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What Is Compassionate Release?

Compassionate release is a recall and resentencing procedure for incarcerated individuals who meet specific medical criteria.¹ It applies to people serving sentences in both CDCR facilities and local custody pursuant to Penal Code § 1170(h).²

In 2024, 140 cases were referred by CDCR to trial courts for consideration.

How the Process Begins

When a CDCR physician determines that an incarcerated person meets the medical criteria for compassionate release, they must notify the Chief Medical Executive (CME) of the person's prognosis. If the CME concurs with the assessment, they must then notify the warden.³

Within 48 hours of receiving notice, the warden must:

- Inform the incarcerated person about the recall and resentencing procedures; and
- Arrange for the person to designate a family member or agent to be notified of the person's medical condition, prognosis, and recall and resentencing process.⁴

- Only CDCR can make a recommendation to a court that an incarcerated person's sentence be recalled through compassionate release procedures. However, *anyone* – including an incarcerated person, their family members or loved ones, or defense counsel – can independently request that CDCR consider compassionate release for an incarcerated person by contacting the CME at the prison. (Penal Code § 1172.2(g).)
- Contact information to request consideration for compassionate release can be found [here](#).

¹ Author's note: While people-first language is preferred, the term "incarcerated person" is used in this resource to reflect the language of the compassionate release statute. Penal Code § 1172.2 and Cal. Code Regs., tit. 15, § 3999.98.

² Penal Code § 1172.2(n). This guide focuses on compassionate release for people in state prison.

³ Penal Code § 1172.2(d).

⁴ Id.

Eligibility Criteria

CDCR must recommend that a person's sentence be recalled if the statewide CME determines that an incarcerated person has either:⁵

1. A serious and advanced illness with an end-of-life trajectory.⁶
- or -
2. A permanent medical incapacitation that did not exist at the time of the original sentencing, with:
 - a medical condition or functional impairment that renders them permanently unable to complete basic activities of daily living, or
 - progressive end-stage dementia.⁷

Exclusions: Compassionate release is *not* available for those convicted of first-degree murder where the victim was a peace officer engaged in – or in retaliation for – the performance of their official duties, or for those sentenced to LWOP or death.⁸

- While not statutorily defined, one Court of Appeal has provided that “end-of-life trajectory” requires that the illness is developing or moving the incarcerated person toward the end of the person’s life. *People v. Multani* (2024) 106 Cal.App.5th 1334, 1344.
- Based upon information provided by CDCR, “end-of life trajectory” has generally been interpreted by trial courts to mean a life expectancy of less than 24 months.
- A person who had *some* incapacitation or dementia at the time of sentencing may be recommended for compassionate release where the condition has subsequently worsened.

⁵ A person may be recommended for compassionate release under more than one criterion.

⁶ Penal Code § 1172.2(b)(1). (E.g., metastatic solid-tumor cancer, amyotrophic lateral sclerosis (ALS), end-stage organ disease, and advanced end-stage dementia.)

⁷ Penal Code § 1172.2(b)(2). Basic activities of living include bathing, eating, dressing, toileting, transferring, and ambulation.

⁸ Penal Code §§ 1170.02, 1172.2(o).

Timeline and Legal Requirements

CDCR - must submit its recommendation to the court within 45 days of the initial determination that the person meets medical criteria and referral to the CME.⁹ This will include medical and custodial information in support of its recommendation.¹⁰

COURT - the incarcerated person has a right to counsel; if they cannot afford to hire an attorney, the court must appoint one.¹¹ The court *must hold a hearing to recall a sentence within 10 days of receiving CDCR's recommendation.*¹² If possible, the hearing should be held in front of the original sentencing judge.¹³ If release is granted, the court must provide CDCR with an amended abstract of judgment or minute order within 24 hours.¹⁴

CDCR - is required to release an incarcerated person within 48 hours of receiving a court order.¹⁵ However, there is frequently an agreement to a longer timeline to allow for CDCR to coordinate the release with housing, medical care, and other reentry services.¹⁶

- Some courts – due to local practice or unfamiliarity with compassionate release procedures – may treat the initial hearing (scheduled within 10 days of receipt of CDCR's recommendation) as a "setting" or "status" conference. However, Penal Code § 1172.2 does **not** contemplate this practice. The hearing set pursuant to Penal Code 1172.2(c) is *the* hearing in which the court should consider whether a sentence should be recalled.

⁹ Penal Code § 1172.2(e).

¹⁰ CDCR will make a recommendation even without a specific post-release plan, but placement can be challenging. Counsel and defense team members should proactively coordinate with CDCR. For details on contents of the referral packet see Cal. Code Regs., tit. 15 § 3999.209 (g)-(i).

¹¹ Penal Code § 1172.2(k).

¹² Penal Code § 1172.2(c).

¹³ Penal Code § 1172.2(i).

¹⁴ Penal Code § 1213(a)(2). See discussion on *Release Considerations*.

¹⁵ Penal Code § 1172.2(l).

¹⁶ At release, the warden must provide the person with a discharge medical summary, full medical records, state identification, prescribed medications, and all personal property. Any remaining records must be mailed to the person's forwarding address. Penal Code § 1172.2(l).

The Hearing

Preparing and obtaining medical records

Once appointed, the referring physician – or their CDCR designee – must make themselves available to defense counsel as needed throughout the proceedings.¹⁷ This can include providing defense counsel with pertinent and curated medical records and providing a prognosis to show physical incapacitation. This assistance may reduce the need to delay the hearing to independently subpoena an individual’s medical records.

Contested hearings

At a contested hearing, the court must base its decision on the evidence presented. If the court determines that the incarcerated person meets the medical criteria for compassionate release, *a presumption is created in favor of recalling and resentencing the individual.*¹⁸

Cases to Know

The presumption may only be overcome if the court finds that person poses **an unreasonable risk of committing a “super strike” based on their current physical and mental condition.** To overcome the presumption of recall, the prosecutor has the burden of affirmatively proving this specific unreasonable risk. *Farr v. County of Nevada* (2010) 187 Cal.App.4th 669, 681.

Even if the court believes release is unwarranted, it cannot deny compassionate release if the statutory requirements of Penal Code § 1172.2 are met. *People v. Torres* (2020) 48 Cal.App.5th 550.

The trial court abused its discretion in denying compassionate release based upon a generalized concern about petitioner’s ability to commit crimes but made no findings as to the unreasonable risk of commission of “super strike” offenses. *Nijmeddin v. Superior Court* (2023) 90 Cal.App.5th 77.

The trial court abused its discretion in denying compassionate release because the finding of unreasonable risk to public safety lacked substantial evidence. *People v. Lewis* (2024) 101 Cal.App.5th 401.

Stipulations

In some jurisdictions, it is common practice for all parties to stipulate to relief based upon the recommendation and documentation provided by CDCR. (See sample court order language below.)

¹⁷ Penal Code § 1172.2(j).

¹⁸ Penal Code § 1172.2(b).

Attending the hearing

CDCR is required to facilitate a patient's timely request to attend the hearing remotely.¹⁹

Resentencing is not required

Full resentencing is not required to release an eligible person through compassionate release. If the goal is to release a person from CDCR custody, the critical steps are:

1. A formal recall of sentence under Penal Code § 1172.2; and
2. A court order directing CDCR to release the person.

This allows for release without the need for a full resentencing – an important option in cases where resentencing is not possible because there is no lower term, concurrent, or determinate sentence available to be imposed by a court.²⁰

Language for Court Orders

There is no mandatory language required for compassionate release orders. However, CDCR looks for 2 key elements:

1. A statement granting the recall of sentence; and
2. A directive ordering the individual's release from CDCR custody on the case.

This language is typically included in either a certified minute order or a separate written order signed by the judge.²¹

Sample Language – Connected Care Release

Compassionate release is granted. The sentence is recalled. The California Department of Corrections and Rehabilitation shall release the incarcerated person on this case within 30 calendar days to a location where access to care is available.²²

Sample Language – Immediate Release

The Court finds that [the incarcerated person] meets the medical criteria set forth in Penal Code § 1172.2. The sentence is recalled and compassionate release is granted. The incarcerated person is ordered released from custody as to this case.

Immediate release should be rare, as individuals with complex care and reentry needs risk losing critical transitional support.

¹⁹ Cal. Code Regs., tit. 15, § 3999.209(j).

²⁰ This guidance has been provided after consultations with experienced practitioners and CDCR.

²¹ Information provided directly by CDCR.

²² Cal. Code Regs., tit. 15, § 3999.98(l).

Convictions from Multiple Counties

Previously, if a person eligible for compassionate release had convictions from multiple counties, CDCR would submit a Penal Code § 1172.2 recommendation to the court in each county of conviction. Release depended upon each court taking positive action, which led to some inconsistent outcomes – one court might grant release while another denied it.

CDCR's approach is expected to change based on the recent case *In re Brissette* (2025) 112 Cal.App.5th 147. In *Brissette*, the Court of Appeal interpreted Penal Code § 1172.2 to require only a single court – the last court to impose a sentence – to resolve a recommendation for compassionate release.²³

Parole Supervision

CDCR's position is that everyone who receives a compassionate release from state prison will be subject to parole supervision. CDCR also now maintains that excess custody credits cannot be applied to reduce a parole term.

Whether to object to parole supervision – or the application of excess credits to any period of parole supervision – following compassionate release may require careful consideration of the circumstances. In some circumstances, the post-release services being provided through parole may benefit some individuals. In other circumstances, incarcerated persons may wish to object through their counsel, and if parole is ordered, consider challenging continuing supervision through a writ of habeas corpus.

²³ Id. at 173.

Challenging a Denial of Compassionate Release

Reason for denial	What to file	Appeals process	Court review
CDCR physician will not determine whether an incarcerated person has a diagnosis that meets medical criteria – or – Physician/CME decides person does not meet medical criteria.	30 days to file a Health Care Grievance – CDCR form 602-HC.	If grievance is denied, an appeal may be submitted for a Headquarters’ level review.	After “exhausting administrative remedies,” a writ of habeas corpus can be filed in the trial court in the county of conviction.
CDCR medical staff find that you have a diagnosis that meets criteria, but other CDCR staff do not timely refer the case to the court.	60 days to file an Administrative Grievance form 602-0.	If grievance is denied, an appeal may be filed for Headquarters’ level review – CDCR form 602-2.	After “exhausting administrative remedies,” a writ of habeas corpus can be filed in the trial court in the county of supervision.
Compassionate release denied after hearing.	Notice of Appeal – form CR-120.	60 days to file a Notice of Appeal in the sentencing court.	The Court of Appeal will appoint appellate counsel.

Additional Resources

Information about compassionate release is available from the [Prison Law Office](#).

Information on changes to compassionate release made by AB 960 is available [here](#).

Judicial Council of California’s [Report on Compassionate Release Program](#).

This guide was created by attorneys in the Capacity Building Unit within the Indigent Defense Improvement Division at the Office of the State Public Defender. For additional information, data, or Compassionate Release resources for defenders, contact capacitybuilding@ospd.ca.gov