Sentence Review Process and Procedure

I. Introduction

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 (SJCDA) Office.

Sentence review is an informal, discretionary, petitioner-initiated review process established by Assembly Bill 2942.

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

II. Mission Statement

The San Joaquin County District Attorney’s Office is committed to ensuring the integrity of its convictions and the fairness of sentences that have been meted out. Persons currently incarcerated under certain circumstances and sentencing structures may have served sufficient time or have been adequately rehabilitated. In these situations, 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 open manner in the ultimate pursuit of truth and justice.

III. Eligibility for Review

Penal Code § 1170 (d)(1) (Assembly Bill 2942) gives the authority to the District Attorney to recommend to a court to recall and resentence. If the judge agrees, he will recall and resentence the petitioner to a sentence that might be less but cannot be greater than the initial sentence.
In order for the PCRU to conduct a review of a conviction, a petitioner making a claim must meet the following prerequisites:

1. The petitioner is currently incarcerated.

2. The petitioner must have been convicted in San Joaquin County.

3. The petitioner was convicted of a felony. Priority review will be given to petitioners who are serving a lengthy sentence. Crimes that involved particularly heinous conduct or vulnerable victims will be given the lowest priority.

4. The petitioner was not convicted of a special circumstance (Penal Code § 190.2) and sentenced to life without the possibility of parole. Special circumstances cannot not be dismissed by law.

5. The petitioner's appeals must be final and there can be no pending habeas corpus petitions.

IV. Petition for Review

1. If a petitioner meets the above criteria, they must fill out the form provided on the Post-Conviction Review Unit web page. (https://www.sjgov.org/da/pcru)

2. The request must be accompanied by all referenced exhibits and witness declarations. The form must include a declaration signed under penalty of perjury by a petitioner. If the form is incomplete or the declaration is not signed, the request for review will be rejected.

Remember, the decision to make a recommendation to a judge and the acceptance of that recommendation by the judge are both completely discretionary; there is no requirement that either decision must be made. It is up to the petitioner to provide as much information as they can.

3. If a petitioner is alleging their conviction was deficient due to new evidence of actual innocence or wrongful conviction, the petitioner must instead file a Conviction Review request.

V. Review Process

1. When the petitioner has completed the form provided, signed the declaration, and provided current contact information, the petitioner should send the form to the PCRU. A mail address is provided on the form.
All subsequent communication with petitioner or petitioner's agent must be through e-mail or mail.

2. Once the request is received by the PCRU, the petitioner will be notified that the request was received and it will go through an intake process.

3. After an initial review, if the petitioner is eligible and the request form has been properly completed, the case will be investigated by the PCRU. This will take time. The more information provided in the beginning by the petitioner, the quicker a request can be reviewed.

Resentencing must operate under current law and judges cannot pick a number to resentence a petitioner. It is important that a petitioner be very specific in the request and why specifically they should receive a reduction in sentence.

For example, “I was sentenced to the upper prison term. I am asking to be resentenced to the middle term for the following reasons …”

Some of the factor’s taken into consideration for review are:

   i. Seriousness of the Commitment Offense
   ii. Criminal History
   iii. Sentence and Expected Release Date
   iv. In-Prison Conduct
   v. Efforts at Rehabilitation
   vi. Post-release Plans

Note that because rehabilitation is something the court takes into consideration when granting resentencing, the petitioner’s Central File must be examined.

4. Once an investigation and review is concluded by the PCRU, a recommendation will be made. If the petitioner’s claim is denied, a letter to that effect will be sent to the petitioner or their legal representative.

5. If the PCRU finds the petitioner’s claim has merit, a recommendation will be made to the District Attorney to accept the petitioner’s request.

   i. If the District Attorney agrees,

   ii. The petitioner or their legal representative will be notified;

   iii. The PCRU will prepare and file a recommendation to the court to have the petitioner recalled and resentedenced.