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CDCR has a process for referring incarcerated individuals who have demonstrated exemplary behavior and meaningful participation in rehabilitative programming for resentencing consideration by the trial court. Such “exceptional conduct” recommendations – which require the approval of the CDCR Secretary – are very rare.

## What is an Exceptional Conduct Recommendation?

Exceptional conduct is one of the categories of resentencing permitted under Penal Code § 1172.1. CDCR may recommend a person for resentencing when their behavior while incarcerated demonstrates sustained compliance with institutional rules and prolonged participation in rehabilitative programming.<sup>1</sup> These exceptional conduct recommendations allow CDCR to identify reformed individuals and enable the sentencing court to determine whether a person’s incarceration remains in the interest of justice given the person’s rehabilitation and growth.<sup>2</sup>

## Eligibility Criteria

### Inclusionary Factors

Per Title 15, California Code of Regulations § 3076.1, for CDCR to refer a person for an exceptional conduct resentencing recommendation, a person must have spent at least ten years in continuous CDCR custody and have shown a consistent record of positive behavior and participation in rehabilitative programming.<sup>3</sup> Positive behavior and participation in rehabilitative programming can be demonstrated by:

- Leadership or facilitation roles in classes or groups
- Participation in educational, vocational, or other training or work assignments
- Consistent positive programming or involvement with self-help and education programs, with substantial credits earned
- Positive laudatory chronos from program staff and correctional staff recognizing positive efforts and contributions
- Preparation for employment after release as shown by work placement chronos, training completion certificates, and documented skills
- Participation in treatment programs like Alcoholics Anonymous, Narcotics Anonymous, or Criminal and Gang Members Anonymous, when relevant to personal factors.

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<sup>1</sup> Penal Code § 1172.1 and Cal. Code Regs., tit. 15, § 3076.1.

<sup>2</sup> California Department of Corrections and Rehabilitation. (2025). [Recall and Resentencing Referral - Family & Friends Services](#).

<sup>3</sup> Cal. Code Regs. tit. 15, § 3076.1, subds. (b)(1) and (b)(2(B)).

## Exclusionary Factors

By statute, Penal Code § 1172.1 does not exclude people who accepted plea bargains, those serving LWOP sentences, or those sentenced to death.<sup>4</sup> However, per Title 15, California Code of Regulations § 3076.1, CDCR does not refer individuals if any of the following apply:<sup>5</sup>

*Rules violations:* Individuals found guilty of a serious or violent rules violation within the last five years or those with pending serious rules violations (e.g., murder, rape, battery, assault, arson, escape, contraband, cellphones, and gang activity).<sup>6</sup>

*Sex offender registrants:* Individuals required to register as sex offenders for 20 years or life under Penal Code § 290(d)(2)(A) or (d)(3).<sup>7</sup>

*Determinate sentence - release date imminent:* Individuals who received a determinate sentence and are already scheduled for release within 18 months.<sup>8</sup>

*Determinate sentence - parole consideration imminent:* Individuals who are serving a determinate sentence for non-violent felonies (Cal. Const, art. I, § 32 (a)(1)) who are eligible for parole consideration within the next 18 months or have already been afforded parole consideration.<sup>9</sup> Note: there is no prohibition on recommending people who have determinate sentences for serious or violent felonies, regardless of their parole date or previous decision.

*Indeterminate sentence - parole consideration imminent:* Individuals who are serving an indeterminate sentence who are scheduled for a parole hearing within the next 18 months or have already been afforded a parole hearing under the following provisions: Cal. Const. art. I, § 32 (a)(1) (nonviolent felony), Penal Code § 3041 (en banc review parole hearings from tie vote), Penal Code § 3051 (youthful offender parole), or Penal Code § 3055 (elderly parole).<sup>10</sup>

*Serving low-term on a single offense:* Individuals who are convicted of a single offense and serving the low (mitigated) term for which there is no lesser-included offense, sentence enhancement, or alternative sentencing scheme which might result in a shorter sentence if resentenced.<sup>11</sup>

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<sup>4</sup> Penal Code § 1172.1.

<sup>5</sup> Cal. Code Regs. tit. 15, § 3076.1, subd. (b)(2).

<sup>6</sup> Cal. Code Regs. tit.15, §§ 3076.1, subd. (b)(2)(C) and 3323(b)-(f) (defining serious or violent rules violations as Division A-1, A-2, B, C, or D offenses).

<sup>7</sup> Cal. Code Regs. tit. 15, § 3076.1, subd. (b)(2)(A); Penal Code § 290(d).

<sup>8</sup> Cal. Code Regs. tit. 15, § 3076.1, subd. (b)(2)(D).

<sup>9</sup> Cal. Code Regs. tit. 15, § 3076.1, subd. (b)(2)(E). Cal. Const., art. I, § 32 refers to nonviolent felonies where individuals are eligible for parole after serving the full term of their primary offense.

<sup>10</sup> California Code of Regulations, tit. 15 § 3076.1, subd. (b)(2)(F).

<sup>11</sup> Cal. Code Regs. tit. 15, § 3076.1, subd. (b)(2)(G). Note: CDCR's regulations prohibit Wardens from making exceptional conduct referrals to the Secretary for those who are serving low term on a single offense. However, when the case is before the sentencing court, the court's power to resentence is

## Only CDCR Can Make an Exceptional Conduct Recommendation

Only the Secretary of CDCR can make a recommendation to a court that an incarcerated person's sentence be recalled through exceptional conduct procedures. However, an incarcerated person can speak to their Correctional Counselor to ask them to evaluate whether they fit the criteria, and the counselor can elect to notify the Warden.

## How the Process Begins

A Correctional Counselor at any institution may notify the Warden if they believe a person meets the criteria for an exceptional conduct resentencing referral.<sup>12</sup> If the Warden agrees, the matter is forwarded to the Classification Services Unit for review. The unit then conducts a comprehensive evaluation of the matter including a review of the person's criminal history, in-custody behavior, staff input, and victim input. The Secretary then makes the final decision.<sup>13</sup>

**Ineligible:** If the Classification Services Unit finds that a referred person is ineligible because of one or more of the outlined exclusions, the reason will be documented in the person's central file, and the incarcerated person will be notified within 10 business days of the decision.

If this happens, the person cannot be reconsidered for an exceptional conduct resentencing recommendation for at least 2 years from the date of decision.<sup>14</sup>

**Eligible:** If, after the evaluation, the Classification Services Unit determines that the person is potentially eligible, the person's name and supporting materials are submitted to the CDCR Secretary for consideration. After review, the Secretary may elect to make an exceptional conduct resentencing recommendation to the trial court.

If that happens, the Secretary directs staff to prepare a Cumulative Case Summary in support of the resentencing recommendation and sends it to the court along with the recommendation.<sup>15</sup>

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broad. Per Penal Code § 1172.1(3)(B), the judge is permitted to vacate the conviction and resentence on a lesser included or a *lesser related* offense, whether or not the offense was charged in the original pleading.

<sup>12</sup> California Department of Corrections and Rehabilitation. (2025). [Recall and Resentencing Referral - Family & Friends Services](#).

<sup>13</sup> Cal. Code of Regs. tit 15, §3076.1, subd. (b)(3).

<sup>14</sup> Cal. Code of Regs. tit 15, §§3076.1, subd. (b)(3)(C) and (b)(4).

<sup>15</sup> The Secretary may decline to make the referral to the sentencing court, but if approved, the Cumulative Case Summary (CCS) is prepared. The CCS includes detailed information about a person, including: biographical data, criminal history, sentencing information, institutional behavior, rules violations, drug tests, placement scores, current housing assignment, work history, rehabilitative

**Hearing and appointment of counsel required:** The court must set a status conference within 30 days of receiving the exceptional conduct recommendation and provide notice to the incarcerated person. The court's order setting the status conference must also appoint counsel to represent the person.<sup>16</sup>

**Victim notification:** Within ten days of notification of the referral, CDCR's Office of Victim and Survivor Rights and Services will notify all victims registered to receive information about the individual.<sup>17</sup>

## Statutory Authority

In its current form, Penal Code § 1172.1 became effective on June 30, 2022.<sup>18</sup> Over time, this process has been renumbered and strengthened with additional language to encourage the release of more individuals. Previous versions include Penal Code § 1170.03<sup>19</sup> and § 1170(d).<sup>20</sup>

Legislative findings and declarations included in Assembly Bill 1540<sup>21</sup> emphasize the legislature's intention to encourage the resentencing of rehabilitated individuals:

- "It is the intent of the legislature for judges to recognize the scrutiny that has already been brought to these referrals by the referring entity"
- "There is almost no evidence that long sentences deter the crimes they are intended to deter"
- "Research shows that criminal involvement diminishes dramatically after an individual reaches 40 years of age and even more after 50 years of age."

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programming, educational information, and the number of visitors who were approved and made visits to the person. See Cal. Code Regs., tit. 15, § 3076.1(b)(3)(D).

<sup>16</sup> Penal Code § 1172.1(b)(1).

<sup>17</sup> California Department of Corrections and Rehabilitation. (2025). [Recall and Resentencing Referral - Family & Friends Services](#).

<sup>18</sup> Assembly Bill 200, (Stats. 2022, ch. 58) § 9, renumbered §1170.02 to its current form of Penal Code § 1172.1.

<sup>19</sup> Assembly Bill 1540 (Stats. 2022, ch. 719), adding protections such as the right to counsel, right to a hearing, the right to present mitigating circumstances, and a presumption in favor of resentencing.

<sup>20</sup> Assembly Bill 1812 (Stats 2018, ch. 36), allowing the court to consider postconviction factors including disciplinary record, record of rehabilitation, diminished physical condition, risk for future violence, and whether circumstances have changed since the sentence so that incarceration is no longer in the interests of justice; see also Assembly Bill 2942 (Stats. 2018, ch. 1001) allowing District Attorney's offices to initiate resentencing.

<sup>21</sup> Assembly Bill 1540 (Stats. 2022, ch. 719).

## The Resentencing Hearing

*Remote appearances:* An incarcerated person has the right to be present at their resentencing hearing, including the option to appear remotely.<sup>22</sup>

*Hearing required before denial:* A judge cannot deny a resentencing without first holding a hearing and allowing all sides to be heard.<sup>23</sup>

*Manner of conviction not material:* The court can resentence regardless of whether the person was convicted through a plea or after a trial.<sup>24</sup>

*Resentencing hearings:* By statute, a CDCR resentencing referral creates a presumption that resentencing be granted.<sup>25</sup>

### Presumption that resentencing will be granted

Per Penal Code § 1172.1(b)(2), "There shall be a presumption favoring recall and resentencing of the defendant, which may only be overcome if a court finds the defendant *currently* poses an unreasonable risk of danger to public safety, as defined in subdivision (c) of Penal Code § 1170.18."

Section 1170.18 defines an "unreasonable risk of danger to public safety" as "an unreasonable risk that the petitioner will commit a new violent felony within the meaning of Penal Code § 667(e)(2)(C)(iv) also known as a "superstrike".

*What the court can consider at the hearing:* At the sentencing hearing, the judge can broadly consider information from both sides. In addition, the judge is required to consider postconviction factors. These include, but are not limited to:<sup>26</sup>

- Disciplinary record and record of rehabilitation while incarcerated
- Age, time served, diminished physical condition that have reduced the risk for future violence
- Evidence that reflects that circumstances have changed since the original sentence such that continued incarceration is no longer in the interests of justice
- Constitutional rights were violated in the underlying proceedings

<sup>22</sup> Penal Code § 1172.1(a)(9).

<sup>23</sup> Penal Code § 1172.1(a)(9).

<sup>24</sup> Penal Code § 1172.1(a)(3).

<sup>25</sup> Penal Code § 1172.1(b)(2); Penal Code § 1170.18.

<sup>26</sup> Penal Code § 1172.1(a)(5).

- Evidence that undermines the integrity underlying the conviction or sentence
- Psychological, physical, or childhood trauma, including:
  - Abuse, neglect, exploitation, sexual violence
  - Intimate partner violence or human trafficking prior to or at the time of the commission of the offense
- If the person was a youth (under 26) at the time of the offense as defined under Penal Code § 1016.7(b)<sup>27</sup>

*Resentencing options:* The court can deny or grant the resentencing motion. If the court grants the motion, the court can resentence a person to a reduced term of imprisonment in different ways. For example, the court can resentence to a lesser offense or reduce the charge to low-term or strike sentence enhancements. The court can then resentence the person to a reduced term of imprisonment.<sup>28</sup>

*Modification must be meaningful, and all ameliorative laws must be applied:* The legislature has been clear that modifications of sentences must be meaningful. In the legislative findings and declarations from AB 600, the Legislature stated:

- “In cases where the judge concludes that recall and resentencing pursuant to 1172.1 . . . is appropriate, the resentencing result in a *meaningful modification*” Meaningful modification means it will cause some actual change in the person’s circumstances, including, but not limited to immediate release, earlier release, and newly acquired entitlement to review by the Board of Parole hearings or the advancement of eligibility for a parole hearing.”<sup>29</sup>

If the case is recalled, then all current sentencing laws apply, including legal changes that may prevent the court from re-imposing certain parts of the sentence and/or give the judge more options to reduce enhancements. For example:

- Gang enhancements can only be reimposed if they meet the stricter provisions of AB 333.<sup>30</sup>
- High term can only be reimposed with aggravating factors proven beyond a reasonable doubt.<sup>31</sup>
- The court may strike enhancements based upon mitigating circumstances such as youth or childhood trauma.<sup>32</sup>

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<sup>27</sup> Penal Code § 1016.7(b).

<sup>28</sup> Penal Code § 1172.1(3)(B).

<sup>29</sup> Assembly Bill 600 (Stats. 2023, ch. 446).

<sup>30</sup> Assembly Bill 333 (Stats. 2022, ch. 699); *People v. Lopez* (2025) 17 Cal.5th 388, 396; *People v. Trent* (2025) 112 Cal.App.5th 251, 264.

<sup>31</sup> Penal Code § 1170(b)(2); *People v. Wiley* (2025) 17 Cal.5th 1069, 1087; *People v. Lynch* (2024) 16 Cal.5th 730, 768.

<sup>32</sup> Senate Bill 81 (Stats. 2022, ch. 721).

# Exceptional Conduct Info Sheet

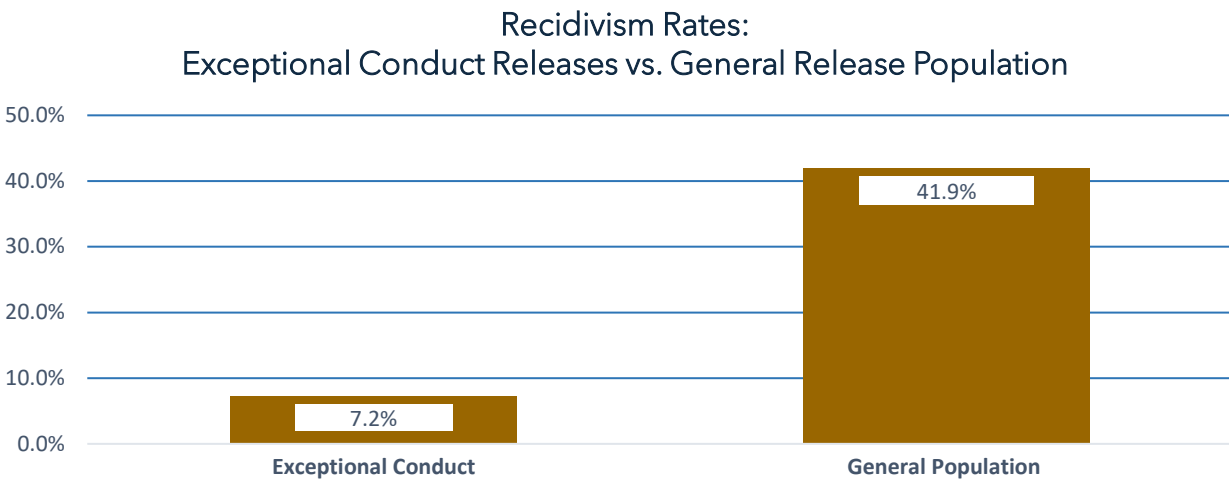
- Uncharged enhancements can be substituted for charged enhancements to achieve a reduced sentence.<sup>33</sup>

If the court resentsences the individual, CDCR's Case Records Unit is required to audit all legal documents and recalculate the release date accordingly.

*Appeals:* Individuals referred for exceptional conduct can appeal if the trial court judge does not appoint them counsel, fails to hold a hearing, or denies resentencing.<sup>34</sup>

## Low Recidivism Rates

*Low recidivism rates:* California Policy Lab was able to track 93 of the first 130 individuals who had been resentenced for exceptional conduct. Three years post-release, none of these individuals had been convicted of a new serious or violent felony, and only 7 percent had been convicted of any offense.<sup>35</sup> In marked contrast, there is an average 42 percent recidivism rate for the general population released from prison.<sup>36</sup>



<sup>33</sup> *People v. Tirado* (2022) 12 Cal.5th 688.

<sup>34</sup> Penal Code § 1172.1(a)(9); Penal Code §1172.6(b)(2); § 1170.18.

<sup>35</sup> Committee on Revision of the Penal Code and California Policy Lab (2025). [California Department of Corrections and Rehabilitation-Initiated Resentencing](#) pp. 2,7.

## Additional Resources

California Department of Corrections and Rehabilitation. [\*Recall and Resentencing Referral - Family & Friends Services.\*](#)

Committee on Revision of the Penal Code and California Policy Lab. [\*California Department of Corrections and Rehabilitation-Initiated Resentencing.\*](#)

Ella Baker Center. [\*Back to Court: A New Resentencing Guide for Penal Code 1172.1 and New Resentencing Laws in California.\*](#)

Human Rights Watch. [\*I Just Want to Give Back: The Reintegration of People Sentenced to Life Without Parole.\*](#)

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 Exceptional Conduct resources for defenders, contact [capacitybuilding@ospd.ca.gov](mailto:capacitybuilding@ospd.ca.gov)