
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Jesse Arreguin, Chair
2025 - 2026 Regular

Bill No: AB 812 **Hearing Date:** July 8, 2025
Author: Lowenthal
Version: May 23, 2025
Urgency: No **Fiscal:** Yes
Consultant: SJ

Subject: *Recall and resentencing: incarcerated firefighters*

HISTORY

Source: Initiate Justice

Prior Legislation: AB 600 (Ting), Ch. 446, Stats. of 2023
AB 200 (Com. on Budget), Ch. 58, Stats. of 2022
AB 1540 (Ting), Ch. 719, Stats. of 2021
AB 2147 (Reyes), Ch. 60, Stats. of 2020
AB 2942 (Ting), Ch. 1001, Stats. of 2018
AB 1156 (Brown), Ch. 378, Stats. of 2015

Support: ACLU California Action; California Public Defenders Association; Courage California; Ella Baker Center for Human Rights; Initiate Justice Action; Justice2Jobs Coalition; LA County Public Defenders Union, Local 148; LA Defensa; Rubicon Programs; San Francisco Public Defender; The W. Haywood Burns Institute; University of San Francisco School of Law, Racial Justice Clinic; Vera Institute of Justice

Opposition: None known

Assembly Floor Vote: 57 - 4

PURPOSE

The purpose of this bill is to require the Department of Corrections and Rehabilitation (CDCR) to promulgate regulations regarding the referral of fire camp participants and incarcerated persons working at institutional firehouses for resentencing by July 1, 2026.

Existing law establishes the California Conservation Camp program to be operated by CDCR in conjunction with Cal Fire to provide for training and use of inmates assigned to the camps to perform public conservation projects including, but not limited to, forest fire prevention and control, forest and watershed management, recreation, fish and game management, soil conservation, and forest and watershed revegetation. (Pub. Resources Code, § 4951.)

Existing law defines “California Conservation Camps” as any camps established for the purpose of receiving wards or incarcerated individuals who are committed to the custody of CDCR, and in which the work projects performed by the wards or incarcerated individuals are supervised by CDCR employees. (Pub. Resources Code, § 4952.)

Existing law provides that CDCR shall utilize incarcerated individuals and wards assigned to conservation camps in performing fire prevention, fire control, and other work of the department. (Pub. Resources Code, § 4953, subd. (a).)

Existing law provides that when a defendant has been convicted of a felony offense and imprisoned, the court may, on its own motion and within 120 days of the date of commitment, or at any time if the applicable sentencing laws at the time of original sentencing are subsequently changed by new statutory authority or case law, or any time upon the recommendation of the Secretary of CDCR or the Board of Parole Hearings (BPH) in the case of person incarcerated in state prison, the county correctional administrator in the case of a person incarcerated in county jail, the district attorney of the county in which the defendant was sentenced, or the Attorney General (AG) if the Department of Justice (DOJ) originally prosecuted the case, recall the sentence and commitment previously ordered and resentence the defendant in the same manner as if they had not previously been sentenced, whether or not the defendant is still in custody, provided the new sentence, if any, is not greater than the initial sentence. (Pen. Code, § 1172.1, subd. (a)(1).)

Existing law requires that the resentencing court 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. (Pen. Code, § 1172.1, subd. (a)(2).)

Existing law authorizes the resentencing court to, in the interest of justice and regardless of whether the original sentence was imposed after a trial or plea agreement, do the following:

- Reduce a defendant's term of imprisonment by modifying the sentence; or,
- 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, and then resentence the defendant to a reduced term of imprisonment. (Pen. Code, § 1172.1, subd. (a)(3).)

Existing law prohibits the court, if it has recalled the sentence on its own motion, from imposing 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 DA of the county in which the defendant was sentenced, or the AG if the DOJ originally prosecuted the case. (Pen. Code, § 1172.1, subd. (a)(4).)

Existing law requires the court to 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. (Pen. Code, § 1172.1, subd. (a)(5).)

Existing law provides that evidence that the defendant's incarceration is no longer in the interest of justice includes, but is not limited to, 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. (Pen. Code, § 1172.1, subd. (a)(5).)

Existing law requires the court to 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, at the time of the commission of the offense, and whether those circumstances were a contributing factor in the commission of the offense. (Pen. Code, § 1172.1, subd. (a)(5).)

Existing law requires the court to state on the record the reasons for its decision to grant or deny recall and resentencing. (Pen. Code, § 1172.1, subd. (a)(7).)

Existing law provides that resentencing may be granted without a hearing upon stipulation by the parties. (Pen. Code, § 1172.1, subd. (a)(8).)

Existing law prohibits a resentencing from being denied, or a stipulation rejected, without a hearing where the parties have an opportunity to address the basis for the intended denial or rejection. (Pen. Code, § 1172.1, subd. (a)(9).)

Existing law specifies that if a resentencing request is from the Secretary of CDCR, BPH, a county correctional administrator, a DA, or the AG, all of the following apply:

- The court must provide notice to the defendant and set a status conference within 30 days after the date that the court received the request. Requires the court's order setting the conference to also appoint counsel to represent the defendant; and,
- There is a presumption favoring recall and resentencing of the defendant, which may only be overcome if a court finds the defendant is an unreasonable risk of danger to public safety, as defined. (Pen. Code, § 1172.1, subd. (b).)

Existing law provides that a defendant is not entitled to file a petition seeking relief from the court, and the court is not required to respond if a defendant requests consideration for relief. (Pen. Code, § 1172.1, subd. (c).)

This bill requires CDCR to promulgate regulations regarding the referral of current and former participants in the California Conservation Camp program and incarcerated persons working at institutional firehouses for resentencing no later than July 1, 2026, that establish all of the following:

- Authorize the referral for resentencing of eligible incarcerated persons who have two or more years remaining to serve in state prison on their sentence.
- Prohibit the exclusion of individuals from resentencing consideration based solely on past or pending parole hearing dates.
- Prohibit the imposition of a minimum time served requirement as a condition for resentencing consideration.

This bill includes legislative findings and declarations.

COMMENTS

1. Need For This Bill

According to the author:

“Second look” sentencing authorizes courts to revisit sentences of incarcerated people when recommended by certain law enforcement authorities. AB 812 will expand opportunities for resentencing to the incarcerated fire crew members who play such a critical role in the prevention of, and response to California Wildfires. Not only will this bill incentivize the participation in programs such as the Conservation (Fire) Camps that offer transferable skills, and pathways to employment outside of incarceration, but it will also reward the heroic behavior shown by these individuals with the ability to petition for resentencing.

2. Conservation (Fire) Camps

CDCR, in cooperation with Cal Fire and the Los Angeles County Fire Department, jointly operates 35 conservation camps, commonly referred to as fire camps, in 25 counties across the state. Conservation Camp Program participants support state, local and federal government agencies as they respond to emergencies such as fires, floods, and other natural or manmade disasters, and complete community service projects when not assigned to an emergency. All fire camps are minimum-security facilities which are overseen by CDCR employees. Participants are supervised by Cal Fire staff when responding to a wildfire or working on a conservation project. (See <<https://www.cdcr.ca.gov/facility-locator/conservation-camps/faq-conservation-fire-camp-program/>>.)

Incarcerated individual participating in fire camps receive the same entry-level training as Cal Fire’s seasonal firefighters as well as ongoing training from Cal Fire throughout their time in the program. An incarcerated person must volunteer for the fire camp program, and some individuals are ineligible for fire camp assignment based on their convictions, including convictions for sex offenses, arson, and escape with force or violence. (<https://www.cdcr.ca.gov/facility-locator/conservation-camps/faq-conservation-fire-camp-program/>.)

Individuals who volunteer for fire camp must complete Cal Fire’s Firefighting Training Program, and program participants become certified wildland firefighters after completing this training. (<<https://www.cdcr.ca.gov/facility-locator/conservation-camps/faq-conservation-fire-camp-program/>>)

Incarcerated firefighters continue to play an integral role in the state’s firefighting efforts, including in Los Angeles County earlier this year. (Keith Mizuguchi, *Inmate Firefighters Battling LA Fires Have Trouble Getting Firefighting Jobs After Release* (Jan. 15, 2025) available at <<https://www.kqed.org/news/12022277/inmate-firefighters-battling-la-fires-have-trouble-getting-firefighting-jobs-after-release>>.) This bill is focused on the recall and resentencing of incarcerated firefighters “[i]n recognition of the vital role that incarcerated persons have played protecting the people and property of California from wildfires.”

3. Recall and Resentencing Provisions

As a general matter, a court typically loses resentencing jurisdiction when the sentence begins. (*Dix v. Superior Court* (1991) 53 Cal.3d 442, 455.) In other words, once the defendant has been committed on a sentence pronounced by the court, the court no longer has the legal authority to increase, reduce, or otherwise alter the defendant's sentence. (*Ibid.*)

The Legislature has created limited statutory exceptions allowing a court to recall a sentence and resentence the defendant. Specifically, within 120 days of commitment for a felony conviction, the court may resentence the defendant as if it had never imposed sentence, provided the new sentence is not greater than the original sentence. The court is also authorized, at any time, to recall the sentence and commitment previously ordered and to resentence the defendant if the applicable sentencing laws at the time of original sentencing are subsequently changed by new statutory authority or case law. In addition, CDCR, BPH, the county correctional administrator, the DA of the county in which the defendant was sentenced, or the AG if the DOJ originally prosecuted the case, can make a recommendation for resentencing at any time. (Pen. Code, § 1172.1, subd. (a).) Penal Code section 1172.1 requires a hearing to determine whether the person should be resentenced unless otherwise stipulated to by the parties.

When resentencing is recommended by one of the specified government entities statutorily authorized to do so, the court must provide notice to the defendant, set a status conference within 30 days of receiving the petition, and appoint counsel. A presumption in favor of resentencing applies to petitions submitted by government entities unless overcome by a finding by the court that the defendant poses an unreasonable risk to public safety. (Pen. Code, § 1172.1, subd. (b).) A defendant is not entitled to petition for recall and resentencing relief under Penal Code section 1172.1. (Pen. Code, § 1172.1, subd. (c).)

4. CDCR's Current Process for Selecting Individuals to Refer for Resentencing

CDCR has developed an internal process to identify and refer incarcerated individuals for recall and resentencing under Penal Code section 1172.1. The department has identified three categories of individuals that it will consider referring for recall and resentencing: those with "exceptional conduct," those whose sentences have some sort of discrepancy due to an error, and those with sentencing discrepancies as result of new legislation or case law. (CDCR, *Recall and Resentencing Referral* available at <<https://www.cdcr.ca.gov/family-resources/recall-resentencing/>>.) With respect to the "exceptional conduct" category, CDCR states:

These are incarcerated people who have demonstrated sustained compliance with departmental rules and have taken ownership of their own rehabilitation through prolonged participation in education, vocation, and self-help programs. Their conduct while incarcerated has inspired others and contributed to safer prisons for staff, visitors, volunteers and incarcerated people, in line with CDCR's mission to enhance public safety through safe and secure incarceration of individuals and rehabilitative strategies to successfully reintegrate them into our communities. (*Ibid.*)

CDCR excludes the following individuals from consideration for referral as a result of "exceptional conduct": a person required to register as a tier 2 or 3 sex offender; a person who has not served at least 10 continuous years in CDCR custody; a person found guilty of a serious or violent rules violation within the last five years or who has a pending serious or violent rules

violation; a person scheduled for release within the next 18 months; a person eligible for parole consideration within the next 18 months; a person who has had a parole suitability hearing, including under Elderly Parole, Youth Parole, or Second Striker Parole Eligibility; and a person serving the lowest legal term for an individual offense. (CDCR, *Recall and Resentencing Referral*, *supra*.)

CDCR describes the “exceptional conduct” referral process as follows:

CDCR will conduct a thorough and complex screening of identified individuals, taking into consideration individual case factors, criminal history, victims, input from institutional staff and Wardens, and other factors. Upon the Secretary’s approval, the case will be sent to the court of commitment for consideration. The court may choose to recall the sentence and commitment, and resentence the individual in question as if they had not previously been sentenced. The court may also decide to let the original sentence stand, or may choose to not respond to the referral at all. If the court resentsences the individual, the prison’s Case Records Unit is required to audit all legal documents and recalculate the release date accordingly. (CDCR, *Recall and Resentencing Referral*, *supra*.)

For those in the sentencing discrepancy due to an error category, the person must not be scheduled for release within the next six months. (CDCR, *Recall and Resentencing Referral*, *supra*.) And finally, the following individuals are excluded from consideration for referral as a result of sentencing discrepancies based on new legislation or case law: a person who has not served five continuous years in CDCR custody; a person who has been found guilty of a serious or violent rules violation within the last year, or has a pending serious or violent rules violation; a person scheduled for release within the next 18 months; a person eligible for parole consideration within the next 18 months; or a person who has had a parole suitability hearing. (*Ibid.*) A referral for an individuals who fits into one of the sentencing discrepancy categories may occur following review of the sentence by CDCR attorneys.

This bill requires CDCR to promulgate regulations regarding the referral of current and former fire camp participants for resentencing by July 1, 2026. The bill specifies that the regulations must limit referral to incarcerated persons who have two or more years remaining on their prison sentence. This bill additionally specifies that the regulations cannot exclude individuals from resentencing consideration based solely on past or pending parole hearing dates, or require a minimum amount of time served as a condition for resentencing consideration. These two prohibitions directly conflict with CDCR’s current practice.

Given that the referral process under Penal Code section 1172.1 is discretionary (i.e., CDCR is not required to refer anyone in its custody for recall and resentencing) and a petition submitted by CDCR is entitled to a presumption in favor of resentencing, members may wish to consider whether CDCR should retain flexibility in determining its inclusionary and exclusionary criteria with respect to identifying individuals to refer for recall and resentencing. CDCR’s website states that the reason for requiring a minimum amount of continuous time served for the “exceptional conduct” category is “to ensure the individual has demonstrated a pattern of positive behavior and programming for a sustained period of time.” CDCR’s website does not provide a reason for excluding individuals who have had a parole suitability hearing or who have a hearing scheduled within the next 18 months. However, one reason could be that because these individuals are

currently in the parole hearing suitability cycle, there is an opportunity for release in the near future, and the person is currently undergoing or will soon undergo an evaluation related to their current risk of danger.

The provisions of this bill apply to current and former incarcerated firefighters. To the extent that someone is a former fire camp participant who has been released from custody, it is not clear why CDCR would petition for recall and resentencing. Those individuals are eligible for expungement under Penal Code section 1203.4b if they successfully participated in the fire camp program. Expungement is more favorable than recall and resentencing because it allows an individual to have their conviction dismissed.

5. Argument in Support

The California Public Defenders Association writes:

Existing law authorizes the Department of Corrections and Rehabilitation (CDCR) to recommend an inmate for resentencing based on that inmate's exceptional conduct while detained in a state prison. Upon receipt of that recommendation, the court is required to conduct a hearing to determine whether the inmate should be resentenced and, if appropriate, then resentence them.

...

Inmate firefighters are particularly deserving of resentencing because they voluntarily risk their lives to protect the public from California's increasingly devastating wildfires.

AB 812 would address this issue by requiring CDCR to promulgate regulations to refer current and former participants in the California Conservation Camp program and incarcerated persons working at institutional firehouses who meet certain criteria for resentencing. Importantly, the contemplated CDCR regulations will lead to a CDCR recommendation for resentencing which will trigger review by a court, that will ultimately determine whether resentencing is appropriate in a given case.

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