



Prisoner Advocacy Network

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Updates on § 1170(d)(1) Resentencing in LA County

PAN attended a webinar on Sunday, Jan 31 2021 by the Ella Baker Center about resentencing opportunities as it pertains to Penal Code § 1170(d)(1) and the new directives of District Attorney George Gascon in LA County.

As background, the webinar explained that Penal Code § 1170(d)(1) allows three entities - DAs offices, the Board of Parole Hearings, and the CDCR Secretary - to make recommendations to the courts to recall and resentence people who are currently serving prison sentences in California. So far, CDCR has made the most recommendations. These recommendations have fallen into two categories: recommendations based on an incarcerated individual's exceptional conduct, and recommendations based on changes in the law (i.e. recommending people for resentencing because the law has changed and their sentence is no longer valid under current law).

Over the past two years, a limited number of DAs have also begun making the referrals under Penal Code § 1170(d)(1). In December, DA George Gascon announced that he intended to start reviewing cases originating in LA County and making referrals for resentencing using these powers.

There have been a lot of questions about how DA Gascon's office intends to approach this work. A woman named Diana Teran was hired recently as a special advisory to DA Gascon and has been tasked with creating a Resentencing Unit at his office. She participated in the webinar and shared that the DA's office was still in the process of setting up a Resentencing Unit. Since the webinar, the DA's office has updated their website with more information, though the Unit is still being established. On March 5, the Ella Baker Center shared with PAN its updated cover letter on Resentencing. Here are some key updates from the letter:

- On March 2, 2021, CA Senator Benjamin Allen introduced Senate Bill 483 which will make RETROACTIVE the repeals of the 3-year drug (via SB 180) and the 1-year prior felony (via SB 136) sentence enhancements. EBC is proud to co-sponsor SB 483.
- Despite CDCR's criteria and the vague language in PC 1170(a)(3), **people with LWOP and death sentences are NOT excluded from PC 1170(d)(1) resentencing!**
- As of 12-7-20, George Gascon is the new District Attorney in Los Angeles and will be reviewing up to 20,000 for potential resentencing. Gascon is currently setting up a resentencing review unit. Gascon is prioritizing people who were already referred by CDCR for resentencing. On 2-15-21 **Gascon's office also announced a "Tier" system for case review for resentencing** - in the "First Tier" they are looking at:
 - people of advanced age and medically vulnerable people
 - people with non-violent, non-serious, non-sexual cases over 50 years old, who have already served 10 years or more on a sentence 20 years or longer; and
 - people who were 14 and 15 years old at the time of arrest but charged as adults, who have already served 10 years, and whose case is not homicide and who do not have to register per Penal Code section 290.
- Gascon's office is asking everyone to **NOT SEND ANYTHING IN**. You will be contacted if your case is under review. Your support network can check the DA's website for more information on this: <https://da.lacounty.gov/policies/resentencing-FAQ>. We encourage you to prepare documents now to be ready to submit when the time comes, and I am including our



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Checklist for Resentencing Packet to assist you in gathering documents. Once the First Tier cases listed above have been reviewed, the Gascon's Office will post additional criteria for other individuals eligible for review.

- As of 10-1-20, the new CDCR Secretary (CDCR's top executive) is Kathleen Allison, kathleen.allison@cdcr.ca.gov. This is the person who approves all of CDCR's PC 1170(d)(1) referrals before they are sent back to the trial court.
- CDCR updated its criteria and process for making PC 1170(d)(1) resentencing referrals, introducing new eligibility criteria in its Emergency Draft Regulations, approved on 12-10-2019, which are in effect until May 10, 2021. These emergency regulations will be still subject to a public hearing and comment process which we anticipate will take place in mid-2021. You can make your voice heard in Public Comment & oppose unfair exclusions so more people can come home!
- Even if someone is DENIED PC § 1170(d)(1) relief in court, the referral itself may be helpful in advocating with CDCR, District Attorneys, and/or the Governor's Office for expedited release under emergency powers. **YOU HAVE THE RIGHT TO APPEAL A DENIAL** - even if months have passed, there was no hearing, and you never received timely notice of your denial. You should contact the Public Defender Office in your county of conviction or your lawyer to learn more.
- If you believe staff have recommended you for a PC § 1170(d)(1) referral, here are some things you can do to get more information:
 - You can speak with your counselor to see if they have more information. If it feels safe to do so, you can file a Form 602 (or a 602-HC specifying the urgency of your PC 1170(d)(1) resentencing given your medical condition and listing your medical history) with your counselor and request a status update on your PC § 1170(d)(1) referral process. You can also submit an updated parole plan, relapse prevention plan, and/or other positive evidence of rehabilitation to your counselor to be added to your C-File.
 - You can reach out to the Public Defender or the lawyer who previously represented you, to inquire if they have received any information about a PC 1170(d)(1) referral sent from CDCR to the court, or if the District Attorney in this county is making referrals.
 - You can reach out to the District Attorney in your county of conviction and inquire if they have a unit or team set up reviewing people for potential PC 1170(d)(1) resentencing referrals and ask them to send intake forms. **BE CAREFUL - ANYTHING YOU SAY TO THE D.A. CAN BE USED AGAINST YOU** in future parole hearings, future resentencing, and other important ways. Consult with any lawyers working on your case beforehand.

Additionally, we are including the Ella Baker checklist of the types of things to include in a package to advocate for resentencing. Again, at this moment in time, the DAs office is NOT accepting applications. However, The advocates at the Ella Baker Center advised that it's never too early to start on such a package so that if you get notified that your sentence is being considered under Penal Code section 1170(d)(1), you have supplemental information that you can share with the DA.