



She led. So can you.

April 22, 2021

Greetings friend,

We write to you with an opportunity to shape the path to freedom for people currently incarcerated in California state prisons. Important laws passed in 2018 (AB 1812, AB 2942) which allow District Attorneys, CDCR, or County Sheriffs to recommend that judges resentence people and release them early. You may have heard this called “**Penal Code 1170(d)(1)**,” “Sentence Review,” or the “Recall of Sentence and Resentencing” process. This resentencing law **SHOULD BE** a safety valve to release people incarcerated in California. It offers critically needed post-conviction relief for people, especially those who fall through the cracks of prior policy reforms. Recent laws have also repealed various sentence enhancements (see SB 620, SB 180, SB 1393, SB 136, etc.), but unfortunately not on a “retroactive” basis. Now, PC § 1170(d)(1) can be used to get people back into court to have the enhancements removed even if their sentences are “final”. **The Penal Code is clear that this resentencing relief should be broadly available. However, CDCR has Emergency Regulations that exclude eligible people from resentencing through a range of unfair and irrelevant criteria.**

Approved on December 12, 2019 and effective January 1, 2020, CDCR issued its Title 15 emergency regulations that govern the process and criteria CDCR staff use for making PC § 1170(d)(1) resentencing referrals. As we’ve seen with Proposition 57 parole board hearings and other areas of criminal justice reforms, **exclusionary criteria are now being applied that have no bearing on whether someone is ready for release, and which keep people incarcerated who should have a chance to come home.** CDCR’s unclear referral process is contributing to confusion, unfairness, and missed opportunities for freedom. We will fight against more people being left behind by broad exclusions.

The public hearing on resentencing regulations will be on May 7, 2021 from 10-11am, and the Public Comment period is March 19, 2021 - May 7, 2021! The time is now to speak up and speak out against CDCR’s unfair criteria.

We seek your support! The Ella Baker Center for Human Rights is working in partnership with our friends at the California Coalition for Women Prisoners (CCWP), the Center for Life Without Parole Studies, Families United to End LWOP (F.U.E.L.), Initiate Justice, Prisoner Advocacy Network, Silicon Valley DeBug, and the Young Women’s Freedom Center to ensure this resentencing process is accessible to as many people as possible. You can join the Public Hearing via conference call: 844-867-6169 (TTY/TDD: Dial 711), Participant code 1780160.

Public Comment Process: March 19 - May 7, 2021 - Happening Now!
Public Comment is a 45-day window when CDCR responds to feedback on its proposed rules.

You can share your support for keeping the resentencing referral process open and not unjustly denying people a chance at resentencing based on various proposed exclusions and harsh behavioral criteria. **We have enclosed a list of the exclusions that are currently in effect along with a sample letter that you can copy, edit, and submit during the Public Comment period.** You and your loved ones can get involved and make your voices heard in the Public Comment period to impact CDCR's new regulations for the Recall and Resentencing Referral Program. Even though the emergency regulations were first approved in December 2019, CDCR has been filing extensions to delay the public from weighing in. The emergency regulations are now in effect until May 10, 2021.

How to Submit Public Comment to Bring More People Home

We need your help to fight 1) against these unfair exclusions and 2) for a fair and transparent process to make it possible for more of our loved ones to come home!

CDCR filed "emergency regulations" which means these rules will be in effect despite the fact that there was no Public Comment period yet. Once the formal regulations are filed, this will start the 45-day window for Public Comment. During Public Comment, you can submit feedback to CDCR's Regulations and Policy Management Branch by sending your comments via mail to: **CDCR RPMB, PO BOX 942883, Sacramento, CA 94283** and email to: RPMB@cdcr.ca.gov. Please email us a copy of your comments to policy@ellabakercenter.org.

THE DEADLINE TO SUBMIT PUBLIC COMMENT IS MAY 7, 2021!

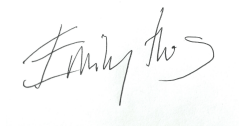
On the last page we have provided a template letter you can sign and mail in! **NOTE: Comments submitted BEFORE or AFTER the Public Comment period are not included in the regulatory process and are not formally responded to by CDCR.**

Thank you for sending us your feedback on the new Resentencing Guide!

If you would like a printed copy of our new Toolkit "Back to Court: A Resentencing Guide to the Fair and Just Sentencing and Reform Act (SB 1393) and PC § 1170(d)(1)" sent inside, in Spanish or English, please write to us at 1419 34th Ave, Suite 202, Oakland, CA 94601

Thanks to everyone who built with us this year. It's an honor to fight for freedom with you.

In Solidarity,



Emily Harris
Policy Director



James King
State Campaigner



Derick Morgan
Policy Associate

CDCR's Proposed Exclusions for Resentencing Referrals

California law (Penal Code § 1170(d)(1)) authorizes the California Department of Corrections and Rehabilitation (CDCR), as well as district attorneys, law enforcement, and county sheriffs to send letters to trial courts recommending the resentencing of people who are currently incarcerated. The trial court in the county of conviction then has the discretion to issue a new shorter sentence if the person is serving an illegal sentence, if there has been a change in sentencing laws, or for any reason “in the interests of justice” based on post-conviction factors such as evidence of rehabilitation and compliance, evidence of age, time served, and diminished physical condition that reduce the risk for violence.

California law [PC § 1170(a)(3)] states that anyone who is currently incarcerated in state prison or county jail is eligible for a resentencing referral. Yet CDCR has placed additional, unjust and unfounded limits [15 C.C.R., sections 3076 et seq.] on this relief beyond what the law says, has interpreted vague language in the Penal Code to exclude people serving LWOP and Death sentences and who they will review for a potential resentencing referral.

According to the DOM (Departmental Operations Manual), people cannot refer themselves or their loved ones for resentencing. CDCR staff in the Classification Services Unit and the Correctional Case Records Unit are charged with making initial findings of eligibility depending on the type of resentencing referral. Despite what the DOM says - CSU staff are receptive to referrals from people and their support networks, but will not respond to these self-referrals formally. CSU staff prepare Cumulative Case Summaries which include a person's pre-conviction and in-custody conduct, work assignments and programming, approved visitor list and visiting history, and victim notification requirements.

There are four categories of people covered by CDCR's resentencing regulations, with different regulations and criteria depending on the type of referral:

- Exceptional conduct
- Substantial likelihood of a sentencing error
- A change in the sentencing law
- Referral received from law enforcement, a prosecutor, or a judge

The following people are excluded from consideration for Exceptional Conduct resentencing:

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

- people with an indeterminate sentence (sentence up to life in prison) who are scheduled for a parole hearing within the next 18 months or have already had a parole hearing

The following people are excluded from consideration for Sentencing Error resentencing:

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

The following people are excluded from consideration for Change in Sentencing Law resentencing:

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

We know these exclusionary criteria are unfair and go against the spirit of the law (PC 1170(d)(1)) which provides broad relief for people who have disproportionate sentences and who have rehabilitated to reenter society and give back to their communities.

Arguments to Submit for Public Comment

There is no need for blanket exclusions that categorically and unjustly deny people their day in court for resentencing relief that is broadly available in the California Penal Code.

- Californians amended PC 1170(d)(1) to incentivize change and good behavior, but CDCR is excluding people unjustly who are not excluded by the Penal Code. CDCR is broadly excluding people based on criteria that have no relation to a person’s rehabilitation, current risk to public safety, or preparedness for release.
- CDCR is using the same unjust criteria from Proposition 57 nonviolent parole review that have been repeatedly challenged in litigation and struck down by appellate courts and the California Supreme Court.
- Both the criteria and the application of the criteria used in case evaluation is more restrictive than the broad language of the Penal Code.

There are already safety measures in place to make sure people referred for resentencing are rehabilitated and ready to come home.

- Because of the broad discretion given to both CDCR and resentencing judges, there are many ways to guard against the release of someone who may be a risk to public safety.
- There is no need for blanket exclusions targeting people on account of their group characteristics instead of their individual achievements and rehabilitation.
- Judicial review of someone’s preparedness for release will generally be more thorough and demanding than the considerations of a parole board hearing or case evaluation.

- Using Rules Violations Reports and Parole Board decisions as dispositive evidence of preparedness for release shields both CDCR and BPH staff from necessary oversight and confuses the legal standards that should be used to determine preparedness for release. Resentencing decisions made by judges are entirely different and separate processes than the internal administrative function served by parole boards.

Exceptional Conduct resentencing referrals should be open to all - not just people with select crimes who have access to programs and have clean records for 5 years.

- The requirement of “prolonged participation in rehabilitative programming” excludes people who do not have access to programs, because of: limited offerings and/or long wait lists at their facility or yard, confinement in solitary or disciplinary classification, medical status, educational background, language barriers, or other reasons.
- The requirement that people have no “serious or violent rules violation” within 5 years excludes 1000s of people who have rehabilitated and pose no risk to public safety.
- The requirement that people already served 10 years excludes 1000s of people who have fully rehabilitated and deserve their day in court.
- The exclusion of all people who must register as a sex offender upon release goes directly against evidence and research that shows a low risk of recidivism and a huge diversity of experiences and crimes within this so-called group.
- Umbrella exclusions remove powerful incentives for people to rehabilitate and change, create despair and hopelessness, and treat people not as individual human beings but as unredeemable outcasts whose paths to personal change are irrelevant.

Change in Sentencing Law resentencing referrals should be open to all - not just people who have already served 5 years and who have a clean record for the last year.

- CDCR’s criteria overemphasize disciplinary record in-custody which may have little bearing on a person’s preparedness for release or current risk to public safety.
- Many people are serving a small base term loaded up with 1- and 5-year enhancements making up the majority of a person’s time. These enhancements have been amended by recent laws. 5 years is too long to wait to get back into court.
- A change in sentencing law reflects the people of California’s decision to decrease unfair punishment. Minor in-custody infractions shouldn’t keep a person incarcerated past the date of a fair sentence.

CDCR should accept self-referrals as well as referrals from attorneys, volunteers, community organizations, and family members, so that people can flag their potential eligibility for a resentencing referral to CDCR.

- Staff are working through thousands of cases with the limits of technology in producing qualitative data to increase administrative efficiency.
- CDCR should establish and provide access for all incarcerated people to a triplicate form to use to request review and referral for PC § 1170(d)(1) recall and resentencing.
- CDCR should make clear who can submit referrals and what information to include to submit an individual’s case to the Secretary for consideration.
- CDCR should accept referrals from non-staff, including lawyers, community organizations, legislators, family members, and volunteers.

Template Letter 1: for organizations and individuals on the outside submitting via mail or email

[Put on Your Letterhead if applicable]

[DATE]

TO: Josh Jugum
CDCR, Regulation and Policy Management Branch
PO Box 942883
Sacramento, CA 94283-0001

Fax: (916) 324-6075

Phone: (916) 445-2266

Email: joshua.jugum@cdcr.ca.gov, RPMB@cdcr.ca.gov staff@oal.ca.gov

CC: policy@ellabakercenter.org

Re: OAL Rulemaking NCR# 21-04, File # 2019-1121-01EON “Recommendation to Recall Sentence and Resentence” Implementation of Penal Code 1170(d)(1)

To whom it may concern,

[On behalf of _____,] I am writing to provide comments on CDCR's draft regulations on PC section 1170(d)(1) Resentencing, approved by the Office of Administrative Law on December 10, 2019 that went into effect on January 1, 2020.

[Describe who you are and your connection to the issue.]

[Remember to include any direct experience you've had with the PC 1170(d)(1) process.]

[Describe the impact of COVID in your life and family/organization and how this makes resentencing referrals even more urgent and the exclusionary criteria even more unjust.]

I/We am/are particularly encouraged by the following components of the proposed regulations:

I/We offer additional proposals to complement these efforts in fully realizing the intent and spirit of the initiative:

If you have any questions or concerns, please contact me at _____.

Thank you for your consideration of these important issues.

Sincerely,

(postmark by May 7, 2021)

Date:

SENT VIA MAIL TO: Josh Jugum
CDCR, Regulation and Policy Management Branch
PO Box 942883
Sacramento, CA 94283-0001

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SIGNATURE:

NAME:

ADDRESS: