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### Your Responsibility When Using the Information Provided Below:

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

### INFORMATION RE: NEW LOS ANGELES COUNTY DISTRICT ATTORNEY POLICIES (March 2021)

We are sending this information in response to your request for advice, information, or assistance concerning new policies announced by George Gascon, the recently-elected Los Angeles County District Attorney (DA). Unfortunately, we cannot provide individual responses to everyone who contacts us and we cannot provide copies of the policy memoranda. However, we hope this letter will help answer your questions. Section I of this letter discusses the types of charges and enhancements affected by the new policies. Section II summarizes the policies for resentencing people who are already serving sentences that are not consistent with these policies. Section III summarizes the policies concerning Penal Code 1170.95 (SB 1437) homicide resentencing cases. Section IV discusses the policies concerning parole suitability hearings.

**These policies are very new and are being challenged.** There have been reports of Deputy District Attorneys (DDAs) and superior court judges not complying with some of the new policies. In addition, the union that represents many of the DDAs has filed a lawsuit asking a judge to declare some of the new policies illegal. We will try to update this letter when there are important new developments.

We do not know exactly how the policies will be put into effect. In the meantime, **a person who thinks they might be eligible for resentencing may want to contact the public defender or private attorney who handled their criminal case, their direct appeal attorney, or any attorney who is representing them in an active post-conviction case.** The Los Angeles Public Defender's Office has many branches and addresses for each of those offices is on the website at: <https://pubdef.lacounty.gov/>. An address for a main office is Los Angeles County Public Defender, 210 West Temple Street, 19-513 CSF, Los Angeles, CA 90012

**These policies affect *only* cases from Los Angeles County.** Each county's DA office generally has discretion to decide what charges to file and what plea offers to make. The law does not

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require other counties to follow the Los Angeles DA's policies or to adopt similar policies. If your charges or conviction are not from a Los Angeles case, the policies described in this letter do not apply to you. We do not know if other counties will adopt similar policies in the future. However, there are some recent laws affecting some types of enhancements that *do* apply statewide. These changes affect people whose cases are not yet final (still can be appealed or are still on appeal) with 1-year prior prison term enhancements, 5-year prior serious felony enhancements, gun use enhancements, and drug trafficking recidivism enhancements. If you are interested in this information please write to request our "Enhancements" letter; the letter is also available on the Resources page at [www.prisonlaw.com](http://www.prisonlaw.com).

## **I. WHAT ARE THE LOS ANGELES COUNTY DA'S NEW POLICIES FOR ENHANCEMENTS/ALLEGATIONS, AND FOR SENTENCING?**

In Special Directive 20-08, the Los Angeles DA announced that, effective December 8, 2020, "sentence enhancements or other sentencing allegations, including under the Three Strikes Law, shall not be filed in any cases and shall be withdrawn in pending matters." On December 15, the Los Angeles DA issued Special Directive 20-08.1 clarifying the policy. On December 18, 2020, the Los Angeles DA issued Special Directive 20-08.2 modifying the policy.

### **The enhancements and allegations that will no longer be charged in most cases include:**

- prior-strike allegations (Penal Code § 667(d), §667(e), § 1170.12(a), § 1170.12 (c));
- "5 year prior" enhancements (Penal Code §667(a)(1)) and "3 year prior" enhancements (Penal Code §667.5(a));
- STEP Act (gang) enhancements (Penal Code § 186.22 et. seq.);
- special circumstances allegations that would result in an LWOP sentence;
- violations of bail or O.R. release enhancements (PC § 12022.1);
- some firearm enhancements (PC § 12022.53).

The policy also states that **the DA's office will seek low term sentences, except when there are extraordinary circumstances**. If a person qualifies as eligible for probation, the DA's office will seek probation, unless there are extraordinary circumstances.

**There are some exceptions to the general policy.** The Los Angeles DA will allow sentence enhancements and allegations to be charged in cases involving (1) child or adult sexual abuse; (2) child abuse; (3) elderly abuse; (4) financial crimes with significant losses or vulnerable victims; and (5) hate crimes targeting people based on race, ethnicity, nationality, religion, sexual orientation, gender, or mental or physical disability. Also, with special approval, sentence enhancements and allegations may be charged when (1) the defendant personally inflicted extensive physical injury on someone or (2)

the type of weapon used or manner in which a deadly or dangerous was used showed an extreme and immediate threat to human life.

In cases where a sentence has not yet been imposed, DDAs are supposed to withdraw any enhancement or allegations that are contrary to this policy. If a person was sentenced within the past 120 days, DDAs are not supposed to oppose defense requests for resentencing in accord with the new policy. If you have an LA county case and you have not yet been sentenced or your sentence was imposed *very* recently, you should contact your defense attorney and/or your appellate attorney immediately to discuss what you should do.

## II. WHAT ARE THE LOS ANGELES DA'S NEW POLICIES FOR RESENTENCING PEOPLE WHO ARE SERVING SENTENCES THAT ARE NOT CONSISTENT WITH THE POLICIES DESCRIBED IN SECTION I, ABOVE?

In Special Directive 20-14, effective December 8, 2020, the Los Angeles DA announced a “Resentencing Policy” that provides relief for people who are currently serving sentences that are longer than they would receive under the current laws and new DA’s policies. The Los Angeles DA’s office estimates that there are 20,000-30,000 people who are serving sentences for LA County cases that are not consistent with the new policies. We are attaching an FAQ sheet on Special Directive 20-14 from the Los Angeles DA’s website. There are two paths for these people to be resentenced.

The first path is that **DDAs should agree to dismiss or move to dismiss out-of-policy sentence enhancements whenever a person has an open or pending Los Angeles court case that makes them legally eligible for resentencing or recall of sentence.** Such cases include (1) habeas corpus cases; (2) cases remanded to the Los Angeles superior court by the court of appeal or the Supreme Court; (3) cases referred by CDCR for recall and resentencing under Penal Code §1170(d)(1); (4) resentencing cases under Penal Code § 1170.126 (Prop. 36, three-strikes cases) or § 1170.18 (Prop. 47; minor theft-related and drug possession cases) or § 1170.91 (SB 865, veterans) or 1170.95 (SB 1437, homicide cases); (5) resentencing cases under 1170(d)(2) (juvenile LWOP resentencing); and (6) all cases where the person was a minor at the time of the crime.

The second path is that **the Los Angeles DA’s office intends to do an “expedited review” of cases and use its power to recommend resentencing of out-of-policy cases under Penal Code 1170(d)(1)** to “eliminate disparity of sentences and to promote uniformity of sentencing.” The office will focus on seeking resentencing for people who: (1) have already served 15 years or more; (2) are currently 60 years of age or older; (3) are at an enhanced risk of COVID-19 infection; (4) have been recommended for resentencing by CDCR; (5) are criminalized survivors of abuse; or (6) were 17 years of age or younger at the time of the offense and were prosecuted as adults.

### **III. WHAT ARE THE LOS ANGELES DA'S NEW POLICIES REGARDING PENAL CODE SECTION 1170.95 RESENTENCING PETITIONS?**

The Los Angeles DA's new policy includes 20 points regarding the handling of petitions to vacate and resentence homicide convictions under Penal Code § 1170.95 (SB 1437). Under these favorable policies, the Los Angeles DA takes the positions that every person should be appointed a lawyer before a court issues a ruling; that relief should be granted to people who pled guilty to manslaughter or attempted murder instead of going to trial on charges of felony murder charges or murder **under the** natural and probable consequences doctrine; that youth factors are relevant to whether a person under age 25 acted with reckless indifference to human life; and that DDAs generally should not argue grounds of ineligibility that were not presented during the original case.

### **IV. WHAT ARE THE LOS ANGELES DA'S NEW POLICIES REGARDING PAROLE SUITABILITY HEARINGS?**

The Los Angeles DA's new default policy is that DDAs will not attend parole hearings and will send letters supporting parole for people who have reached their Minimum Eligible Parole Date (MEPD), Youth Eligible Parole Date (YEPD), or Elderly Parole Date (EPD). However, if a person has a Comprehensive Risk Assessment that indicates they have a high risk of recidivism, the DDA may take a neutral position neither supporting nor opposing parole.

## Operations

### Resentencing

[Preguntas y Respuestas sobre Normas de Re-Sentencia](#)

[Opioid Complaint Form](#)

[Conviction Integrity Unit](#)

[Human Trafficking](#)

[Elder Abuse](#)

[Environmental Crimes](#)

[Alternative Sentencing Courts](#)

## Resentencing Policy FAQs

 [SEARCH](#)

[En Español](#)

This information is provided to members of the public seeking additional information regarding the District Attorney's resentencing policy detailed in [Special Directive 20-14](#), which was issued December 7, 2020.

Implementation of the resentencing policy is currently in the early development stage. The District Attorney's Office will process resentencing requests when the resentencing policy is finalized.

### What is the District Attorney's resentencing policy?

District Attorney George Gascón is committed to reviewing sentences of people who are incarcerated and serving punishments that are no longer appropriate under current law and/or office policies and practices.

Penal Code Section 1170(d) authorizes the District Attorney to request that an individual's sentence be recalled and reconsidered if "continued incarceration is no longer in the interest of justice."

The District Attorney's Office is currently in the process of establishing a Resentencing Unit that will eventually process and review cases for resentencing consideration pursuant to Penal Code section 1170(d). The Resentencing Unit will prioritize cases for resentencing based on governing law, careful review of available data, individual case files, public safety, and policy priorities specified by the District Attorney.

Additional details concerning the District Attorney's resentencing policy are contained in [Special Directive 20-14](#).

### Is the District Attorney's Office reviewing cases for resentencing consideration?

Yes. The District Attorney is establishing a Resentencing Unit to provide a fair and efficient process.

The District Attorney is currently in the process of reviewing cases that have been recommended for resentencing by the California Department of Corrections pursuant to Penal Code section 1170(d) due to exceptional conduct or medical urgency.

It is estimated that as many as 20,000 cases may qualify for resentencing consideration under the District Attorney's resentencing policy.

Because of the large number of cases potentially eligible for resentencing consideration, a Resentencing Unit is being established within the District Attorney's Office that will be responsible for developing and implementing a fair, orderly, and efficient process for evaluating cases for resentencing consideration. The Resentencing Unit will follow governing statutes and make determinations based on available data, individual case considerations, public safety, and policy priorities specified in the District Attorney's Special Directive.

Although the District Attorney is authorized to request and recommend resentencing in certain cases, a judge makes the ultimate decision whether to grant or deny such a request.

### Will certain cases be given priority?

Yes. The cases will be prioritized as follows:

Priority will be given to the following three categories of incarcerated individuals:

#### Adults

- Age 50 and older; AND
- Sentenced to 20 years or more; AND
- Served a minimum of 10 years in custody; AND
- Serving a sentence for a non-serious or nonviolent felony [Serious and violent felonies are defined in Penal Code section 1192.7(c) and Penal Code section 667.5(c)]; AND

- e) Has not suffered a prior conviction for a "super strike," as defined in Penal Code section 667(e)(2)(C)(IV); AND
- f) Is not a sex offender registrant.

**Minors Tried as Adults**

- a) Sentenced for a crime that was committed at age 14 or 15; AND
- b) Not serving time for a homicide offense; AND
- c) Has served a minimum of 10 years in custody; AND
- d) Is not a sex offender registrant.

AND

**Medically Compromised**

The individual has been recommended for resentencing by CDCR because at high risk of complications related to COVID.

Once the priority cases listed above have been reviewed, the District Attorney's Office will post additional criteria for other individuals eligible for review to determine whether resentencing will be recommended. While we are committed to reviewing all cases with sentences that conflict with existing laws and/or policies, there is no guarantee that all cases reviewed will be recommended for resentencing. Additional factors such as in-prison rehabilitation; disciplinary history; re-entry plans; evidence that reflects whether age, time served, or diminished physical condition, if any, have reduced the risk for future violence; and evidence that reflects that circumstances have changed since the original sentencing so that continued incarceration is no longer in the interest of justice will also be taken into consideration.

The review of sentences undertaken by the District Attorney's Office to determine whether it may be appropriate to request that an individual's sentence be recalled and reconsidered by a judge is separate and apart from recommendations for resentencing made by CDCR. CDCR also is authorized to request that an incarcerated individual be considered for resentencing for reasons including medical necessity or exceptional conduct.

**Can I request that the District Attorney consider a case for resentencing?**

No. The District Attorney's Office cannot accept calls, emails, letters, or other submissions regarding individual cases.

The District Attorney's Office cannot respond to requests or concerns regarding individual cases. We appreciate that many cases involve extenuating circumstances deserving special attention, and we will do our best to address them. However, in order to maintain a fair and orderly process, requests for resentencing consideration made by incarcerated individuals, family members, attorneys, and/or other representatives and advocates will not be considered at this time.

The best way to support individuals seeking resentencing is to encourage them to participate in rehabilitative programming and avoid disciplinary actions while incarcerated. We understand that the pandemic has limited the number of programs available in prison, so we encourage those who are able to participate in related correspondence courses. Gathering letters of support from institutional staff, family, community members, and re-entry providers also may be helpful. Retain this information for use in the event that a resentencing hearing is scheduled. Do not send any documents to the District Attorney's Office.

Neither individuals, family members nor attorneys are permitted to request resentencing under Penal Code Section 1170(d). The resentencing request must be made by the District Attorney, the Secretary of the Department of Corrections and Rehabilitation, the Sheriff, or the Board of Parole Hearings.

**Will I know if a case is being considered for resentencing?**

Yes. You will be notified by the District Attorney's Office, your attorney, or a nonprofit organization with whom we are collaborating that your case is under consideration for resentencing.

When there is a determination that your case is being considered, you will be notified in writing.

**Will victims be notified if a case is being considered for resentencing?**

Yes. The District Attorney's Office will notify crime victims and provide an opportunity for them to be heard.

In conformity with state law and as part of its evaluation process, the District Attorney's Office will endeavor

to contact impacted crime victims and provide notice of any upcoming court proceeding. Crime victims in any case being considered for resentencing will have an opportunity to address the District Attorney's Office and the court as part of any resentencing proceeding. If you are a victim of a crime and want to ensure that your voice is heard in any case that may be considered for resentencing, you should confirm your contact information by calling the Bureau of Victim Services or emailing the Bureau at [victimservices@da.lacounty.gov](mailto:victimservices@da.lacounty.gov). Be prepared to provide your telephone number and email address, the name of the victim, the full name of the defendant, and the court case number if available.

#### **Will cases recommended for resentencing return to court?**

Yes. When the District Attorney files a resentencing request, a court date may be set to hear evidence and argument on whether to reduce an individual's sentence.

Under Penal Code Section 1170(d), a consideration for resentencing proceeding begins upon the request of the District Attorney or other law enforcement agency specified by statute. When a resentencing request is properly filed, a court date may be set. Because the decision whether to grant or deny such a request is made by a judge, the incarcerated individuals and/or their legal representatives should present evidence as to why continued incarceration is, or is no longer in the interest of justice, including evidence of rehabilitation and adequate re-entry support.

#### **Does the District Attorney decide whether or not a person will be resentenced?**

No. Decisions to reduce sentences are made by judges, not by the District Attorney.

Although the District Attorney may request that an individual's sentence be reduced, the decision whether to grant or deny such a request is made by either the original judge in the case or a judge appointed by the presiding judge.

In deciding whether to resentence an individual upon the recommendation of the District Attorney, judges generally consider the following factors: an individual's rehabilitative programming and disciplinary record while incarcerated, age, amount of time served, any diminished physical condition or medical issue, future risk to public safety, re-entry plans, and other circumstances that may have changed over time.

#### **Do I need a lawyer for resentencing consideration?**

The District Attorney does not accept recommendations for resentencing and cannot give legal advice.

The District Attorney's Office is not considering recommendations for resentencing by outside counsel. Therefore, a lawyer cannot initiate or accelerate the review process for an individual case.

When a case is identified by the Resentencing Unit of the District Attorney's Office as eligible for resentencing consideration, incarcerated individuals and their last known counsel will be notified because legal representation may be helpful at that point in time.

Once a case is identified for resentencing consideration, the District Attorney's Office plans to work closely with public defenders and nonprofit organizations to ensure that every person recommended for resentencing has access to free legal services, although individuals are always free to hire their own lawyer.

#### **Will the District Attorney's Office provide additional information about its resentencing process?**

Yes. Updates to the policy and procedures regarding resentencing will be posted to this web page.

The District Attorney's Office will post additional information concerning the progress of its resentencing policy. This is an unprecedented effort in the nation. It will take some time and we urge your patience. Updates will be posted to this web page.

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