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**PROTECTING OUR COMMUNITY SINCE 1850**

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**AB 2942 POLICY**

**Recall & Resentencing Review Procedure**

**I. Introduction**

Pursuant to Assembly Bill 2942, a wholly discretionary and informal, petitioner-initiated review process was established whereby the District Attorney may, under appropriate circumstances, recall a petitioner's sentence and recommend an alternative sentence.

**II. Mission Statement**

The San Joaquin County District Attorney's Office is committed to seeking justice for the community of San Joaquin County. In seeking justice, the Office of the District Attorney is committed to a common sense and just approach to criminal prosecution as follows:

- 1) Protect the safety of the community and advocate for the victims of violent and serious criminal conduct.
- 2) Individuals engaged in "Violent" and "Serious" crimes represent an increased threat to community safety.
- 3) Repeat offenders and multiple crime offenders are regarded as an increased threat to the safety of the community.
- 4) Offenders who accept responsibility for their criminal activity should abide by the plea agreement for which they bargained.

The District Attorney has the discretion to revisit a sentence to determine whether in the interest of justice, the sentence should be reduced. It is the goal of this Office and the PCRU to review these claims in a fair and independent manner in the ultimate pursuit of the truth and justice.

**III. Internal Guidelines**

It is the responsibility of the Post-Conviction Review Unit (PCRU) to review requests for the District Attorney to petition the court to recall and resentence a defendant who was convicted of a crime by the San Joaquin County District Attorney's (SJFDA) Office.

The PCRU will review sentences upon proper petition from a petitioner. Should a petitioner's request be meritorious, the SJFDA's Office will seek to petition the court to recall and resentence the petitioner.

## 1. Statutory Authority

The ability of a District Attorney to request a court to recall and resentence derives its authority from Penal Code § 1172.1(a)(1) (Assembly Bill 2942).

## 2. Procedural Requirements

Sentencing Review is an informal procedure provided for the benefit of petitioners. Because granting of a resentence pursuant to Penal Code 1172.1(a)(1) is completely discretionary, it is the petitioner's responsibility to present their case in its entirety. For this reason, the following procedural requirements need to be met for a request to recall and resentence to be properly considered:

### A. **Complete the "Sentence Review Request" Form**

A petitioner must complete the recall and resentencing review form in its entirety. The request must be legible, coherent, and must be accompanied by all referenced exhibits and declarations. Case information, grounds for relief, and the specific type of relief sought must be properly stated.

Failure to complete the form will be an immediate denial (without prejudice to properly refile).

Any person filing on petitioner's behalf must provide their contact information.

### B. **Exhaust Legal Remedies**

Petitioner must have exhausted all other legal remedies, particularly their appeal. Primarily, if petitioner has appealed their conviction and an appeal is currently pending, then their request is premature. This is a ground for immediate denial of the request, without prejudice.

Petitioners must state which legal remedies they have pursued to reduce their sentence, if any. Failure to pursue alternate, available legal remedies must be adequately explained, but may weigh against granting relief.

### C. **Release of the Central File ("C-File")**

An inmate's C-File is their master file maintained by the department containing the inmate's records.

Because rehabilitation is something the court takes into consideration when granting resentencing, the District Attorney's office must have access to petitioner's C-File to review in-prison conduct. Dangerous or rule-breaking behavior in prison will weigh against granting relief, while positive behavior and participation in rehabilitative programs will weigh in favor of relief.

#### **D. Present All Declarations Under Penalty of Perjury, with Declarant's Contact Information**

Any declarants must provide declarations under penalty of perjury. The declarant's contact information must be included in the request so that this office may verify their declarations.

#### **E. Disqualifying Claims**

The following cases will not be eligible for discretionary relief pursuant to Penal Code 1172.1(a)(1):

##### **i. Out-of-county Cases**

This office does not have jurisdiction to review a conviction from another county.

##### **ii. Disqualifying Charges**

###### **a. Section 190.2 (Special Circumstances) allegations**

As a matter of law, pursuant to Penal Code §1385.1, a judge has no discretion to strike or dismiss any special circumstance (§ 190.2) that is plead or proven. Any petitioner serving a life sentence without possibility of parole is legally ineligible for relief.

###### **b. Violent Crimes enumerated in Penal Code 667.5(c).**

The Office of the District Attorney for San Joaquin County is committed to protecting victims against the most violent offenses. As such, a petitioner who has been convicted of an offense enumerated in Penal Code 667.5(c) would not be eligible for relief under Penal Code 1172.1(a)(1).

###### **c. Serious Crimes enumerated in Penal Code 1192.7(c).**

The Office of the District Attorney for San Joaquin County is committed to protecting victims against the most serious offenses. As such, a petitioner who has been convicted of an offense enumerated in Penal Code 1192.7(c) would not be eligible for relief under Penal Code 1172.1(a)(1).

###### **d. Cases which require registration pursuant to Penal Code 290.**

Offenders required to register pursuant to the Sex Offender Registration Act have engaged in criminal conduct that has victimized this community's most vulnerable members. As such, they would not be eligible for relief under Penal Code 1172.1(a)(1).

###### **e. Cases in which the petitioner entered a plea.**

The vast majority of cases filed in San Joaquin County are resolved via a plea bargain. In these situations, fair and equitable negotiations are undertaken by the District Attorney's Office and legal counsel for the petitioner/defendant, and approved by the court. These plea negotiations always consider a significant reduction in the charges and/or exposure of the case, for the benefit of the petitioner/defendant.

As such, the petitioner/defendant should abide by their judicially-approved bargain.

### 3. Processing the Request

#### A. **Communication with Petitioner or Petitioner's Agent**

All communication with petitioner or petitioner's agent must be through e-mail or mail.

#### B. **Review Procedure**

The petition will be reviewed for procedural sufficiency and absence of disqualifying criteria. If a petitioner has a disqualifying offense, a denial letter explaining the reason for the denial will be sent to the petitioner.

If a request form is not complete, petitioner has an appeal pending, or petitioner has failed to provide necessary documentation, their petition will be denied without prejudice to properly refile. This denial will be sent in a form letter describing the deficiency.

#### C. **Qualification Considerations**

##### i. **Seriousness of the Commitment Offense**

The primary consideration will always be the facts of the conviction. Questions to consider include but are not limited to: What was the nature of the harm petitioner caused? Was there a weapon brandished or used? Was there physical injury, and if so, to what extent? Was substance abuse a factor?

##### ii. **Criminal History and Recidivism**

Review of each petitioner's prior criminal record is required. Recidivist behavior, especially recidivism with escalating criminal conduct strongly counts against granting relief.

##### iii. **Sentence**

###### a. **Date of the Conviction**

If petitioner is recently convicted, a reduction of their sentence may result in a disproportionately low sentence for their conduct. Petitioners with recent convictions, particularly convictions where the appeal is pending, are poor candidates for relief. Here, the portion of their sentence they have served positively correlates with the likelihood they will receive relief (older convictions are more likely to get relief).

b. **Minimum Eligible Parole Date (MEPD) and Release Date**

There is no timeline prescribed for the review of recall and resentencing petitions. Review times will depend heavily on current workload and availability of the attorneys and legal assistants. As a result, the date of conviction, MEPD and/or anticipated release date will determine whether the effort of reviewing and preparing a recommendation is justified. Remember, recall and resentencing does not vacate a conviction, but only reduces the sentence. As a result, if a petitioner is anticipating being released in six months or less, they may find they finish serving their sentence before their petition is finished processing.

Likewise, a petitioner eligible for parole, or one who will become eligible for parole shortly after they file their petition, is less likely to receive relief because parole is a sufficient legal mechanism to reduce their sentence.

iv. **Exhaustion of legal remedies**

As mentioned above, a petitioner may avail themselves of numerous other sentence-reducing procedures and laws. Thus, a petitioner must justify seeking such extraordinary relief as recall and resentencing if the petitioner has failed to seek these remedies. If the petitioner has sought other legal remedies, they must explain which remedies and provide documentation explaining why they were denied relief. This includes if they received parole consideration and were denied. If they were denied relief on dangerousness grounds, they must explain what has changed that would warrant resentencing presently.

v. **Public Safety Considerations**

a. **In-Prison Conduct**

In prison conduct is a factor indicating a petitioner's current dangerousness and likelihood to reoffend. Likewise, it is one of the factors the court looks at when determining whether to accept a recommendation for resentencing. Frequent rules violations, particularly for violence or substance abuse, weighs against granting relief.

b. **Rehabilitation**

The quality of a petitioner's rehabilitation will weigh for or against granting relief. Primary factors to consider include, but are not limited to: If substance abuse was a factor in the commitment offense, has the petitioner attended substance abuse treatment?

Has the petitioner attended anger management? Has the petitioner shown insight, by acknowledging their commitment offense and their culpability? Victim blaming, denying culpability or minimizing the harm caused weighs against granting relief.

**c. Post-Release Plans**

This factor is particularly important for individuals who seek resentencing which would result in their immediate release from custody. Has the petitioner considered where they will live, work, and if relevant, how they will continue receiving treatment and other forms of care to maintain any rehabilitative behaviors they acquired in prison? Does the petitioner have a support network, family, or friends? And is the petitioner planning on returning to the community they victimized, or to live with people with whom they associated when they committed the commitment offense? Remaining a member of a gang weighs against granting relief, particularly if the petitioner plans on returning to a region where their gang is active.

**vi. Likelihood of Success Before the Court**

Ultimately, the District Attorney's recommendation to a court to recall and resentence a petitioner is only half of the equation for a Penal Code §1172.1(a)(1) resentencing. The court must accept the recommendation and resentence the petitioner. Even if the petitioner shows sufficient rehabilitation, a court may refuse to resentence the petitioner if it deems otherwise.

**vii. Petitioner's Basis for Relief**

Finally, the petitioner's specific request, the merits of his request, and his acknowledgment of harm caused to the victim must all be weighed and balanced with the factors above.

**C. Recommendation**

**If Resentencing Is Not Recommended**

A memo shall be written outlining the factors listed above. A letter denying petitioner's request will be sent out. The letter should include language indicating that petitioner is not foreclosed from pursuing other legal remedies.

## **If Resentencing Is Recommended**

- i. If a case is deemed meritorious, a memorandum to that effect, detailing the reasoning shall be forwarded to the District Attorney.
- ii. The District Attorney has the option of creating another review committee ideally comprised of a member of the PCRU and Victim Services, the current supervisor of the originating prosecution unit, and, if possible, the original prosecutor.
- iii. Should the District Attorney agree with the recommendation of the PCRU, the following steps shall be taken:
  - a. Correspondence is to be forwarded to the petitioner or their counsel informing them that petitioner's case has merit, and the intention to file a motion for recommendation.
  - b. All efforts should be made to meet with any victims of the underlying case to explain the decision and its implications.
  - c. The original investigating agency shall be contacted to explain the decision and its implications.

A motion will be prepared and filed with the court requesting recall and resentencing pursuant to Penal Code §1172.1(a)(1) with notice to petitioner or their legal counsel.