

**Senate Bill 9
As Amended 5/27/11
California Penal Code 1170**

(d) (2)

(A) When a defendant who was under 18 years of age at the time of the commission of the offense for which the defendant was sentenced to imprisonment for life without the possibility of parole has served at least 15 years of that sentence, the defendant may submit to the sentencing court a petition for recall and resentencing provided that defendants who entered custody on or after January 1, 1992, but prior to July 1, 2002, shall be permitted to submit a petition for recall and resentencing only as follows:

(i) Those defendants who entered custody prior to January 1, 1994, may submit a petition in the 2011-12 fiscal year.

(ii) Those defendants who entered custody on or after January 1, 1994, but prior to January 1, 1995, may submit a petition in the 2012-13 fiscal year.

(iii) Those defendants who entered custody on or after January 1, 1995, but prior to January 1, 1996, and those who entered custody on or after January 1, 2000, but prior to January 1, 2001, may submit a petition in the 2013-14 fiscal year.

(iv) Those defendants who entered custody on or after January 1, 1996, but prior to July 1, 1996, and those who entered custody on or after January 1, 2001, but prior to May 1, 2001, may submit a petition in the 2014-15 fiscal year.

(v) Those defendants who entered custody on or after July 1, 1996, but prior to January 1, 1997, and those who entered custody on or after May 1, 2001, but prior to January 1, 2002, may submit a petition in the 2015-16 fiscal year.

(vi) Those defendants who entered custody on or after January 1, 1997, but prior to July 1, 1997, and those who entered custody on or after January 1, 2002, but prior to July 1, 2002, may submit a petition in the 2016-17 fiscal year.

(vii) Those defendants who entered custody on or after July 1, 1997, but prior to January 1, 1998, may submit a petition in the 2017-18 fiscal year.

(viii) Those defendants who entered custody on or after January 1, 1998, but prior to July 1, 1998, may submit a petition in the 2018-19 fiscal year.

(ix) Those defendants who entered custody on or after July 1, 1998, but prior to January 1, 1999, may submit a petition in the 2019-20 fiscal year.

(x) Those defendants who entered custody on or after January 1, 1999, but prior to July 1, 1999, may submit a petition in the 2020-21 fiscal year.

(xi) Those defendants who entered custody on or after July 1, 1999, but prior to January 1, 2000, may submit a petition in the 2021-22 fiscal year.

(xii) If recall and resentencing is not granted under petitions permitted in clauses (i) to (xi), inclusive, defendants who entered custody on or after January 1, 1992, but prior to January 1, 2000, may submit a second and final petition after having served 24 years. The

final petition may be submitted, and the response to that petition shall be determined, during the 25th year of the defendant's sentence. If recall and resentencing is not granted under petitions permitted in clauses (i) to (vi), inclusive, defendants who entered custody on or after January 1, 2000, but prior to July 1, 2002, may submit petitions as described in subparagraph (H).

(B) The defendant shall file the original petition with the sentencing court. A copy of the petition shall be served on the agency that prosecuted the case. The petition shall include the defendant's statement that he or she was under 18 years of age at the time of the crime and was sentenced to life in prison without the possibility of parole, the defendant's statement describing his or her remorse and work towards rehabilitation, and the defendant's statement that one of the following is true:

(i) The defendant was convicted pursuant to felony murder or aiding and abetting murder provisions of law.

(ii) The defendant does not have juvenile felony adjudications for assault or other felony crimes with a significant potential for personal harm to victims prior to the offense for which the sentence is being considered for recall.

(iii) The defendant committed the offense with at least one adult codefendant.

(iv) The defendant has performed acts that tend to indicate rehabilitation or the potential for rehabilitation, including, but not limited to, availing himself or herself of rehabilitative, educational, or vocational programs, if those programs have been available at his or her classification level and facility, using self-study for self-improvement, or showing evidence of remorse.

(C) If any of the information required in subparagraph (B) is missing from the petition, or if proof of service on the prosecuting agency is not provided, the court shall return the petition to the defendant and advise the defendant that the matter cannot be considered without the missing information.

(D) A reply to the petition, if any, shall be filed with the court within 60 days of the date on which the prosecuting agency was served with the petition, unless a continuance is granted for good cause.

(E) If the court finds by a preponderance of the evidence that the statements in the petition are true, the court shall hold a hearing to consider whether to recall the sentence and commitment previously ordered and to resentence the defendant in the same manner as if the defendant had not previously been sentenced, provided that the new sentence, if any, is not greater than the initial sentence. Victims, or victim family members if the victim is deceased, shall retain the rights to participate in the hearing.

(F) The factors that the court may consider when determining whether to recall and resentence include, but are not limited to, the following:

(i) The defendant was convicted pursuant to felony murder or aiding and abetting murder provisions of law.

(ii) The defendant does not have juvenile felony adjudications for assault or other felony crimes with a significant potential for

personal harm to victims prior to the offense for which the sentence is being considered for recall.

(iii) The defendant committed the offense with at least one adult codefendant.

(iv) Prior to the offense for which the sentence is being considered for recall, the defendant had insufficient adult support or supervision and had suffered from psychological or physical trauma, or significant stress.

(v) The defendant suffers from cognitive limitations due to mental illness, developmental disabilities, or other factors that did not constitute a defense, but influenced the defendant's involvement in the offense.

(vi) The defendant has performed acts that tend to indicate rehabilitation or the potential for rehabilitation, including, but not limited to, availing himself or herself of rehabilitative, educational, or vocational programs, if those programs have been available at his or her classification level and facility, using self-study for self-improvement, or showing evidence of remorse.

(vii) The defendant has maintained family ties or connections with others through letter writing, calls, or visits, or has eliminated contact with individuals outside of prison who are currently involved with crime.

(viii) The defendant has had no disciplinary actions for violent activities in the last five years in which the defendant was determined to be the aggressor.

(G) The court shall have the discretion to recall the sentence and commitment previously ordered and to resentence the defendant in the same manner as if the defendant had not previously been sentenced, provided that the new sentence, if any, is not greater than the initial sentence. The discretion of the court shall be exercised in consideration of the criteria in subparagraph (B). Victims, or victim family members if the victim is deceased, shall be notified of the resentencing hearing and shall retain their rights to participate in the hearing.

(H) If the sentence is not recalled, the defendant may submit another petition for recall and resentencing to the sentencing court when the defendant has been committed to the custody of the department for at least 20 years. If recall and resentencing is not granted under that petition, the defendant may file another petition after having served 24 years. The final petition may be submitted, and the response to that petition shall be

(I) In addition to the criteria in subparagraph (F), the court may consider any other criteria that the court deems relevant to its decision, so long as the court identifies them on the record, provides a statement of reasons for adopting them, and states why the defendant does or does not satisfy the criteria.

(J) This subdivision shall have retroactive application.