

**District Attorney Discretion to Recommend
Sentence Recall and Resentencing
Assembly Bill 2942 & Penal Code § 1170 (d)(1).**

Frequently Asked Questions

AB 2942 & ELIGIBILITY

Q: What is Assembly Bill 2942?

In February 2018, Assemblymember Phil Ting introduced Assembly Bill 2942 (AB 2942) along with the bill sponsor, Santa Clara County District Attorney Jeff Rosen. In October 2018, Governor Brown signed Assembly Bill 2942, which became law on January 1, 2019. AB 2942 amended Penal Code section 1170(d)(1) in order to allow the District Attorney to revisit past sentences to determine whether further confinement is no longer in the interest of justice. When the District Attorney makes this finding, they can now recommend to the court to recall the case and issue a lesser sentence.

Q: Who is Eligible for Resentencing Under AB 2942?

Eligibility will depend on the policies established by each District Attorney office. The law allows prosecuting agencies to set their own criteria and determine the types of cases they will review. The Sentence Review Project is working with District Attorney offices to establish policies and procedures for reviewing and recommending cases.

Q: Are There Any Exclusions or Carve-Outs in AB 2942?

No. There are no exclusions in AB 2942. A prosecuting agency can recommend a recall of sentence involving any type of offense, any type of sentence, and there are no requirements of time served. People serving a sentence outside of California are eligible, so long as they were prosecuted under California law and sentenced by a California court.

Q: Could AB 2942 Help Non-Citizens?

Yes. Some immigration consequences are triggered by the sentence an immigrant defendant receives. For immigrants facing sentence-based immigration consequences, AB 2942 may be able to provide relief. AB 2942 would allow the District Attorney to recommend, and the court to impose, a new, non-deportable sentence. For more information visit www.ilrc.org.

DISTRICT ATTORNEY PROCESS AND REVIEW

Q: Have Any District Attorney Offices Started Reviewing Cases for Sentence Recall?

In partnership with the Sentence Review Project, the Santa Clara County District Attorney is reviewing a narrow set of cases. If you qualify, you will receive a letter explaining next steps. This narrow set of cases does not represent future criteria or eligibility. Because the law is so new, this office is starting with a pilot to establish the process and identify best practices. Additionally, San Joaquin County District Attorney is reviewing cases on a rolling basis. Have someone from your support network visit: <https://www.sjgov.org/da/pcru> and complete their intake form. There are no other counties with an intake or review process in place. However, the Sentence Review Project is currently working with District Attorney offices across California to adopt policies and implement a review system.

Q: Are District Attorneys Required to Review Cases?

No. The law is discretionary, meaning the District Attorney office that prosecuted your case is not *required* to review cases for resentencing.

Q: How Can I Find Out When My District Attorney Starts Reviewing Cases for Sentence Recall?

As District Attorney offices begin participating, we will provide updates to prison law libraries. You can also visit www.sentencereview.org for updates on which offices are reviewing cases.

Q: Can A Person in Prison or Their Loved One Request a Review and Recommendation?

It is not recommended that you or your support network write to your District Attorney about your case. In an effort to explain why you believe your case warrants review, you may accidentally make a statement that could be viewed as inconsistent with your readiness for release. Even if you feel confident in your statements, anything written to the District Attorney can be raised at future parole hearings and possibly used against you. The Sentence Review Project is developing a template that you can use. This template will be made available once offices begin accepting requests. If you do contact your District Attorney, you should limit the information you provide to questions contained in the attached intake form from the Sentence Review Project.

Q: Are There Any Legal Service Providers That Can File a Petition or Expedite a Request for District Attorney-Initiated Sentence Recall?

No. AB 2942 does not create a path for you to petition a court for resentencing. The only way a court can hear your case under 1170(d)(1) for recall of sentence and resentencing is through a recommendation from one of the following actors: the District Attorney that prosecuted your case, CDCR or the Board of Parole Hearings, and the County Administrator or Sheriff's Office (if you are serving a sentence in jail). Therefore, it is not advised to pay any attorneys offering to file a petition for you. Be careful of any organization or legal entity charging a legal fee and claiming to be able to expedite or file a petition on your behalf.

Q: Why Aren't Any District Attorney Offices Reviewing Cases Yet?

The past few years have been groundbreaking ones for criminal justice reform and there are now several new legal vehicles for relief. All of the new reforms will involve an increase in workload and time to establish and adopt implementation policies. This will require system leaders to identify and allocate resources and various organizations to train and advocate for effective policies. Some of the new laws, however, are discretionary, meaning there is no legal requirement to use the new law. Most District Attorney offices (as well as Public Defender offices) will prioritize working on reforms that *require* the District Attorney and the courts to review. AB 2942 did not *mandate* that prosecuting agencies review cases to recommend for resentencing. Therefore, in terms of timing for the relief made possible by AB 2942, many District Attorney offices will not be able to prioritize these cases at the outset of 2019. We are working to identify resources and partnerships to off-set the capacity concerns to enable more District Attorney offices to begin reviewing cases.

CDCR AND 1170(d)(1)

Q: What's the Difference Between AB 2942 and CDCR's Process for Recommending a Sentence Recall?

Under California Penal Code § 1170(d)(1), a trial court can recall and issue a new sentence in two circumstances: 1) the court recalls a sentence and resents on its own motion within 120 days of judgment or 2) the court recalls and resents at any time after the original sentencing if CDCR, the Board of Parole Hearings, the Sheriff/County Administrator, or the District Attorney submit a formal recommendation to trigger the court's discretion.

Many people have been hearing that people in prison are receiving letters from CDCR stating that they have been recommended for a recall of sentence and resentencing under 1170(d)(1). CDCR's process of initiating a sentence recall is different than AB 2942. In its discretion and as outlined through its own agency regulations, CDCR is recommending a sentence recall in three scenarios: 1) where a person in prison meets an "exceptional conduct" standard, 2) where a current sentence is legally invalid due to new information, a change in the law, or a judicial decision, and 3) where a current sentence includes enhancements that are now within the court's discretion to strike (e.g. gun enhancements, "nickel prior"). CDCR has their own set of guidelines for reviewing and initiating a sentence recall. CDCR is in the process of developing regulations and will make these available once complete.

AB 2942 HEARINGS

Q: If the District Attorney Recommends a Recall of My Sentence, What Happens Next?

Once the District Attorney recommends your case for sentence recall, they will provide briefing to the court stating why further confinement is no longer in the interest of justice. The court will then decide whether to hear your case. The court has discretion to deny a recall hearing.

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Q: If the Court Hears My Case, What Power Does the Court Have?

If the court decides to hear your case and recall your sentence, the court will then hold a sentencing hearing “as if [you] had not previously been sentenced.” Penal Code § 1170(d)(1). The court can then use all of its judicial powers available at the time of the resentencing hearing, including new authority to strike enhancements under recent reforms.

Q: What Information Will the Court Consider at The Hearing?

While the court treats the sentencing hearing as if the defendant had never been sentenced, the most significant benefit to you at this type of resentencing hearing is the court will *also* consider post-conviction factors in determining whether further confinement is warranted. After the passage of AB 1812, the courts now have specific guidelines for resentencing hearings initiated through Penal Code § 1170(d)(1). Courts will consider a person’s programming while incarcerated and their efforts towards rehabilitation, rather than narrowly focusing on the underlying case. Specifically, the law instructs that the court may consider: (1) your disciplinary record and record of rehabilitation while incarcerated; (2) evidence that reflects whether age, time served, and diminished physical condition, if any, have reduced your risk for future violence; and (3) evidence that reflects that circumstances have changed since your original sentencing so that your continued incarceration is no longer in the interest of justice. Also, any violations (115’s or RVR’s) will likely be taken into consideration. However, the fact that you have received violations in the past does not make you ineligible, but will be considered along with all “post-conviction” factors.

Q: After Considering “Post-Conviction Factors” What Will the Court Do?

After considering post-conviction factors, the court would then decide whether to give a new sentence and what the new sentence should be. The court will determine (1) which term of imprisonment to impose, (2) whether any enhancements charged can and should be stricken, and (3) where there are multiple charges, whether the sentences should run concurrent (time served will count towards all individual sentence terms) or consecutive (you must serve each term separately). Whatever the court decides, the total sentence cannot be more than your original sentence.

Q: Are There any Limitations on What the Court Can Do?

Yes. First, the court cannot resentence you in excess of the original sentence, meaning, the new sentence must be a shorter duration of time. Second, the court must make a legal sentence, meaning, the court must choose a sentence term that is listed in the California Penal Code for your offense. Third, the court must award credit for time served on the original sentence. Lastly, recent legislation (AB 1812) instructs the court to consider “post-conviction factors” in making its resentencing decision.

Q: What is the Role of the Victim in These Hearings?

Under Marsy’s Law, the California Constitution provides crime victims a series of rights and protections. While some of these rights require the victim to make a request, crime victims have a right to notice, the right to appear at a sentencing hearing, and the right to have their safety considered before any release. Further, because Marsy’s Law states that crime victims are entitled to finality in their cases, the court and District Attorney will likely consider the impact of a reduced sentence on the victim.

NOW WHAT? ANY NEXT STEPS

Q: Is There Anything I Can Do Now While Waiting for My DA To Start Reviewing Cases?

Yes! We know that District Attorney offices and the courts will be looking at post-conviction factors to determine whether further confinement is no longer in the interest of justice. In California, the stated purpose of incarceration is punishment, rehabilitation and restorative justice. If you can show that these goals have already been achieved, you can strengthen your opportunity for resentencing. If you have started or want to start certain in-prison programming, now is the time to enroll or complete those programs. Also, leadership or mentorship activities can reflect strong indications of rehabilitation and can illustrate how you have changed since the time of your original sentence. Further, your ability to identify, discuss, address, and resolve certain behaviors or mindsets that were present at the time you committed your crime can help illustrate your insight and a change in circumstance.

Please consider reviewing the *List of Supporting Documents* which include a list of recommend document to identify, gather and complete. We recognize that not every CDCR facility provides adequate access to in-prison programs. Please indicate your attempts and availability issues at your facility. The list is also available at www.sentencereview.org.

Q: What If I Do All These Things and My District Attorney Still Isn't Reviewing Cases?

Even if the District Attorney in your county of conviction isn't reviewing cases, all of your hard work towards rehabilitation can be used for existing or future pathways to release. Evidence of successful programming, insight and a reentry plan will be critical at hearings before the Board of Parole Hearings. All of these attributes will also be useful for applications for commutation or pardon to the California Governor. Lastly, as you have seen from the series of criminal justice reforms, there are many advocates who are relentlessly working on ways to secure your freedom. Many coming reforms will likely involve evidence of rehabilitation as a condition to release.

Q: Can the Sentence Review Project Help Me with My Case?

The Sentence Review Project is an advocacy and legal resource organization that works with California District Attorney offices and community based organizations to establish policies for AB 2942. Our organization does not provide legal representation or legal advice. Eventually, we will be reviewing cases and providing support for incarcerated people in preparing their applications for District Attorney review. Due to limited capacity at this time, the Sentence Review Project is not able to support any specific cases. However, we are working hard to secure resources and partnerships to provide support.

We believe that every person has the capacity to become ready, but some may be further along than others. You can submit the attached intake form and we will keep your information on file and contact you when further information is available. For a faster reply, and easier back-and-forth correspondence, please have someone from your support network complete and submit the intake form at www.sentencereview.org.

Please note: we provide legal resources, but nothing in this FAQ is intended as legal advice.