

**Assembly Bill 600:
New Trial Court Initiated Recall
and Resentencing Procedures
(Pen. Code, § 1172.1)**

December 6, 2023

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Assembly Bill 600

Criminal Procedure: Resentencing



Amends the law authorizing recall and resentencing to permit **a court** to recall a sentence **at any time** if the applicable sentencing laws at the time of original sentencing are **subsequently changed** by new statutory authority or case law.



Pen. Code, § 1172.1



January 1, 2024

AB 600 Changes *The Authority* to Request Recall of a Sentence Under Section 1172.1 After 120 Days Of Sentencing

Old Law

- ❖ Secretary of CDCR or the Board of Parole Hearings
- ❖ County correctional administrator
- ❖ District attorney
- ❖ Attorney General

New Law

Now also provides:

Recall and resentencing “may be initiated by the original sentencing judge, a judge designated by the presiding judge, or any judge with jurisdiction in the case.” (§ 1172.1, subd. (a)(1).)

The *Intent* of Assembly Bill 600 in Resentencing Proceedings Pursuant to Section 1172.1

That “all ameliorative laws and court decisions allowing discretionary relief should be applied regardless of the date of the offense or conviction.”

...“that courts have full discretion ... to reconsider past decisions to impose prior strikes”--not limited to *Romero* factors, but also section 1385, “or any other evidence that continued incarceration is no longer in the interests of justice”

The *Intent* of Assembly Bill 600 in Resentencing Proceedings Pursuant to Section 1172.1 (Cont.)

Consistent with the Racial Justice Act, “to provide remedies that ameliorate discriminative practices in the criminal justice system, including discrimination in seeking or obtaining convictions or imposing sentences”

That “the resentencing result in a **meaningful modification**”

WHICH “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.”

What about Defendants?

“A defendant is **not entitled to file a petition** seeking relief from the court under this section. If a defendant requests consideration for relief under this section, **the court is not required to respond.**” (§ 1172.1, subd. (c).)



What about Defendants? (Cont.)

However, a defendant should be permitted to “invite” the court to recall and resentence under section 1172.1 (See *People v. Loper* (2015) 60 Cal.4th 1155, 1167, discussing *People v. Carmony* (2004) 33 Cal.4th 367, 375, and § 1385.)

- “[w]hen the balance falls clearly in favor of the defendant, a trial court not only may but should exercise the powers granted to [it] by the Legislature ...” (*Ibid.*)

The Court's Authority

The court may “resentence the defendant in the same manner as if they had not previously been sentenced, whether or not the defendant is still in custody, and provided the new sentence, if any, is **no greater than the initial sentence.**” (§ 1172.1, subd. (a)(1).)

“The court, in recalling and resentencing under this subdivision, **shall** apply the sentencing rules of the Judicial Council and **apply any changes in law** that reduce sentences or provide for judicial discretion so as to eliminate disparity of sentences and to promote uniformity of sentencing.” (§ 1172.1, subd. (a)(2).)

The Court's Authority (Cont.)

“The resentencing court may, in the interest of justice and regardless of whether the original sentence was imposed after a trial or plea agreement, do the following:

(A) Reduce a defendant's term of imprisonment by modifying the sentence.

(B) Vacate the defendant's conviction and impose judgment on any necessarily included lesser offense or lesser related offense, whether or not that offense was charged in the original pleading, with the concurrence of the defendant, and then resentence the defendant to a reduced term of imprisonment.”

(§ 1172.1, subd. (a)(3).)

The Court's Authority (Cont.)

“If the court has recalled the sentence **on its own motion**, the court **shall not impose** a judgment on any necessarily included lesser offense or lesser related offense **if the conviction was a result of a plea bargain** without the concurrence of **both the defendant and the district attorney** of the county in which the defendant was sentenced, or the Attorney General if the Department of Justice originally prosecuted the case.” (§ 1172.1, subd. (a)(4).)


Recall / Resentencing Factors

“In recalling and resentencing pursuant to this provision, the court **shall** consider **postconviction factors**, including, but not limited to, **the disciplinary record and record of rehabilitation** of the defendant while incarcerated, **evidence that reflects** whether **age, time served, and diminished physical condition**, if any, **have reduced the defendant’s risk for future violence**, and **evidence that reflects that circumstances have changed** since the original sentencing **so that continued incarceration is no longer in the interest of justice.**” (§ 1172.1, subd. (a)(5).)

Recall / Resentencing Factors (Cont.)

What is evidence that the defendant's incarceration is no longer in the interest of justice?

It includes...

 “evidence that the defendant's constitutional rights were violated in the proceedings related to the conviction or sentence at issue, and any other evidence that undermines the integrity of the underlying conviction or sentence.” (§ 1172.1, subd. (a)(5).)

Recall / Resentencing Factors (Cont.)



“The court shall consider if the defendant has experienced **psychological, physical, or childhood trauma**, including, but not limited to, abuse, neglect, exploitation, or sexual violence, if the defendant was a victim of intimate partner violence or human trafficking prior to or at the time of the commission of the offense, or **if the defendant is a youth** or was a youth as defined under subdivision (b) of Section 1016.7 at the time of the commission of the offense, **and whether those circumstances were a contributing factor** in the commission of the offense.” (§ 1172.1, subd. (a)(5).)

Recall / Resentencing Procedure

“Resentencing may be granted **without a hearing upon stipulation** by the parties.” (§ 1172.1, subd. (a)(7).)

Unlike recall/resentencing initiated by other entities (§ 1172.1, subd. (a)(9)), **a summary denial of a defendant request for recall and resentencing without a hearing is probably not prohibited** (§ 1172.1, subd. (c) (defendant not entitled to file a petition; if defendant requests relief “the court is not required to respond”).

Some Good Candidates for AB 600 Requests, Due to Ameliorative Sentencing Changes:

- Section 1385 (amended in 2022 by SB 81), which changed rules for imposing or striking enhancements.
- Sections 1170 and 1170.1 (amended in 2022 by SB 567), which changed rules for imposing upper sentencing terms (also provides low-term presumption §1170(b)(6)).

- Sections 12022.5 and 12022.53 (amended in 2018 by SB 620), which changed rules for imposing, striking, or reducing (*People v. Tirado* (2022) 12 Cal.5th 688) gun enhancements.
- Section 667, subd. (a) (amended in 2019 by SB 1393) which allows striking of five-year serious felony enhancements.

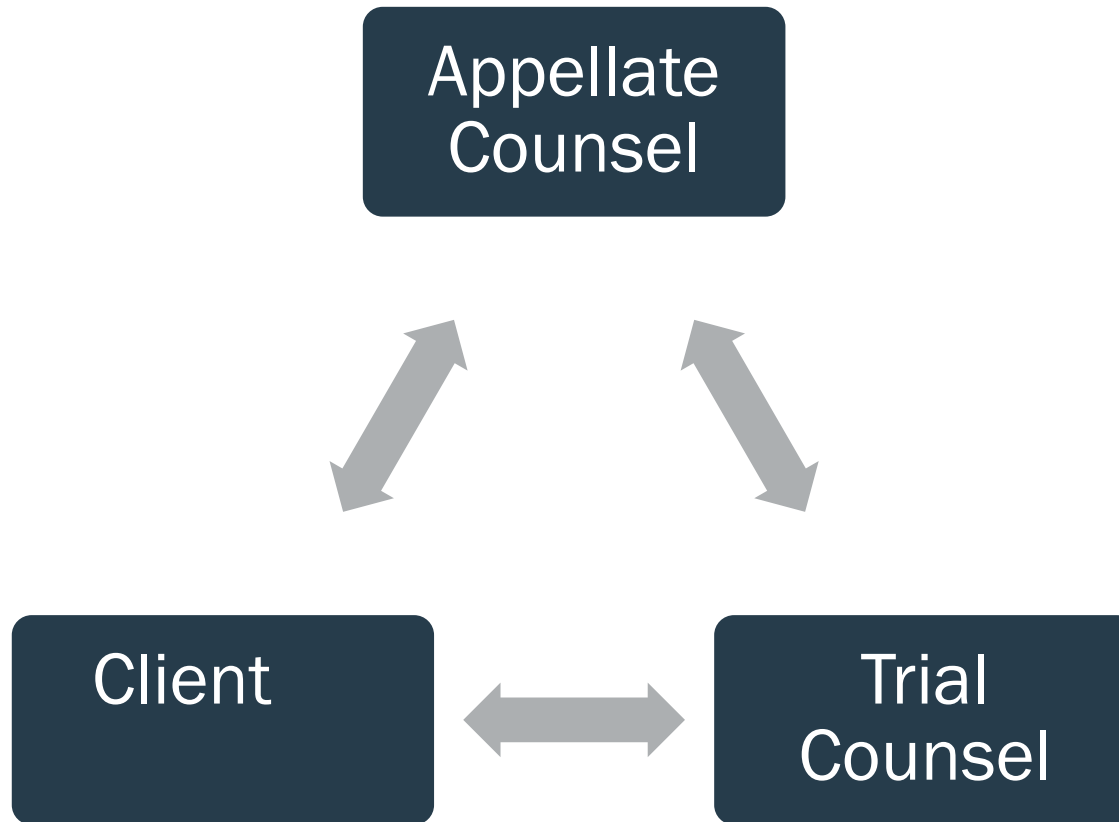
Some Good Candidates for AB 600 Requests, Due to Ameliorative Sentencing Changes (Cont.)

Be Creative!!!

Not Exhaustive!!!

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More to Come: Stay Tuned!

Judge
Couzen's AB
600 memo

Pro per fact
sheet & form

FDAP panel
alerts re AB
600
developments