



PRISON LAW OFFICE

General Delivery, San Quentin, CA 94964
Telephone (510) 280-2621 • Fax (510) 280-2704
www.prisonlaw.com

Executive Director:
Margot Mendelson

Attorneys:
Rana Anabtawi
Patrick Booth
Tess Borden
Claudia Ceseña
Steven Fama
Mackenzie Halter
Alison Hardy
Sophie Hart
Marissa Hatton
Jacob Hutt
A.D. Lewis
Rita Lomio
Donald Specter

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.

IMPORTANT! Every year, new criminal laws are proposed. **However, propositions or bills have no effect on anyone unless and until they are either approved by a majority of the voters during an election or passed by the Legislature and signed by the Governor.** We will update this letter if and when there are new sentencing laws affecting people who are already in prison.

CHANGES TO LAWS ON ENHANCEMENTS AND SENTENCES

(revised February 2024)

In the past few years, some California laws about criminal sentences and enhancements have changed. The new laws are complicated, including regarding who can use them, and when. This letter addresses the major changes, and we hope it will help answer your questions. We cannot provide individual responses to everyone who asks us for advice or assistance. For specific information or advice about your case, you should contact the public defender's office in the county where you were convicted or the attorney who represented you at sentencing or on your criminal appeal.

Part 1 of this letter lists two laws that apply retroactively and automatically regardless of when you were originally sentenced.

Part 2 discusses seven laws that do *not* apply if your case was already "final" when the law took effect. These laws apply only if (1) your criminal case was not yet final when the new law took effect *or* (2) if your case becomes non-final because your conviction or sentence is vacated or recalled for some other reason. This section describes when cases become "final," and discusses some of the court cases concerning resentencing under these new laws.

Part 3 discusses a law that applies only if you are sentenced after the new law took effect *or* if your original conviction or sentence is vacated or recalled and you are being resentenced for some other reason.

This letter does not discuss changes to the criminal laws that (1) permit certain people to be re-sentenced (Penal Code section 1172.2). (2) limit who can be convicted of homicide/attempted homicide crimes (Senate Bills 1437 and 775); (3) forbid racial discrimination or bias in criminal convictions or sentences ("the Racial Justice Act," Assembly Bills 2542, 256, and 1118); and (4) require sentencing courts to consider trauma experienced during military service (Assembly Bill 865 and Senate Bill 1209). Those laws may help some people get their convictions vacated or get resentenced to lower terms. If you want more information on any of those laws, please write to

Prison Law Office to ask for our letters on those topics. The letters are also available on the Resources page at www.prisonlaw.com.

1. CHANGES THAT APPLY REGARDLESS OF WHEN YOU WERE SENTENCED OR WHEN YOUR CONVICTION BECAME FINAL.

Two types of enhancements have been eliminated. If you had those enhancements, they are invalid and the sentencing court was supposed to remove them from your current sentence, regardless of when you were sentenced, whether you filed a direct appeal, or when your direct appeal was over. These enhancements are:

- **Senate Bills 136 and 483** – eliminated most one-year prior prison term enhancements under Penal Code § 667.5(b). This enhancement now can be used only if your prior prison term was for a “sexually violent offense” listed in Welfare and Institutions Code § 6600(b).
- **Senate Bills 180 and 483** – eliminated most three-year drug trafficking prior conviction enhancements under Health and Safety Code § 11370.2. This enhancement now can be used only if your prior conviction was for a violation or conspiracy to violate Health and Safety Code § 11380 (using or employing a minor in the sale or possession for sale of controlled substances).

If your current sentence included either of these enhancements, CDCR (or the county jail, if you are sentenced to jail) was required to notify the sentencing court and the court was required to resentence you by December 31, 2023.¹ If you think CDCR (or county jail) officials were supposed to refer you for resentencing, but they failed to do so, you should file an administrative grievance and appeal. If you are in CDCR, file your grievance on CDCR Form 602-1 and appeal on CDCR Form 602-2. If you are in county jail, use the grievance process for that jail. You also should ask for help from the public defender’s office for the county where you were sentenced or an attorney who represented you on your criminal case or appeal. Although you cannot file your own motion for resentencing under these laws,² you might have grounds for a petition for writ of habeas corpus or writ of mandate if CDCR or jail officials did not refer you or the court did not resentence you.

In most cases, if the judge held a resentencing under these laws, the judge had authority to reconsider your whole sentence, including applying other recent changes in the sentencing laws.³ However, there are some on-going disputes about the extent of judges’ resentencing power in certain types of circumstances.⁴

¹ Penal Code § 1172.7 and § 1172.75. A court could conduct a resentencing hearing even if the person’s case was also on appeal. *People v. Velasco* (2023) 97 Cal.App.5th 663

² *People v. Burgess* (2022) 86 Cal.App.5th 375; *People v. Newell* (2023) 93 Cal.App.5th 265; *People v. Escobedo* (2023) 95 Cal.App.5th 440.

³ *People v. Monroe* (2022) 85 Cal.App.5th 393.

⁴ One dispute is whether the prosecutor should have an opportunity to withdraw from the original

2. **CHANGES THAT APPLY ONLY IF YOUR CASE WAS NOT FINAL WHEN THE NEW LAW TOOK EFFECT (OR IF YOU ARE BEING RESENTENCED FOR OTHER REASONS).**

Unless the Legislature provides otherwise, a new criminal law that decreases punishment *does not* apply to cases that are “final” when the law takes effect, but *does* apply to cases that are sentenced after the new law takes effect, that are not yet final when the law takes effect, or that become non-final for other reasons after the law takes effect.⁵ This rule applies to many of the new enhancement and sentence laws. These laws and the dates they took effect are:

Effective January 1, 2018:

- **Senate Bill 620 – gave courts discretion to strike Penal Code § 12022.5 or § 12022.53 firearm use enhancements in the “interests of justice.”** This includes discretion to substitute a lesser uncharged firearm enhancement under a different section of the statute.⁶ The California Supreme Court is considering whether a court may substitute a lesser uncharged firearm enhancement based on a different enhancement statute.⁷

Effective January 1, 2019:

- **Senate Bill 1393 – gave courts discretion to strike Penal Code § 667(a) five-year prior serious felony conviction enhancements in the “interests of justice.”**

guilty or no contest plea if a court intends to reduce the sentence beyond merely striking the invalid prior. (*People v. Coddington* (2023) 96 Cal.App.5th 562; *People v. Carter* (2023) 97 Cal.App.5th 960, not yet final.) Another dispute is whether a person is entitled to full resentencing if the now-invalid enhancement was stayed at the time of the original sentencing. (*People v. Renteria* (2023) 96 Cal.App.5th 1276; *People v. Rhodius* (2023) 97 Cal.App.5th 38, not yet final; *People v. Christianson* (2023) 97 Cal.App.5th 300, not yet final; *People v. Saldana* (2023) 97 Cal.App.5th 1270, not yet final). A third dispute is whether or not a court has authority to apply limits on Three Strikes sentences that took effect in 2012 or whether the voters intended for Proposition 36 to be the only procedure and standard for reducing a Three Strikes term for a non-violent current offense. *People v. Superior Court (Guevara)* (2023) 97 Cal.App.5th 978, not yet final.

⁵ Penal Code § 3; *In re Estrada* (1965) 63 Cal.2d 740, 745.

⁶ *People v. Tirado* (2022) 12 Cal.5th 68.

⁷ *People v. McDavid*, No. S275940.

Effective January 1, 2022:

- **Assembly Bill 124 – created a presumption in favor of low terms (where certain factors contributed to the person’s offense:** (1) psychological, physical, or childhood trauma, (2) being under 26 years old; or (3) being a victim of intimate partner violence or human trafficking.⁸
- **Senate Bill 567 – created a presumption against imposing upper terms** unless you admit aggravating factors justifying an upper term or the aggravating factors were proven beyond a reasonable doubt at trial.⁹
- **Assembly Bill 518 – gave courts discretion to impose sentence on the crime that has shorter sentence when a person’s act violates multiple criminal statutes.**
- **Senate Bill 73 – expanded probation eligibility for crimes relating to controlled substances,** except for crimes involving minors.¹⁰
- **Assembly Bill 333 – limited the facts that can be used to prove Penal Code § 186.22 gang crimes and enhancements, including gang-murder special circumstances.**¹¹
The California Supreme Court is reviewing disputes about whether this new law affects the validity of a prior gang-based “strike” finding,¹² whether the new law applies when a second appeal results in limited remand to address specific sentencing issues,¹³ and whether another part of AB 333 that requires separate trials of gang charges applies to non-final cases.¹⁴

Your case is not final if (1) you still have time to file a direct appeal or have a direct appeal pending in the court of appeal, (2) you still have time to file a petition asking for review of your

⁸ Penal Code § 1170(b).

⁹ Penal Code § 1170(b). Prior convictions and related factors that are established by a certified record can be considered even if not admitted by you or submitted to the jury in the current trial. *People v. Wiley* (2023) 97 Cal.App.5th 676, not yet final. Also, SB 567 does not prohibit a court from relying on unproven aggravating factors to impose a *middle* term. *People v. Hillburn* (2023) 93 Cal.App.5th 189.

¹⁰ Penal Code § 1203.07 and § 1203.073; Health & Safety Code § 11370.

¹¹ The California Supreme Court has held that applying AB 333 to gang murder special circumstances does not violate Proposition 21. *People v. Rojas* (2023) 15 Cal.5th 561.

¹² *People v. Fletcher*, S281282

¹³ *People v. Lopez*, No. S281488.

¹⁴ *People v. Burgos*, No. S274743. If the separate trial law does apply, reversal of non-gang counts will not be required unless it is reasonably likely that a separate trial would have changed the verdict. *People v. Tran* (2022) 13 Cal.5th 1169.

direct appeal or your petition for review is pending in the California Supreme Court, or (3) you still have time to file a petition for writ of certiorari from your direct appeal or your petition for writ of certiorari is still pending in the U.S. Supreme Court.¹⁵ This means that if your case is still on direct appeal (including any petition for review or for certiorari following the direct appeal), your appeal attorney may be able to argue that your case should be sent back for resentencing under the new laws. In most situations, the court of appeal should send your case back to the sentencing court for reconsideration unless the record clearly shows that the jury would have entered the same verdict or the sentencing court would keep the same sentence under the new law.¹⁶ However, there may be disputes about the standards for deciding which cases must be reconsidered, especially regarding Senate Bill 567's requirements that aggravating factors used to impose upper terms be admitted by the defendant or proven at trial, and the California Supreme Court is considering these issues.¹⁷

Also, if your sentence is vacated, recalled, or re-opened for other reasons, then it will become "not final" again, and when you are resentenced, the court should apply any new changes in the sentencing laws that went into effect after your original sentencing.¹⁸ If you have any type of petition or resentencing recommendation pending, you should discuss with the attorney who is representing you whether you can benefit from any of the new sentencing laws discussed in this section. Here are some situations in which your case may be re-opened and become non-final:

¹⁵ *People v. Ramirez* (2008) 159 Cal.App.4th 1412, 1420–1421; California Rules of Court, rule 8.308(a).

¹⁶ See, e.g., *People v. Salazar* (2023) 15 Cal.5th 416; *People v. Venegas* (2020) 44 Cal.App.5th 32; *People v. McDaniels* (2018) 22 Cal.App.5th 420; *People v. Chavez* (2018) 22 Cal.App.5th 663; *People v. Valenzuela* (2018) 23 Cal.App.5th 82; *People v. Flores* (2022) 73 Cal.App.5th 1032; *People v. Tran* (2022) 13 Cal.5th 1169; *People v. Cooper* (2023) 14 Cal.5th 735; and *People v. Cooper* (2023) 14 Cal.5th 735.

¹⁷ *People v. Lynch*, No. S274942; *People v. Falcon*, No. S281242; see also *People v. Flores* (2022) 75 Cal.App.5th 495 (upper term need not be reconsidered if it is beyond a reasonable doubt that a jury would have found true at least one aggravating factor); *People v. Zabelle* (2022) 80 Cal.App.5th 1098 (holding that even if jury would have found true at least one aggravating factor, case must be reconsidered if it is reasonably probable the sentencing court would have chosen a shorter sentence under the new law); *People v. Ruiz* (2023) 97 Cal.App.5th 1068, not yet final.

¹⁸ See *People v. Salgado* (2022) 82 Cal.App.5th 376 [new laws apply at resentencing on CDCR recommendation]; *People v. Cepeda* (2021) 70 Cal.App.5th 456 [similar]; *People v. Padilla* (2022) 13 Cal.5th 152 [new laws apply at resentencing after habeas corpus decision that vacated original sentence]; *People v. McKenzie* (2018) 9 Cal.5th 40 [case not final when imposition of sentence suspended during grant of probation]; *People v. Esquivel* (2021) 11 Cal.5th 671 [case not final if probation granted but execution of sentence suspended, if any order revoking probation could be appealed]; but see *In re Rodriguez* (66 Cal.App.5th 952 [announcement of aggregate term for multiple offenses from separate proceedings did not re-open finality of the earlier case]; *People v. White* (2022) 86 Cal.App.5th 1229 [holding *Franklin* hearing does not make case non-final].

- Your conviction or sentence are vacated due to a successful habeas corpus petition. There are many different bases for filing a habeas petition. One recently developed ground for a petition is to allow people to challenge convictions or sentences that are based on racial bias or discrimination (the Racial Justice Act or “RJA”).¹⁹
- Your conviction or sentence are vacated due to a referral or petition some other reform law. For example, a referral for Penal Code § 1172.7 or § 117.75 resentencing can at least sometimes allow the resentencing court to apply other changes in the law (see Section 1, above). Likewise, some people’s cases can be re-opened by a petition under Penal Code § 1172.6, which allows people to benefit from new limits on who can be convicted of homicide or attempted homicide. Another law, Penal Code § 1170.91(b), allows people to file a resentencing petition to consider trauma experienced when they were in the military.
- CDCR (or the county jail administrator or the District Attorney) recommend you for recall and resentencing. The CDCR Secretary (or for people in jail, the county jail administrator) or the District Attorney may at any time recommend that you be resentenced in the “interests of justice.”²⁰ These officials have broad discretion to decide who to recommend for resentencing, but CDCR and some District Attorneys will make resentencing recommendations for people with exceptional conduct while incarcerated and people who could get shorter sentences under new laws. In particular, CDCR reports that has recommended people for “change in sentencing law” resentencing where people have firearm or prior serious felony enhancements that used to be mandatory but are now discretionary (Senate Bill 620 and Senate Bill 1393 cases) if people meet other criteria set by CDCR.²¹ If you would like more information about Penal Code § 1172.1 resentencing and CDCR’s policies, please write to Prison Law Office to ask for a letter on Resentencing PC § 1172.1 (formerly § 1170(d)(1) and § 1170.03). That letter is also available on the Resources page at www.prisonlaw.com.

When a sentencing court reconsiders your case, it must give you and your attorney the opportunity for a hearing.²² The court should take into account the sentencing factors in the California rules of court.²³ The court also can consider your rehabilitation efforts dating from after your original sentencing.²⁴ In some situations, the court can consider changing any parts of your

¹⁹ See Penal Code § 1473; Penal Code § 1473.5; *CDCR Penal Code 1170(d)(1) Program Overview*.

²⁰ Penal Code § 1172.1.

²¹ Cal. Code Regs., tit. 15, § 3076-§ 3076.2.

²² *People v. Rocha* (2019) 32 Cal.App.5th 352.

²³ *People v. Pearson* (2019) 38 Cal.App.5th 112.

²⁴ *People v. Yanaga* (2020) 58 Cal.App.5th 619.

sentence,²⁵ though there may be disputes about some situations.²⁶ If the court refuses to exercise its discretion to give you a shorter sentence, the court of appeal will uphold the decision unless it is irrational or arbitrary.²⁷

!!Be aware that the issues may be more complicated if you entered a guilty or no contest plea!!
The California Supreme Court is considering whether someone who made a plea agreement for a specific sentence can get resentenced pursuant to SB 567 (presumption against upper term) or AB 124 (presumption in favor of low term where certain factors present).²⁸ If you are resentenced after entering a plea, and the sentencing court is inclined to resentence you to a term that is not consistent with your plea bargain, the District Attorney either must agree to modify the plea bargain or will be allowed to undo the plea bargain and re-file the charges against you.²⁹ On the other hand, if you entered an open plea (with no particular sentence specified) or a plea to a range of terms, courts so far have held that you can be resentenced to any new sentence that is consistent with the plea agreement.³⁰

3. CHANGE THAT APPLIES ONLY IF YOU WERE SENTENCED AFTER THE NEW LAW TOOK EFFECT (OR IF YOU ARE BEING RESENTENCED FOR OTHER REASONS).

There is one new law that applies only to cases in which sentencing occurs on or after January 1, 2022:

- Senate Bill 81 – created presumptions in favor of dismissing enhancements in some circumstances. Courts now must give “great weight” to certain factors when they exercise discretion about whether to impose or dismiss enhancements. Any of the following circumstances “weighs greatly in favor” of dismissing an enhancement, unless the court finds that dismissal would create a likelihood that you would cause physical injury or serious danger to others:

²⁵ See *People v. Bautista-Castanon* (2023) 89 Cal.App.5th 922; *People v. Salgado* (2022) 82 Cal.App.5th 376.

²⁶ *People v. Cervantes* (2021) 72 Cal.App.5th 326 [court not required to conduct full resentencing when court of appeal sent case sent back for limited remand to consider whether to strike firearm enhancement]; see also cases cited in footnotes 4, 12, and 13 of this letter.

²⁷ *People v. Pearson* (2019) 38 Cal.App.5th 112; *People v. Parra Martinez* (2022) 78 Cal.App.5th 317; *People v. Campbell* (2023) 92 Cal.App.5th 1327, decision not yet final.

²⁸ *People v. Mitchell*, No. S277314.

²⁹ *People v. Stamps* (2020) 9 Cal.5th 685; *People v. Fox* (2023) 90 Cal.App.5th 826.

³⁰ *People v. Henderson* (2021) 67 Cal.App.5th 785; *People v. Flores* (2022) 73 Cal.App.5th 1032.

- ◆ Applying the enhancement would be racially discriminatory under Penal Code § 745
- ◆ Multiple enhancements are alleged, in which case only one enhancement should be applied
- ◆ Applying the enhancement could result in a total sentence of over 20 years, in which case the enhancement shall be dismissed
- ◆ The offense is connected to mental illness
- ◆ The offense is connected to prior victimization or childhood trauma
- ◆ The offense is not a violent felony under Penal Code § 667.5(c)
- ◆ The person was a juvenile when they committed the offense or any prior juvenile adjudication that triggers the enhancement
- ◆ The enhancement is based on a prior conviction that is over five years old
- ◆ The firearm used in the offense was inoperable or unloaded.³¹

This new law applies only to sentencings that happen after January 1, 2022.³² However, it also must be applied when an older sentence is vacated or recalled for other reasons and resentencing occurs after January 1, 2022.³³ If the court is inclined to impose a new lower sentence that is inconsistent with a plea bargain you made, then the District Attorney either must agree to modify the plea bargain or will be allowed to undo the plea bargain and re-file the charges.³⁴

The Supreme Court is considering whether this new law creates a rebuttable presumption that an enhancement will be dismissed unless the sentencing court finds dismissal would endanger public safety.³⁵ If a sentencing court does properly find that dismissal would endanger public safety, then the court can impose the enhancement even if it results in sentence of over 20 years.³⁶

³¹ Penal Code § 1385.

³² See *People v. Flowers* (2022) 81 Cal.App.5th 680. See also *People v. Diaz* (2023) 97 Cal.App.5th 1172, not yet final (sending case back for resentencing where person sentenced after January 1, 2022 but record indicated the court and parties had been unaware of SB 81).

³³ *People v. Sek* (2022) 74 Cal.App.5th 657.

³⁴ See *People v. Stamps* (2020) 9 Cal.5th 685.

³⁵ *People v. Walker*, No. S278309.

³⁶ *People v. Lipscomb* (2022) 87 Cal.App.5th 9; *People v. Renteria* (2023) 96 Cal.App.5th 1276; *People v. Cota* (2023) 97 Cal.App.5th 318.

This new law does not affect a court's decision whether to grant or deny a "Romero" motion to strike priors, because the Two Strikes and Three Strikes laws are alternative sentencing laws, not enhancements.³⁷

There is information on your legal rights and how to protect your rights in *The California Prison and Parole Law Handbook*, published by the Prison Law Office. The *Handbook* is on CDCR electronic tablets and kiosks in the Law Library/California/Secondary Sources/The California Prison and Parole Law Handbook. In addition, people who have internet access can view and print the *Handbook* under the Resources tab at www.prisonlaw.com. As of early 2024, we are in the process of updating the *Handbook* to reflect changes in the law since 2019. Updated chapters will state the dates on which they were updated.

³⁷ *People v. Burke* (2023) 89 Cal.App.5th 237; *People v. Olay* (2023) 98 Cal.App.5th 60, not yet final; *People v. Dain* (2024) ___ Cal.App.5th ___, not yet final.