

## Re-sentencing Requests – Fact Sheet

**There have been several changes in the law that result in inmates/defendants being resentenced. This has drastically increased our workload; it has forced victims and their families to revisit the trauma they have already suffered and has prematurely released felons into our community.**

### **SB 775/SB 1437**

- Senate Bill No. 1437 (SB 1437) created Penal Code section 1172.6 which provides a process for accomplices convicted of first- or second-degree murder under either a felony murder or natural probable consequences theory of liability to petition the court for resentencing. On October 5, 2021, the Governor approved Senate Bill No. 775 (SB 775). That legislation became effective on January 1, 2022 and amended section 1172.6 to extend the resentencing petition process to individuals convicted of attempted murder and manslaughter. This statute allows inmates to petition to have their sentences vacated and to be resentenced to a different and lesser crime.
- As of January 2023, the San Diego District Attorney's Office has received more than **525** petitions from inmates requesting resentencing under this new law. Reviewing and preparing to respond to these petitions is extremely time-consuming and labor intensive. The DA's Office has set up a special unit to do so.
- The first step in the process is a **prima facie hearing** where the inmate must establish whether they qualify for resentencing. Preparing for such a hearing is a laborious task, including reading through 100's of pages of transcripts from previous hearings, jury instructions, and appellate court opinions, etc. DDAs must respond to this petition filed by the inmate within 60 days of service.
- Last year, prosecutors appeared at approximately **234** such hearings. The team handling these petitions also appear for **status conferences** which are requested by the judges. At the prima facie hearing, a judge determines if the petitioner/inmate has established a prima facie case for relief and whether to issue an order to show cause and set the matter for an **evidentiary hearing**. So far, there have been approximately 56 evidentiary hearings, of which it was determined by a judge that 20 inmates' sentences were vacated, and their matters were resentenced to a lower term; 59 additional evidentiary hearings are currently pending.

- Preparation for the Evidentiary Hearings includes reading through trial transcripts (which can be tens of thousands of pages), reviewing jury instructions and verdict forms, writing briefs of 30 pages or more, working with DA investigators to locate witnesses, and meeting with witnesses to update them on the case prior to calling them to testify.
- Lost in all of this are the victim’s family (and the victims of attempted murder)—who thought they received justice and often were at peace with the murder of their loved one and the sentence imposed on those responsible. However, at present they are being informed that what was once a tragic experience from their past is now very much in the present based on new legislation and the person or persons responsible for their loved one’s murder or attempted murder is back in court. Part of our responsibility is notifying victims and their families about the change in the law and upcoming hearings—essentially re-victimizing them.

**SB 483**

- Another change in the law, SB483, went into effect in January of last year. It requires the court to review and resentence defendants who had sentencing enhancements (prison priors) imposed as part of their sentence. The practical result of this law has been to reduce many lengthy sentences and release inmates convicted of serious crimes back onto the streets.
- In stage one, we received 170 cases from the California Department of Corrections and Rehabilitation. These were mandated to be resented by October 1, 2022 and we met that burden.
- The second batch of cases referred to us contains more than 625 prisoners on the list and their cases must be resolved by the end of this year. This is also very labor intensive and resentencing requests are piling up in our office. Again, Deputy DAs must review the prior case, probation report, manage subpoenas, and file oppositions to defense motions when appropriate.
- This burden is spread around the criminal justice system to not only us, but the court and public defender. The good news is that we have a good working relationship with the public defender’s office and are cooperating well with them.

**SB 567**

- SB 567 requires the court to impose the middle term of imprisonment unless there are aggravating circumstances that have been stipulated by the defendant or found true at trial.



- As a stand-alone law, SB 567 is not retroactive in the traditional sense (although applies to cases not yet final on appeal). But, when a case is back before the court in conjunction with other recently passed legislation, a defendant's case can become non-final. In that instance, a defendant who was sentenced to the upper term can be resentenced. This would require, in the SB 567 context, the prosecution to prove aggravating factors which were not previously required under the law to keep the upper term in place.

#### **ELDERL PAROLE**

- Effective January of 2021, inmates who are both age 50 and have served at least 20 years in prison are now eligible for an elderly parole hearing. Inmates who are age 60 and have served at least 25 years are also eligible for an elderly parole hearing. This is the law regardless of what crime they were convicted of.

#### **CASE EXAMPLES FROM RESENTENCINGS**

- **Tyler Dean** was one of three defendants who attacked, stabbed, and killed a man in Fallbrook for no other reason than being black. The defendant was sentenced to 31 years-to-life in 2018, but last week had his murder conviction reversed, requiring the DA's Office to retry him for murder on an alternate theory of liability.
- **Ramon Del Rio** killed two people (shot and stabbed) who were trying to buy drugs from him, leaving their bodies in the Sea World parking lot. He was the actual killer- not an accomplice. This was an older case (1978 jury trial) and while we had some documents detailing the offense, the statute made clear that the court could not consider them. The documents the court *could* consider, the trial transcripts, had been purged due to the age of the case and so we were unable to establish in court that he was the direct perpetrator of the two murders. A judge vacated his two first degree murder convictions and resentenced him to a charge of robbery, clearing the way for him to be released from prison.
- In 2007 and 2008 **Abraham Franco** aided and abetted two gang-related murders by driving fellow gang members, who he knew were armed, to rival gang territory. He waited in his car while the perceived rivals were gunned down and then drove the shooters away from the scene. The first "rival" was in fact a juvenile who was not in a gang. In July of 2011 he was sentenced to 80-life. One of the victims is the brother of current Deputy District Attorney Augustin Pena (Javier Quiroz). After an evidentiary hearing on both murder convictions, a judge granted the petition as to the murder of Javier Quiroz and denied the petition as to the murder of Angel Hernandez. The court resentenced Franco to prison for a term of three years, plus 15-life. With respect to the second murder the court re-imposed Franco's original 15-life sentence but struck the 25-life firearm enhancement under newly enacted legislation (AB 620, giving it the



discretion to do so). Because Franco was not held sufficiently accountable for his active role in the murder of an innocent teenager, he is now eligible for release on parole

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