case, a law enforcement officer involved in the case, an expert witness, or juror exhibited bias or animus towards the defendant because of the defendant's race, ethnicity, or national origin.

(2) During the defendant's trial, in court and during the proceedings, the judge, an attorney in the case, a law enforcement officer involved in the case, an expert witness, or juror, used racially discriminatory language about the defendant's race, ethnicity, or national origin, or otherwise exhibited bias or animus towards the defendant because of the defendant's race, ethnicity, or national origin, whether or not purposeful. This paragraph does not apply if the person speaking is relating language used by another that is relevant to the case or if the person speaking is giving a racially neutral and unbiased physical description of the suspect.

(3) The defendant was charged or convicted of a more serious offense than defendants of other races, ethnicities, or national origins who have engaged in similar conduct and are similarly situated, and the evidence establishes that the prosecution more frequently sought or obtained convictions for more serious offenses against people who share the defendant's race, ethnicity, or national origin in the county where the convictions were sought or obtained.

(4) (A) A longer or more severe sentence was imposed on the defendant than was imposed on other similarly situated individuals convicted of the same offense, and longer or more severe sentences were more frequently

imposed for that offense on people that share the defendant's race, ethnicity, or national origin than on defendants of other races, ethnicities, or national origins in the county where the sentence was imposed.

(B) A longer or more severe sentence was imposed on the defendant than was imposed on other similarly situated individuals convicted of the same offense, and longer or more severe sentences were more frequently imposed for the same offense on defendants in cases with victims of one race, ethnicity, or national origin than in cases with victims of other races, ethnicities, or national origins, in the county where the sentence was imposed.

(b) A defendant may file a motion in the trial court or, if judgment has been imposed, may file a petition for writ of habeas corpus or a motion under Section 1473.7 in a court of competent jurisdiction, alleging a violation of subdivision (a). If the motion is based in whole or in part on conduct or statements by the judge, the judge shall disqualify themselves from any further proceedings under this section.

(c) If a motion is filed in the trial court and the defendant makes a prima facie showing of a violation of subdivision (a), the trial court shall hold a hearing. A motion made at trial shall be made as soon as practicable upon the defendant learning of the alleged violation. A motion that is not timely may be deemed waived, in the discretion of the court.

(1) At the hearing, evidence may be presented by either party, including, but not limited to, statistical evidence, aggregate data, expert testimony, and the sworn testimony of witnesses. The court may also appoint an independent expert. For the purpose of a motion and hearing under this section, out-of-court statements that the court finds trustworthy and reliable, statistical evidence, and aggregated data are admissible for the limited purpose of determining whether a violation of subdivision (a) has occurred.

(2) The defendant shall have the burden of proving a violation of subdivision (a) by a preponderance of the evidence. The defendant does not need to prove intentional discrimination.

(3) At the conclusion of the hearing, the court shall make findings on the record.

(d) A defendant may file a motion requesting disclosure to the defense of all evidence relevant to a potential violation of subdivision (a) in the possession or control of the state. A motion filed under this section shall describe the type of records or information the defendant seeks. Upon a showing of good cause, the court shall order the records to be released. Upon a showing of good cause, and in order to protect a privacy right or privilege, the court may permit the prosecution to redact information prior to disclosure or may subject disclosure to a protective order. If a statutory privilege or constitutional privacy right cannot be adequately protected by redaction or a protective order, the court shall not order the release of the records.

(e) Notwithstanding any other law, except as provided in subdivision (*l*), or for an initiative approved by the voters, if the court finds, by a

preponderance of evidence, a violation of subdivision (a), the court shall impose a remedy specific to the violation found from the following list:

(1) Before a judgment has been entered, the court may impose any of the following remedies:

(A) Declare a mistrial, if requested by the defendant.

(B) Discharge the jury panel and empanel a new jury.

(C) If the court determines that it would be in the interest of justice, dismiss enhancements, special circumstances, or special allegations, or reduce one or more charges.

(2) (A) After a judgment has been entered, if the court finds that a conviction was sought or obtained in violation of subdivision (a), the court shall vacate the conviction and sentence, find that it is legally invalid, and order new proceedings consistent with subdivision (a). If the court finds that the only violation of subdivision (a) that occurred is based on paragraph (3) of subdivision (a), the court may modify the judgment to a lesser included or lesser related offense. On resentencing, the court shall not impose a new sentence greater than that previously imposed.

(B) After a judgment has been entered, if the court finds that only the sentence was sought, obtained, or imposed in violation of subdivision (a), the court shall vacate the sentence, find that it is legally invalid, and impose a new sentence. On resentencing, the court shall not impose a new sentence greater than that previously imposed.

(3) When the court finds there has been a violation of subdivision (a), the defendant shall not be eligible for the death penalty.

(4) The remedies available under this section do not foreclose any other remedies available under the United States Constitution, the California Constitution, or any other law.

(f) This section also applies to adjudications and dispositions in the juvenile delinquency system and adjudications to transfer a juvenile case to adult court.

(g) This section shall not prevent the prosecution of hate crimes pursuant to Sections 422.6 to 422.865, inclusive.

(h) As used in this section, the following definitions apply:

(1) “More frequently sought or obtained” or “more frequently imposed” means that the totality of the evidence demonstrates a significant difference in seeking or obtaining convictions or in imposing sentences comparing individuals who have engaged in similar conduct and are similarly situated, and the prosecution cannot establish race-neutral reasons for the disparity. The evidence may include statistical evidence, aggregate data, or nonstatistical evidence. Statistical significance is a factor the court may consider, but is not necessary to establish a significant difference. In evaluating the totality of the evidence, the court shall consider whether systemic and institutional racial bias, racial profiling, and historical patterns of racially biased policing and prosecution may have contributed to, or caused differences observed in, the data or impacted the availability of data overall. Race-neutral reasons shall be relevant factors to charges, convictions,

and sentences that are not influenced by implicit, systemic, or institutional bias based on race, ethnicity, or national origin.

(2) "Prima facie showing" means that the defendant produces facts that, if true, establish that there is a substantial likelihood that a violation of subdivision (a) occurred. For purposes of this section, a "substantial likelihood" requires more than a mere possibility, but less than a standard of more likely than not.

(3) "Relevant factors," as that phrase applies to sentencing, means the factors in the California Rules of Court that pertain to sentencing decisions and any additional factors required to or permitted to be considered in sentencing under state law and under the state and federal constitutions.

(4) "Racially discriminatory language" means language that, to an objective observer, explicitly or implicitly appeals to racial bias, including, but not limited to, racially charged or racially coded language, language that compares the defendant to an animal, or language that references the defendant's physical appearance, culture, ethnicity, or national origin. Evidence that particular words or images are used exclusively or disproportionately in cases where the defendant is of a specific race, ethnicity, or national origin is relevant to determining whether language is discriminatory.

(5) "State" includes the Attorney General, a district attorney, or a city prosecutor.

(6) "Similarly situated" means that factors that are relevant in charging and sentencing are similar and do not require that all individuals in the comparison group are identical. A defendant's conviction history may be a relevant factor to the severity of the charges, convictions, or sentences. If it is a relevant factor and the defense produces evidence that the conviction history may have been impacted by racial profiling or historical patterns of racially biased policing, the court shall consider the evidence.

(i) A defendant may share a race, ethnicity, or national origin with more than one group. A defendant may aggregate data among groups to demonstrate a violation of subdivision (a).

(j) This section applies as follows:

(1) To all cases in which judgment is not final.

(2) Commencing January 1, 2023, to all cases in which, at the time of the filing of a petition pursuant to subdivision (f) of Section 1473 raising a claim under this section, the petitioner is sentenced to death or to cases in which the motion is filed pursuant to Section 1473.7 because of actual or potential immigration consequences related to the conviction or sentence, regardless of when the judgment or disposition became final.

(3) Commencing January 1, 2024, to all cases in which, at the time of the filing of a petition pursuant to subdivision (f) of Section 1473 raising a claim under this section, the petitioner is currently serving a sentence in the state prison or in a county jail pursuant to subdivision (h) of Section 1170, or committed to the Division of Juvenile Justice for a juvenile disposition, regardless of when the judgment or disposition became final.

(4) Commencing January 1, 2025, to all cases filed pursuant to Section 1473.7 or subdivision (f) of Section 1473 in which judgment became final for a felony conviction or juvenile disposition that resulted in a commitment to the Division of Juvenile Justice on or after January 1, 2015.

(5) Commencing January 1, 2026, to all cases filed pursuant to Section 1473.7 or subdivision (f) of Section 1473 in which judgment was for a felony conviction or juvenile disposition that resulted in a commitment to the Division of Juvenile Justice, regardless of when the judgment or disposition became final.

(k) For petitions that are filed in cases for which judgment was entered before January 1, 2021, and only in those cases, if the petition is based on a violation of paragraph (1) or (2) of subdivision (a), the petitioner shall be entitled to relief as provided in subdivision (e), unless the state proves beyond a reasonable doubt that the violation did not contribute to the judgment.

SEC. 3. Section 1473 of the Penal Code is amended to read:

1473. (a) A person unlawfully imprisoned or restrained of their liberty, under any pretense, may prosecute a writ of habeas corpus to inquire into the cause of the imprisonment or restraint.

(b) A writ of habeas corpus may be prosecuted for, but not limited to, the following reasons:

(1) False evidence that is substantially material or probative on the issue of guilt or punishment was introduced against a person at a hearing or trial relating to the person's incarceration.

(2) False physical evidence, believed by a person to be factual, probative, or material on the issue of guilt, which was known by the person at the time of entering a plea of guilty, which was a material factor directly related to the plea of guilty by the person.

(3) (A) New evidence exists that is credible, material, presented without substantial delay, and of such decisive force and value that it would have more likely than not changed the outcome at trial.

(B) For purposes of this section, "new evidence" means evidence that has been discovered after trial, that could not have been discovered prior to trial by the exercise of due diligence, and is admissible and not merely cumulative, corroborative, collateral, or impeaching.

(c) Any allegation that the prosecution knew or should have known of the false nature of the evidence referred to in paragraphs (1) and (2) of subdivision (b) is immaterial to the prosecution of a writ of habeas corpus brought pursuant to paragraph (1) or (2) of subdivision (b).

(d) This section does not limit the grounds for which a writ of habeas corpus may be prosecuted or preclude the use of any other remedies.

(e) (1) For purposes of this section, "false evidence" includes opinions of experts that have either been repudiated by the expert who originally provided the opinion at a hearing or trial or that have been undermined by later scientific research or technological advances.

(2) This section does not create additional liabilities, beyond those already recognized, for an expert who repudiates the original opinion provided at

a hearing or trial or whose opinion has been undermined by later scientific research or technological advancements.

(f) Notwithstanding any other law, a writ of habeas corpus may also be prosecuted after judgment has been entered based on evidence that a criminal conviction or sentence was sought, obtained, or imposed in violation of subdivision (a) of Section 745, if that section applies based on the date of judgment as provided in subdivision (j) of Section 745. A petition raising a claim of this nature for the first time, or on the basis of new discovery provided by the state or other new evidence that could not have been previously known by the petitioner with due diligence, shall not be deemed a successive or abusive petition. If the petitioner has a habeas corpus petition pending in state court, but it has not yet been decided, the petitioner may amend the existing petition with a claim that the petitioner's conviction or sentence was sought, obtained, or imposed in violation of subdivision (a) of Section 745. The petition shall state if the petitioner requests appointment of counsel and the court shall appoint counsel if the petitioner cannot afford counsel and either the petition alleges facts that would establish a violation of subdivision (a) of Section 745 or the State Public Defender requests counsel be appointed. Newly appointed counsel may amend a petition filed before their appointment. The court shall review a petition raising a claim pursuant to Section 745 and shall determine if the petitioner has made a prima facie showing of entitlement to relief. If the petitioner makes a prima facie showing that the petitioner is entitled to relief, the court shall issue an order to show cause why relief shall not be granted and hold an evidentiary hearing, unless the state declines to show cause. The defendant may appear remotely, and the court may conduct the hearing through the use of remote technology, unless counsel indicates that the defendant's presence in court is needed. If the court determines that the petitioner has not established a prima facie showing of entitlement to relief, the court shall state the factual and legal basis for its conclusion on the record or issue a written order detailing the factual and legal basis for its conclusion.

SEC. 3.5. Section 1473 of the Penal Code is amended to read:

1473. (a) A person unlawfully imprisoned or restrained of their liberty, under any pretense, may prosecute a writ of habeas corpus to inquire into the cause of the imprisonment or restraint.

(b) A writ of habeas corpus may be prosecuted for, but not limited to, the following reasons:

(1) False evidence that is substantially material or probative on the issue of guilt or punishment was introduced against a person at a hearing or trial relating to the person's incarceration.

(2) False physical evidence, believed by a person to be factual, probative, or material on the issue of guilt, which was known by the person at the time of entering a plea of guilty, which was a material factor directly related to the plea of guilty by the person.

(3) (A) New evidence exists that is credible, material, presented without substantial delay, and of such decisive force and value that it would have more likely than not changed the outcome at trial.

(B) For purposes of this section, "new evidence" means evidence that has been discovered after trial, that could not have been discovered prior to trial by the exercise of due diligence, and is admissible and not merely cumulative, corroborative, collateral, or impeaching.

(4) A significant dispute has emerged or further developed in the petitioner's favor regarding expert medical, scientific, or forensic testimony that was introduced at trial and contributed to the conviction, such that it would have more likely than not changed the outcome at trial.

(A) For purposes of this section, the expert medical, scientific, or forensic testimony includes the expert's conclusion or the scientific, forensic, or medical facts upon which their opinion is based.

(B) For purposes of this section, the significant dispute may be as to the reliability or validity of the diagnosis, technique, methods, theories, research, or studies upon which a medical, scientific, or forensic expert based their testimony.

(C) Under this section, a significant dispute can be established by credible expert testimony or declaration, or by peer reviewed literature showing that experts in the relevant medical, scientific, or forensic community, substantial in number or expertise, have concluded that developments have occurred that undermine the reliability or validity of the diagnosis, technique, methods, theories, research, or studies upon which a medical, scientific, or forensic expert based their testimony.

(D) In assessing whether a dispute is significant, the court shall give great weight to evidence that a consensus has developed in the relevant medical, scientific, or forensic community undermining the reliability or validity of the diagnosis, technique, methods, theories, research, or studies upon which a medical, scientific, or forensic expert based their testimony or that there is a lack of consensus as to the reliability or validity of the diagnosis, technique, methods, theories, research, or studies upon which a medical, scientific, or forensic expert based their testimony.

(E) The significant dispute must have emerged or further developed within the relevant medical, scientific, or forensic community, which includes the scientific community and all fields of scientific knowledge on which those fields or disciplines rely and shall not be limited to practitioners or proponents of a particular scientific or technical field or discipline.

(F) If the petitioner makes a prima facie showing that they are entitled to relief, the court shall issue an order to show cause why relief shall not be granted. To obtain relief, all the elements of this paragraph must be established by a preponderance of the evidence.

(G) This section does not change the existing procedures for habeas relief.

(c) Any allegation that the prosecution knew or should have known of the false nature of the evidence referred to in paragraphs (1) and (2) of subdivision (b) is immaterial to the prosecution of a writ of habeas corpus brought pursuant to paragraph (1) or (2) of subdivision (b).

(d) This section does not limit the grounds for which a writ of habeas corpus may be prosecuted or preclude the use of any other remedies.

(e) (1) For purposes of this section, "false evidence" includes opinions of experts that have either been repudiated by the expert who originally provided the opinion at a hearing or trial or that have been undermined by the state of scientific knowledge or later scientific research or technological advances.

(2) This section does not create additional liabilities, beyond those already recognized, for an expert who repudiates the original opinion provided at a hearing or trial or whose opinion has been undermined by scientific research, technological advancements, or because of a reasonable dispute within the expert's relevant scientific community as to the validity of the methods, theories, research, or studies upon which the expert based their opinion.

(f) Notwithstanding any other law, a writ of habeas corpus may also be prosecuted after judgment has been entered based on evidence that a criminal conviction or sentence was sought, obtained, or imposed in violation of subdivision (a) of Section 745, if that section applies based on the date of judgment as provided in subdivision (j) of Section 745. A petition raising a claim of this nature for the first time, or on the basis of new discovery provided by the state or other new evidence that could not have been previously known by the petitioner with due diligence, shall not be deemed a successive or abusive petition. If the petitioner has a habeas corpus petition pending in state court, but it has not yet been decided, the petitioner may amend the existing petition with a claim that the petitioner's conviction or sentence was sought, obtained, or imposed in violation of subdivision (a) of Section 745. The petition shall state if the petitioner requests appointment of counsel and the court shall appoint counsel if the petitioner cannot afford counsel and either the petition alleges facts that would establish a violation of subdivision (a) of Section 745 or the State Public Defender requests counsel be appointed. Newly appointed counsel may amend a petition filed before their appointment. The court shall review a petition raising a claim pursuant to Section 745 and shall determine if the petitioner has made a prima facie showing of entitlement to relief. If the petitioner makes a prima facie showing that the petitioner is entitled to relief, the court shall issue an order to show cause why relief shall not be granted and hold an evidentiary hearing, unless the state declines to show cause. The defendant may appear remotely, and the court may conduct the hearing through the use of remote technology, unless counsel indicates that the defendant's presence in court is needed. If the court determines that the petitioner has not established a prima facie showing of entitlement to relief, the court shall state the factual and legal basis for its conclusion on the record or issue a written order detailing the factual and legal basis for its conclusion.

SEC. 4. Section 3.5 of this bill incorporates amendments to Section 1473 of the Penal Code proposed by both this bill and Senate Bill 467. That section of this bill shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2023, (2) each bill amends

Section 1473 of the Penal Code, and (3) this bill is enacted after Senate Bill 467, in which case Section 3 of this bill shall not become operative.

O

Resentencing under People v. Heard
Juveniles serving the functional equivalent of LWOP

People convicted of crimes that were committed when they were under 18 and who were sentenced to serve long sentences that are the equivalent to life without parole can ask to be resentenced. This is a change in the law. To be eligible for resentencing under Penal Code section 1170(d)(1), a person must have served at least 15 years in custody.

The change in the law comes from a case named People v. Heard. A description of the case is included in the Frequently Asked Questions section. A copy of the case is included with this packet.

WHO CAN USE THE NEW LAW?

To be able to use Penal Code section 1170(d)(1), a person must:

(1) Have been convicted of a crime that was committed before they turned 18.
(2) Have received a long sentence that is equivalent to life without parole, which means that the person has been sentenced to such a long sentence that their sentence is longer than they will likely live.
(3) Have served at least 15 years in custody.
(4) Provide a statement telling the judge about their remorse and rehabilitation.
(5) State that one of the following is true (more than one may apply):

- They were convicted of felony murder or aiding and abetting murder.
- Besides the case they are asking the court to resentence, they do not have a juvenile adjudication for assault or other felony crimes with a significant potential for harm to victims.
- They committed the offense with at least one adult co-defendant.
- They have shown potential for rehabilitation, like taking counseling, education, or vocational programs.

WHO CANNOT USE THE NEW LAW?

The new law does not apply if any of these are true:

- It was pled and proven that the victim was tortured.
- The victim was a law enforcement officer.
- The victim was a firefighter.

WHAT CAN THE JUDGE DO IF THE SENTENCE IS RECALLED?

If the sentence is recalled, the judge can:

- Send the case to juvenile court if the person was between 14 or 15 years old when they committed the offense. There would no longer be adult court jurisdiction for the case because of changes in the law made by Senate Bill 1391. Information about Senate Bill 1391 is included in the Frequently Asked Questions section.
- Send the case to juvenile court for a transfer hearing (previously called a "fitness hearing") if the person was between the ages of 16-17 when the offense was committed.
- Lower the sentence.
- Leave the sentence the same.

The judge is not allowed to make the sentence longer.

WHAT HAPPENS IF THE JUDGE DOES NOT RECALL THE SENTENCE?

If the judge decides to not recall the sentence the first time a petition is filed, another petition can be filed after more time is served in custody. A person can:

- File a second petition after they have served at least 20 years in custody.
- File a third petition after they have served at least 24 years in custody.

HOW DO I GET STARTED?

You should try to talk to an attorney for assistance. Before you or your family pay money for an attorney, you should contact the public defender's office or attorney who helped you with your case. When you contact the attorney, be sure to tell them how old you were when you were convicted and what sentence you received. A list of public defender contacts is included in this packet.

To ask the court to recall your sentence, you will need to file a petition. A petition is a document you send to the court asking for something. A sample petition you can use to try and get into court is attached. The form allows you to ask for a lawyer to represent you. You do not have to use this form.

Included in this packet is an instruction sheet to help you fill out the petition. If you want to use the form, you will need to check the boxes and write in information about your case. Once you have filled out and signed the form, you need to:

(1) send the original completed form to the court that sentenced you.
(2) send a copy to the district attorney.
(3) send a copy to the attorney or the public defender who represented you.
(4) keep a copy for your records.

Once the Court has accepted your petition, the prosecutor will be given 60 days to file a reply. If the prosecutor needs more time, they can request the court give them additional time to respond if they have good cause. However, the prosecutor is not required to file a response.

Sometimes it is helpful to see a flow chart of the process involved:

FREQUENTLY ASKED QUESTIONS

The following is not legal advice specific to your case. It is your responsibility to do legal research or contact a lawyer to determine if you are eligible to apply for relief.

Q: What happened in the case of People v. Heard?

A: A person named Frank Heard committed some offenses when he was 15 and 16 years old. The trial court sentenced him to 23 years plus 80 years to life for those offenses. He did not receive life without the possibility of parole, but he argued that it was the "functional equivalent" to life without the possibility of parole because the sentence was so long he would die in prison.

Mr. Heard filed a petition to be resentenced under Penal Code section 1170(d)(1). That Penal Code section allows juveniles who were sentenced to life without the possibility of parole to ask the court to resentence them after they have served a minimum of 15 years in custody. The trial court denied Mr. Heard's request because he had not been sentenced to life without the possibility of parole.

Mr. Heard appealed his case. The Court of Appeal decided that if a juvenile was sentenced to the functional equivalent of life without parole they should be able to use Penal Code section 1170(d)(1). The Court of Appeal said that to not allow someone with a lengthy sentence that is equivalent to life without the possibility of parole to use Penal Code section 1170(d)(1) would violate the equal protection of laws guaranteed under the Constitution.

The Court of Appeal said that Mr. Heard was eligible to use Penal Code section 1170(d)(1) even if he was also eligible for youthful parole consideration under Penal Code section 3051.

The Attorney General did not file a petition for review of the Court of Appeal's decision. Because there is no split of authority, the Court of Appeal's decision is binding on all trial courts in California.

The case citation is: People v. Heard (2022) 83 Cal.App.5th 608.

Q: I think I am eligible. How can this law help me?

A: The new law can help you in a few ways. If you were under the age of 16 when the crime was committed, the judge could transfer your case from adult court back to juvenile court. If you were between the ages of 16-17 when your case was direct filed or transferred to adult court, you could get the benefit of a new transfer hearing.

Q: How long does my sentence need to be to qualify under the new law?

A: There is no clear answer. To be able to use the new law, your sentence must be the functional equivalent of life without parole. To give you an idea, in a non-homicide case, the California Supreme Court decided that a sentence of 50 years for crimes that were committed when a person was under 18 years old is the functional equivalent to life without parole. Because there is no clear guidance, a shorter sentence could also be eligible under the new law.

There may be arguments that a shorter sentence would also qualify if you have a health concern that will likely shorten your lifespan.

Q: What must a judge consider during the resentencing hearing?

A: If your case does not stay in juvenile court and instead is sent back to adult court after a new juvenile transfer hearing, the judge in adult court will decide whether to resentence you. In deciding whether to resentence someone, the judge must consider certain factors. Not all of these factors will apply to your case. But, if the factors exist in your case, the judge is required to consider:

- If the person was convicted pursuant to felony murder or aiding and abetting murder laws.
- Whether the person has any juvenile felony adjudications for assault or other crimes with a significant potential for harm to victims.
- Whether the person committed the offense with at least one adult co-defendant.
- If, prior to the offense, the person had insufficient adult support or supervision.
- If, prior to the offense, the person suffered from psychological or physical trauma or significant stress.
- Whether the person has shown the potential for rehabilitation. This includes participating in rehabilitative, educational, or vocational programs.
- Whether the person has used self-study for improvement.
- Whether the person is remorseful.
- If the person maintained family ties or connects with others through letter writing, calls, or visits.
- Whether the person eliminated contacts with people outside of prison who are involved in crime.
- Whether there have been disciplinary actions in the last 5 years for violent actions where the person was determined to be the aggressor.
- If the person has experienced psychological, physical or childhood trauma, including any abuse, neglect, exploitation, or sexual violence.
- If the person was the victim of intimate partner battery or human trafficking before or at the time of the offense.

Q: Is this new law different from a youthful parole hearing?

A: Yes. Penal Code section 3501 provides for youthful parole hearings. The rules and rights for a youthful parole hearing are different from the law that was changed by the case of People v. Heard and Penal Code section 1170(d)(1). A person could potentially be eligible for relief under both Penal Code section 1170(d)(1) and Penal Code section 3051.

Q: Are behavioral credits included in determining if I have been in custody long enough to file a petition?

A: Behavioral credits are <u>not</u> included in calculating time for Penal Code section 1170(d)(1). To be able to use this new law, you must have served at least 15 years of actual time before you file a petition.

Q: I am also eligible for relief under Senate Bill 1437 or Senate Bill 775 (felony murder resentencing). Can I file a petition under Penal Code section 1170(d)(1) too?

A: <u>YOU NEED TO BE EXTREMELY CAREFUL IF YOU ARE ELIGIBLE UNDER BOTH LAWS. YOU SHOULD TRY TO TALK WITH AN ATTORNEY BEFORE FILING A PETITION UNDER PENAL CODE SECTION 1170(d)(1).</u>

Senate Bill 1437 and Senate Bill 775 established a new law that allows resentencing for some people serving terms for murder, attempted murder, or manslaughter. Resentencing is allowed if the conviction was based on the felony murder rule, the natural and probable consequences doctrine or other theory where malice was assigned to a person based solely on that person's participation in a crime. The new law is contained in Penal Code section 1172.6.

Filing a petition under Penal Code section 1170(d)(1) is completely different from filing for relief under Penal Code section 1172.6. Some people will be eligible under both laws. If you have an attorney representing you on a Penal Code section 1172.6 petition, you should talk to them before you file a petition under Penal Code section 1170(d)(1). You do not want to write anything on your Penal Code section 1170(d)(1) petition that could cause problems for your Penal Code section 1172.6 petition. Specifically, what you say in the Penal Code section 1170(d) petition about how you are remorseful could cause problems for your other resentencing petitions. That is why you should talk to an attorney before filing anything.

You should be aware that the statement about remorse that you are required to include in your Penal Code section 1170(d)(1) petition will become part of the record. Both the judge and the prosecutor will have a copy of your statement. If you say something different in the future, like at a parole hearing or in another petition, a judge, a prosecutor, or a parole board commissioner might think you are not being truthful. This could be a reason to deny you relief in some other petition or make you seem unsuitable for parole and prevent or delay your release.

You are strongly encouraged to talk with an attorney before you file a petition. A list with contact information for different public defender offices is included with this packet.

Q: What is Senate Bill 1391?

A: Senate Bill 1391 is a law that was passed in 2019. It changed Welfare and Institutions Code section 707. With the change in the law, prosecutors cannot transfer cases to adult court for people who were 14 or 15 years old at the time a crime was committed. Now, a person must be at least 16 years old to be transferred to adult court.

Q: When should I file the petition for recall of sentence?

A: You can file your petition to recall your sentence after you have served at least 15 years in custody.

There is no deadline to file a petition for recall of sentence.

Q: What documents or information would be helpful to collect?

A: Documents could help support showing the judge your rehabilitation or potential for rehabilitation. You may want to collect documents that show:

- Classes you have taken.
- Any self-study you have completed for improvement.
- Any job training you received.
- Any self-help groups, like alcoholics anonymous or narcotics anonymous, you have participated in.
- Any jobs you have had while in custody.
- Any positive write ups you have received.
- Any religious programs you have participated in.
- Any other documents that show you have the potential for rehabilitation.

Q: I took a deal. Am I eligible if I did not go to trial?

A: Yes. It does not matter if you were convicted after a trial or whether you were convicted through a plea bargain. If the judge determines that you are eligible, the change in the law will apply.

Q: What should I do if the court rejects my petition?

A: If you try to file a petition with the court that is rejected, you should resubmit another petition. Sometimes the court that rejected the petition will let you know what they thought the problem was with the petition. You should fix that part of your petition. If you cannot determine on your own what the problem was, you should try to talk to an attorney.

SAMPLE PETITION

A Guide to Filling out the Petition Follows

PETITION FOR RECALL AND RESENTENCE

Penal Code §1170(d)(1), *People v. Heard* (2022) 85 Cal. App. 5th 608

PEOPLE OF THE STATE OF CALIFORNIA, County of _____ DEFENDANT:_____ DATE OF BIRTH: _____	CASE NUMBER: _____

Pursuant to *People v. Heard* (2002) 85 Cal. App. 5th 608, I request that my sentence be recalled and that a new sentencing hearing be set.

☐ 1. I was _____ years old at the time of my crime.

☐ 2. I was sentenced to_____.

☐ 3. I have served at least 15 years of my sentence.

4. At least one of the following is true (check all that apply):

☐ I was convicted of felony murder or aiding and abetting murder.

☐ I do not have a juvenile adjudication for assault or other felony crime(s) with a significant potential for harm to victims prior to this offense.

☐ I committed the offense with at least one adult codefendant.

☐ I have performed acts that tend to indicate rehabilitation or the potential for rehabilitation, including, but no limited to, availing myself of rehabilitation, educational or vocational programs, using self-study for self-improvement, and/or showing evidence of remorse.

☐ 5. I was not convicted of torturing the victim (Pen. Code §206), and the victim was not a public safety official, including local, state or federal law enforcement personnel or firefighter.

☐ 6. I have attached a statement describing my remorse and my work towards rehabilitation.

☐ 7. I request that the court appoint an attorney to represent me for this petition. I am indigent.

☐ 8. I have mailed a copy of this Petition to the following:

☐ **Office of the District Attorney**

County of _____

[Street Address]

[City, State, Zip]

☐ **Office of the Public Defender**

County of _____

[Street Address]

[City, State, Zip]

OR

☐ [Trial Attorney Name]

[Firm Name]

[Street Address]

[City, State, Zip]

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

DATE: _____ **SIGNATURE:** _____

PRINTED NAME: _____

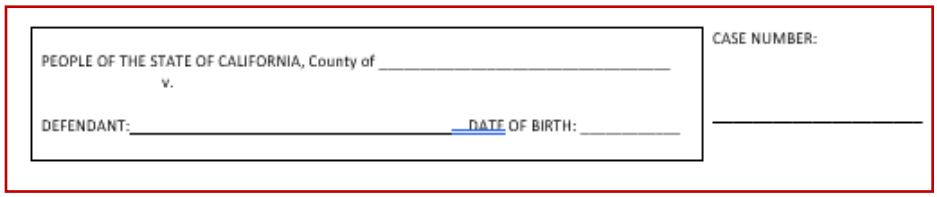
CITY: _____ **STATE:** _____

Statement describing remorse and work towards rehabilitation.

INSTRUCTION SHEET

How to Fill Out the Sample Petition for Recall & Resentence (Pen. Code §1170(d)(1))

The **top box** on the Petition is for your case information. You must add the county where you were sentenced, your name, date of birth, and your court case number. Providing this information makes sure your petition gets to the right judge and that the court can pull your file.

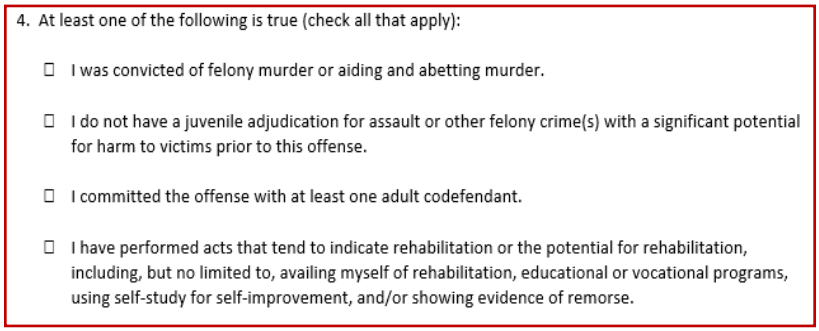

PEOPLE OF THE STATE OF CALIFORNIA, County of _____
v.
DEFENDANT:_____ DATE OF BIRTH: _____
CASE NUMBER:
_____

Line 1 requires your age at the time the crime was committed. You must have been juvenile (younger than 18 years old) to qualify for Pen. Code §1170(d)(1) resentencing. Also check the box next to line 1.

Line 2 requires you to write out your sentence (the number of years to which you were sentenced). Also check the box next to line 2.

Line 3 only requires you to check the box next to line 3. You must have already served at least 15 actual years of your sentence to qualify for Pen. Code §1170(d)(1) resentencing.

Line 4 begins a list of options that might apply to you and your case. You must check at least 1 of the boxes in this list to qualify for Pen. Code §1170(d)(1) resentencing. For some people, more than one of the options in this list will apply – check the box next to every option that applies to you. It is okay if only one applies.


4. At least one of the following is true (check all that apply):

☐ I was convicted of felony murder or aiding and abetting murder.

☐ I do not have a juvenile adjudication for assault or other felony crime(s) with a significant potential for harm to victims prior to this offense.

☐ I committed the offense with at least one adult codefendant.

☐ I have performed acts that tend to indicate rehabilitation or the potential for rehabilitation, including, but no limited to, availing myself of rehabilitation, educational or vocational programs, using self-study for self-improvement, and/or showing evidence of remorse.

Line 5 only requires you check the box next to line 5. You can only qualify for Pen. Code §1170(d)(1) resentencing if you were not convicted of torturing the victim in your case, and if the victim was not a member of law enforcement or a firefighter.

Line 6 requires you to check the box next to line 6 and to write out a statement, on separate paper, describing the work you have done towards rehabilitation. There is no length requirement for your statement.

WARNING!!

Do not write about **remorse** until you have spoken with a lawyer. This petition asks the court to appoint an attorney to represent you, and that is the attorney you should speak with about any statement on remorse.

****

In this initial petition, before you have an attorney, you should only write a statement about work you have done towards **rehabilitation**. You may use the two pages provided with this form, or, if you have more to write, you may use as many additional pieces of paper as necessary.

Writing about your **rehabilitation** is straightforward. Consider including[1]:

- Programs completed, including participation in self-help groups or training
- Educational progress, courses taken, degrees earned (including vocational)
- Positive work record, admission to honor dorms, or other accomplishments
- Attendance at church or other religious/spiritual activities
- Participation in charity events or efforts
- Positive chronos from COs or supervisors
- If you are barred from programming, share ways in which you managed to educate yourself, become more self-aware, and any coping skills you've developed to overcome challenges in prison
- Any factors that will ensure against recidivism, such as your parole plan, access to family and community support once released, job prospects or plans for further education

Line 7 only requires you to check the box next to line 7. If you or your family has retained a paid lawyer to litigate your Pen. Code §1170(d)(1) petition, do not check this box. Otherwise, check the box to let the court know you want an attorney appointed to represent you. As of the writing of this reference sheet, it is unclear whether a judge will appoint at attorney immediately upon receiving your petition or only if the recall is granted and your case is scheduled for a resentencing hearing.

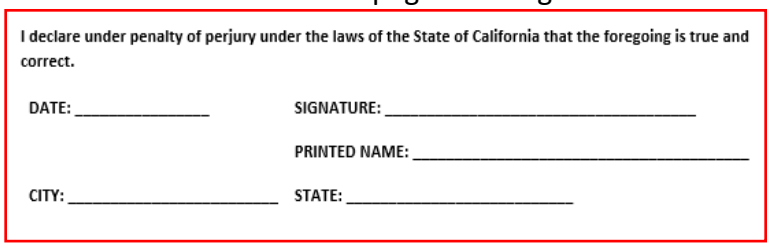
[1] This list is from the Commutation Application Guide created by California Coalition for Women Prisoners, 4400 Market Street, Oakland, CA 94608, info@womenprisoners.org

Line 8 is the Proof of Service. You must fill out the information for the District Attorney in the county where you were convicted, and you must actually mail a *copy* of your petition to the same District Attorney. Also check the box next to "Office of the District Attorney".

It is also a good idea to mail a copy of your petition to your trial lawyer (the lawyer that represented you in this case at the superior court level). If you were represented by a public defender attorney, fill in the address for the public defender in the county where you were convicted. Also check the box next to "Office of the Public Defender". A list of contact information for Public Defender offices in the state of California is included.

If you were represented by someone other than a public defender (other indigent defense counsel or a privately retained lawyer) fill in the information beginning with [Trial Attorney Name]. Also check the box next to [Trial Attorney Name].

Finally, you need to sign and date the petition at the bottom of the 2nd page. This signature confirms that you have filled out this Petition truthfully and correctly. Signing here also means you are subject to prosecution for perjury if you intentionally included false information. You also need to print your full name and print the name of the city and state where you signed this petition.


I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

DATE: _____ SIGNATURE: _____

PRINTED NAME: _____

CITY: _____ STATE: _____

State of California

PENAL CODE

Section 1170

1170. (a) (1) The Legislature finds and declares that the purpose of sentencing is public safety achieved through punishment, rehabilitation, and restorative justice. When a sentence includes incarceration, this purpose is best served by terms that are proportionate to the seriousness of the offense with provision for uniformity in the sentences of offenders committing the same offense under similar circumstances.

(2) The Legislature further finds and declares that programs should be available for inmates, including, but not limited to, educational, rehabilitative, and restorative justice programs that are designed to promote behavior change and to prepare all eligible offenders for successful reentry into the community. The Legislature encourages the development of policies and programs designed to educate and rehabilitate all eligible offenders. In implementing this section, the Department of Corrections and Rehabilitation is encouraged to allow all eligible inmates the opportunity to enroll in programs that promote successful return to the community. The Department of Corrections and Rehabilitation is directed to establish a mission statement consistent with these principles.

(3) In any case in which the sentence prescribed by statute for a person convicted of a public offense is a term of imprisonment in the state prison, or a term pursuant to subdivision (h), of any specification of three time periods, the court shall sentence the defendant to one of the terms of imprisonment specified unless the convicted person is given any other disposition provided by law, including a fine, jail, probation, or the suspension of imposition or execution of sentence or is sentenced pursuant to subdivision (b) of Section 1168 because they had committed their crime prior to July 1, 1977. In sentencing the convicted person, the court shall apply the sentencing rules of the Judicial Council. The court, unless it determines that there are circumstances in mitigation of the sentence prescribed, shall also impose any other term that it is required by law to impose as an additional term. Nothing in this article shall affect any provision of law that imposes the death penalty, that authorizes or restricts the granting of probation or suspending the execution or imposition of sentence, or expressly provides for imprisonment in the state prison for life, except as provided in of subdivision (d). In any case in which the amount of preimprisonment credit under Section 2900.5 or any other provision of law is equal to or exceeds any sentence imposed pursuant to this chapter, except for a remaining portion of mandatory supervision imposed pursuant to subparagraph (B) of paragraph (5) of subdivision (h), the entire sentence shall be deemed to have been served, except for the remaining period of mandatory supervision, and the defendant shall not be actually delivered to the custody of the secretary or the county correctional administrator. The court shall

advise the defendant that they shall serve an applicable period of parole, postrelease community supervision, or mandatory supervision and order the defendant to report to the parole or probation office closest to the defendant's last legal residence, unless the in-custody credits equal the total sentence, including both confinement time and the period of parole, postrelease community supervision, or mandatory supervision. The sentence shall be deemed a separate prior prison term or a sentence of imprisonment in a county jail under subdivision (h) for purposes of Section 667.5, and a copy of the judgment and other necessary documentation shall be forwarded to the secretary.

(b) (1) When a judgment of imprisonment is to be imposed and the statute specifies three possible terms, the court shall, in its sound discretion, order imposition of a sentence not to exceed the middle term, except as otherwise provided in paragraph(2).

(2) The court may impose a sentence exceeding the middle term only when there are circumstances in aggravation of the crime that justify the imposition of a term of imprisonment exceeding the middle term, and the facts underlying those circumstances have been stipulated to by the defendant, or have been found true beyond a reasonable doubt at trial by the jury or by the judge in a court trial. Except where evidence supporting an aggravating circumstance is admissible to prove or defend against the charged offense or enhancement at trial, or it is otherwise authorized by law, upon request of a defendant, trial on the circumstances in aggravation alleged in the indictment or information shall be bifurcated from the trial of charges and enhancements. The jury shall not be informed of the bifurcated allegations until there has been a conviction of a felony offense.

(3) Notwithstanding paragraphs (1) and (2), the court may consider the defendant's prior convictions in determining sentencing based on a certified record of conviction without submitting the prior convictions to a jury. This paragraph does not apply to enhancements imposed on prior convictions.

(4) At least four days prior to the time set for imposition of judgment, either party or the victim, or the family of the victim if the victim is deceased, may submit a statement in aggravation or mitigation to dispute facts in the record or the probation officer's report, or to present additional facts. The court may consider the record in the case, the probation officer's report, other reports, including reports received pursuant to Section 1203.03, and statements in aggravation or mitigation submitted by the prosecution, the defendant, or the victim, or the family of the victim if the victim is deceased, and any further evidence introduced at the sentencing hearing.

(5) The court shall set forth on the record the facts and reasons for choosing the sentence imposed. The court may not impose an upper term by using the fact of any enhancement upon which sentence is imposed under any provision of law. A term of imprisonment shall not be specified if imposition of sentence is suspended.

(6) Notwithstanding paragraph (1), and unless the court finds that the aggravating circumstances outweigh the mitigating circumstances that imposition of the lower term would be contrary to the interests of justice, the court shall order imposition of the lower term if any of the following was a contributing factor in the commission of the offense:

(A) The person has experienced psychological, physical, or childhood trauma, including, but not limited to, abuse, neglect, exploitation, or sexual violence.

(B) The person 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.

(C) Prior to the instant offense, or at the time of the commission of the offense, the person is or was a victim of intimate partner violence or human trafficking.

(7) Paragraph (6) does not preclude the court from imposing the lower term even if there is no evidence of those circumstances listed in paragraph (6) present.

(c) The court shall state the reasons for its sentence choice on the record at the time of sentencing. The court shall also inform the defendant that as part of the sentence after expiration of the term they may be on parole for a period as provided in Section 3000 or 3000.08 or postrelease community supervision for a period as provided in Section 3451.

(d) (1) (A) When a defendant who was under 18 years of age at the time of the commission of the offense for which the defendant was sentenced to imprisonment for life without the possibility of parole has been incarcerated for at least 15 years, the defendant may submit to the sentencing court a petition for recall and resentencing.

(B) Notwithstanding subparagraph A this paragraph shall not apply to defendants sentenced to life without parole for an offense where it was pled and proved that the defendant tortured, as described in Section 206, their victim or the victim was a public safety official, including any law enforcement personnel mentioned in Chapter 4.5 (commencing with Section 830) of Title 3, or any firefighter as described in Section 245.1, as well as any other officer in any segment of law enforcement who is employed by the federal government, the state, or any of its political subdivisions.

(2) The defendant shall file the original petition with the sentencing court. A copy of the petition shall be served on the agency that prosecuted the case. The petition shall include the defendant's statement that the defendant was under 18 years of age at the time of the crime and was sentenced to life in prison without the possibility of parole, the defendant's statement describing their remorse and work towards rehabilitation, and the defendant's statement that one of the following is true:

(A) The defendant was convicted pursuant to felony murder or aiding and abetting murder provisions of law.

(B) The defendant does not have juvenile felony adjudications for assault or other felony crimes with a significant potential for personal harm to victims prior to the offense for which the sentence is being considered for recall.

(C) The defendant committed the offense with at least one adult codefendant.

(D) The defendant has performed acts that tend to indicate rehabilitation or the potential for rehabilitation, including, but not limited to, availing themselves of rehabilitative, educational, or vocational programs, if those programs have been available at their classification level and facility, using self-study for self-improvement, or showing evidence of remorse.

(3) If any of the information required in paragraph (2) is missing from the petition, or if proof of service on the prosecuting agency is not provided, the court shall return

the petition to the defendant and advise the defendant that the matter cannot be considered without the missing information.

(4) A reply to the petition, if any, shall be filed with the court within 60 days of the date on which the prosecuting agency was served with the petition, unless a continuance is granted for good cause.

(5) If the court finds by a preponderance of the evidence that one or more of the statements specified in subparagraphs (A) to (D), inclusive, of paragraph (2) is true, the court shall recall the sentence and commitment previously ordered and hold a hearing to resentence the defendant in the same manner as if the defendant had not previously been sentenced, provided that the new sentence, if any, is not greater than the initial sentence. Victims, or victim family members if the victim is deceased, shall retain the rights to participate in the hearing.

(6) The factors that the court may consider when determining whether to resentence the defendant to a term of imprisonment with the possibility of parole include, but are not limited to, the following:

(A) The defendant was convicted pursuant to felony murder or aiding and abetting murder provisions of law.

(B) The defendant does not have juvenile felony adjudications for assault or other felony crimes with a significant potential for personal harm to victims prior to the offense for which the defendant was sentenced to life without the possibility of parole.

(C) The defendant committed the offense with at least one adult codefendant.

(D) Prior to the offense for which the defendant was sentenced to life without the possibility of parole, the defendant had insufficient adult support or supervision and had suffered from psychological or physical trauma, or significant stress.

(E) The defendant suffers from cognitive limitations due to mental illness, developmental disabilities, or other factors that did not constitute a defense, but influenced the defendant's involvement in the offense.

(F) The defendant has performed acts that tend to indicate rehabilitation or the potential for rehabilitation, including, but not limited to, availing themselves of rehabilitative, educational, or vocational programs, if those programs have been available at their classification level and facility, using self-study for self-improvement, or showing evidence of remorse.

(G) The defendant has maintained family ties or connections with others through letter writing, calls, or visits, or has eliminated contact with individuals outside of prison who are currently involved with crime.

(H) The defendant has had no disciplinary actions for violent activities in the last five years in which the defendant was determined to be the aggressor.

(7) The court shall have the discretion to resentence the defendant in the same manner as if the defendant had not previously been sentenced, provided that the new sentence, if any, is not greater than the initial sentence. The discretion of the court shall be exercised in consideration of the criteria in paragraph (6). Victims, or victim family members if the victim is deceased, shall be notified of the resentencing hearing and shall retain their rights to participate in the hearing.

(8) Notwithstanding paragraph (7), the court may also resentence the defendant to a term that is less than the initial sentence if any of the following were a contributing factor in the commission of the alleged offense:(9) Paragraph (8) does not prohibit the court from resentencing the defendant to a term that is less than the initial sentence even if none of the circumstances listed in paragraph (8) are present.

(10) If the sentence is not recalled or the defendant is resentenced to imprisonment for life without the possibility of parole, the defendant may submit another petition for recall and resentencing to the sentencing court when the defendant has been committed to the custody of the department for at least 20 years. If the sentence is not recalled or the defendant is resentenced to imprisonment for life without the possibility of parole under that petition, the defendant may file another petition after having served 24 years. The final petition may be submitted, and the response to that petition shall be determined, during the 25th year of the defendant's sentence.

(11) In addition to the criteria in paragraph (6) the court may consider any other criteria that the court deems relevant to its decision, so long as the court identifies them on the record, provides a statement of reasons for adopting them, and states why the defendant does or does not satisfy the criteria.

(12) This subdivision shall have retroactive application.

(13) Nothing in this paragraph is intended to diminish or abrogate any rights or remedies otherwise available to the defendant.

(e) (1) Notwithstanding any other law and consistent with paragraph (1) of subdivision (a), if the secretary determines that a prisoner satisfies the criteria set forth in paragraph (2), the secretary may recommend to the court that the prisoner's sentence be recalled.

(2) The court shall have the discretion to resentence or recall if the court finds that the facts described in subparagraphs (A) and (B) or subparagraphs (B) and (C) exist:

(A) The prisoner is terminally ill with an incurable condition caused by an illness or disease that would produce death within 12 months, as determined by a physician employed by the department.

(B) The conditions under which the prisoner would be released or receive treatment do not pose a threat to public safety.

(C) The prisoner is permanently medically incapacitated with a medical condition that renders them permanently unable to perform activities of basic daily living, and results in the prisoner requiring 24-hour total care, including, but not limited to, coma, persistent vegetative state, brain death, ventilator-dependency, loss of control of muscular or neurological function, and that incapacitation did not exist at the time of the original sentencing.

(3) Within 10 days of receipt of a positive recommendation by the secretary, the court shall hold a hearing to consider whether the prisoner's sentence should be recalled.

(4) Any physician employed by the department who determines that a prisoner has 12 months or less to live shall notify the chief medical officer of the prognosis. If the chief medical officer concurs with the prognosis, they shall notify the warden. Within 48 hours of receiving notification, the warden or the warden's representative

shall notify the prisoner of the recall and resentencing procedures, and shall arrange for the prisoner to designate a family member or other outside agent to be notified as to the prisoner's medical condition and prognosis, and as to the recall and resentencing procedures. If the inmate is deemed mentally unfit, the warden or the warden's representative shall contact the inmate's emergency contact and provide the information described in paragraph (2).

(5) The warden or the warden's representative shall provide the prisoner and their family member, agent, or emergency contact, as described in paragraph (4), updated information throughout the recall and resentencing process with regard to the prisoner's medical condition and the status of the prisoner's recall and resentencing proceedings.

(6) Notwithstanding any other provisions of this section, the prisoner or their family member or designee may independently request consideration for recall and resentencing by contacting the chief medical officer at the prison or the secretary. Upon receipt of the request, the chief medical officer and the warden or the warden's representative shall follow the procedures described in paragraph (4). If the secretary determines that the prisoner satisfies the criteria set forth in paragraph (2), the secretary may recommend to the court that the prisoner's sentence be recalled. The secretary shall submit a recommendation for release within 30 days.

(7) Any recommendation for recall submitted to the court by the secretary shall include one or more medical evaluations, a postrelease plan, and findings pursuant to paragraph (2).

(8) If possible, the matter shall be heard before the same judge of the court who sentenced the prisoner.

(9) If the court grants the recall and resentencing application, the prisoner shall be released by the department within 48 hours of receipt of the court's order, unless a longer time period is agreed to by the inmate. At the time of release, the warden or the warden's representative shall ensure that the prisoner has each of the following in their possession: a discharge medical summary, full medical records, state identification, parole or postrelease community supervision medications, and all property belonging to the prisoner. After discharge, any additional records shall be sent to the prisoner's forwarding address.

(10) The secretary shall issue a directive to medical and correctional staff employed by the department that details the guidelines and procedures for initiating a recall and resentencing procedure. The directive shall clearly state that any prisoner who is given a prognosis of 12 months or less to live is eligible for recall and resentencing consideration, and that recall and resentencing procedures shall be initiated upon that prognosis.

(11) The provisions of this subdivision shall be available to an inmate who is sentenced to a county jail pursuant to subdivision (h). For purposes of those inmates, "secretary" or "warden" shall mean the county correctional administrator and "chief medical officer" shall mean a physician designated by the county correctional administrator for this purpose.

(12) This subdivision does not apply to a prisoner sentenced to death or a term of life without the possibility of parole.

(f) Notwithstanding any other provision of this section, for purposes of paragraph (3) of subdivision (h), any allegation that a defendant is eligible for state prison due to a prior or current conviction, sentence enhancement, or because the defendant is required to register as a sex offender shall not be subject to dismissal pursuant to Section 1385.

(g) A sentence to the state prison for a determinate term for which only one term is specified, is a sentence to state prison under this section.

(h) (1) Except as provided in paragraph (3), a felony punishable pursuant to this subdivision where the term is not specified in the underlying offense shall be punishable by a term of imprisonment in a county jail for 16 months, or two or three years.

(2) Except as provided in paragraph (3), a felony punishable pursuant to this subdivision shall be punishable by imprisonment in a county jail for the term described in the underlying offense.

(3) Notwithstanding paragraphs (1) and (2), where the defendant (A) has a prior or current felony conviction for a serious felony described in subdivision (c) of Section 1192.7 or a prior or current conviction for a violent felony described in subdivision (c) of Section 667.5, (B) has a prior felony conviction in another jurisdiction for an offense that has all the elements of a serious felony described in subdivision (c) of Section 1192.7 or a violent felony described in subdivision (c) of Section 667.5, (C) is required to register as a sex offender pursuant to Chapter 5.5 (commencing with Section 290) of Title 9 of Part 1, or (D) is convicted of a crime and as part of the sentence an enhancement pursuant to Section 186.11 is imposed, an executed sentence for a felony punishable pursuant to this subdivision shall be served in the state prison.

(4) Nothing in this subdivision shall be construed to prevent other dispositions authorized by law, including pretrial diversion, deferred entry of judgment, or an order granting probation pursuant to Section 1203.1.

(5) (A) Unless the court finds, in the interest of justice, that it is not appropriate in a particular case, the court, when imposing a sentence pursuant to paragraph (1) or (2), shall suspend execution of a concluding portion of the term for a period selected at the court's discretion.

(B) The portion of a defendant's sentenced term that is suspended pursuant to this paragraph shall be known as mandatory supervision, and, unless otherwise ordered by the court, shall commence upon release from physical custody or an alternative custody program, whichever is later. During the period of mandatory supervision, the defendant shall be supervised by the county probation officer in accordance with the terms, conditions, and procedures generally applicable to persons placed on probation, for the remaining unserved portion of the sentence imposed by the court. The period of supervision shall be mandatory, and may not be earlier terminated except by court order. Any proceeding to revoke or modify mandatory supervision under this subparagraph shall be conducted pursuant to either subdivisions (a) and (b) of Section 1203.2 or Section 1203.3. During the period when the defendant is under that supervision, unless in actual custody related to the sentence imposed by the court, the defendant shall be entitled to only actual time credit against the term of imprisonment

imposed by the court. Any time period which is suspended because a person has absconded shall not be credited toward the period of supervision.

(6) When the court is imposing a judgment pursuant to this subdivision concurrent or consecutive to a judgment or judgments previously imposed pursuant to this subdivision in another county or counties, the court rendering the second or other subsequent judgment shall determine the county or counties of incarceration and supervision of the defendant.

(7) The sentencing changes made by the act that added this subdivision shall be applied prospectively to any person sentenced on or after October 1, 2011.

(8) The sentencing changes made to paragraph (5) by the act that added this paragraph shall become effective and operative on January 1, 2015, and shall be applied prospectively to any person sentenced on or after January 1, 2015.

(9) Notwithstanding the separate punishment for any enhancement, any enhancement shall be punishable in county jail or state prison as required by the underlying offense and not as would be required by the enhancement. The intent of the Legislature in enacting this paragraph is to abrogate the holding in People v. Vega (2014) 222 Cal.App.4th 1374, that if an enhancement specifies service of sentence in state prison, the entire sentence is served in state prison, even if the punishment for the underlying offense is a term of imprisonment in the county jail.

(Amended (as amended by Stats. 2020, Ch. 29, Sec. 15) by Stats. 2021, Ch. 731, Sec. 1.3. (SB 567) Effective January 1, 2022. Section operative January 1, 2022, by its own provisions.)

PEOPLE V. HEARD

Filed 9/20/22

CERTIFIED FOR PUBLICATION

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE, Plaintiff and Respondent, v. FRANK ELI HEARD, Defendant and Appellant.	D079237 (Super. Ct. No. SCD193832)

APPEAL from an order of the Superior Court of San Diego County, John M. Thompson, Judge. Reversed and remanded with instructions.

Eric R. Larson under appointment by the Court of Appeal, for Defendant and Appellant.

Rob Bonta, Attorney General, Lance E. Winters, Chief Assistant Attorney General, Steve Oetting Assistant Attorney General, Melissa Mandel and Nora S. Weyl, Deputy Attorneys General for Plaintiff and Respondent.

INTRODUCTION

Frank Eli Heard is serving a sentence of 23 years plus 80 years to life for two counts of attempted willful, deliberate and premeditated murder for a drive-by shooting he committed at age 15, and one count of voluntary

manslaughter for a homicide he committed just after he turned 16. After 15 years of incarceration, he petitioned the trial court to recall his sentence and resentence him to a lesser sentence under Penal Code[1] section 1170, former subdivision (d)(2) (now subdivision (d)(1)). Under this provision, a juvenile offender who "was sentenced to imprisonment for life without the possibility of parole" and has been incarcerated for at least 15 years "may submit to the sentencing court a petition for recall and resentencing." (§ 1170, former subd. (d)(2)(A)(i), now subd. (d)(1)(A).) The trial court denied Heard's petition, finding him ineligible for relief because he was not sentenced to an explicitly designated term of life without the possibility of parole.[2]

Heard appeals, presenting two issues of first impression. First, he asserts the resentencing provision should be interpreted to apply not only to juvenile offenders sentenced to explicitly designated terms of life without parole, but also to a juvenile offender, like him, who have been sentenced to multiple terms that are the functional equivalent of life without parole. Second and alternatively, Heard asserts a contrary interpretation of the resentencing provision would violate his constitutional right to equal protection of the laws. We reject his first contention. Instead, we interpret section 1170, subdivision (d)(1)(A), to limit eligibility to petition for recall and resentencing to juvenile offenders sentenced to explicitly designated life without parole terms. But we conclude denying juvenile offenders, who were sentenced to the functional equivalent of life without parole, the opportunity

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1 Further unspecified statutory references are to the Penal Code.

2 For brevity, we subsequently refer to life without the possibility of parole as "life without parole."

to petition for resentencing violates the guarantee of equal protection. We therefore reverse the trial court's order and remand for further proceedings.

FACTUAL AND PROCEDURAL BACKGROUND

I.

Heard's Convictions and Sentence[3]

In January 2005, when Heard was 15 years old, he and three fellow members of the West Coast Crips gang were riding in a car when the front passenger shot at a group of rival Blood gang members on the street. In the volley of bullets, two persons were injured, but not killed. Heard admitted to the police he was in possession of a gun at the time of the shooting. When the gun was recovered, it had Heard's fingerprints on it and was determined to have fired shell casings recovered from the crime scene. The evening of the shooting, Heard bragged to a friend that he "got a slob," which is a derogatory term for a Blood. In a videotape of a party, made a few days before the

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[3] Our summary of the underlying factual and procedural background is taken in part from two prior decisions of this court. (*People v. Heard* (Feb. 24, 2009, D052492) [nonpub. opn.]; *In re Heard* (2014) 223 Cal.App.4th 115, review granted April 30, 2014, S216772, matter transferred Aug. 17, 2016, judg. vacated and cause remanded Sept. 12, 2016, D063181.) Although *People v. Heard* is an unpublished opinion, and our published opinion in *In re Heard* was subsequently vacated, we may appropriately rely on them for information about the background of this case. Both opinions were submitted to the trial court as exhibits to Heard's recall and resentencing petition, and on January 13, 2022, this court granted Heard's unopposed request for judicial notice of both opinions as well as the docket in case number D063181 pursuant to California Rules of Court, rule 8.252(a), and Evidence Code sections 452, subdivision (d), and 459. (See, e.g., *Pacific Gas & Electric Co. v. City and County of San Francisco* (2012) 206 Cal.App.4th 897, 907, fn. 10 [observing it was appropriate for the appellate court to cite an unpublished decision "to explain the factual background of the case and not as legal authority"]; accord, *Conrad v. Ball Corp.* (1994) 24 Cal.App.4th 439, 443, fn. 2.)

shooting, Heard was holding what appeared to be the same gun used in the shooting and performing a rap song that glorified a prior killing of Bloods.

In July 2005, less than two weeks after Heard turned 16, witnesses saw him and others walk up to a young man standing on a street corner. After exchanging words with the man, Heard pulled out a handgun and shot him in the head, killing him. It was later determined that Heard believed the victim was on the street corner selling drugs in his gang's territory.[4]

Heard was charged with two counts of attempted willful, deliberate and premeditated murder (§§ 664, 187, subd. (a); counts 1 and 2), and one count of murder (§ 187, subd. (a); count 3). Each offense was alleged to have been committed for the benefit of a criminal street gang (§ 186.22, subd. (b)(1)) and with the personal use of a firearm (§ 12022.53, subds. (c), (d), & (e)(1)). Count 3 was severed and Heard went to a jury trial on counts 1 and 2. The jury found him guilty of both counts of attempted murder as charged and found true the firearm use and gang allegations. Heard then entered a plea agreement on count 3, in which he pled guilty to the lesser included offense of voluntary manslaughter (§ 192, subd. (a)) and admitted a gang enhancement allegation (§ 186.22, subd. (b)(1)), as well as a firearm enhancement (§ 12022.5, subd. (a)).

Heard's sentencing hearing took place in January 2008. In a sentencing memorandum filed before the hearing, Heard argued the imposition of a life sentence would be cruel and unusual punishment in violation of the Eighth Amendment. He urged the court to consider his youth and capacity to mature and change, limited intelligence, and that he was

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4 Our description of this homicide is taken from the probation report, which was included in the clerk's transcript for this appeal.

introduced to criminal street gangs as a toddler, when making its sentencing decision. At the sentencing hearing, Heard's trial counsel continued to maintain that it would be unconstitutional to sentence Heard to prison for life.

The trial court disagreed. It found there was "no constitutional infirmity for the imposing of a life sentence for an attempted premeditated murder," and that the Legislature had approved prosecuting juveniles as adults in response to an increase in acts of gang violence by juvenile gang members. The court stated Heard was the "poster child for the legislative intervention with regard to gangs." It concluded there was "no constitutional infirmity in the application of either a life sentence as to the counts or . . . life sentences as to the enhancements." The court then sentenced Heard to a total prison term of 23 years plus 80 years to life.[5]

Heard appealed his attempted murder convictions, and this court affirmed the judgment in 2009. (*People v. Heard*, *supra*, D052492, review denied May 20, 2009, S171378.) Heard filed a petition for a writ of habeas corpus with the superior court, claiming his prison sentence was excessive because he would not be eligible for parole during his lifetime. The superior court denied the petition. Heard then filed a petition for a writ of habeas corpus with this court in 2012, raising again the argument that his sentence

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[5] On counts 1 and 2, Heard was sentenced to 15 years to life on each attempted premeditated murder and a consecutive 25 years to life for the firearm under section 12022.53, subdivision (d), on each offense. The total term on both counts was 80 years to life. On count 3, Heard was sentenced to nine years for the voluntary manslaughter, plus four years for the firearm under section 12022.5, subdivision (a), another 10 years for the gang enhancement under section 186.22, for a total determinate term of 23 years. The court elected to run the sentences for counts 1, 2, and 3 consecutively.

was excessive. As we later discuss in further detail, in January 2014, we granted the petition and remanded the case for resentencing. (*In re Heard*, *supra*, D063181.) In the intervening years since Heard was sentenced in 2008, a sea change in juvenile sentencing law had occurred, beginning with the United States Supreme Court's decision in *Roper v. Simmons* (2005) 543 U.S. 551 (*Roper*). We discuss those changes in juvenile sentencing law next, before returning to the procedural history of Heard's case.

II.

Changes in Juvenile Sentencing Law

A. *Decisional Law*

Beginning with *Roper* in 2005, the United States Supreme Court held the Eighth Amendment categorically bars imposition of the death penalty on offenders who were under 18 when their crimes were committed. (*Roper*, *supra*, 543 U.S. at pp. 578–579.) In a series of decisions that followed, the United States Supreme Court and California Supreme Court placed further limits on the punishment that may constitutionally be imposed on juvenile offenders. These decisions arose in large part from advances in research on adolescent brain development, and the related, growing recognition that juveniles "have diminished culpability and greater prospects for reform" and are therefore "constitutionally different from adults for purposes of sentencing." (*Miller v. Alabama* (2012) 567 U.S. 460, 471 (*Miller*), discussing *Roper*, *supra*, 543 U.S. 551 and *Graham v. Florida* (2010) 560 U.S. 48 (*Graham*).)

Five years after *Roper*, the United States Supreme Court held in *Graham* the Eighth Amendment categorically bars the imposition of a sentence of life without parole on a juvenile offender who did not commit homicide. (*Graham*, *supra*, 560 U.S. at p. 82.) The *Graham* court observed:

"As compared to adults, juveniles have a ' "lack of maturity and an underdeveloped sense of responsibility" '; they 'are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure'; and their characters are 'not as well formed.' [Citation.] These salient characteristics mean that '[i]t is difficult even for expert psychologists to differentiate between the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption.' [Citation.] Accordingly, 'juvenile offenders cannot with reliability be classified among the worst offenders.' " (*Id.* at p. 68.)

The *Graham* court further observed that life without parole is " 'the second most severe penalty permitted by law' " and it is "an especially harsh punishment for a juvenile [offender]," who "will on average serve more years and a greater percentage of his life in prison than an adult offender." (*Graham*, *supra*, 560 U.S. at pp. 69, 70.) It "likened a life without parole sentence for nonhomicide [juvenile] offenders to the death penalty itself, given their youth and the prospect that, as the years progress, juveniles can reform their deficiencies and become contributing members of society." (*People v. Caballero* (2012) 55 Cal.4th 262, 266 (*Cabellero*), citing *Graham*, at pp. 69–70.) To avoid violating the Eighth Amendment, the high court held that states "need not guarantee the [nonhomicide] offender eventual release" but must provide "some realistic opportunity to obtain release." (*Graham*, at p. 82.)

In *Miller*, the United States Supreme Court extended *Graham*'s reasoning to homicide cases and held the Eighth Amendment forbids sentencing schemes that make life without parole the mandatory punishment for a juvenile convicted of homicide. (*Miller*, *supra*, 567 U.S. at p. 489.) The

Court reaffirmed that "the distinctive attributes of youth diminish the penological justifications for imposing the harshest sentences on juvenile offenders, even when they commit terrible crimes." (*Id.* at p. 472.) It explained that "mandatory penalty schemes . . . remov[e] youth from the balance" and "prohibit a sentencing authority from assessing whether the law's harshest term of imprisonment proportionately punishes a juvenile offender. That contravenes *Graham*'s (and also *Roper*'s) foundational principle: that imposition of a State's most severe penalties on juvenile offenders cannot proceed as though they were not children." (*Id.* at p. 474.)

The *Miller* court did not extend *Graham*'s categorical ban to homicide cases and foreclose life without parole terms for juvenile homicide offenders, but it held the sentencing court must have discretion to impose a lesser sentence. (*Miller*, *supra*, 567 U.S. at p. 480.) The Court outlined mitigating factors relating to youth that must be considered by the sentencing court before committing a juvenile to prison for life without parole,[6] and cautioned

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6 These factors are: "(1) 'a juvenile offender's "chronological age and its hallmark features—among them, immaturity, impetuosity, and failure to appreciate risks and consequences" '; (2) ' "the family and home environment that surrounds [the juvenile]—and from which he cannot usually extricate himself—no matter how brutal or dysfunctional" '; (3) ' "the circumstances of the homicide offense, including the extent of [the juvenile defendant's] participation in the conduct and the way familial and peer pressures may have affected him" '; (4) 'whether the offender "might have been charged and convicted of a lesser offense if not for incompetencies associated with youth—for example, his inability to deal with police officers or prosecutors (including on a plea agreement) or his incapacity to assist his own attorneys" '; and (5) ' "the possibility of rehabilitation." ' " (*In re Kirchner* (2017) 2 Cal.5th 1040, 1054 (*Kirchner*).)

that the "appropriate occasions for sentencing juveniles to this harshest possible penalty will be uncommon."[7] (*Id.* at pp. 477–479.)

In *Caballero*, the California Supreme Court held that an aggregate 110-year-to-life sentence imposed on a juvenile convicted of nonhomicide offenses contravenes *Graham*'s mandate against cruel and unusual punishment under the Eighth Amendment. (*Caballero*, *supra*, 55 Cal.4th at pp. 265, 268–269.) In so holding, our high court rejected the People's claim that "a cumulative sentence for distinct crimes does not present a cognizable Eighth Amendment claim" because each individual sentence included the possibility of parole within the juvenile offender's lifetime. (*Id.* at p. 267.) The juvenile offender in *Caballero* was convicted of three counts of attempted murder, committed for the benefit of a criminal street gang and with the personal use of a firearm. (*Id*. at p. 265.) The Court observed the juvenile "will become parole eligible over 100 years from now." (*Id.* at p. 268 [explaining that under section 3046, subdivision (b), the defendant would be required to serve a minimum of 110 years before becoming parole eligible].) The Court called this a "term-of-years sentence that amounts to the functional equivalent of a life without parole sentence." (*Caballero,* at p. 268.) It then concluded that under *Graham*, "sentencing a juvenile offender for a nonhomicide offense to a term of years with a parole eligibility date that falls outside the juvenile

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7 In *Montgomery v. Louisiana* (2016) 577 U.S. 190, 212 (*Montgomery*), the Court held the holding of *Miller* was retroactive because it announced a substantive rule of constitutional law. The *Montgomery* court also held that states could remedy *Miller* error—that is, sentencing a juvenile to life without parole without considering the youth-related mitigating factors outlined in *Miller* (see footnote 6, *ante*)—by giving juvenile homicide offenders parole hearings, rather than resentencing them. (*Montgomery*, at p. 212.)

offender's natural life expectancy constitutes cruel and unusual punishment in violation of the Eighth Amendment." (*Caballero,* at p. 268.)

B. *Statutory Law*

As decisional law on the punishment of juvenile offenders was developing, the Legislature enacted two provisions that are relevant to this case.

1. *Senate Bill No. 9 (2011–2012 Reg. Sess.) (Senate Bill 9) Adds Former Subdivision (d)(2), Now Subdivision (d)(1), to Section 1170*

Effective January 1, 2013, Senate Bill 9 added former subdivision (d)(2) to section 1170. (See Stats. 2012, ch. 828, § 1.) Senate Bill 9 "was introduced in the Legislature after *Graham*, but before *Miller*" and "was inspired by concerns regarding sentences of life without parole for juvenile offenders." (*Kirchner*, *supra*, 2 Cal.5th at p. 1049.) It created "a procedural mechanism for resentencing of defendants who were under the age of 18 at the time of the commission of their offenses and who were given [life without parole] sentences." (*People v. Willover* (2016) 248 Cal.App.4th 302, 310.) Under this provision, "[w]hen a defendant who was under 18 years of age at the time of the commission of the offense for which the defendant was sentenced to imprisonment for life without the possibility of parole has been incarcerated for at least 15 years, the defendant may submit to the sentencing court a petition for recall and resentencing." (§ 1170, former subd. (d)(2)(A)(i), now subd. (d)(1)(A).)

In the petition, "the defendant must describe his or her remorse, relate his or her work toward rehabilitation, and state that a qualifying circumstance is true." (*Kirchner*, *supra*, 2 Cal.5th at pp. 1049–1050.) The qualifying circumstances are (1) the defendant "was convicted pursuant to felony murder or aiding and abetting murder provisions of law"; (2) the

defendant does not have juvenile felony adjudications for assault or other violent felonies prior to the offense that resulted in the sentence being considered for recall; (3) the defendant committed the offense with at least one adult codefendant; or (4) the defendant has performed acts that tend to indicate rehabilitation or the potential for rehabilitation. (§ 1170, former subd. (d)(2)(B)(i)–(iv), now subd. (d)(1)(A)–(D).) "If the court finds by a preponderance of the evidence that one or more of the qualifying circumstances in the petition are true, the court must recall the defendant's sentence and hold a hearing to resentence the defendant." (*Kirchner*, at p. 1050.)

At the resentencing hearing, the court is permitted to consider factors enumerated in the statute, along with " 'any other criteria that the court deems relevant to its decision.' " (*Kirchner*, *supra*, 2 Cal.5th at p. 1050.) "Upon conducting this assessment, '[t]he court shall have the discretion to resentence the defendant in the same manner as if the defendant had not previously been sentenced, provided that the new sentence, if any, is not greater than the initial sentence.' " (*Ibid.*) If the sentence is not recalled or the defendant is resentenced to imprisonment for life without the possibility of parole, the defendant may submit another petition for recall and resentencing after 20 and 24 years of incarceration. (§ 1170, former subd. (d)(2)(H), now subd. (d)(10).)

In *Kirchner*, the California Supreme Court held this statutory resentencing procedure is not adequate to cure *Miller* error. (*Kirchner*, *supra*, 2 Cal.5th at pp. 1043, 1052–1056.) The Court explained the procedure was "originally . . . developed prior to the decision in *Miller*, . . . was not designed to provide a remedy for this type of error, and . . . is not well suited to serve this purpose." (*Id.* at p. 1052.) It further explained the procedure

"provides only a selective and qualified remedy, the application of which is ultimately premised on an inquiry that may, but does not necessarily, overlap with the one demanded under *Miller*." (*Id.* at pp. 1054–1055.)

Since its original enactment, former subdivision (d)(2) of section 1170 has been modified, but the modifications are relatively minor. Relevant to this appeal, the provision that specifies which defendants are eligible to file a petition for recall and resentencing (§ 1170, former subd. (d)(2)(A)(i), now subd. (d)(1)(A)) has not been changed. Effective January 1, 2022, subdivision (d)(2) of section 1170 was redesignated as subdivision (d)(1) of section 1170. (Stats. 2021, ch. 731, § 1.3.)

2. *Senate Bill No. 260 (2013-2014 Reg. Sess.) (Senate Bill 260)*

Effective January 1, 2014, Senate Bill 260 added sections 3051, 3046, subdivision (c), and 4801, subdivision (c), to the Penal Code. (Stats. 2013, ch. 312, §§ 3, 4 & 5; see *People v. Franklin* (2016) 63 Cal.4th 261, 276–277 (*Franklin*) [discussing this history].) Senate Bill 260 was passed "explicitly to bring juvenile sentencing into conformity with *Graham*, *Miller*, and *Caballero*." (*Franklin*, at p. 277.)

"At the heart of [Senate Bill 260] was the addition of section 3051, which requires the Board [of Parole Hearings (Board)] to conduct a 'youth offender parole hearing' during the 15th, 20th, or 25th year of a juvenile offender's incarceration. [Citation.] The date of the hearing depends on the offender's ' "[c]ontrolling offense," ' which is defined as 'the offense or enhancement for which any sentencing court imposed the longest term of imprisonment.' " (*Franklin*, *supra*, 63 Cal.4th at p. 277.) As originally enacted, section 3051 created a schedule of youth offender parole hearings for juvenile offenders sentenced to a determinate term, a life term of less than 25

years to life, or a life term of 25 years to life.[8] (Stats. 2013, ch. 312, § 4; § 3051, subd. (b)(1)–(3).)

In *Franklin*, the California Supreme Court considered the effect of Senate Bill 260 on a juvenile's claim of *Miller* error. The defendant in *Franklin* was 16 years old when he shot and killed another teenager. (*Franklin*, *supra*, 63 Cal.4th at p. 269.) He was convicted of first degree murder with a corresponding firearm enhancement, for which he received two consecutive 25-year-to-life terms. (*Id.* at p. 271.) Our high court held "just as *Graham* applies to sentences that are the 'functional equivalent of a life without parole sentence' [citation], so too does *Miller* apply to such functionally equivalent sentences." (*Id.* at p. 276.) The Court went on to find, however, that Senate Bill 260 mooted the defendant's Eighth Amendment challenge to his sentence under *Miller*. It explained that although the defendant remained bound by his original sentence, by operation of Senate Bill 260, the defendant "is now serving a life sentence that includes a meaningful opportunity for release during his 25th year of incarceration. Such a sentence is neither [life without parole] nor its functional equivalent. Because [the defendant] is not serving [a life without parole] sentence or its functional equivalent, no *Miller* claim arises here." (*Franklin*, at pp. 279–280.)

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[8] Section 3051 originally excluded juvenile offenders sentenced to life without parole from receiving youth offender parole hearings. (See *Franklin*, *supra*, 63 Cal.4th at p. 278.) After the California Supreme Court held in *Kirchner*, *supra*, 2 Cal.5th 1040 that section 1170, former subdivision (d)(2), was inadequate to cure *Miller* error, the Legislature amended section 3051 to provide youth offender parole hearings to juvenile offenders sentenced to life without parole. (See § 3051, subd. (b)(4), added by Stats. 2017, ch. 684, § 1.5.)

At the same time, our high court recognized the defendant's sentencing hearing may have resulted in a record that was "incomplete or missing mitigation information [relating to his youth]" because such information was not considered relevant at the time he was sentenced. (*Franklin*, *supra*, 63 Cal.4th at pp. 282–283.) Accordingly, it remanded the matter for the trial court to determine "whether [the defendant] was afforded sufficient opportunity to make a record of information relevant to his eventual youth offender parole hearing," and, if not, to hold a hearing at which the parties could present evidence bearing on "youth-related factors" for later consideration by the Board. (*Id.* at p. 284.) This hearing is now commonly referred to as a *Franklin* proceeding. (See *In re Cook* (2019) 7 Cal.5th 439, 450.)

Against this backdrop of changes in juvenile sentencing law, we return to Heard's petition for writ of habeas corpus.

III.

Heard's Petition for Writ of Habeas Corpus

As noted, in December 2012, Heard filed a petition for writ of habeas corpus with this court in which he argued his sentence was excessive under the Eighth Amendment. In January 2014, we granted the petition and remanded the case for resentencing. (*In re Heard*, *supra*, D063181.) Relying on *Graham*, *Miller*, and *Caballero*, we held Heard's sentence was "a de facto life [without parole] sentence," the majority of which was attributable to nonhomicide offenses, and it therefore violated the Eighth Amendment. (*Ibid.*) Lacking the benefit of *Montgomery* and *Franklin*, we rejected the People's contention that Heard's eligibility for a parole hearing under section 3051 negated the need for resentencing.

The People petitioned for review with the California Supreme Court. In April 2014, the Court granted the petition and deferred action pending the resolution of two other cases (*In re Alatriste*, S214652, and *In re Bonilla*, S214960). In May 2016, while Heard's case was still pending, the California Supreme Court decided *Franklin*, *supra*, 63 Cal.4th 261. In August, our high court transferred Heard's case to this court with directions to vacate our January 2014 disposition and to issue an order to show cause to the secretary of the California Department of Corrections and Rehabilitation (Department of Corrections), returnable to the superior court, why Heard was not entitled to make a record of " 'mitigating evidence tied to his youth.' ([*Franklin*, *supra*, 63 Cal.4th at pp. 268–269, 283–284].)" In September 2016, we vacated our opinion in case number D063181 and issued an order to show cause as directed.[9]

Heard received his *Franklin* proceeding in August 2017. After reviewing documents submitted by Heard and the People, the trial court determined it had not received all relevant mitigating evidence at the sentencing hearing.[10] The court ordered the parties' documents to be filed with the court under seal and submitted to the Department of Corrections.

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9 Because this opinion was vacated, it has no effect as law of the case. (See *Crossroads Investors, L.P. v. Federal National Mortgage Assn.* (2017) 13 Cal.App.5th 757, 773.)

10 On our own motion, we take judicial notice of the trial court's order, which appears on the docket in case number D063181 and is part of our file in that case. (Evid. Code, §§ 452, subd. (d)(1), 459, subd. (a); see *Forbes v. County of San Bernardino* (2002) 101 Cal.App.4th 48, 50–51.)

IV.

Heard's Petition for Recall and Resentencing

In March 2021, Heard filed in the trial court a petition for recall and resentencing under section 1170, former subdivision (d)(2)(A). He asserted he was eligible to petition for resentencing because his sentence was a de facto life without parole sentence. He claimed he also met the other statutory criteria for resentencing, including that he had been incarcerated for over 15 years, was 15 years old when he committed the attempted murders, and his co-defendant was an adult at the time of these offenses.[11] Citing exhibits attached to his petition, he also asserted that he was no longer an active gang member, had completed multiple self-help and educational programs in prison, and was working as a mentor to younger inmates.

On June 28, 2021, in a written order, the trial court denied Heard's petition on the ground that he was statutorily ineligible to petition for resentencing. The court reasoned that resentencing under section 1170, former subdivision (d)(2)(A)(i), was specifically made available only to those defendants "sentenced to imprisonment for LWOP" (i.e., life without parole), and Heard "was not sentenced to imprisonment for LWOP." Heard appealed the trial court's order.[12]

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11 Wade Thomas Mills III, an adult, was in the car with Heard during the drive-by-shooting. He was found in possession of a gun at the time of the shooting, and his gun was also determined to have fired shell cases recovered from the crime scene. He was charged and tried with Heard on the attempted murders in counts 1 and 2, but the jury deadlocked as to Mills on both charges, and the court declared a mistrial as to Mills's case.

12 The People do not dispute that the trial court's order is an appealable order. (See § 1237, subd. (b) [postconviction orders implicating a defendant's "substantial rights" are appealable]; *Gray v. Superior Court* (2016) 247

DISCUSSION

Heard challenges the trial court's determination that he is ineligible to petition for recall and resentencing on two grounds that present matters of first impression. First, he contends section 1170, subdivision (d)(1),[13] should be interpreted to apply to juvenile offenders sentenced to the functional equivalent of life without parole. Second, he contends that a contrary interpretation of section 1170, subdivision (d)(1), would violate his constitutional right to equal protection of the laws. Here, we reject Heard's interpretation of section 1170, subdivision (d)(1), but we agree with him that denying juvenile offenders sentenced to the functional equivalent of life without parole the opportunity to petition for resentencing under this provision violates the constitutional guarantee of equal protection of the laws.

I.

Section 1170, Subdivision (d)(1), Limits Eligibility to Petition for Resentencing to Juvenile Offenders Sentenced to Actual Life Without Parole

Heard's first contention presents an issue of statutory interpretation that we consider de novo. (See *People v. Prunty* (2015) 62 Cal.4th 59, 71.) "[O]ur fundamental task . . . is to determine the Legislature's intent so as to effectuate the law's purpose." (*People v. Murphy* (2001) 25 Cal.4th 136, 142.)

Cal.App.4th 1159, 1164 ["It is plain that a defendant's 'substantial rights' include personal liberty interests."].)

13 As we have mentioned, former subdivision (d)(2) of section 1170 was recently redesignated as subdivision (d)(1) of section 1170. (Stats. 2021, ch. 731, § 1.3.) This change took effect on January 1, 2022, while this appeal was pending. (See *ibid.*) Although the parties' appellate briefs refer to this provision by its former designation, we will generally refer to the provision (and the parties' arguments about the provision) using its current designation.

"Statutory construction begins with the plain, commonsense meaning of the words in the statute, ' "because it is generally the most reliable indicator of legislative intent and purpose." ' " (*People v. Manzo* (2012) 53 Cal.4th 880, 885.) A statute is not to be read in isolation, but construed in context and " 'with reference to the whole system of law of which it is a part so that all may be harmonized and have effect.' " (*Landrum v. Superior Court* (1981) 30 Cal.3d 1, 14.) " 'If there is no ambiguity or uncertainty in the language, the Legislature is presumed to have meant what it said, and we need not resort to legislative history to determine the statute's true meaning.' " (*People v. Skiles* (2011) 51 Cal.4th 1178, 1185.)

In ruling that Heard was ineligible to petition for recall and resentencing, the trial court relied on section 1170, subdivision (d)(1)(A), which states: "When a defendant who was under 18 years of age at the time of the commission of *the offense for which the defendant was sentenced to imprisonment for life without the possibility of parole* has been incarcerated for at least 15 years, the defendant may submit to the sentencing court a petition for recall and resentencing." (Italics added.)

The question is whether this provision, and in particular the italicized text, refers only to defendants sentenced to an explicitly designated term of life without parole, or whether it includes defendants sentenced to multiple terms that in the aggregate constitute the functional equivalent of life without parole. Two aspects of the statutory text suggest eligibility to petition for resentencing is limited to defendants sentenced to an explicitly designated term of life without parole.

First, the phrase "life without the possibility of parole" denotes a specific sentence and is used elsewhere in the Penal Code to specify that punishment as distinct from other punishments. For example, section 190.5,

subdivision (b), provides: "The penalty for a defendant found guilty of murder in the first degree, in any case in which one or more special circumstances enumerated in Section 190.2 or 190.25 has been found to be true under Section 190.4, who was 16 years of age or older and under the age of 18 years at the time of the commission of the crime, shall be confinement in the state prison for *life without the possibility of parole* or, at the discretion of the court, 25 years to life." (Italics added.) Similarly, section 3051, subdivision (b), which makes the timing of youth offender parole hearings contingent on the offender's longest term of imprisonment (§ 3051, subd. (a)(2)(B)), has separate provisions that create different parole hearing eligibility dates depending on whether the offender's longest term of imprisonment is "a determinate sentence" (§ 3051, subd. (b)(1)), "a life term of less than 25 years to life" (§ 3051, subd. (b)(2)), "a life term of 25 years to life" (§ 3051, subd. (b)(3)), or "*life without the possibility of parole*" (§ 3051, subd. (b)(4), italics added).

Second, section 1170, subdivision (d)(1)(A), uses the singular when referring to "*the offense* for which the defendant was sentenced to imprisonment for life without the possibility of parole." (§ 1170, subd. (d)(1)(A), italics added.) For a single offense to result in a life without parole sentence, the sentence must be one of an explicitly designated life without parole. The functional equivalent of life without parole results only when a defendant receives *multiple sentences for multiple offenses*, or an offense plus one or more enhancements, that add up to a lifelong prison commitment with no realistic opportunity for release. (See, e.g., *Caballero*, *supra*, 55 Cal.4th at pp. 265, 268–269 [sentence of 110 years to life for three counts of attempted murder plus corresponding firearm enhancements was the functional equivalent of life without parole]; *People v. Contreras* (2018) 4 Cal.5th 349,

356–357, 369 (*Contreras*) [two juveniles sentenced to aggregate terms of 50 years to life and 58 years to life imposed for multiple kidnapping offenses and multiple sexual offenses; held, these sentences were the functional equivalent of life without parole].) The use of the singular when referring to "the offense for which the defendant was sentenced" suggests the Legislature meant an explicitly designated life without parole sentence. (§ 1170, subd. (d)(1)(A).)

Accordingly, the text of the statute does not support Heard's interpretation of it. And even if we were to find ambiguity in the statute's text, its legislative history also fails to assist Heard. As *Kirchner* explained, Senate Bill 9 "was inspired by concerns regarding sentences of life without parole for juvenile offenders." (*Kirchner*, *supra*, 2 Cal.5th at p. 1049, citing Assem. Com. on Appropriations, Analysis of Sen. Bill 9, as amended Aug. 15, 2011, pp. 3–5.) Although case law has since made clear these concerns apply to offenders sentenced to an explicitly designated life without parole term as well as terms that are functionally equivalent to life without parole, this case law was still nascent when Senate Bill 9 was introduced. Virtually every legislative committee analysis of Senate Bill 9 observed that section 190.5, subdivision (b), permitted juvenile offenders to be sentenced to life without parole for special circumstances murder; other sentencing provisions were not discussed. (See, e.g., Sen. Com. on Public Safety, Analysis of Sen. Bill 9, as introduced Dec. 6, 2010, p. 3; Sen. Rules Com., Off. of Sen. Floor Analyses, 3d reading analysis of Sen. Bill 9, as introduced, pp. 2–3; Assem. Com. on Public Safety, Analysis of Sen. Bill 9, as amended May 27, 2011, pp. 5–6, 9; Sen. Rules Com., Off. of Sen. Floor Analyses, Unfinished Business Analysis of Sen. Bill 9, as amended July 2, 2012, p. 2.) Thus, contemporaneous analyses of Senate Bill 9 tend to show the Legislature, in enacting the resentencing

provision, was focused only on creating a remedy for juveniles sentenced to an explicitly designated life without parole term.

The interplay between the relief afforded by Senate Bill 9 and the relief afforded by Senate Bill 260 provides further support for the conclusion that Senate Bill 9 was intended for juvenile offenders sentenced to an explicitly designated life without parole term. As we have discussed, Senate Bill 260, which created section 3051, was explicitly passed "to bring juvenile sentencing into conformity with *Graham*, *Miller*, and *Caballero*." (*Franklin*, *supra*, 63 Cal.4th at p. 277.) And yet as originally enacted, section 3051 provided youth offender parole hearings only to juveniles whose lengthiest sentence was (1) a determinate sentence, (2) "a life term of less than 25 years to life," or (3) "a life term of 25 years to life." (See § 3051, subd. (b)(1)–(3), added by Stats. 2013, ch. 312, § 4.) It was only after the California Supreme Court held in *Kirchner*, *supra*, 2 Cal.5th 1040 that section 1170, former subdivision (d)(2), now subdivision (d)(1), was inadequate to cure *Miller* error, that the Legislature amended section 3051 to provide youth offender parole hearings to juvenile offenders sentenced to "life without the possibility of parole." (See § 3051, subd. (b)(4), added by Stats. 2017, ch. 684, § 1.5.) This history, too, demonstrates the resentencing provision was intended for juvenile offenders sentenced to explicitly designated life without parole terms, with section 3051 initially serving as a complementary provision that provided relief only to other juvenile offenders.

All of these considerations lead to the conclusion that eligibility under section 1170, subdivision (d)(1)(A), to petition for recall and resentencing is limited to juvenile offenders sentenced to an explicitly designated life without parole term. Heard offers two reasons why we should construe the statute differently. First, he contends we should "view[ ]" the statute against the

"legal landscape" pertaining to juvenile sentencing—a landscape that includes *Miller*, *Franklin*, and *Kirchner*. He essentially asks us to read section 1170, subdivision (d)(1), as though it embodied the principles articulated in these decisions even though it was introduced after them. We are not free to construe a statute so liberally that we change its intended meaning. "[W]e may not ' " ' "rewrite a statute to make it express an intention not expressed therein" ' " ' or one that may be derived from its legislative history." (*People v. Hobbs* (2007) 152 Cal.App.4th 1, 5.) "We do not sit as a 'super Legislature.' " (*People v. Flores* (2014) 227 Cal.App.4th 1070, 1074.)

Second, Heard contends we should construe section 1170, subdivision (d)(1), so as to avoid an absurd result. The absurd result being that a juvenile sentenced to terms amounting to de facto life without parole is not eligible to petition for resentencing, when a juvenile sentenced to actual life without parole is eligible to petition for resentencing. We disagree this circumstance warrants invoking the absurdity exception of statutory construction. Under the absurdity doctrine, "[a] court is not required to follow the plain meaning of a statute when to do so would frustrate the manifest purpose of the legislation as a whole or otherwise lead to absurd results. [Citations.] However, the absurdity exception requires much more than showing that troubling consequences may potentially result if the statute's plain meaning were followed or that a different approach would have been wiser or better. . . . Moreover, our courts have wisely cautioned that the absurdity exception to the plain meaning rule 'should be used most sparingly by the judiciary and only in extreme cases else we violate the separation of powers principle of government.' " (*Switzer v. Wood* (2019) 35 Cal.App.5th 116, 129.) It is not unusual for resentencing provisions to

exclude categories of offenders. (See *People v. Gonzalez* (2021) 65 Cal.App.5th 420, 434 [identifying examples of such provisions].) Interpreting section 1170, subdivision (d)(1)(A), to limit eligibility for resentencing to juveniles sentenced to an explicitly designated life without parole term is not a consequence so extreme that it qualifies as absurd. (Cf. *People v. Morris* (1988) 46 Cal.3d 1, 15 [applying the absurdity doctrine to avoid construing section 190.4 to require that the robbery underlying a felony murder must be separately charged as an independent substantive offense, lest the statute of limitations applicable to the robbery operate as a bar to the felony murder, which has no statute of limitations], disapproved on other grounds by *In re Sassounian* (1995) 9 Cal.4th 535, 543–545.)

For all of these reasons, we conclude section 1170, subdivision (d)(1)(A), limits eligibility to petition for recall and resentencing to juvenile offenders sentenced to an explicitly designated life without parole term. The trial court's interpretation of the statute was correct, and it did not err in denying Heard's petition for recall and resentencing on this ground.

II.

Denying Juvenile Offenders Like Heard Who Were Sentenced to the Functional Equivalent of Life Without Parole the Opportunity to Petition for Resentencing Violates the Constitutional Guarantee of Equal Protection

Heard contends that if section 1170, subdivision (d)(1), is not interpreted to apply to defendants sentenced to the functional equivalent of life without parole, then it violates his constitutional right to equal protection of the laws. On this, we agree.

The People argue that Heard forfeited the opportunity to raise his equal protection challenge on appeal because he failed to assert it in the trial court. It is true that an equal protection claim "may be forfeited if it is raised

for the first time on appeal." (*People v. Dunley* (2016) 247 Cal.App.4th 1438, 1447.) But "application of the forfeiture rule is not automatic." (*In re S.B.* (2004) 32 Cal.4th 1287, 1293.) "[A]ppellate courts have discretion to address constitutional issues raised on appeal" where, as here, "the issue presented is 'a pure question of law' turning on undisputed facts." (*In re Spencer S.* (2009) 176 Cal.App.4th 1315, 1323; see *In re Sheena K.* (2007) 40 Cal.4th 875, 888 [defendant's challenge to a probation condition as constitutionally vague and overbroad presented a pure question of law that could be considered for the first time on review]; *People v. Blanco* (1992) 10 Cal.App.4th 1167, 1172–1173 [whether to address the constitutionality of a statute for the first time on appeal is a discretionary determination for the reviewing court].) One factor that supports overlooking a forfeiture is when the belatedly raised issue "may return as a habeas corpus petition" (*In re Spencer S.*, at p. 1323), which could occur here (see *In re Jones* (2019) 42 Cal.App.5th 477, 480 [habeas petition challenging denial of resentencing under section 1170, former subdivision (d)(2)]). We also observe that section 1170, subdivision (d)(10), allows the filing of successive resentencing petitions, so Heard could conceivably raise his equal protection challenge in a later petition if we do not consider it now. So we will exercise our discretion to consider the merits of Heard's equal protection claim.

A. *Heard Is Similarly Situated With the Juvenile Offenders Eligible to Seek Resentencing Under Section 1170, Subdivision (d)(1)*

"The Fourteenth Amendment to the United States Constitution and article I, section 7, subdivision (a) of the California Constitution both prohibit the denial of equal protection of the laws. 'The equal protection guarantees of [both Constitutions] are substantially equivalent and analyzed in a similar fashion.' " (*People v. Cruz* (2012) 207 Cal.App.4th 664, 674.) "The concept of equal protection recognizes that persons who are similarly situated with

respect to a law's legitimate purposes must be treated equally." (*People v. Brown* (2012) 54 Cal.4th 314, 328.)

When we are presented with an equal protection claim, we begin by considering whether the class of persons allegedly subjected to unequal treatment is similarly situated with the class of persons benefited by the challenged law. " ' "The first prerequisite to a meritorious claim under the equal protection clause is a showing that the state has adopted a classification that affects two or more *similarly situated* groups in an unequal manner." [Citations.] This initial inquiry is not whether persons are similarly situated for all purposes, but "whether they are similarly situated for purposes of the law challenged." ' " (*People v. Morales* (2016) 63 Cal.4th 399, 408 (*Morales*).) Indeed, "[t]here is always some difference between the two groups which a law treats in an unequal manner since an equal protection claim necessarily asserts that the law in some way distinguishes between the two groups." (*People v. Nguyen* (1997) 54 Cal.App.4th 705, 714.)

Heard protests the fact that juvenile offenders sentenced to an explicitly designated life without parole term can seek resentencing while juvenile offenders sentenced to the functional equivalent of such a sentence cannot. As we have already explained, section 1170, subdivision (d)(1)(A), establishes the threshold eligibility requirements to petition for recall and resentencing. Its only criteria are (1) the defendant "was under 18 years of age at the time of the commission of the offense"; (2) for this offense, the defendant "was sentenced to imprisonment for life without the possibility of parole"; and (3) the defendant "has been incarcerated for at least 15 years." (§ 1170, subd. (d)(1)(A).) If the defendant meets these requirements, he "may submit to the sentencing court a petition for recall and resentencing." (*Ibid.*) Heard meets the first and third criteria; in this regard, he is identically

situated with those who are eligible to petition for resentencing. The only difference between him and the defendants to whom this provision applies is that he was sentenced to 23 years plus 80 years to life, rather than life without parole.

Heard argues his sentence constitutes a de facto life without parole sentence and he is thus similarly situated with juveniles sentenced to an explicit term of life without parole. He acknowledges that due to the enactment of section 3051, he will now receive a youth offender parole hearing in his 25th year of incarceration, but points out that following the 2018 amendment of section 3051, juveniles sentenced to an explicit term of life without parole are also entitled to a youth offender parole hearing in their 25th year of incarceration. (Stats. 2017, ch. 684 § 1.5; see § 3051, subd. (b)(3), (4).)

The People disagree that Heard's sentence qualifies as a de facto life without parole sentence. Citing *Franklin*, *supra*, 63 Cal.4th at page 286, they contend section 3051 has " 'reformed' " Heard's sentence so that it is no longer the functional equivalent of life without parole. The People additionally argue that "irrespective of section 3051," Heard is not similarly situated with juvenile offenders sentenced to an explicit term of life without parole. The difference, they claim, is in the crimes committed by each group of offenders.

Here, we conclude Heard is similarly situated for purposes of section 1170, subdivision (d)(1)(A), with those juvenile offenders who are eligible to petition for resentencing. First, we disagree that Heard's eligibility for a youth offender parole hearing under section 3051 undermines the conclusion that his sentence constitutes a de facto life without parole sentence, such that he is not similarly situated with the juvenile offenders to whom the resentencing provision applies. As another court has explained, the statutory

resentencing provision "uses the phrase '*was sentenced*' and refers to the past." (See *People v. Lopez* (2016) 4 Cal.App.5th 649, 653–654, italics added (*Lopez*) [holding that two juveniles, whose life without parole sentences were modified to life with parole in response to a habeas petition, asserting Eighth Amendment error remained eligible to seek resentencing under section 1170, former subdivision (d)(2)(A)(i), because they were originally sentenced to life without parole].) At the time Heard was sentenced, section 3051 had not yet been enacted, and he was required to serve his determinate term plus the full minimum period of confinement of each of his life sentences before becoming parole eligible. (§§ 669, subd. (a), 3046, subd. (b).) Put another way, Heard would have to serve 103 years before becoming parole eligible. Such a sentence constitutes a de facto life without parole sentence. (See *Caballero*, *supra*, 55 Cal.4th at p. 268 [offender who would not become parole eligible for more than 100 years was sentenced to the functional equivalent of life without parole].)

It is true, as the People contend, that *Franklin* held that because the defendant had become eligible for a youth offender parole hearing in his 25th year of incarceration, he was no longer serving a life without parole sentence or its functional equivalent. (*Franklin*, *supra*, 63 Cal.4th at pp. 279–280.) As our high court explained, this was the result of the retroactive operation of section 3051. (*Franklin*, at pp. 278–279.) The Court further explained, however, that section 3051 did not alter the defendant's original sentence, which continued to remain binding. (*Franklin*, at pp. 279–280.) Applying the same reasoning here, although the retroactive operation of section 3051 means Heard will receive a youth offender parole hearing in his 25th year of incarceration, his original sentence remains binding. Section 1170, subdivision (d)(1), is a statutory resentencing opportunity, not a cure for

Miller error. (*Kirchner*, *supra*, 2 Cal.5th at p. 1056.) Although under *Franklin*, Heard's sentence as it currently operates is no longer the functional equivalent of life without parole, this does not change the fact that the sentence *was* a de facto life without parole sentence at the time it was imposed. Because section 1170, subdivision (d)(1)(A), refers to the "offense for which the defendant *was sentenced* to imprisonment for life without the possibility of parole" (italics added), and Heard was sentenced to the functional equivalent of a life without parole sentence, he is similarly situated with the juvenile offenders whose sentences make them eligible to seek resentencing.

As for the People's claim that the crimes committed by the juvenile offenders eligible to petition for resentencing are different from the crimes committed by those who cannot seek resentencing, we do not find this distinction is relevant. The People rely on *People v. Sanchez* (2020) 48 Cal.App.5th 914, 920 (*Sanchez*), which involved an equal protection challenge to former section 1170.95.[14] At that time, former section 1170.95 provided that "[a] person convicted of felony murder or murder under a natural and probable consequences theory may file a petition with the court that sentenced the petitioner to have the petitioner's murder conviction vacated and to be resentenced on any remaining counts" if certain specified conditions were met. (See *Sanchez*, at p. 918; former § 1170.95, subd. (a), added by Stats. 2018, ch. 1015, § 4.) The defendant in *Sanchez* was convicted of voluntary manslaughter based on an incident in which he and fellow gang members yelled at a rival gang member and the defendant's fellow gang

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14 Former section 1170.95 has since been amended and renumbered as section 1172.6. (Stats. 2021, ch. 551, § 2 [amended, effective Jan. 1, 2022]; Stats. 2022, ch. 58, § 10 [amended and renumbered, effective June 30, 2022].)

members assaulted the rival, causing him to smash his head on the pavement. (*Sanchez*, at p. 916.) He argued that former section 1170.95 violated equal protection by granting relief to defendants convicted of felony murder or murder under a natural and probable consequences theory, but not to defendants convicted of voluntary manslaughter. (*Sanchez*, at p. 917.)

The appellate court disagreed. It explained that former section 1170.95 was enacted in conjunction with legislation that "amend[ed] sections 188 and 189 to restrict the scope of first-degree felony murder and to eliminate murder liability based on the natural and probable consequences doctrine," and "create[d] a procedure for offenders previously convicted of felony murder or murder under a natural and probable consequences theory to obtain the benefits of these changes retrospectively." (*Sanchez*, *supra*, 48 Cal.App.5th at p. 917.) The court found the defendant was not similarly situated with those the law was intended to benefit, because he "was 'convicted of voluntary manslaughter, a different crime from murder, which carries a different punishment' " and because "[i]n general, 'offenders who commit different crimes are not similarly situated.' " (*Id.* at p. 920.)

The People's reliance on *Sanchez* is misplaced. The equal protection inquiry focuses on whether two groups of people are similarly situated " ' "*for purposes of the law challenged*." ' " (*Morales*, *supra*, 63 Cal.4th at p. 408, italics added.) Unlike former section 1170.95, the resentencing provision currently codified at section 1170, subdivision (d)(1), was not enacted in conjunction with legislation that narrowed the scope of theories available to support particular homicide offenses, and its purpose was not to create a procedure for vacating convictions. In stark contrast to former section 1170.95, section 1170, subdivision (d)(1), does not make the defendant's conviction of a particular offense a requirement for seeking resentencing.

(See § 1170, subd. (d)(1)(A).) In short, *Sanchez* involved a different ameliorative law with a different purpose and different requirements than the provision at issue in this case. The *Sanchez* court's reasons for finding the defendant convicted of voluntary manslaughter insufficiently similar to the defendants eligible for relief under former section 1170.95 simply do not apply here.

We conclude that for purposes of section 1170, subdivision (d)(1)(A), Heard is similarly situated with those defendants who are eligible to petition for resentencing.

B. *The Resentencing Provision's Differential Treatment of Juvenile Offenders Sentenced to Life Without Parole and Juvenile Offenders Sentenced to the Functional Equivalent of Life Without Parole Fails Rational Basis Scrutiny*

Next, we must consider whether the disparate treatment of the two categories of juvenile offenders is constitutionally justified. Both sides contend we should answer this question by applying the rational basis test. We agree. "Where a class of criminal defendants is similarly situated to another class of defendants who are sentenced differently, courts look to determine whether there is a rational basis for the difference." (*People v. Edwards* (2019) 34 Cal.App.5th 183, 195.) " 'This standard of rationality does not depend upon whether lawmakers ever actually articulated the purpose they sought to achieve.' " (*Johnson v. Department of Justice* (2015) 60 Cal.4th 871, 881.) " 'While the realities of the subject matter cannot be completely ignored [citation], a court may engage in " 'rational speculation' " as to the justifications for the legislative choice [citation]. It is immaterial for rational basis review "whether or not" any such speculation has "a foundation in the record." ' [Citation.] To mount a successful rational basis challenge, a party must ' "negative every conceivable basis" ' that might support the disputed

statutory disparity." (*Ibid.*) "If a plausible basis exists for the disparity, courts may not second guess its ' "wisdom, fairness, or logic." ' " (*Ibid.*)

Heard contends there is no rational basis for making juvenile offenders sentenced to explicit terms of life without parole eligible for resentencing under section 1170, subdivision (d)(1), while denying the same opportunity to juvenile offenders sentenced to terms that amount to the functional equivalent of life without parole. We agree. The resentencing provision has been called "a legislative 'act of lenity' designed to permit defendants to secure a 'modification downward' of their sentences." (*People v. Gibson* (2016) 2 Cal.App.5th 315, 327.) Though apparently initially conceived as a means for reducing the sentence of a juvenile offender sentenced to life without parole to one that provided an opportunity for parole,[15] section 3051,

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15 When a recall petition filed under the authority of section 1170, subdivision (d)(1), is granted, the sentencing court has "the discretion . . . to resentence the defendant in the same manner as if the defendant had not previously been sentenced, provided that the new sentence, if any, is not greater than the initial sentence." (§ 1170, subd. (d)(7).) Such provisions have been held to give the resentencing court "jurisdiction to modify *every* aspect of the sentence, and not just the portion subjected to the recall. [Citations.] In this situation, . . . the resentencing court may consider 'any pertinent circumstances which have arisen since the prior sentence was imposed.' " (*People v. Buycks* (2018) 5 Cal.5th 857, 893 [discussing recall of sentence under section 1170, former subdivision (d)]; see *Dix v. Superior Court* (1991) 53 Cal.3d 442, 458 [observing that section 1170, former subdivision (d) allowed the trial court, on its own motion, within 120 days of the date of commitment, to " 'recall the sentence and commitment [previously ordered] and resentence the defendant in the same manner as if the defendant had not been sentenced previously' "].) In *Lopez*, *supra*, 4 Cal.App.5th at pages 652 to 653, two juveniles initially sentenced to life without parole were each placed on five years of probation after the trial court granted their petitions for resentencing. As this example reveals, the benefit provided by section 1170, subdivision (d)(1), can extend beyond resentencing the offender to a term that includes the possibility of parole.

subdivision (b)(4), now largely fulfills that purpose. (See § 3051, subd. (b)(4).) Even so, the resentencing provision remains operative and available to offenders sentenced to explicit life without parole terms.

We can conceive of no legitimate reason for making juvenile offenders sentenced to explicit life without parole terms eligible to seek resentencing but not juvenile offenders sentenced to the equivalent of a life without parole sentence. Both groups, subject to limited exceptions, are now eligible for youth offender parole hearings.[16] Heard will receive his youth offender parole hearing after 25 years of incarceration; so will a juvenile offender sentenced to an explicit term of life without parole. (§ 3051, subd. (b)(3), (4).) And yet only the latter group is permitted to petition for resentencing.

The People's sole justification for the differential treatment is that the Legislature "could have reasonably concluded that the punishment of [life without parole] imposed on those under age 18 could be excessive and this was an appropriate means of reform by allowing for reconsideration of such a sentence." But as Heard points out, the same concern applies equally to juveniles sentenced to the functional equivalent of life without parole.

Nor can the differential treatment be justified by differences in the relative culpability of each group. The United States Supreme Court, in addressing the justifications for juvenile punishment, has recognized that a criminal sentence must relate to the culpability of the offender. (See *Graham*, *supra*, 560 U.S. at p. 71.) Resentencing under section 1170,

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16 The Legislature has excluded from relief under section 3051 juvenile offenders sentenced under the Three Strikes Law or the "One Strike" sex offender law. (See § 3051, subd. (h) [stating section 3051 "shall not apply to cases in which sentencing occurs pursuant to Section 1170.12, subdivisions (b) to (i), inclusive, of Section 667, or Section 667.61"].)

subdivision (d)(1), is available to juvenile offenders convicted of first degree murder whose cases involve a special circumstances finding. (See § 190.5, subd. (b).) Special circumstances murders are considered "the most heinous acts" proscribed by law. (*In re Nunez* (2009) 173 Cal.App.4th 709, 728.) They are "more severe and more deserving of lifetime punishment than nonspecial circumstance first degree murder." (*In re Williams* (2020) 57 Cal.App.5th 427, 436.) By contrast, " 'defendants who do not kill, intend to kill, or foresee that life will be taken are categorically less deserving of the most serious forms of punishment than are murderers. . . . Although an offense like robbery or rape is "a serious crime deserving serious punishment," those crimes differ from homicide crimes in a moral sense.' " (*Contreras, supra,* 4 Cal.5th at p. 382, quoting *Graham*, at p. 69.) Section 1170, subdivision (d)(1), thus has the incongruous effect of extending sentencing leniency exclusively to the category of offenders generally regarded as the least deserving of it. (See *Contreras*, at p. 382 [observing that section 3051, by making juveniles convicted of special circumstances murder eligible for youth offender parole hearings while denying youth offender parole hearings to juvenile One Strike sex offenders, has the "anomalous" effect of "treat[ing] a nonhomicide offense more harshly than special circumstance murder"].) The gravity of the crimes committed by the two groups of juvenile offenders thus fails to explain their differential treatment.

We have also considered whether the Legislature might have viewed a juvenile offender whose multiple offenses cause him to receive a lengthy term-of-years sentence as more culpable, and more deserving of severe punishment, than an offender who commits a single, albeit more serious offense. However, even if one accepts this as a logical premise, it fails when one considers how section 1170, subdivision (d)(1), operates. Although

section 1170, subdivision (d)(1), makes a juvenile offender sentenced to an explicit life without parole term eligible to petition for resentencing, nothing in the provision precludes a juvenile who receives that same sentence *plus additional terms imposed for additional offenses or enhancements* from petitioning for resentencing. The number of offenses theoretically committed by each group of offenders also fails to justify their disparate treatment.

In sum, we are unable to identify a rational basis for making juveniles sentenced to an explicitly designated life without parole term, but not juveniles sentenced to the functional equivalent of life without parole, eligible to petition for resentencing under section 1170, subdivision (d)(1). As a consequence, denying Heard the opportunity to petition for resentencing under this provision violates his right to equal protection of the laws.[17]

We will therefore reverse the trial court's order denying Heard's petition for recall and resentencing on the ground that his sentence rendered him ineligible to petition for resentencing. Because the trial court denied Heard's petition on this ground, it did not consider the merits of the petition.

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17 Heard's equal protection claim appears to embrace the position—a position the People do not address—that the canon of constitutional avoidance requires us to construe section 1170, subdivision (d)(1)(A), to avoid this equal protection violation. To the extent Heard advances this argument, we reject it. The canon of constitutional avoidance applies when a statute " ' "is susceptible of two constructions, one of which will render it constitutional and the other unconstitutional in whole or in part[.]" ' " (*People v. Gutierrez* (2014) 58 Cal.4th 1354, 1373.) It "is a tool for choosing between competing plausible interpretations of a statutory text" (*Clark v. Suarez Martinez* (2005) 543 U.S. 371, 381), "not a method of adjudicating constitutional questions by other means" (*ibid.*). As we have concluded, section 1170, subdivision (d)(1)(A), cannot plausibly be interpreted to apply to juvenile offenders who were not sentenced to an explicitly designated life without parole term. For this reason, the canon of constitutional avoidance does not apply.

(See § 1170, subd. (d)(5) [requiring the court to determine whether, "by a preponderance of the evidence that one or more of the statements specified in subparagraphs (A) to (D), inclusive, of paragraph (2) is true"].) Upon remand, the court must consider the merits of the petition and proceed in accordance with section 1170, subdivision (d)(1)'s directives. We express no opinion on the outcome of that proceeding.

DISPOSITION

The June 28, 2021 order denying Heard's petition for recall of sentence and resentencing is reversed. The matter is remanded to the trial court for further proceedings in accordance with this opinion.

DO, J.

WE CONCUR:

HUFFMAN, Acting P. J.

IRION, J.

Post Conviction Relief
as a Result of Developments in Forensic Science
SB 467

OSPD thanks the California Innocence Coalition for the materials related to SB 467

SB 467 made changes to Penal Code Section 1473 to create a new path for post-conviction relief if faulty scientific, forensic or medical expert testimony contributed to my conviction.[1]

Below is information explaining more about what the law does, what the new law is, and an FAQ to help determine if it impacts your case.

If you think that scientific, forensic or medical expert testimony contributed to your conviction, please write to the innocence project that handles cases in the county you were convicted. This contact information is provided below.

BACKGROUND

On January 1, 2023, two big changes to post-conviction law will take effect. This law will impact convictions where:

1) Expert testimony in the case is undermined by the current *state of scientific knowledge*. This means that a court does not just look at what has happened since the conviction, but can look at what existed at the time of my conviction as well. This evidence of the current state of scientific knowledge could be used to show that the science used in the case is not as reliable as was believed at the time I was convicted.

OR

2) There is now a significant dispute or a further developed significant dispute in the scientific, medical, or forensic community about the reliability of the expert testimony used in the case and this expert testimony contributed to the conviction.

[1] OSPD thanks the California Innocence Coalition for creating this document.

HIGHLIGHTS OF THE NEW LAW

The California law that allows a petition for writ of habeas corpus to challenge a conviction in California state court is Penal Code Section 1473. Below are the specific changes to this section that happened because of SB 467; all of Penal Code Section 1473 is provided at the end of this document.

CHANGE #1:

Penal Code Section 1473, subdivision, (b)(4) was added to the statute:

(b) A writ of habeas corpus may be prosecuted for, but not limited to, the following reason:

…

(4) A significant dispute has emerged or further developed in the petitioner's favor regarding expert medical, scientific, or forensic testimony that was introduced at trial and contributed to the conviction, such that it would have more likely than not changed the outcome at trial.

NOTE: This section of SB 467 applies if expert medical, scientific, or forensic testimony was introduced at trial and contributed to my conviction. Since trial, a significant dispute about that expert testimony has come about or further developed and had the jury heard about this significant dispute about this science a juror or the jury would have more likely than not have reached a different decision.

NOTE: Some ways that I can show that a dispute is significant, is by presenting evidence such as:

- A statement from an expert
- Testimony by an expert
- Research papers, studies, articles, and other literature that shows the dispute
- A consensus (an agreement) has developed in the relevant community which now UNDERMINES the RELIABILITY of the science used for the expert's testimony, OR
- There is a LACK of consensus (not an agreement) in the relevant community as to the RELIABILITY of the science used for the expert's testimony

CHANGE #2:

Penal Code Section 1473(e)(1) was amended to read:

For purposes of this section, "false evidence" includes opinions of experts that have either been repudiated by the expert who originally provided the opinion at a hearing or trial or that have been undermined by the state of scientific knowledge or later scientific research or technological advances.

NOTE: This section of SB 467 applies if expert testimony was used in your case. If the state of scientific knowledge has changed or advanced in a way that undermines what an expert in your case testified to, then this may qualify as "false evidence" and would be a potential legal claim in a petition for writ of habeas corpus. This change in the law has been expanded to include evidence that undermines the expert's testimony *even if* it existed at the time of the testimony. (See SB 467 (Expert Witnesses: writ of habeas corpus) 08/29/22 Senate Floor Analyses.)

WHO TO CONTACT

If you think the new law might impact your case and you are represented by an attorney you should tell them about the new law! If you do not have an attorney you can start by writing to the innocence organizations in California. Please know that the innocence organizations do not have the ability to represent everyone who writes to them, and if they cannot help, that is not a reflection of the merits of your case.

If the conviction is from Northern California:

Northern California Innocence Project
500 El Camino Real
Santa Clara, CA 95053

If the conviction is from Southern California (Imperial, Kern, Los Angeles, Orange, Riverside, San Bernardino, San Diego, San Luis Obispo, Santa Barbara, and Ventura.):

California Innocence Project
225 Cedar Street,
San Diego, CA 92101

Loyola Project for the Innocent
919 Albany Street
Los Angeles, CA 91101

Los Angeles Innocence Project
1800 Paseo Rancho Castilla
Los Angeles, CA 90032

FREQUENTLY ASKED QUESTIONS

The following is <u>not legal advice</u> specific to your case. It is your responsibility to do legal research or contact a lawyer to determine if you are eligible to apply for relief and to comply with deadlines.

Q: When does SB 467 go into effect?

A: The changes made in SB 467 go into effect January 1, 2023.

Q: What are some examples of scientific, medical, or forensic expert evidence? (Note: this is not a complete list)

A: Shaken Baby Syndrome/Abusive Head Trauma, Bitemark Comparison, Microscopic Hair Comparison, Arson, Child Sexual Abuse Accommodation Syndrome, Fingerprint Comparison, Firearm Comparison Evidence, Handwriting comparison, Blood spatter evidence, or similar evidence.

Q: What does it mean that the scientific, medical, or forensic evidence contributed to my conviction?

A: If the evidence was presented to the jury and they relied on it to convict, or it was argued by the prosecution as a reason you should be convicted.

Q: How do I know if the science, medical or forensic evidence has been undermined by the state of scientific knowledge or is the source of a significant scientific dispute?

A: If your case falls into one of the examples listed above (or other similar science, medical or forensic evidence) and this evidence contributed to your conviction then reach out to an attorney.

Q: If I think I have a claim under this statute, where should I start?

A: If you feel the new changes in the law apply to your case, you should review your trial transcripts for the expert testimony. You should also write to an attorney for help. See the "Senate Bill (SB) 467—Information" document for the contact list. If you currently have a case on appeal or in postconviction, make sure to contact that attorney as well.

Q: When should I file my habeas corpus petition?

A: While there is no deadline to file a habeas petition under PC section 1473, you must have new evidence (evidence that was not presented at your trial) in order to file a habeas. You also must file close in time to when you discover the new evidence or when there is a change in the

law applicable to your case. But the courts like to hear about all legal claims at one time and the law often prohibits the court from considering multiple habeas petitions unless certain difficult exceptions are met. So if you file a writ now you may not be allowed to file one later about other issues that come up. Start by reviewing your trial transcripts to see if the new law might affect your case and consult an attorney with the information you have.

TEXT OF PENAL CODE §1473

(The changes made by SB 467 are underlined)

1473. (a) A person unlawfully imprisoned or restrained of their liberty, under any pretense, may prosecute a writ of habeas corpus to inquire into the cause of the imprisonment or restraint.

(b) A writ of habeas corpus may be prosecuted for, but not limited to, the following reasons:

(1) False evidence that is substantially material or probative on the issue of guilt or punishment was introduced against a person at a hearing or trial relating to the person's incarceration.

(2) False physical evidence, believed by a person to be factual, probative, or material on the issue of guilt, which was known by the person at the time of entering a plea of guilty, which was a material factor directly related to the plea of guilty by the person.

(3) (A) New evidence exists that is credible, material, presented without substantial delay, and of such decisive force and value that it would have more likely than not changed the outcome at trial.

(B) For purposes of this section, "new evidence" means evidence that has been discovered after trial, that could not have been discovered prior to trial by the exercise of due diligence, and is admissible and not merely cumulative, corroborative, collateral, or impeaching.

(4) A significant dispute has emerged or further developed in the petitioner's favor regarding expert medical, scientific, or forensic testimony that was introduced at trial and contributed to the conviction, such that it would have more likely than not changed the outcome at trial.

(A) For purposes of this section, the expert medical, scientific, or forensic testimony includes the expert's conclusion or the scientific, forensic, or medical facts upon which their opinion is based.

(B) For purposes of this section, the significant dispute may be as to the reliability or validity of the diagnosis, technique, methods, theories, research, or studies upon which a medical, scientific or forensic expert based their testimony.

(C) Under this section, a significant dispute can be established by credible expert testimony or declaration, or by peer reviewed literature showing that experts in the relevant medical, scientific, or forensic community, substantial in number or

expertise, have concluded that developments have occurred that undermine the reliability or validity of the diagnosis, technique, methods, theories, research, or studies upon which a medical, scientific, or forensic expert based their testimony.

(D) In assessing whether a dispute is significant, the court shall give great weight to evidence that a consensus has developed in the relevant medical, scientific, or forensic community undermining the reliability or validity of the diagnosis, technique, methods, theories, research, or studies upon which a medical, scientific, or forensic expert based their testimony or that there is a lack of consensus as to the reliability or validity of the diagnosis, technique, methods, theories, research, or studies upon which a medical, scientific, or forensic expert based their testimony.

(E) The significant dispute must have emerged or further developed within the relevant medical, scientific, or forensic community, which includes the scientific community and all fields of scientific knowledge on which those fields or disciplines rely and shall not be limited to practitioners or proponents of a particular scientific or technical field or discipline.

(F) If the petitioner makes a prima facie showing that they are entitled to relief, the court shall issue an order to show cause why relief shall not be granted. To obtain relief, all the elements of this paragraph must be established by a preponderance of the evidence.

(G) This section does not change the existing procedures for habeas relief.

(c) Any allegation that the prosecution knew or should have known of the false nature of the evidence referred to in paragraphs (1) and (2) of subdivision (b) is immaterial to the prosecution of a writ of habeas corpus brought pursuant to paragraph (1) or (2) of subdivision (b).

(d) This section does not limit the grounds for which a writ of habeas corpus may be prosecuted or preclude the use of any other remedies.

(e) (1) For purposes of this section, “false evidence” includes opinions of experts that have either been repudiated by the expert who originally provided the opinion at a hearing or trial or that have been undermined by the state of scientific knowledge or later scientific research or technological advances.

(2) This section does not create additional liabilities, beyond those already recognized, for an expert who repudiates the original opinion provided at a hearing or trial or whose opinion has been undermined by scientific research, technological advancements, or because of a reasonable dispute within the expert’s relevant scientific community as to

the validity of the methods, theories, research, or studies upon which the expert based their opinion.

(f) Notwithstanding any other law, a writ of habeas corpus may also be prosecuted after judgment has been entered based on evidence that a criminal conviction or sentence was sought, obtained, or imposed in violation of subdivision (a) of Section 745 if judgment was entered on or after January 1, 2021. A petition raising a claim of this nature for the first time, or on the basis of new discovery provided by the state or other new evidence that could not have been previously known by the petitioner with due diligence, shall not be deemed a successive or abusive petition. If the petitioner has a habeas corpus petition pending in state court, but it has not yet been decided, the petitioner may amend the existing petition with a claim that the petitioner's conviction or sentence was sought, obtained, or imposed in violation of subdivision (a) of Section 745. The petition shall state if the petitioner requests appointment of counsel and the court shall appoint counsel if the petitioner cannot afford counsel and either the petition alleges facts that would establish a violation of subdivision (a) of Section 745 or the State Public Defender requests counsel be appointed. Newly appointed counsel may amend a petition filed before their appointment. The court shall review a petition raising a claim pursuant to Section 745 and shall determine if the petitioner has made a prima facie showing of entitlement to relief. If the petitioner makes a prima facie showing that the petitioner is entitled to relief, the court shall issue an order to show cause why relief shall not be granted and hold an evidentiary hearing, unless the state declines to show cause. The defendant shall appear at the hearing by video unless counsel indicates that their presence in court is needed. If the court determines that the petitioner has not established a prima facie showing of entitlement to relief, the court shall state the factual and legal basis for its conclusion on the record or issue a written order detailing the factual and legal basis for its conclusion.

Veterans Resentencing Information
SB 1209

SB 1209 is a new law affecting veterans with felony convictions that begins on January 1, 2023. SB 1209 changes Penal Code section 1170.91. It allows people who have served in the military to ask a court to resentence them to less time. The law applies to people who are currently serving in the military. It also applies to people who used to serve in the military. To be able to use the new law, the person must have a trauma or condition that is related to their military service.

A copy of the law and a sample petition are attached. Please read both carefully. If you believe you are eligible, you can fill out the attached petition to ask the court to resentence you.

WHO CAN PETITION TO BE RESENTENCED UNDER SB 1209?

To be able to use the new law, the person must have:

(1) Served in the United States military.
(2) Have a condition or trauma that is related to their military service.
(3) The court did not think about those issues when they were sentenced.

Trauma or condition means having at least one of the following:

- Sexual trauma
- Traumatic brain injury
- Post-traumatic stress disorder
- Substance abuse
- Mental health problems.

People who are serving a determinate sentence (have a lower, middle or upper term sentence) or who are on probation, parole, post-release community supervision or mandatory supervision can file a petition for resentencing. The new law also applies to people who are serving life sentences with the possibility of parole.

WHICH VETERANS CANNOT USE THIS LAW?

Not everyone who has served in the military can ask the judge to resentence them under this new law. People who are required to register as sex offenders or who have been convicted of some special felonies are not able to use the new law. You can find a list of those convictions in the Frequently Asked Questions section of this packet.

WHAT CAN THE JUDGE DO?

The judge gets to decide what the new sentence should be. In deciding the new sentence, the judge has to consider whether the person has had trauma from their time in the military, such as mental health problems or post-traumatic stress disorder (PTSD).

The judge is not allowed to make the person's sentence longer. The judge can:

- Lower the sentence
- Change the charges to lesser charges, if the district attorney agrees
- Shorten probation or parole
- Leave the sentence the same.

FILING THE PETITION

A petition is a document you send to the court asking for something. A sample petition you can use to get into court is attached. The form allows you to ask for a lawyer to represent you. You do not have to use this form.

If you want to use the form, you will need check the boxes and write in information about your case. Once you have filled out and signed the form, you need to:

(1) send the original completed form to the court that sentenced you.
(2) send a copy to the district attorney.
(3) send a copy to the attorney or the public defender who represented you.
(4) keep a copy for your records.

Attached are addresses for the public defender offices across California. This may be helpful for filling out the petition. The addresses should be on your paperwork from court, if you still have it. If you don't have the addresses you need, you should check with the law library.

FREQUENTLY ASKED QUESTIONS

The following is not legal advice specific to your case. It is your responsibility to do legal research or contact a lawyer to determine if you are eligible to apply for relief.

Q: I am eligible for relief. How can this law help me?

A: The judge can shorten the length of your time in custody or shorten the length of time you are on probation or parole. Or, if everyone agrees, the judge can change the type of charge. In order to change the type of charge you are convicted of, the prosecutor, the judge and you must all agree. If you all agree, it does not matter if you were not originally charged with the lesser included or lesser related offenses.

Q: Do I need to be serving a sentence in prison to use this law?

A: No. It does not matter where you are serving your sentence. The new law applies to those serving sentences in county jails or in CDCR. It also applies to those who are on supervision because of their conviction (for example, those on probation, parole, post-release community supervision or mandatory supervision).

Q: I took a deal. Am I eligible if I did not go to trial?

A: Yes. It does not matter if you were convicted after a trial or whether you were convicted through a plea bargain. If the judge determines that you are eligible for relief, the new law will apply.

Q: Does this law also apply to misdemeanor convictions?

A: No. The new law is limited to those who are currently serving felony sentences.

Q: When should I file the petition for recall of sentence?

A: The new law takes effect on January 1, 2023. You should file your petition for recall of sentence after that date.

Q: Is there a deadline for filing a petition?

A: No. There is no deadline to file a petition for recall of sentence.

Q: Should I file a petition if I do not know whether I am eligible?

A: You should not file a petition unless you believe you are eligible. However, if you read through the petition and think you are eligible, you can file the petition and ask for a lawyer.

You do not have to attach military or mental health records when you file your petition for recall of sentence. Your lawyer can get these records later.

Q: What prior convictions could stop me from using this new law?

A: If you have a conviction for one of these listed felonies, you are not able to use the new law. It does not matter if the conviction is very old or if it is your most recent conviction.

- Any sexually violent offense
- Oral copulation, sodomy or sexual penetration of a person under 14 years of age or more than 10 years younger than the other person
- Any lewd or lascivious act involving a person under 14 years of age
- Any conviction that requires you to register as a sex offender
- Any homicide offense, including attempted homicide
- Solicitation to commit murder
- Assault with a machine gun on a peace officer or firefighter
- Possession of a weapon of mass destruction
- Any serious or violent felony punishable by life imprisonment or death

Q: How can I get records of my military service?

A: You can request records of your military service from the National Personnel Records Center (NPRC) using form SF 180. A copy of this form is included with this packet. You can also write a letter to the NPRC and send it to:

NPRC
1 Archives Drive
St. Louis, Missouri 63138.

SAMPLE PETITION

Petitioner name: CDCR no. (*if applicable*): Institution name (*if applicable*): Street address: City, State, Zip Code: Attorney name (*if applicable*): State Bar no.:	*For Court Use Only*
SUPERIOR COURT OF CALIFORNIA, **COUNTY OF**: _____	SUPERIOR COURT CASE NUMBER:
PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT: _____ DATE OF BIRTH: _____	*For Court Use Only*
PETITION FOR RECALL OF SENTENCE **(Pen. Code § 1170.91(b))**	**Date:** **Time:** **Department:**

I _____ , declare as follows:

☐ **1.** I am currently serving a sentence for the felony conviction(s) listed below.

☐ I am currently in jail or prison; or

☐ I am currently on supervision because of my conviction (for example, probation, parole, post-release community supervision, or mandatory supervision).

☐ **2.** On (*date of conviction*): _____, I was convicted of the following felony offense(s) (*attach additional sheets if necessary*):

Code	**Section**	**Name of offense**

☐ **3.** I am now or was a member of the United States military. I am serving or served in the (*branch of military*) _____.

☐ **4.** I request that this Court appoint counsel to represent me.

☐ **5.** I am suffering from at least one of the conditions listed below that are related to my service in the military:

- Sexual trauma

- Traumatic Brain Injury (TBI)
- Post-Traumatic Stress Disorder (PTSD)
- Substance Abuse
- Mental health problem

☐ **6.** I believe that when I was sentenced, the judge did not consider my service-connected trauma, injury or condition as a factor in deciding my sentence.

☐ **7.** I have mailed a copy of this Petition to the following:

☐ **Office of the District Attorney**

County of
_____

_____
[Street Address]

_____
[City, State, Zip]

☐ **Office of the Public Defender**

County of
_____

_____
[Street Address]

_____
[City, State, Zip]

OR

☐ [If not represented by the Public Defender]

_____
[Trial attorney name]

_____
[Street Address]

_____
[City, State, Zip]

I declare under penalty of perjury that the above is true except as to that stated on information and belief or that which is legal conclusion and as to those, I believe them to be true.
Date:_____ City:_____ State: _____

Signature:_____ Printed name: _____

REQUEST FOR MILITARY RECORDS

INSTRUCTION AND INFORMATION SHEET FOR SF 180, REQUEST PERTAINING TO MILITARY RECORDS

1. General Information. The Standard Form 180, Request Pertaining to Military Records (SF 180) is used to request information from military records. Certain identifying information is necessary to determine the location of an individual's record of military service. Please try to answer each item on the SF180. If you do not have and cannot obtain the information for an item, show "NA," meaning the information is "not available". Include as much of the requested information as you can. Incomplete information may delay response time. To determine where to mail this request see Page 2 of the SF 180 for record locations and facility addresses. Medical information may be withheld from a patient if determined that the information would be detrimental to the patient's physical or mental health or would likely cause the patient to harm himself or someone else. Online requests may be submitted to the National Personnel Records Center (NPRC) by a veteran or deceased veteran's next-of-kin using eVetRecs at https://www.archives.gov/veterans/military-service-records/.

2. Personnel Records/Military Human Resource Records/Official Military Personnel File (OMPF) and Medical Records/Service Treatment Records (STR). Personnel records of military members who were discharged, retired, or died in service **LESS THAN 62 YEARS AGO** and medical records are in the legal custody of the military service department and are administered in accordance with rules issued by the Department of Defense and the Department of Homeland Security (DHS, Coast Guard). STRs of persons on active duty are generally kept at the local servicing clinic. After the last day of active duty, STRs should be requested from the appropriate address on page 2 of the SF 180 (See item 3, Archival Records, if the military member was discharged, retired or died in service more than 62 years ago).

a. Release of information: Release of information is subject to restrictions imposed by the military services consistent with Department of Defense regulations, the provisions of the Freedom of Information Act (FOIA) and the Privacy Act of 1974. The service member (either past or present) or the member's authorized legal recipient has access to almost any information contained in that member's own record. The authorization signature of the service member or the member's authorized legal recipient is needed in Section III of the SF 180. Others requesting information from military personnel records and/or STRs must have the release authorization in Section III of the SF 180 signed by the member or authorized legal recipient. If the appropriate signature cannot be obtained, only limited types of information can be provided (DoD 6025.18-R C8). If the former member is deceased, the surviving next-of-kin (NOK) may be entitled to greater access to a deceased veteran's records than a member of the general public (DoD 6025.18-R C6.2.1.2). The NOK may be any of the following: unmarried/surviving spouse, father, mother, son, daughter, sister, or brother. Requesters **MUST provide proof of death such as the DD Form 1300, Casualty Report, a copy of a death certificate, newspaper article (obituary) or death notice, coroner's report of death, funeral director's signed statement of death, or verdict of coroner's jury.**

b. Fees for records: There is no charge for most services provided to service members or next-of-kin of deceased veterans. A nominal fee is charged for certain types of service. In most instances, service fees cannot be determined in advance. If your request involves a service fee, you will receive an invoice with your records.

3. Archival Records. Personnel records of military members who were discharged, retired, or died in service **62 OR MORE YEARS AGO** have been transferred to the legal custody of NARA and are referred to as "archival records".

a. Release of Information: Archival records are open to the public. The Privacy Act of 1974 does not apply to archival records, therefore, written authorization from the veteran or next-of-kin is not required. In order to protect the privacy of the veteran, his/her family, and third parties named in the records, the personal privacy exemption of the Freedom of Information Act (5 U.S.C. 552 (b)(6)) may still apply and may preclude the release of some information.

b. Fees for Archival Records: Access to archival records are granted by offering copies of the records for a fee (44 U.S.C. 2116 (c)). If a fee applies to the copies of documents in the requested record, you will receive an invoice. Copies will be sent after payment is made. For more information see https://www.archives.gov/st-louis/archival-programs/military-personnel-archival/ompf-archival-requests.html.

4. Where reply may be sent. The reply may be sent to the service member or any other address designated by the service member or other authorized requester. If the designated address is NOT registered to the addressee by the U.S. Postal Service (USPS), provide BOTH the addressee's name AND "in care of" (c/o) the name of the person to whom the address is registered on the NAME line in Section III, item 3, on page 1 of the SF 180. The COMPLETE address must be provided, INCLUDING any apartment/suite/unit/lot/space/etc. number. NOTE: If requester desires to send his/her record to a third party, he/she must fill out a DD Form 2870 authorizing the releasing agency to release the record and the timeframe of the authorization. The form may be downloaded using most commercial web search tools by entering "DD Form 2870" as a search term.

5. Definitions and abbreviations. DISCHARGED -- the individual has no current military status; SERVICE TREATMENT RECORD (STR) -- The chronology of medical, mental health, and dental care received by service members during the course of their military career (does not include records of treatment while hospitalized); TDRL – Temporary Disability Retired List.

6. Service completed before World War I. National Archives Trust Fund (NATF) forms must be used to request these records. Obtain the forms by e-mail from *inquire@nara.gov* or write to the Code 6 address on page 2 of the SF 180.

PRIVACY ACT OF 1974 COMPLIANCE INFORMATION

The following information is provided in accordance with 5 U.S.C. 552a(e)(3) and applies to this form. Authority for collection of the information is 44 U.S.C. 2907, 3101, and 3103, and Public Law 104-134 (April 26, 1996), as amended in title 31, section 7701. Disclosure of the information is voluntary. If the requested information is not provided, it may delay servicing your inquiry because the facility servicing the service member's record may not have all of the information needed to locate it. The purpose of the information on this form is to assist the facility servicing the records (see the address list) in locating the correct military service record(s) or information to answer your inquiry. This form is then retained as a record of disclosure. The form may also be disclosed to Department of Defense components, the Department of Veterans Affairs, the Department of Homeland Security (DHS, U.S. Coast Guard), or the National Archives and Records Administration when the original custodian of the military health and personnel records transfers all or part of those records to that agency. If the service member was a member of the National Guard, the form may also be disclosed to the Adjutant General of the appropriate state, District of Columbia, or Puerto Rico, where he or she served.

PAPERWORK REDUCTION ACT PUBLIC BURDEN STATEMENT

Public burden reporting for this collection of information is estimated to be five minutes per request, including time for reviewing instructions and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of the collection of information, including suggestions for reducing this burden, to National Archives and Records Administration (MP), 8601 Adelphi Road, College Park, MD 20740-6001. *DO NOT SEND COMPLETED FORMS TO THIS ADDRESS*. SEND COMPLETED FORMS TO THE APPROPRIATE ADDRESS LISTED ON PAGE 2 OF THE SF 180.

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OMB No. 3095-0029 Expires 04/30/2024

REQUEST PERTAINING TO MILITARY RECORDS

Requests can be submitted online using eVetRecs at https://www.archives.gov/veterans/military-service-records/

To ensure the best possible service, please thoroughly review the accompanying instructions before filling out this form. PLEASE PRINT LEGIBLY OR TYPE BELOW.

SECTION I - INFORMATION NEEDED TO LOCATE RECORDS *(Furnish as much information as possible.)*

1. NAME USED DURING SERVICE (last, first, full middle)	2. SOCIAL SECURITY #	3. DATE OF BIRTH	4. PLACE OF BIRTH

5. SERVICE, PAST AND PRESENT *(For an effective records search, it is important that ALL service be shown below.)*

	BRANCH OF SERVICE	DATE ENTERED	DATE RELEASED	OFFICER	ENLISTED	SERVICE NUMBER (If unknown, write "unknown")
a. ACTIVE				☐	☐	
b. RESERVE				☐	☐	
c. NATIONAL GUARD				☐	☐	

6. PLEASE LIST LAST FOUR DUTY STATIONS, IF KNOWN: 1. _____ 2. _____ 3. _____ 4. _____

7. IS THIS PERSON DECEASED? ☐ **NO** ☐ **YES** - ***MUST*** *provide Date of Death if veteran is deceased:* _____

8. DID THIS PERSON RETIRE FROM MILITARY SERVICE? ☐ **NO** ☐ **YES**

SECTION II – INFORMATION AND/OR DOCUMENTS REQUESTED

1. CHECK THE ITEM(S) YOU ARE REQUESTING:

☐ **DD Form 214 or equivalent:** Year(s) in which form(s) issued to veteran (Date of Separation): _____
This form contains information used to verify military service. **An UNDELETED DD Form 214 is ordinarily required to determine eligibility for benefits**. If you request a DELETED copy, the following items will be blacked out: authority for separation, reason for separation, reenlistment eligibility code, separation (SPD/SPN) code, and, for separations after June 30, 1979, character of separation and dates of time lost. Please note – recent veterans may be able to request a DD Form 214 through milConnect by visiting: https://www.va.gov/records/get-military-service-records/
An UNDELETED copy will be sent UNLESS YOU SPECIFY A DELETED COPY by checking this box: ☐ I want a **DELETED** copy.

☐ **Official Military Personnel File (OMPF):** The OMPF may include duty stations and assignments, training and qualifications, awards and decorations received, disciplinary actions, administrative remarks, enlistment and/or discharge information (including DD Form 214, Report of Separation, or equivalent), and other personnel actions. Detailed information about the veteran's participation in battles and their military engagements is NOT contained in the record.

☐ **Medical Records:** Includes health (outpatient), extended ambulatory, and dental records. If inpatient/hospitalization records are requested, please specify below.
☐ I request inpatient/hospitalization records from _____ (facility), last treated in _____ (year). **(NOTE: Fields are required)**
If available, you may receive copies of inpatient narrative summaries, operative reports, discharge summaries, etc. contained in the record.

☐ **Dental Records:** Please check this box if **ONLY** dental records are needed from the medical record.

☐ **Other (Please Specify):** _____

2. PURPOSE: (Providing information about the purpose of the request is **voluntary;** however, it may help to provide the best possible response and may result in a faster reply. Information provided will in no way be used to make a decision to deny the request.)

☐ Benefits (explain) ☐ Employment ☐ VA Loan Programs ☐ Medical ☐ Genealogy ☐ Correction ☐ Personal ☐ Other (explain)

Explain here: _____

SECTION III - RETURN ADDRESS AND SIGNATURE

1. REQUESTER NAME: _____

2. RELATIONSHIP TO VETERAN: _____

3. ☐ I am the MILITARY SERVICE MEMBER OR VETERAN identified in Section 1, above.

☐ I am the DECEASED VETERAN'S NEXT-OF-KIN **(MUST submit Proof of Death.** See item 2a on instruction sheet.)

☐ I am the VETERAN'S LEGAL GUARDIAN **(MUST submit copy of Court Appointment)** or AUTHORIZED REPRESENTATIVE (MUST submit copy of Authorization Letter or Power of Attorney)

☐ OTHER (Specify): _____

4. SEND INFORMATION/DOCUMENTS TO:
(Please print or type. See item 4 on accompanying instructions.)

_____
Name

_____ _____
Street Address Apt. #

_____ _____ _____
City State ZIP Code

_____ _____
Daytime Phone Fax Number

_____
Email Address

5. AUTHORIZATION SIGNATURE: I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the information in this Section 3 is true and correct and that I authorize the release of the requested information. *(See items 2a or 3a on the accompanying instructions sheet. Without the Authorization Signature of the veteran, next-of-kin of deceased veteran, veteran's legal guardian, authorized government agent, or other authorized representative, only limited information can be released unless the request is archival. No signature is required if the request is for archival records.)*

_____ _____
Signature Required – Do not print **Date**

* This form is available at https://www.archives.gov/veterans-military-service-records/standard-form-180.pdf on the National Archives and Records Administration (NARA) web site. *

The various categories of military service records are described in the chart below. For each category there is a code number which indicates the address at the bottom of the page to which this request should be sent. Please refer to the Instruction and Information Sheet accompanying this form as needed.

BRANCH	CURRENT STATUS OF SERVICE MEMBER	Personnel Record	Medical or Service Treatment Record
AIR FORCE	Discharged, deceased, or retired before 5/1/1994	14	14
	Discharged, deceased, or retired 5/1/1994 – 9/30/2004	14	11
	Discharged, deceased, or retired 10/1/2004 – 12/31/2013	1	11
	Discharged, deceased, or retired on or after 1/1/2014	1	13
	Active (including National Guard on active duty in the Air Force), TDRL, or general officers retired with pay	1	
	Reserve, IRR, Retired Reserve in non-pay status, current National Guard officers not on active duty in the Air Force, or National Guard released from active duty in the Air Force	2	
	Current National Guard enlisted not on active duty in the Air Force	2	13
COAST GUARD	Discharged, deceased, or retired before 1/1/1898	6	
	Discharged, deceased, or retired 1/1/1898 – 3/31/1998	14	14
	Discharged, deceased, or retired 4/1/1998 – 9/30/2006	14	11
	Discharged, deceased, or retired 10/1/2006 – 9/30/2013	3	11
	Discharged, deceased, or retired on or after 10/1/2013	3	14
	Active, Reserve, Individual Ready Reserve or TDRL	3	
MARINE CORPS	Discharged, deceased, or retired before 1/1/1895	6	
	Discharged, deceased, or retired 1/1/1905 – 4/30/1994	14	14
	Discharged, deceased, or retired 5/1/1994 – 12/31/1998	14	11
	Discharged, deceased, or retired 1/1/1999 - 12/31/2013	4	11
	Discharged, deceased, or retired on or after 1/1/2014	4	8
	Individual Ready Reserve	5	
	Active, Selected Marine Corps Reserve, TDRL	4	
ARMY	Discharged, deceased, or retired before 11/1/1912 (enlisted) or before 7/1/1917 (officer)	6	
	Discharged, deceased, or retired 11/1/1912 – 10/15/1992 (enlisted) or 7/1/1917 – 10/15/1992 (officer)	14	
	Discharged, deceased, or retired 10/16/1992 – 9/30/2002	14	11
	Discharged, deceased, or retired (including TDRL) 10/1/2002 – 12/31/2013	7	11
	Discharged, deceased, or retired (including TDRL) on or after 1/1/2014	7	9
	Current Soldier (Active, Reserve (including Individual Ready Reserve) or National Guard)	7	
NAVY	Discharged, deceased, or retired before 1/1/1886 (enlisted) or before 1/1/1903 (officer)	6	
	Discharged, deceased, or retired 1/1/1886 – 1/30/1994 (enlisted) or 1/1/1903 – 1/30/1994 (officer)	14	14
	Discharged, deceased, or retired 1/31/1994 – 12/31/1994	14	11
	Discharged, deceased, or retired 1/1/1995 – 12/31/2013	10	11
	Discharged, deceased, or retired on or after 1/1/2014	10	8
	Active, Reserve, or TDRL	10	
PHS	Public Health Service - Commissioned Corps officers only	12	

ADDRESS LIST OF CUSTODIANS and SELF-SERVICE WEBSITES (BY CODE NUMBERS SHOWN ABOVE) – Where to write/send this form

1
Air Force Personnel Center
AFPC/DP2SSM
550 C Street West
JBSA-Randolph TX 78150-4721
Fax Number: 210-565-3124
Email: DP2SSM.MILRECS.INCOMING@US.AF.MIL

2
Air Reserve Personnel Center

Total Force Service Center: 1-800-525-0102
https://mypers.af.mil/

3
Commander, Personnel Service Center
(BOPS-C-MR) MS7200
US Coast Guard
2703 Martin Luther King Jr Ave SE
Washington, DC 20593-7200
https://www.dcms.uscg.mil/ompf

4
Headquarters U.S. Marine Corps
Manpower Management Records & Performance (MMRP-10)
2008 Elliot Road
Quantico, VA 22134-5030
SMB.MANPOWER.MMRP-10@usmc.mil

5
Marine Corps Forces Reserve
2000 Opelousas Avenue
New Orleans, LA 70114

6
National Archives & Records Administration
Research Services (RDT1R)
700 Pennsylvania Avenue NW
Washington, DC 20408-0001

7
US Army Human Resources Command's web page:
https://www.hrc.army.mil/content/1113

or 1-888-ARMYHRC (1-888-276-9472)

8
Navy Medicine Records Activity (NMRA)
BUMED Detachment St. Louis
4300 Goodfellow Boulevard, Building 103
St. Louis, MO 63120
Fax number: 314-260-8128

9
AMEDD Army Record Processing Center
3370 Nacogdoches Road, Suite 116
San Antonio, TX 78217
Fax Number: 210-201-8310

10
Navy Personnel Command (PERS-313)
5720 Integrity Drive
Millington, TN 38055-3130

11
Department of Veterans Affairs
ATTN: Release of Information
Claims Intake Center
P.O. Box 4444
Janesville, WI 53547-4444
Fax Number: 844-531-7818
https://www.va.gov

12
Division of Commissioned Corps Officer Support
ATTN: Records Officer
1101 Wooton Parkway, Plaza Level, Suite 100
Rockville, MD 20852

13
AF STR Processing Center
ATTN: Release of Information
3370 Nacogdoches Road, Suite 116
San Antonio, TX 78217

14
National Personnel Records Center
(Military Personnel Records)
1 Archives Drive
St. Louis, MO 63138-1002
https://www.archives.gov/veterans/military-service-records/

Senate Bill No. 1209

CHAPTER 721

An act to amend Section 1170.91 of the Penal Code, relating to sentencing.

[Approved by Governor September 28, 2022. Filed with
Secretary of State September 28, 2022.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1209, Eggman. Sentencing: members of military: trauma.

Existing law requires a court, if it concludes that a defendant convicted of a felony offense is or was a member of the United States military who may be suffering from sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse, or mental health problems as a result of the defendant's military service, to consider that circumstance as a factor in mitigation when imposing a sentence. Existing law allows a defendant who is currently serving a felony sentence and meets these criteria to petition for resentencing if those criteria were not considered at the time of sentencing and the person was sentenced prior to January 1, 2015.

This bill would allow a defendant meeting these criteria to petition for recall of sentence and resentencing, as specified, without regard to whether the defendant was sentenced prior to January 1, 2015. The bill would also exclude from special consideration and from resentencing, any person convicted of, or having a prior conviction for, certain violent and sexual offenses.

The people of the State of California do enact as follows:

SECTION 1. Section 1170.91 of the Penal Code is amended to read:

1170.91. (a) If the court concludes that a defendant convicted of a felony offense is, or was, a member of the United States military who may be suffering from sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse, or mental health problems as a result of the defendant's military service, the court shall consider the circumstance as a factor in mitigation when imposing a sentence. This consideration does not preclude the court from considering similar trauma, injury, substance abuse, or mental health problems due to other causes, as evidence or factors in mitigation.

(b) (1) A person currently serving a sentence for a felony conviction, whether by trial or plea, who is, or was, a member of the United States military and who may be suffering from sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse, or mental health problems as a result of the person's military service may petition for a recall

of sentence, before the trial court that entered the judgment of conviction in the case, to request resentencing if the circumstance of suffering from sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse, or mental health problems as a result of the person's military service was not considered as a factor in mitigation at the time of sentencing.

(2) If the court that originally sentenced the person is not available, the presiding judge shall designate another judge to rule on the petition.

(3) Upon receiving a petition under this subdivision, the court shall determine, at a public hearing held after not less than 15 days' notice to the prosecution, the defense, and any victim of the offense, whether the person satisfies the criteria in this subdivision. At that hearing, the prosecution shall have an opportunity to be heard on the petitioner's eligibility and suitability for resentencing. If the person satisfies the criteria, the court may, in the interest of justice, and regardless of whether the original sentence was imposed after a trial or plea, do either of the following:

(A) Reduce the defendant's term of imprisonment by modifying the sentence.

(B) Vacate the 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 by the Attorney General if the case was originally prosecuted by the Department of Justice.

(4) A person who is resentenced pursuant to this subdivision shall be given credit for time served.

(5) Resentencing under this subdivision shall not result in the imposition of a term longer than the original sentence.

(6) This subdivision does not alter or diminish any rights conferred under Section 28 of Article I of the California Constitution (Marsy's Law).

(7) This subdivision does not diminish or abrogate any rights or remedies otherwise available to the person.

(8) This subdivision does not diminish or abrogate the finality of judgments in any case not falling within the purview of this subdivision.

(9) This subdivision does not impose an obligation on the Department of Corrections and Rehabilitation to provide medical or mental health assessments in order to identify potential service-related injuries.

(10) This subdivision shall apply retroactively.

(c) This section does not apply to a person convicted of, or having one or more prior convictions for, an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 or an offense requiring registration pursuant to subdivision (c) of Section 290.

O

GPS Monitoring for Individuals Identified as SVP
AB 1641

Adds Welfare & Institutions Code §6608.1

Assembly Bill (AB) 1641 requires any individual identified as a "Sexually Violent Predator" (SVP) on a conditional release program to be constantly monitored by a global positioning system (GPS) unit. This was the policy the state of California generally followed, but now it has been specifically written into the law. This law takes effect on January 1, 2023.

New Rules & Procedures for Mentally Incompetent Individuals on Death Row
AB 2657

Amends and renumbers Pen. Code §3700.5; Repeals Pen. Code §3700, 3704 & 3704.5; Repeals and adds Pen. Code §3701, 3702, 3703

Assembly Bill (AB) 2657 requires the judge to vacate the death sentences of a person who has become permanently incompetent to be executed. This law also changes the procedure for determining whether a person serving a death sentence is incompetent to be executed. Finally, it establishes a procedure for an incarcerated person whose death sentence has been affirmed on direct appeal to petition a court for relief any time prior to the setting of their execution date if they are permanently incompetent to be executed. These changes take effect January 1, 2023.

PUBLIC DEFENDER CONTACT LIST

CALIFORNIA PUBLIC DEFENDER CONTACT LIST

Alameda	Alameda County Public Defender 1401 Lakeside Drive #400 Oakland, CA 94612-4305 510-272-6600	**Imperial**	Imperial County Public Defender 895 Broadway El Centro, CA 92243 442-265-1705
Contra Costa	Contra Costa County Public Defender 800 Ferry Street Martinez, CA 94553 925-335-8000	**Kern**	Kern County Public Defender 1315 Truxtun Ave Bakersfield, CA 93301 661-868-4799
El Dorado	El Dorado County Public Defender 3976 Durok Road, Ste 104 Shingle Springs, CA 95682 530-621-6440	**Lassen**	Lassen County Public Defender 2950 Riverside Dr Ste 103 Susanville, CA 96130-4710 530-251-8312
Fresno	Fresno Public Defender's Office 2135 Fresno Street, Suite 100 Fresno, CA 93721 (559) 600-3546	**Los Angeles**	Los Angeles County Public Defender 210 West Temple Street, 19-513 Los Angeles, CA 213-974-2811
Humboldt	Humboldt County Public Defender 1001 4th Street Eureka, CA 95501-0544 707-445-7634	**Marin**	Marin County Public Defender 3501 Civic Center Drive, Suite 127 San Rafael, CA 94903 415-473-6321
Mendocino	Mendocino County Public Defender 175 S School Street Ukiah, CA 95482-4825 707-234-6950	**San Bernardino**	San Bernardino County Public Defender 323 West Court Street San Bernardino, CA 92415-0320 909-382-3950
Merced	Merced County Public Defender 1944 M Street Merced, CA 95348 209-385-7692	**San Diego**	San Diego County Public Defender 451 A Street, Suite 900 San Diego, CA 92101 619-338-4700
Monterey	Monterey County Public Defender 168 W Alisal Street, 2nd Floor Salinas, CA 93901 831-755-5058	**San Francisco**	San Francisco Public Defender 555 7th Street San Francisco, CA 94103 415-553-1671
Napa	Napa County Public Defender 1127 First Street, Ste B Napa, CA 94559 707-253-4442	**San Joaquin**	San Joaquin County Public Defender 102 S San Joaquin Street #1 Stockton, CA 95202 209-468-2730

Nevada
Nevada County Public Defender
109 N Pine Street
Nevada City, CA 95959
530-265-1400

Orange
Orange County Public Defender
801 Civic Center Dr W, Ste 400
Santa Ana, CA 92701-4033
657-251-6090

Riverside
Riverside County Public defender
4075 Main Street, Suite 100
Riverside, CA 92501
951-955-6000

Sacramento
Sacramento County Public Defender
700 H Street, Suite 2070
Sacramento, CA 95814
916-874-6411

Santa Cruz
Santa Cruz Public Defender
420 May Avenue
Santa Cruz, CA 95060
831-454-5300

Sonoma
Sonoma County Public Defender
600 Administration Dr, First Floor, Rm 111
Santa Rosa, CA 95403
707-565-2791

Stanislaus
Stanislaus County Public Defender
1021 I Street, Ste 201
Modesto, CA 95354
209-525-4200

Tulare
Tulare County Public Defender
221 S. Mooney Blvd
Visalia, CA 93291
559-636-4500

Santa Barbara
Santa Barbara County Public Defender
1100 Anapapa Street, 3rd Floor
Santa Barbara, CA 93101
805-568-3470

Santa Clara
Santa Clara County Public Defender
120 West Mission Street
San Jose, CA 95110
408-299-7700

Shasta
Shasta County Public Defender
1815 Yuba Street
Redding, CA 96001
530-245-7598

Siskiyou
Siskiyou County Public Defender
320 South Oregon Street
Yreka, CA 960697
530-842-8105

Solano
Solano County Public Defender
675 Texas Street, Ste 3500
Fairfield, CA 94533
707-784-6700

Tuolumne
Tuolumne County Public Defender
99 N. Washington Street
Sonora, CA 95370
209-533-6370

Ventura
Ventura County Public Defender
800 S. Victoria Ave, Room 207
Ventura, CA 93009
805-654-2201

Yolo
Yolo County Public Defender
814 North Street
Woodland, CA 95695
530-666-8165

Contract Offices

Alpine
Kimberly Hunt
99 Water St.
Markleeville, CA 96150
530-544-2509

Glenn
Geoff Dulebohn
323 West Sycamore Street
Willows, CA 95988
530-330-7084

CALIFORNIA PUBLIC DEFENDER CONTACT LIST

Amador
Fitzgerald, Alvarez & Ciummo, PLC
201 Clinton Rd Ste 202
Jackson, CA 95642-2678
209-223-0877

Butte
Butte Co. Public Defender Consortium
1560 Humboldt Rd, Ste 1
Chico, CA 95928-9101
530-924-6412

Calaveras
Leigh Fleming
265 West St. Charles Street, Ste. 4
San Andreas, CA 95249
209-754-4321

Colusa
Albert Smith
229 5th St
Colusa, CA 95932
530-458-8801

Del Norte
Karen Olson
431 H St Ste A
Crescent City, CA 95531-4019
707-464-2350

Madera
Fitzgerald, Alvarez & Ciummo PLC
123 E Fourth Street
Madera, CA 93638
559-673-7227

Mariposa
Neal Douglass
P.O. Box 2131
Mariposa, CA 95338
559-760-5149

Modoc
Tom Gifford
113 West North Street
Alturas, CA 96101
530-233-3100

Inyo
Gerard Harvey
P.O. Box 1701
Bishop, CA 93515
760-264-5580

Elizabeth Corpora
308 West Line Street, Suite A
Bishop, CA 93514
760-872-8226

Kings
Marianne Gilbert
4125 W Noble Ave, Suite 109
Visalia, CA 93277
559-816-2997

Lake
Lake Indigent Defense
390 North Forbes Street
Lakeport, CA 95453-1219
707-900-5177

San Benito
Fitzgerald, Alvarez & Ciummo PLC
123 E. Fourth Street
Madera, CA 93638
559-673-7227

San Luis Obispo
San Luis Obispo Defenders
991 Osos Street, Ste A
San Luis Obispo, CA 93401
805-541-5715

San Mateo
Private Defender Program
333 Bradford, Suite 200
Redwood City, CA 94063
650-298-4000

Sierra
J. Lon Cooper
P.O. Box 682
Nevada City, CA 95959
530-265-4565

CALIFORNIA PUBLIC DEFENDER CONTACT LIST

Mono	Josh Hillemeier 201 South Warren Street Bishop, CA 93514 760-258-7538	**Sutter**	Michael Sullinger 604 B Street, Suite 1 Yuba City, CA 95991 530-822-7355
	Sophie Bidet 272 Sierra Manor, Ste D Mammoth Lakes, CA 93546 760-920-6120	**Tehama**	Christopher Logan 1248 Washington St. Red Bluff, CA 96080 530-529-4266
Placer	Dan Koukol 3785 Placer Corporate Dr., Suite 550 Rocklin, CA 95765 916-644-1100	**Trinity**	Ken Miller P.O. Box 1054 Red Bluff, CA 96080 530-529-1794
Plumas	Craig Osborne P.O. Box 449 Quincy, CA 95971 530-616-8699	**Yuba**	Yuba Public Defenders 303 6th Street Marysville, California, 95901 530-741-2331