

# Sentencing Laws

## **AB 600 Equity in Resentencing** - Effective 1/1/2024

**What is AB 600?** - This law allows courts to recall a sentence and initiate resentencing at any point in time, if the sentencing laws applicable at the time of sentencing have subsequently changed, including sentencing enhancement laws, strike laws, or any other sentencing rules. It mandates judges to consider post-conviction factors, including a person's disciplinary and rehabilitation record while incarcerated; a person's age and time served; and whether the circumstances have changed to the point that continuous incarceration is no longer in the interest of justice.

**Who qualifies?** - Anyone, if the sentencing laws applicable at the time of sentencing have subsequently changed. For example, if the person was convicted of a gang enhancement prior to the implementation of AB 333 (1/1/2022), which changed the criteria of gang enhancements, that person can send in an AB 600 petition to the courts in the county where that individual was convicted. \*If a person requests consideration for relief under AB 600, the court is not required to respond, so it is super important that a strong case is submitted with the petition in order to increase the chances that a judge will move forward with it.

[AB 600 Request Form](#)

## **AB 1118 Racial Justice Act Claims** - Effective 1/1/2024

**What is AB 1118?** - This law makes technical changes to the procedures for claims under the Racial Justice Act (RJA) by clarifying that RJA claims can be raised on appeal, or, if additional evidence is needed, permits individuals to request stay of an appeal and remand to the trial court to file a motion.

**Who qualifies?** - Anyone who experiences racial bias during the criminal legal process.

## **AB 256 Racial Justice Act for All** - Effective 1/1/2023

**What is AB 256?** - This law makes the California Racial Justice Act retroactive. It allows California convictions to be overturned if race played a role in the conviction. It also expands the definition of an inappropriate use of race, and it allows a person to compare cases from within a district attorney's office.

**Who qualifies?** - Anyone convicted or sentenced after the Racial Justice Act of 2020 was signed may file a petition to have their conviction vacated immediately. However, for retroactive relief, the following timeline must be followed:

- January 1, 2023 — People facing deportation or sentenced to death
- January 1, 2024 — People incarcerated for a felony
- January 1, 2025 — Others with a felony conviction after 2015
- January 1, 2026 — Anyone with a felony conviction

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## **SB 775 Felony Murder** - Effective 1/1/2022

**What is SB 775?** - This law expands SB 1437, which reformed the felony murder rule by clarifying that malice (intention to do injury to another) cannot be imputed on a person solely because of their specified crime.

### **Who qualifies?**

- Someone convicted of attempted murder – under any theory in which malice is attributed based solely on participation in the crime
- Someone convicted of manslaughter – under the theory of felony murder or murder under the natural and probable consequences doctrine (a consequence that one could reasonably expect to result from an act)

## **SB 81 Presumption Against Long Sentence Enhancements** - Effective 1/1/2022

**What is SB 81?** - This law encourages judges to only issue sentence enhancements when it is an issue of public safety. When determining if a sentence enhancement is appropriate, the law asks judges to look at the following circumstances:

- Whether the conviction in question resulted from an offense nonviolent in nature or one that didn't involve the use of a firearm;
- Whether distributing a sentence enhancement would have an unfair racial impact on the accused;
- If the sentence enhancement is given to a conviction that is over five years old;
- Whether the conviction in question was related to a person's mental health issues or childhood trauma;
- How old a person was when the offense in question was committed (whether or not they were a juvenile at the time); and
- If the total sentence or the number of enhancements received for a single offense exceeds 20 years.

**Who qualifies?** - SB 81 does not indicate that it is retroactive. However, it can be considered if the court case is not yet final (ongoing appeal) or your loved one goes back to court for resentencing.

## **AB 1540 Resentencing** - Effective 1/1/2022

**What is AB 1540?** - This law mandates that the court must provide notice to a person and set a status conference within 30 days of the receipt of a request for resentencing and must appoint counsel for the person. This greatly reduces the amount of time that a person must be incarcerated before their resentencing is taken up by the court. The court may grant a resentencing without a hearing if all the parties are in agreement. The court is now required to state its reasons for a resentencing decision on the record. AB 1540 also creates a presumption favoring recall and resentencing.

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**Who qualifies?** - The following people may be eligible for recall of their sentence under AB 1540:

- Someone who was sentenced and requested a resentencing hearing
- Someone who did not have legal counsel during their resentencing hearing
- Someone who was resentenced, and the court did not state reasons for the new sentence term
- Someone who requested resentencing and the court did not honor a presumption favoring recall and resentencing
- An attorney, judge, law enforcement officer, expert witness, or juror involved in the case exhibited racial bias or animus (hostility) towards the person.
- During the trial, whether or not purposeful or directed at the person facing charges, there was use of racially discriminatory language.

Thus, if a person was sentenced to a prison term and they requested a recall and resentencing that did not have a favorable outcome, they may qualify for resentencing.

**AB 124 Survivors of Sexual & Intimate Partner Violence, & Youth Under 26** - Effective 1/1/2022

**What is AB 124?** - This law permits a judge to vacate a nonviolent crime arrest or conviction if the person was a victim of intimate partner violence or sexual violence. The person must still petition the court for such relief and prove by clear and convincing evidence that the crime was related to being a victim of violence. AB 124 also applies when the crime was a serious felony or a charge of human trafficking, and when the person was coerced to commit the offense as a direct result of being a victim of intimate partner violence or sexual violence at the time of the offense and had a reasonable fear of harm.

**Who qualifies?** - Anyone who has experienced psychological, physical, or childhood trauma, or was a youth (under 26) at the time of the crime or was the victim of intimate partner violence, sexual violence, or human trafficking, and was convicted of a nonviolent crime. This law does not apply to people convicted of a “violent” felony.

**SB 483 One-Year Prison Prior & Three-Year Drug Trafficking Enhancements** - Effective 1/1/2022

**What is SB 483?** - This law requires the Secretary of the California Department of Corrections and Rehabilitation (CDCR) and each county correctional administrator to identify every person in their custody who is serving a term that includes a repealed enhancement. Once identified, they must provide the name of each person, their date of birth, and relevant case or docket number to the sentencing court that imposed the enhancement. Requires that the court appoint counsel to any person qualified to go through the process of resentencing under this law.

**Who qualifies?** - Any person who received a sentence enhancement based on prior prison terms. It does exclude enhancements for prior convictions of sexually violent offenses. The law also pertains to any person who received a sentence enhancement for prior convictions for crimes specifically related to controlled substances. It does exclude enhancements that were

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imposed for prior convictions that involve the use of a minor in the commission of offenses that involved controlled substances.

### **AB 333 Gang Enhancements** - Effective 1/1/2022

**What is AB 333?** - This law reduces the list of crimes allowed for gang enhancements, prohibits the use of the current charge as proof of a “pattern” of criminal gang activity, requires direct evidence of current gang activity, separates gang allegations from underlying charges at trial at the request of defense counsel, and provides clearer definitions for what the prosecution must prove in order to add gang enhancements to a person’s sentence. (1) predicate offenses (a crime that is a component of a more serious crime) must now be proven to have “commonly benefitted a criminal street gang, and the common benefit from the offense[s] is more than reputational”; (2) the last predicate offense must have occurred within three years of the date of the currently charged offense; (3) the predicate offenses must have been committed by two or more “members” of the gang, as opposed to any persons; (4) the currently charged offense no longer counts as a predicate offense; and (5) the list of qualifying predicate offenses is shortened.

- **Who qualifies?** - Although AB 333 is not retroactive, it can be considered if the court case is not yet final (ongoing appeal) or your loved one goes back to court for resentencing. Crimes that may still be considered for gang enhancement include:
- Assault with a deadly weapon or by means of force likely to produce great bodily injury
- Robbery
- Unlawful homicide or manslaughter
- Sale, possession for sale, transportation, manufacture, offer for sale, or offer for manufacture, a controlled substance
- Shooting at an inhabited dwelling or occupied motor vehicle
- Discharging or permitting the discharge of a firearm from a motor vehicle
- Arson
- Intimidation of witnesses and victims
- Grand theft
- Grand theft of any vehicle, firearm, trailer, or vessel
- Burglary
- Rape
- Money laundering
- Kidnapping
- Mayhem
- Aggravated Mayhem
- Torture
- Felony extortion
- Carjacking
- Sale, delivery, or transfer of a firearm
- Possession of a pistol, revolver, or other firearm capable of being concealed upon the person

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- Threats to commit crimes resulting in death or great bodily injury
- Theft and unlawful taking or driving of a vehicle
- Prohibited possession of a firearm in violation of the law
- Carrying a concealed firearm in violation of the law
- Carrying a loaded firearm in violation of the law

### **SB 567 Aggravated Prison Terms (High Terms) - Effective 1/1/2022**

**What is SB 567?** - This law requires the court to impose the middle term of imprisonment unless there are aggravating circumstances that have been (1) stipulated by the person facing charges or (2) found true beyond a reasonable doubt at trial by the jury or judge. Additionally, the court, except in specified circumstances, upon the request of the person facing charges, must separate the trial on the circumstances in aggravation from the trial of charges and enhancements. The court may consider prior convictions based on a certified record of conviction without a finding by the jury. The court must also state reasons for imposing the term selected.

**Who qualifies?** - Any person who will be sentenced where the statutory default is the middle term, as well as people who are charged with one or more enhancements. Anyone who received a sentence higher than the middle term may be eligible for a sentence reduction under SB 567 if it can be proven that the court did not have aggravating circumstances to warrant the increased sentence.

### **AB 2542 Racial Discrimination - Effective 1/1/2021**

**What is AB 2542?** - This law, also called The Racial Justice Act, prohibits prosecutors from seeking, obtaining, or imposing a conviction or sentence on the basis of race by expanding opportunities for people to challenge racial bias in their case. Specifically, AB 2542 would make it possible for a person charged with or convicted of a crime to challenge their conviction or sentence by demonstrating that one of the following examples of discrimination played a role in their prosecution:

- An attorney, judge, law enforcement officer, expert witness, or juror involved in the case exhibited racial bias or animus towards the person facing charges.
- During the trial, whether or not purposeful or directed at the person facing charges, there was use of racially discriminatory language.

**Who qualifies?** - Anyone who experiences racial bias during the criminal legal process.

### **[1172.1 CDCR Resentencing](#) - Effective 1/1/2020**

**What is 1170.03 formerly 1170(d)?** - This law permits CDCR to recommend resentencing for certain individuals.

**Who qualifies?** - CDCR has created their own criteria for who qualifies. LWOP are excluded. Additionally, each referral category has exclusionary criteria.

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## Exceptional conduct

1. Not required to register pursuant to PC 290 (sex offenders) as a tier 2 or 3 offender.
  1. Beginning January 1, 2021, California Penal Code established tiers for registration. A tier one offense is not considered a serious or violent felony and requires registration for a minimum of 10 years, whereas tier 2 and tier 3 offenses require registration for a minimum of 20 years and life, respectively.
2. Must have served at least 10 continuous years in CDCR custody.
  1. CDCR determined that 10 years is a sufficient length of time to ensure the individual has demonstrated a pattern of positive behavior and programming for a sustained period of time.
3. Not found guilty of a serious or violent rules violation (Divisions A-D) within the last five years, or have a serious or violent rules violation pending.
  1. Such rules violations include but are not limited to murder, rape, battery, assault, arson, escape, possession/distribution of contraband, possession of a cellphone, and gang activity.
4. Not scheduled for release within the next 18 months.
5. Not eligible for parole consideration within the next 18 months, whether indeterminately or determinately sentenced.
6. Have not had a parole suitability hearing, whether the individual is indeterminately sentenced or eligible for parole consideration under Elderly Parole, Youth Parole, or Second Striker Parole Eligibility.
7. Must not be serving the lowest legal term for an individual offense, as the court may not impose a lesser sentence than the lowest legal term.

## Sentencing discrepancies

1. Not scheduled for release within the next six months.

## Changes in sentencing laws

1. Have served five continuous years in CDCR custody
2. Not have been found guilty of a serious or violent rules violation (Division A-D) within the last year, or have a serious or violent rules violation pending.
3. Not scheduled for release within the next 18 months
4. Not eligible for parole consideration within the next 18 months
5. Not have had a parole suitability hearing

## **SB 136 One-Year Prison Prior Enhancements - Effective 1/1/2020**

**What is SB 136?** - This law restricts the mandatory one-year sentence enhancement for each prior prison or felony jail term to only those convicted of a sexually violent offense.

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**Who qualifies?** - Thanks to SB 483, this law is retroactive. SB 136 applies to anyone who received a one-year sentence enhancement for prior prison or felony jail terms, except those convicted of a sexually violent offense.

### **SB 1437 Felony Murder** - Effective 1/1/2019

**What is SB 1437?** - This law clarifies that a person can only be guilty of “felony murder” if:

1. The person is the actual killer.
2. The person acted with intent to kill, such as assisting the actual killer or encouraging the actual killer to kill the victim.
3. The person was a major participant in the crime who acted with “reckless indifference to human life.”
4. The victim was a police officer, who was killed on the job, and “the person knew or reasonably should have known that the victim was a police officer engaged in the performance of his or her duties.”

### **Who qualifies?**

- Someone convicted of first degree murder.
- Someone convicted of second degree murder.
- Someone that accepted a plea offer, who could have been convicted of first-degree or second-degree murder, had they proceeded to trial, or who could not be convicted of first or second-degree murder under the new law.

### **AB 2942 DA Resentencing** - Effective 1/1/2019

**What is AB 2942?** - This law permits elected DAs to reevaluate past sentences. If the DA determines that the length of the sentence no longer serves the interests of justice, then they may request resentencing. A DA in the county in which a person was sentenced may bring the request to the county court. The court can then deny or grant the request.

**Who qualifies?** - Anyone convicted of a felony or misdemeanor. The law does not exclude anyone. However, each DA has the discretion to create their own criteria. There are 58 counties in California, so there are 58 elected DAs, and each one can set their own criteria.

### **SB 1393 Five-Year “Nickel-Prior” Enhancements** - Effective 1/1/2019

**What is SB 1393?** - This law allows a judge to strike a five-year enhancement “nickel-prior” for a prior serious felony conviction, if the act furthers justice.

**Who qualifies?** - Although SB 1393 is not retroactive, it can be considered if the court case is not yet final (ongoing appeal) or your loved one goes back to court for resentencing.

### **SB 1391 14 and 15-year olds** - Effective 1/1/2019

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**What is SB 1391?** - This law prohibits the prosecution of minors in adult court for offenses committed while under the age of 16, unless the minor was not apprehended until after turning 18 years of age.

**Who qualifies?** - Anyone who was under the age of 16 when their crime occurred and was tried as an adult.

## **SB 620 Gun Enhancements** - Effective 1/1/2018

**What is SB 620?** - This law permits a judge to use his or her discretion under Penal Code §1385 (“in the interest of justice”) to remove a gun enhancement.

**Who qualifies?** - Although SB 620 is not retroactive, it can be considered if the court case is not yet final (ongoing appeal) or your loved one goes back to court for resentencing.

## **SB 180 Three-Year Drug Trafficking Enhancements** - Effective 1/1/2018

**What is SB 180?** - This law repeals the three-year sentence enhancement for prior drug convictions, with the exceptions of drug manufacturing and convictions involving a minor.

**Who qualifies?** - Thanks to SB 483, this law is retroactive. SB 180 applies to anyone who received a three-year sentence enhancement for prior drug convictions, except those convicted of enlisting the help of a minor and drug manufacturing.

## **\*Terms to Know**

**Arraignment Hearing** - An arraignment hearing is the first formal court proceeding in the California criminal law process. It follows an arrest. Simply put, this is the stage where

- the court will advise a person of their Constitutional rights,
- a person will find out the specific criminal charges that have been filed against them,
- a person will have their first opportunity to enter a plea, and
- the court will set, modify, reinstate, or exonerate a person’s bail.

**Bail Hearing** - A bail hearing is a court proceeding where a judge decides whether to allow a person to post bail and be released from custody while awaiting trial. A judge could also decide to “set bail” at a higher or lower amount than what is scheduled for the offense. The California Supreme Court ruled that people who cannot afford to pay bail must be released unless there is clear and convincing evidence that incarcerating them is necessary for public or victim safety.

**Preliminary Hearing** - A preliminary, or prelim, hearing is one of the earliest stages in California’s pretrial criminal court process. It is a special proceeding, held before a judge or magistrate, to determine if there is enough evidence to proceed to trial. The prosecutor presents live witnesses and evidence, subject to cross-examination by the defense. The judge usually schedules this hearing at a person’s arraignment after they enter a “not guilty” plea. Unless a person waives their right to a timely preliminary hearing... or the court finds good cause to



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continue the proceeding...the prelim must take place within ten court days of the arraignment or plea, whichever is later.

**Pretrial** - The “pretrial” process refers to:

- court appearances (which includes a preliminary hearing in felony cases),
- motions (such as a Penal Code 995 PC “motion to set aside the complaint” or a Penal Code 1538.5 PC “motion to suppress evidence”),
- discovery issues (ensuring that a person’s defense attorney and the prosecution are exchanging all relevant evidence and witness information), and
- any plea bargains or negotiations that take place before trial.

**Jury Trial** - A jury trial is where 12 members of the community are assembled to hear the evidence and decide whether or not a person is guilty of the crime or crimes with which he or she is charged. All persons accused of misdemeanors or felonies are entitled to a jury trial. The jurors must unanimously agree upon guilt before a person can be found guilty and convicted.

**Sentencing Hearing** - A court proceeding in which a judge imposes penalties upon a person who has pled guilty or no contest, or has been found guilty at a jury trial or bench trial. At a sentencing hearing, the defense presents mitigating circumstances as to why the punishment and penalties should be minimized. Conversely, the prosecution presents aggravating circumstances to demonstrate why the sentence should be harsh.

**Transfer Hearing** - A transfer, or fitness, hearing is where a juvenile court judge decides whether a 16 or 17-year-old is “fit” for the juvenile court system. The judge will look at five factors, including the seriousness of the alleged crime, to determine whether the 16 or 17-year-old is likely to benefit from the rehabilitative services of juvenile delinquency court. If the judge decides that the minor will not benefit from those services, the minor gets transferred to adult court.

**Sentence Enhancement** - Sentence enhancements are laws that increase the total incarceration term for a crime based on aspects of how the crime was committed or who committed it. California’s Penal Code is weighed down by more than 150 separate sentence enhancements. 80% of people in prison have sentence enhancements, and 25% of them have at least 3 enhancements.

**C-File** - A C-File, or Central File, is a file that contains all records of a person in CDCR custody, including classification committee records, disciplinary reports, ad-seg lockup orders, chronos, confidentials, among others.

**Discovery Packet** - When a person appears before their arraignment, the prosecutor is required to provide a copy of the criminal complaint and turn over all discovery on the case to the defense attorney. Typically, this initial discovery packet only includes the police report,

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witness statements, and a person's criminal record, but it should also include an evidence log, photographs, recordings, and any other evidence gathered by the DA.

**Difference between a jury trial and a plea deal** - In plea bargaining, a person agrees to waive all their trial rights in exchange for leniency; in a trial bargain, a person takes their case before a jury and can be found "not guilty" or "guilty" and given the maximum sentence.

**Habeas Corpus** - A recourse in law through which a person can report an unlawful detention or imprisonment to a court and request that the court order the custodian of the person, usually a prison official, to bring them to court, to determine whether the detention is lawful.

**"How To" Guide for Writ of Habeas Corpus**