



Prisoner Advocacy Network (PAN)
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<https://www.prisoneradvocacynetwork.org/covid-19.html>
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PAN Self-Advocacy Routes of Release Related to COVID-19

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Your Responsibility in Using These Guides

PAN's COVID-19 Guides are not intended to give legal advice, but rather general legal information. No attorney-client relationship is created by using any information in this guide. You should consult an attorney for legal advice specific to your situation. When putting PAN's COVID-19 Guides together, we did our best to give you useful and accurate information because we know that people who are currently or formerly incarcerated often have difficulty getting legal information. However, the laws change frequently and are subject to differing interpretations. If you use this information, it is your responsibility to make sure that the law has not changed, and applies to your particular situation. This guide was produced along with additional materials about COVID-19 in CDCR that people outside can download and mail to you, including: [PAN Guide to Administrative Appeals For COVID-19](#) (Short Version); [PAN Guide to Administrative Appeals For COVID-19](#) (Long Version); and, [How To Draft Declarations to Support Requests Related to COVID-19](#). You can write to the Prison Law Office office@prisonlaw.com General Delivery, San Quentin, CA 94964 for a [California State Habeas Corpus Manual](#); a manual on [California State Petition of Writ of Mandate](#); a [Federal Habeas Corpus Manual](#); a [Lawsuits for Money Damages Against Prison Officials Manual](#); as well as a guide specifically on [Requesting CDCR Records](#).

What is Covered in this Guide

This Guide covers the following routes to raise a claim related to Covid-19 in the courts:

- Why Plata/Coleman are unlikely to lead to release
- California Penal Code §1170(d)(1) Criminal Resentencing in Superior Court
- A petition for writ of habeas corpus in state court
- A petition for writ of mandamus in state court
- A petition for writ of habeas corpus in federal court
- A civil rights claim under 42 U.S.C. Sect. 1983 in federal court
- Why other options are not likely to lead to release due to COVID-19

Why Plata/Coleman Unlikely to Lead to Release

On March 25, 2020, attorneys from the [Prison Law Office](#) (PLO) and the law firm of [Rosen, Bien, Galvan, & Grunfeld](#) (RBGG) filed an emergency motion in the [Coleman v. Newsom](#) and [Plata v. Newsom](#), [overcrowding lawsuits](#) asking for release. On April 17, Judge Tigar held that



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the COVID-19 policies that the state presented to the court were, for now, constitutionally adequate so no releases would be ordered through this case yet, or likely ever. The court noted that it believes that the government has the ability to take additional steps to decrease the risk of spreading the disease, and noted it would continue to oversee the state's response. The court also indicated that it may find CDCR's response "deliberately indifferent" and therefore unconstitutional if circumstances change in the future. Because of the April 17th court order saying that the state's COVID policies were thus far constitutional, it is more important than ever to make a record showing that the policies CDCR claims are in place are not actually in place or were so delayed to be meaningless or physically harmful to you. If CDCR is proven to have failed to implement its policies, that could be a basis for your release. You are the one who will need to provide the proof that CDCR's practices are different than the policies it claims to have implemented. If you create the paper trail that proves this, the judge may change his mind.

Potential Routes to Release or Relief Due to COVID

There are many different routes to seek relief relating to COVID-19 in addition to the routes covered in this guide. Below is a brief summary of some of the other routes to relief that you may consider outside of filing a lawsuit against CDCR. Due to the emergency nature of COVID-19 people are filing emergency suits in various kinds of courts, styled as various kinds of cases, or combining traditionally separate case types into one case. You have a few options, and each corresponds to a different court form. The form and documents you attach to it need to contain all information that the court needs to rule in your favor in a well-organized way so that it is easy to follow, and without overloading the court with information that is not really relevant to the issue you are raising. The enclosed documents should help you figure out what is most relevant for COVID-19.

California Penal Code §1170(d)(1) Criminal Resentencing in Superior Court

Penal Code § 1170(d)(1) authorizes a court to recall a sentence and resentence a person to a lesser sentence either: (1) on the court's own motion within 120 days after sentencing, or (2) at any time upon a recommendation from the CDCR, the Board of Parole Hearings (BPH), the District Attorney, or the County Correctional Administrator (typically the Sheriff). CDCR or the DA can send a referral letter to a trial court to give the judge the authority to recall the sentence of someone who is currently incarcerated to be resentenced "anew." An 1170(d)(1) referral would go to the court corresponding to location of your county of conviction (not where you were sentenced). In the past, CDCR and the courts have been reluctant to consider people's efforts to ask for consideration directly, and instead preferred to allow CDCR or the DA to initiate the



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referral. Given COVID-19 it is worth asking any custody or medical staff you know to try to make a referral to the

Warden, Director of Adult Institutions, and Secretary Diaz for you. Defense attorneys have had some luck contacting CDCR and DAs to present a package of paperwork requesting “exceptional conduct” consideration. Now is a good time to contact your criminal attorney about this, especially because the statute requires the court to consider advanced age and diminished physical condition, two COVID-19 risk factors. The Ella Baker Center’s guide has more information about the various categories CDCR has considered, which include exceptional conduct: [Back to Court: a Resentencing Guide for the Fair and Just Sentencing Reform Act \(SB 1393\) and PC 1170\(d\)\(1\)](#). The Office of Administrative Law’s website has the [temporary CDCR rules](#).

P.C. 1170(d)(1) empowers CDCR and DAs to petition sentencing judges for resentencing: “The court may consider postconviction factors, including, but not limited to, the inmate’s disciplinary record and record of rehabilitation while incarcerated, evidence that reflects whether age, time served, and diminished physical condition, if any, have reduced the inmate’s risk for future violence, and evidence that reflects that circumstances have changed since the inmate’s original sentencing so that the inmate’s continued incarceration is no longer in the interest of justice.” There is no indication CDCR or DAs will use this process. When contacted, CDCR indicated the process is too slow for COVID relief, even when courts were operating on a normal basis. That is, of course, not even considering delays caused by court rules limiting review of criminal matters due to COVID already slowing resentencing motions pending before covid. Though COVID-19 appears to be an ideal circumstance for CDCR and District Attorneys to seek judicial evaluation for release because the COVID-19 risk factors align with the statute’s factors, including someone’s advanced age, diminished physical condition, this power is not being used in a timely fashion, if at all.

Contacts

- Emily at Ella Baker Center to see if you are already on CDCR’s referral list, and to get on their mailing list for updates - 1419 34th Ave #202, Oakland, CA 94601 (510) 428-3939 emily@ellabakercenter.org.
- Stanford Three Strikes Project is also working on some cases Michael Romano, (650) 736 - 8670, mromano@stanford.edu; Susan Champion, (650)736 - 7757, schampion@law.stanford.edu; Milena Blake, milenab@stanford.edu; Crown Quadrangle, 559 Nathan Abbott Way Stanford, CA 94305-8610.



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- Sentence Review Project, to advocate to DAs in your county, though they likely can't take individual cases. [Intake form](#), 1904 Franklin St. Suite 205, Oakland, CA, 94612 info@sentencereview.org.
- [The Public Defender's office](#) and/or the private attorney that handled your criminal case to request resentencing under PC 1170(d)(1) from CDCR or the DA.

Commutation Requests to Governor Newsom

According to <https://www.gov.ca.gov/commutations/>, people who have been convicted of a crime and are currently serving their sentence in California may apply for a commutation (reduction of sentence). The Board of Parole Hearings (BPH) investigates commutation applications. In deciding whether to grant a commutation, the BPH considers:

- the impact of a commutation on the community, including whether the grant is consistent with public safety and in the interests of justice;
- the age and circumstances of the offense and the sentence imposed, and the age of the applicant at the time;
- the applicant's self-development and conduct since the offense, including whether the applicant has made use of available rehabilitative programs and has identified and addressed treatment needs;
- the applicant's need for a commutation; and
- the applicant's plans upon release from custody.

To apply for commutation for the first time or for the first time in three years, you must submit a [Commutation Application](#) to the Governor's Office. You may submit additional information or copies of relevant documents in support of your application, such as letters of support or certificates of achievement. Do not send original documents because application materials will not be returned. You must also submit completed [Notice of Intent to Apply for Clemency](#) to the district attorney in the county of the conviction for your commitment offense; and submit an authorization for release of medical information (form 7385) if you are applying for a commutation because you are suffering from a terminal illness or have a severe and chronic disability that would be substantially mitigated by release from prison or reduction of sentence. If you submitted a commutation application in the last three years and would like Governor Newsom to re-open your prior application and consider it, you may submit a Reapplication for Clemency. These forms are available at <https://www.gov.ca.gov/clemency/>. CCWP's guide to commutation is here <https://droplwop.com/commutations-application-guide/>.



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Governor Newsom indicated he will not grant mass commutation. Though the California Governor enjoys wide discretion to grant executive clemency in the form of commutations that substitute a less severe punishment for that imposed by the court the process is slow and may require DA, and at times judicial review. California Constitution Cal. Const. art. V, § 8; Cal. Penal Code § 4800. The governor may not grant clemency to a person twice convicted of a felony without first obtaining a recommendation from the California Supreme Court, but the standard for that recommendation is only a determination that “the applicant’s claim has sufficient support that an act of executive clemency, should the Governor choose to grant it, would not represent an abuse of power.” “Procedure for Considering Requests for Recommendations Concerning Applications for Pardon or Commutation,” Admin. Order 2018-03-28, (Cal. 2018); See also, e.g., See Cal. Penal Code § 4853. Cal. Penal Code § 4802.05.

Contact: Governor Gavin Newsom State Capitol, 1303 10th St., Suite 1173, Sacramento, CA 95814. kelli.evans@gov.ca.gov, eliza.hersh@gov.ca.gov.

File Emergency 602 & 602HC and Seek Release through a Writ of Habeas Corpus

If you are medically high risk and/or are set to be released soon, file a 602 and 602HC seeking early release. If you believe that you are medically high risk because you have underlying health conditions such as diabetes, hypertension, respiratory illness, or cardiovascular disease, and/or are elderly (over 50), prepare a record identify yourself by filing a 602 seeking early release due to risk of COVID-19. List all medical conditions that make you high risk and attach any recent medical records documenting your conditions. State clearly: **I am not adequately protected from a coronavirus infection at this facility because** (describe the conditions that threaten you with infection, such as inadequate sanitation of facility or availability of soap, disinfectant, or hand washing facilities; inadequate isolation of symptomatic people; inadequate quarantine of exposed persons; inadequate exclusion of symptomatic or exposed staff, contractors or volunteers, inadequate testing and reporting, or inadequate health care for the infected.



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A petition for writ of mandamus in state court

Paste summary, relevant forms, and relevant addresses and contact information from self help litigation guide.

A petition for writ of habeas corpus in federal court

Paste summary, relevant forms, and relevant addresses and contact information from self help litigation guide.

A civil rights claim under 42 U.S.C. Sect. 1983 in federal court

Paste summary, relevant forms, and relevant addresses and contact information from self help litigation guide.

Why Other Release Mechanisms Are Likely Unavailable or too Delayed to Be Effective

What You Can Do Now

- **Build a Record:** The record you build will support with for any route of advocacy you may take. Make notes of what is happening at your facility; gather medical records and other evidence of your conditions; reach out to loved ones to build a parole plan, which is an important part of any request for release.
- **File a 602 if adequate precautions are not taken within your facility:** CDCR has said it will follow its typical protocol for influenza (flu) outbreaks, which includes isolation of people with symptoms and separate quarantines of others who are exposed to those with symptoms. File a 602 or a Group 602-G if precautions are not taken around you, including: Provision of adequate soap and disinfectant free to all incarcerated persons; distribution of double the amount of soap; provision of hand sanitizer when hand washing facilities are not available; sanitation of high-touch surfaces throughout the facility including phones, counters, tables, eating surfaces, doorknobs, faucets, and all bathroom surfaces. Bathrooms should be sanitized three times a day.
- **Update your forms on file with CDCR** about who you want to be involved in your medical care and how you want them to be involved. Mail copies of the various forms below and share with whomever you authorize for release of information and decision-making on your behalf.



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Record Authorization Release Form 7385 gives someone outside the ability to get information about you from CDCR's California Correctional Health Care Services (CCHCS), including access to your medical and custody records and the ability to speak with someone at the prison about your health via phone calls, emails, or faxes with this information.

- [CDCR 7421 Advance Directive](#) is a document that allows you to write your wishes about end-of-life care. It allows you to say what you want so that family, friends, doctors, nurses, and other health care staff will know for sure what you want if you can no longer speak for yourself (for example: "I don't want CPR (to be revived) or a breathing machine if my heart stops or I cannot breathe on my own. If I cannot eat on my own, a feeding tube is okay."). It also allows you to name someone as your Medical Decision-Maker to make health care choices for you if there comes a time when you cannot physically advocate for yourself. They can tell others about your wishes for treatment at the end of life and make sure they are followed.
 - The Advance Directive is NOT a "Will" and has NOTHING to do with your possessions or assets inside or outside of prison.
 - **Please note:** PAN/your PAN advocate cannot serve as a Medical Decision-Maker on your behalf.
- [CDCR 7465 POLST](#) is short for Physicians Orders for Life Sustaining Treatment. This form is in addition to form CDCR 7421 Advance Directive form. The POLST is a form used by all hospitals in California (and other states) and is used to write a patient's wishes about end-of-life care. Ask your counselor or health care provider for one.
- **Write to Prison Law Office for additional legal handouts:** the Prison Law Office has a manual about Covid-19, a [California State Habeas Corpus Manual](#); a manual on [California State Petition of Writ of Mandate](#); a [Federal Habeas Corpus Manual](#); and a [Lawsuits for Money Damages Against Prison Officials Manual](#); as well as a guide specifically on [Requesting CDCR Records](#). You should write to the Prison Law Office directly for those materials.



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Where to send requests for release due to COVID-19 (via LEGAL MAIL)

- CDCR's COVID-19 response team. COVID19@cdcr.ca.gov.
- J. Clark Kelso, Federal Medical Receiver (916) 739-7000 ckelso@pacific.edu
- Ralph Diaz, Secretary for CDCR (916) 324-7308 — press 4 ralph.diaz@cdcr.ca.gov
- Diana Toche, Undersecretary - Health Care Services diana.toche@cdcr.ca.gov
- Connie Gipson, Director, Division of Adult Institutions connie.gipson@cdcr.ca.gov
- If people have gone before the board and were found suitable, contact BPH and Governor to ask for expedited release Jennifer.Shaffer@cdcr.ca.gov
- Write and call the [medical department at the prison](#).
- Reach out to the [Ombudsman](#) assigned to prison.
- Ask a lawyer who is available to help or already working with you on the case to reach out to the prison's [Litigation Coordinator](#).
- Contact facility's Warden [here](#)
- If release date within 60 days and may qualified for [expedited](#) release James King james@ellabakercenter.org
- If referred by CDCR under Penal Code section 1170(d)(1) for resentencing, contact emily@ellabakercenter.org.
- [The Public Defender's office](#) and/or the private attorney that handled your criminal case to request resentencing under PC 1170(d)(1) from CDCR or the DA.
- [Prison Law Office](#) (PLO) General Delivery, San Quentin, CA 94964 office@prisonlaw.com
- [Rosen, Bien, Galvan, & Grunfeld](#) (RBGG) 101 Mission St. 6th Fl, San Francisco, CA 94105 [Email](#)
- Governor Gavin Newsom State Capitol, 1303 10th St., Suite 1173, Sacramento, CA 95814. [Submit](#) commutation application. Contact kelli.evans@gov.ca.gov, eliza.hersh@gov.ca.gov.
- The [superior](#) court where the prison is through a writ of habeas corpus/mandate.
- The [federal](#) court where the prison is through a habeas/civil rights suit under 42 U.S.C. 1983.
- The [legislators](#) representing your home / district you are incarcerated in.
- Your loved ones. They can submit packages to advocate for your release. You should fill out medical and general release and authorization forms so they can obtain documents from CDCR and allow CDCR to speak to them. These forms include the [CDCR 1019/1021](#) custody records release, [CDCR 7385 \(health record release authorization\)](#) (updated October 2019 version), [CDCR 7421](#) Advance Directive for Health Care (updated June 2018 version).
- Stanford Three Strike Project, Michael Romano, 650 736.8670, mromano@stanford.edu, Susan Champion 650 736.7757 schampion@law.stanford.edu, Milena Blake milenab@stanford.edu Crown Quadrangle, 559 Nathan Abbott Way Stanford, CA 94305-8610



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- *Please note, if you send anything to PAN: PAN will not file anything in court, with CDCR, or with the Governor on your behalf.*