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## Changes to CDCR Compassionate Release Procedure **AB 960**

***Amends Penal Code §§1170 & 1170.02; Adds Penal Code §§1172.2***

Assembly Bill (AB) 960 is a new law beginning January 1, 2023 that requires the CDCR to recommend that an incarcerated person's sentence be recalled **if** that person meets certain medical criteria. (Pen. Code §1172.2(a).) This process is commonly called "compassionate release." AB960 also creates a mandatory presumption in favor of compassionate release by the court **unless** the incarcerated person is found to be an unreasonable risk of danger of committing a violent "super strike" felony.<sup>1</sup>

A copy of the law is attached. Please read it carefully. This document does not constitute legal advice and is general information.

### **Required Medical Criteria to be Eligible for Compassionate Release**

You must meet **one** of these medical criteria for compassionate release to apply<sup>2</sup>:

1. You are suffering from a serious and advanced illness with an end-of-life trajectory (including metastatic solid-tumor cancer, amyotrophic lateral sclerosis, end-stage organ disease, and advanced end-stage dementia)  
**–OR–**
2. You are permanently medically incapacitated with a medical condition or functional impairment that renders you permanently unable to complete basic activities of daily living or have progressive end-stage dementia **and** that condition did not exist at the time of the original sentence.

Examples of "basic activities of daily living" include bathing, eating, dressing, toileting, transferring, and ambulation. Other activities may also be considered "basic activities of daily living", even if they are not specifically mentioned within Pen. Code §1172.2(b)(2).

### **Some Convictions Make You Ineligible for Compassionate Release**

Compassionate release **is not available** if you are:

- Serving a death sentence or a life without the possibility of parole (LWOP) sentence.<sup>3</sup>

<sup>1</sup>Penal Code §1172.2(a); Penal Code §1170.18.

<sup>2</sup>Penal Code §1172.2(b)(1) & (2).

<sup>3</sup>Penal Code §1172.2(o).

- Convicted of first-degree murder of a peace officer engaged in the performance of their duties or as retaliation for the performance of their duties.<sup>4</sup>

### **The CDCR Process for Compassionate Release as of January 1, 2023<sup>5</sup>**

The first step is for a CDCR physician to determine that you have a medical prognosis that meets the medical criteria (listed above). That physician then notifies the Chief Medical Executive. This notification is mandatory.

The referral from the physician to the Chief Medical Executive makes several other things happen. The Chief Medical Executive must determine whether they agree with the medical prognosis. If they **agree**, they must then notify the Warden. This notification is mandatory.

Once the referral from the physician is made to the Chief Medical Executive, the CDCR **must** refer the matter to the court for compassionate release consideration within 45 days. This referral is mandatory. The CDCR is not required to notify your attorney, but your right to counsel is triggered by the CDCR notice to the court. The judge will appoint counsel (give you a lawyer) if you are indigent. Most individuals in prison are indigent.

When a Warden gets notice from the Chief Medical Executive that you meet the medical criteria for compassionate release, the Warden must notify you and your designated family member or agent within 48 hours. This notification is mandatory. If you are mentally unfit, the warden must contact your emergency contact and provide this same information.

Throughout the compassionate release process, the Warden must provide updated information regarding medical condition and progress within the process to you and your family member or agent.

### **What Happens in Court in Compassionate Release Cases<sup>6</sup>**

There **must** be a hearing in front of a judge in your county of conviction within 10 days of the CDCR's recommendation for compassionate release. This hearing is to determine whether your sentence should be recalled. This hearing will be conducted by the same judge that handled the original sentence unless that judge is unavailable.

A recommendation from the CDCR to the court triggers your right to counsel. If you are indigent, the court **must** appoint a lawyer to represent you.

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<sup>4</sup>Penal Code §1170.02.

<sup>5</sup>Penal Code §1170.02(d)-(f).

<sup>6</sup>Penal Code §1172.2(b), (c), (i), (k) & (l).

There is a presumption in favor of resentencing and receiving compassionate release once the case is referred to court. The only way the judge can deny compassionate release is if they find that you pose an unreasonable risk of danger of committing a violent “super-strike” felony.

If the court grants compassionate release, it will send an order to the CDCR and you **must** be released within 48 hours. You can agree to a longer period in custody before release.

At time of release, the Warden **must** make sure you have:

- a discharge medical summary
- full medical records
- state identification
- parole / PRCS medications
- all property.

Any additional records not contained in this list **must** be sent to your forwarding address.

### **How You or Your Family Can Ask for Compassionate Release**

You or your family can also start this process by making a request for compassionate release directly to the Chief Medical Executive. A contact list of Chief Medical Executives is included with this reference sheet. Please be advised that the contact list was last updated July 2020, so the information may be outdated.

When a request is made directly to the Chief Medical Executive, the CDCR **must** follow the same procedure to determine if you meet the medical criteria for compassionate release.<sup>7</sup>

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<sup>7</sup>Penal Code §1172.2(f).

**Denial of Compassionate Release Can Be Challenged**

<b>Reason for Denial</b>	<b>What to File</b>	<b>Appeals Process</b>	<b>Court Review Possible</b>
CDCR physician will not determine whether you have a diagnosis that meets the medical criteria  -or-  Physician / Chief Medical Executive decides you do not meet the medical criteria	30 days to file a Health Care Grievance CDCR Form 602-HC	If grievance is denied, an appeal may be filed to the Headquarters (Sacramento) level	After “exhausting administrative remedies”, a writ of habeas corpus can be filed in the trial court in the county of conviction
CDCR medical staff find that you have a diagnosis that meets the medical criteria but other CDCR staff do not timely refer the case to the court	60 days to file an Administrative Grievance CDCR Form 602-0	If grievance is denied, an appeal may be filed to the Headquarters (Sacramento) level CDCR Form 602-2	After “exhausting administrative remedies”, a writ of habeas corpus can be filed in the trial court in the county of supervision
The judge denied compassionate release	Notice of Appeal form (CR-120)	60 days to file a notice of appeal in the sentencing court	The Court of Appeal will appoint an attorney and review the case

**Compassionate Release Also Applies to Individuals in County Jails**

The provisions of this law apply equally to incarcerated individuals in county jail custody pursuant to Penal Code §1170(h).<sup>8</sup>

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<sup>8</sup>§1172.2(n).

## **FREQUENTLY ASKED QUESTIONS**

*The following is not legal advice specific to your case. It is your responsibility to do legal research or contact a lawyer to determine if you are eligible for relief.*

**Q: I have a medical condition. Can this law help me?**

A: It depends on what medical condition you have, but your health must be so poor that you are either going to die soon or you cannot take care of basic daily living activities by yourself. The law names the following medical conditions:

- solid-tumor cancer,
- amyotrophic lateral sclerosis,
- end-stage organ disease
- advanced end-stage dementia

Other medical conditions may also qualify. In some circumstances, you cannot have had the medical condition at the time of your original sentence. This means you must have developed this medical condition after you were incarcerated, or possibly that your medical condition has gotten much worse since your incarceration began.

**Q: Do I need to be serving a sentence in prison to use this law?**

A: No. The new law applies to those serving time in county jails or CDCR.

**Q: Can only a CDCR physician start the compassionate release process?**

A: No. If you believe you qualify for compassionate release, you may start the process yourself by contacting the Chief Medical Executive at your facility. Additionally, if your family or another person on the outside believes you qualify for compassionate release, they may also start the process by contacting the Chief Medical Executive at your facility. A list of Chief Medical Executives at CDCR facilities is included with this factsheet.

**Q: If I am granted compassionate release, when will I get out?**

A: If the judge grants you compassionate release, the CDCR will have 48 hours to release you once they received the order from the judge. The only way this can be delayed is if you agree to a delay for some reason such as coordination of housing and/or medical needs in the community. When you are released, you may be required to serve a period of parole.

**Q: I am serving a life sentence. Can I get compassionate release?**

A: It depends. If you are serving a life sentence because you were convicted of first-degree murder of a police officer engaged in the performance of their duties or as retaliation for the

performance of their duties, you cannot get compassionate release. The only other exclusions are for persons serving a death sentence or an LWOP sentence. If you are serving any other kind of life sentence, you are eligible for compassionate release so long as you meet the medical criteria.

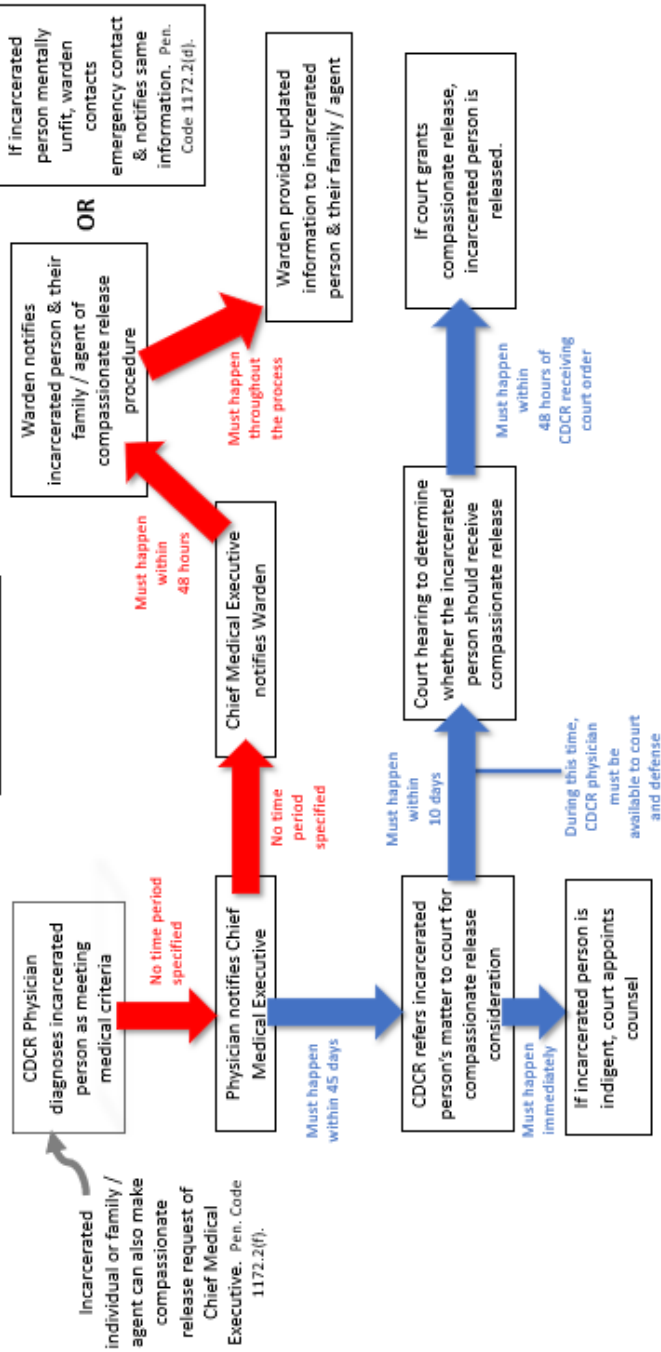
**Q: What does “currently pose an unreasonable risk of danger of committing a violent ‘super-strike felony” mean?**

A: During the compassionate release hearing, the court would have to make a finding, based on evidence before it, that you currently present an unreasonable risk of danger of committing a “super strike” as defined in Pen. Code §667(e)(2)(C)(iv). If the judge determines, based on evidence, that you pose an unreasonable risk of committing one of these offenses, you will be denied compassionate release.

**Q: What if I’m in a coma or otherwise unconscious? Will the compassionate release process go on without me?**

A: Yes. The CDCR process can start without you. The case can be referred to the court for resentencing without you, and a lawyer will still be appointed and represent you at any hearing. If your medical condition is so bad that you are “mentally unfit”, the compassionate release process will proceed anyway. If you are ultimately granted compassionate release, you will be released from prison even if you are in a coma or otherwise unconscious for all or a part of the process.

**Compassionate Release Timeline  
(Penal Code 1177.2)**



## **TEXT OF PENAL CODE §1172.2**

(a) Notwithstanding any other law and consistent with paragraph (1) of subdivision (a) of Section 1170, if the statewide chief medical executive, in consultation with other clinical executives, as needed, determines that an incarcerated person satisfies the medical criteria set forth in subdivision (b), the department shall recommend to the court that the incarcerated person's sentence be recalled.

(b) There shall be a presumption favoring recall and resentencing under this section if the court finds that the facts described in paragraph (1) or (2) exist, which may only be overcome if a court finds the defendant is an unreasonable risk of danger to public safety, as defined in subdivision (c) of Section 1170.18, based on the incarcerated person's current physical and mental condition.

(1) The incarcerated person has a serious and advanced illness with an end-of-life trajectory. Examples include, but are not limited to, metastatic solid-tumor cancer, amyotrophic lateral sclerosis (ALS), end-stage organ disease, and advanced end-stage dementia.

(2) The incarcerated person is permanently medically incapacitated with a medical condition or functional impairment that renders them permanently unable to complete basic activities of daily living, including, but not limited to, bathing, eating, dressing, toileting, transferring, and ambulation, or has progressive end-stage dementia, and that incapacitation did not exist at the time of the original sentencing.

(c) Within 10 days of receipt of a positive recommendation by the department, the court shall hold a hearing to consider whether the incarcerated person's sentence should be recalled.

(d) Any physician employed by the department, or their designee, who determines that an incarcerated person has a serious and advanced illness with an end-of-life trajectory or has a medical condition or functional impairment that renders them permanently medically incapacitated shall notify the chief medical executive of the prognosis. If the chief medical executive concurs with the prognosis, they shall notify the warden. Within 48 hours of receiving notification, the warden or the warden's representative shall notify the incarcerated person of the recall and resentencing procedures, and shall arrange for the incarcerated person to designate a family member or other outside agent to be notified as to the incarcerated person's medical condition and prognosis, and as to the recall and resentencing procedures. If the incarcerated person is deemed mentally unfit, the warden or the warden's representative shall contact the incarcerated person's emergency contact and provide the information described in subdivision (b).

(e) The department shall refer the matter to the court for recall and resentencing within 45 days of the primary physician's, or their designee's, diagnosis and referral to the chief medical executive.

(f) The warden or the warden's representative shall provide the incarcerated person and their family member, agent, or emergency contact, as described in subdivision (d), updated information throughout the recall and resentencing process with regard to the incarcerated person's medical condition and the status of the incarcerated person's recall and resentencing proceedings.

(g) Notwithstanding any other provisions of this section, the incarcerated person or their family member or designee may independently request consideration for recall and resentencing by contacting the chief medical executive at the prison. Upon receipt of the request, the chief medical executive and the warden or the warden's representative shall follow the procedures described in subdivision (d). If the department determines that the incarcerated person satisfies the criteria set forth in subdivision (b), the



department shall recommend to the court that the incarcerated person's sentence be recalled. The department shall submit a recommendation for release within 45 days.

(h) Any recommendation for recall submitted to the court by the department shall include one or more medical evaluations, a postrelease plan, and findings pursuant to subdivision (b).

(i) If possible, the matter shall be heard before the same judge of the court who sentenced the incarcerated person.

(j) The referring physician or their designees from the department shall be available to the court or defense counsel as necessary throughout the recall and resentencing proceedings.

(k) Upon recommendation to the court for recall of sentence, the incarcerated person shall have the right to counsel and, if indigent, the right to court appointed counsel.

(l) If the court grants the recall and resentencing application, the incarcerated person shall be released by the department within 48 hours of receipt of the court's order, unless a longer time period is agreed to by the incarcerated person. At the time of release, the warden or the warden's representative shall ensure that the incarcerated person has each of the following in their possession: a discharge medical summary, full medical records, state identification, parole or postrelease community supervision medications, and all property belonging to the incarcerated person. After discharge, any additional records shall be sent to the incarcerated person's forwarding address.

(m) The secretary shall issue a directive to medical and correctional staff employed by the department that details the guidelines and procedures for initiating a recall and resentencing procedure. The directive shall clearly state that any incarcerated person who has a serious and advanced illness with an end-of-life trajectory or who is found to be permanently medically incapacitated is eligible for recall and resentencing consideration, and that recall and resentencing procedures shall be initiated upon that prognosis.

(n) The provisions of this section shall be available to an incarcerated person who is sentenced to a county jail pursuant to subdivision (h) of Section 1170. For purposes of those incarcerated persons, "secretary" or "warden" shall mean the county correctional administrator and "chief medical executive" shall mean a physician designated by the county correctional administrator for this purpose.

(o) This section does not apply to an incarcerated person sentenced to death or a term of life without the possibility of parole.

(p) Beginning January 1, 2024, the California Judicial Council shall publicly release an annual report on the compassionate release program based on records provided by the department pursuant to this section and subsequent court records. The report shall include, but is not limited to, all of the following:

(1) The number of people who were referred to the court for recall and resentencing disaggregated by race, ethnicity, age, gender identity and further disaggregated by the type of criteria on which the referral was based. The report shall identify the following categories of criteria for recall and resentencing referrals:

(A) A serious and advanced illness with an end-of-life trajectory.

(B) Functional impairment.

(C) Cognitive impairment.

(2) The number of people released by the court pursuant to this section, disaggregated by race, ethnicity, age, and gender identity.

(3) The number of people denied resentencing sought pursuant to this section disaggregated by race, ethnicity, age, and gender identity.

(4) Number of people who pass away before completing the recall and resentencing process disaggregated by race, ethnicity, age, and gender identity.

(5) Number of people denied resentencing sought pursuant to this section for lack of release plans with data disaggregated by race, ethnicity, age, and gender identity.

(6) Number of cases pending decision with data disaggregated by race, ethnicity, age, and gender identity.