

# CCAP's Chart for Assembly Bill No. 124, Assembly Bill No. 1540, and Senate Bill No. 567

Assembly Bill No. 124, Assembly Bill No. 1540, and Senate Bill No. 567 make numerous, very significant changes to criminal sentencing and resentencing procedures and cross-reference one another. Based on the importance of these changes and the interconnection of the three bills, CCAP has created a separate chart outlining the changes these bills make.

## Statutes Amended / Added:

### [Pen. Code, § 1170 \(amended\)](#)

- [Sentencing: Aggravating Factors Justifying an Upper Term Must be Admitted or Found True Beyond a Reasonable Doubt at Trial by the Jury or by the Judge in a Court Trial; Bifurcation of Aggravating Circumstances](#)
- [Sentencing: Presumption of Lower Term for Certain Defendants with Mitigating Circumstances](#)
- [Recall and Resentencing for Juvenile Offenders Sentenced to LWOP](#)

[Pen. Code, § 1170.1 \(amended\)](#)—Sentencing Enhancements: Aggravating Factors Justifying an Upper Term for an Enhancement Must be Admitted or Found True Beyond a Reasonable Doubt at Trial by the Jury or by the Judge in a Court Trial

[Pen. Code, § 1170.03 \(added\)](#)—Pen. Code, § 1170, subd. (d)(1) Recall and Resentencing Provision Moved and Amended.

**Update Note:** Assembly Bill No. 200 (signed by the Governor on 6/30/2022 / effective immediately) renumbered § 1170.03 to Pen. Code, § 1172.1

[Pen. Code, § 236.15 \(added\)](#)—New Petition Process for Vacating Nonviolent Convictions/Arrests Where the Arrest/Conviction was a Direct Result of Being a Victim of Intimate Partner Violence or Sexual Violence

[Pen. Code, § 236.23 \(amended\)](#)—Expansion of Affirmative Defense for Human Trafficking Victims

[Pen. Code, § 236.24 \(added\)](#)—New Affirmative Defense for Victims of Intimate Partner Violence or Sexual Violence

[Pen. Code, § 1016.7 \(added\)](#)—Mitigating Factors Prosecution Must Consider During Plea Negotiations

## **Effective Dates**

The effective date for all the bills listed in this chart is 1/1/2022.

## **Retroactivity**

The bills in this chart have at least one or more sections that may have retroactive application under *In re Estrada* (1965) 63 Cal.2d 740. As a result, counsel should consider whether arguing retroactivity under *Estrada* and its progeny would benefit the appellant in a given case. Some recent favorable cases interpreting *Estrada* include:

- *People v. Esquivel* (2021) 11 Cal.5th 671 (legislation ameliorating punishment presumptively applies in a case where defendant is placed on probation with execution of an imposed sentence suspended if the defendant may still timely obtain direct review of an order revoking probation and causing the sentence to take effect)
- *People v. McKenzie* (2020) 9 Cal.5th 40 (a defendant who is placed on probation after imposition of sentence is suspended, and who does not timely appeal from the order granting probation, may take advantage of ameliorative statutory amendments that take effect during a later appeal from a judgment revoking probation and imposing sentence)
- *People v. Frahs* (2020) 9 Cal.5th 618 (mental health pretrial diversion statute for defendants with qualifying mental disorders (Pen. Code, § 1001.36) is retroactive to cases that were not final when the statute became effective)
- *People v. Stamps* (2020) 9 Cal.5th 685 (Senate Bill No. 1393 applies retroactively to cases that were not final when the legislation became effective; this opinion also addresses applying ameliorative legislation on appeal from a guilty plea)
- *People v. Superior Court (Lara)* (2018) 4 Cal.5th 299 (the part of Proposition 57 that prohibits prosecutors from charging juveniles with crimes directly in adult court reduces the possible punishment for a class of persons (juveniles) and the rationale of *In re Estrada* (1965) 63 Cal.2d 740 requires retroactive application of the law to all cases not final when the law was enacted)

**Links to Text of Bills on California Legislative Information Website**

[Assembly Bill No. 124](#)

[Assembly Bill No. 1540](#)

[Senate Bill No. 567](#)

Statute Amended / Added	Bill	Important Highlights
Pen. Code, § 1170, subd. (b) (amended)  <a href="#">Link to text of Pen. Code, § 1170 showing amendments.</a>	Senate Bill No. 567, Section 1.3 <sup>1</sup>	<p><b><i>Sentencing—Aggravating Factors Justifying an Upper Term Must be Admitted or Found True Beyond a Reasonable Doubt at Trial by the Jury or by the Judge in a Court Trial; Bifurcation of Aggravating Circumstances</i></b></p> <ul style="list-style-type: none"> <li>• Pen. Code, § 1170, subd. (b)(1) has been amended to provide that, if an offense specifies three possible terms, “the court shall, in its sound discretion, order imposition of a sentence not to exceed the middle term,” except as provided in paragraph (2) of the statute.</li> <li>• Pen. Code, § 1170, subd. (b)(2) provides:               <ul style="list-style-type: none"> <li>○ “The court may impose a sentence exceeding the middle term only when there are circumstances in aggravation of the crime that justify the imposition of a term of imprisonment exceeding the middle term, and the facts underlying</li> </ul> </li> </ul>

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<sup>1</sup> Senate Bill No. 567, Assembly Bill No. 124, and Assembly Bill No. 1540 all include changes to Penal Code section 1170 and cross-reference each other. Based on our analysis of the bills, we believe the operative version of section 1170 is in Senate Bill No. 567, section 1.3. The legislative history for all three bills will likely be relevant.

Statute Amended / Added	Bill	Important Highlights
		<p>those circumstances have been stipulated to by the defendant, or have been found true beyond a reasonable doubt at trial by the jury or by the judge in a court trial.”</p> <ul style="list-style-type: none"> <li>○ “Except where evidence supporting an aggravating circumstance is admissible to prove or defend against the charged offense or enhancement at trial, or it is otherwise authorized by law, upon request of a defendant, trial on the circumstances in aggravation alleged in the indictment or information shall be bifurcated from the trial of charges and enhancements. The jury shall not be informed of the bifurcated allegations until there has been a conviction of a felony offense.”</li> <li>● “[T]he court may consider the defendant’s prior convictions in determining sentencing based on a certified record of conviction without submitting the prior convictions to a jury. This paragraph does not apply to enhancements imposed on prior convictions.” (Pen. Code, § 1170, subd. (b)(3).)</li> </ul> <p><b><i>Sentencing—Presumption of Lower Term for Certain Defendants with Mitigating Circumstances</i></b></p> <ul style="list-style-type: none"> <li>● Under Pen. Code, § 1170, subd. (b)(6), unless the court finds that the aggravating circumstances outweigh the mitigating circumstances and that imposition of the lower term would be contrary to the interests of justice, the court shall order imposition of the lower term if any of the following was a contributing factor in the commission of the offense: <ul style="list-style-type: none"> <li>○ “The person has experienced psychological, physical, or childhood trauma, including, but not limited to, abuse, neglect, exploitation, or sexual violence.”</li> <li>○ “The person is a youth, or was a youth as defined under subdivision (b) of Section 1016.7 at the time of the commission of the offense.”</li> </ul> </li> </ul>

Statute Amended / Added	Bill	Important Highlights
		<ul style="list-style-type: none"> <li> <ul style="list-style-type: none"> <li> <ul style="list-style-type: none"> <li>▪ Assembly Bill No. 124 adds Pen. Code, § 1016.7. Subdivision (b) defines a “youth” as “any person under 26 years of age on the date the offense was committed.”</li> <li>○ “Prior to the instant offense, or at the time of the commission of the offense, the person is or was a victim of intimate partner violence or human trafficking.”</li> </ul> </li> <li>• A court may still impose the lower term even if there is no evidence of circumstances listed above. (Pen. Code, § 1170, subd. (b)(7).)</li> </ul> </li> </ul>

Statute Amended / Added	Bill	Important Highlights
<p>Pen. Code, § 1170, subd. (d) (amended)</p> <p><a href="#">Link to text of Pen. Code, § 1170 showing amendments.</a></p>	<p>Senate Bill No. 567, Section 1.3</p>	<p><b><i>Recall and Resentencing for Juvenile Offenders Sentenced to LWOP</i></b></p> <ul style="list-style-type: none"> <li>• Pen. Code, § 1170, subd. (d) has been amended and the Pen. Code, § 1170, subd. (d)(1) recall and resentencing procedure has been moved to a new statute, Pen. Code, § 1170.03 (see below, added by Assembly Bill No. 1540, Section 3.1).</li> <li>• Pen. Code, § 1170, subd. (d) now solely addresses the recall and resentencing procedure for juvenile offenders sentenced to LWOP.</li> <li>• In addition to updating subdivision references, there are substantive changes to the juvenile offender LWOP recall and resentencing procedure.</li> <li>• Pen. Code, § 1170, subd. (d)(8) provides that the court may also resentence the defendant to a term that is less than the initial sentence if any of the following were a contributing factor in the commission of the alleged offense: <ul style="list-style-type: none"> <li>○ “The person has experienced psychological, physical, or childhood trauma, including, but not limited to, abuse, neglect, exploitation, or sexual violence.”</li> <li>○ “The person is a youth, or was a youth as defined under subdivision (b) of Section 1016.7 at the time of the commission of the offense.” <ul style="list-style-type: none"> <li>○ Assembly Bill No. 124 adds Pen. Code, § 1016.7. Subdivision (b) defines a “youth” as “any person under 26 years of age on the date the offense was committed.”</li> <li>○ “Prior to the instant offense, or at the time of the commission of the offense, the person is or was a victim of intimate partner violence or human trafficking.”</li> </ul> </li> </ul> </li> <li>• The court is not prohibited from resentencing the defendant to a term that is less than the initial sentence even if none of the circumstances above are present. (Pen. Code, § 1170, subd. (d)(9).)</li> <li>• <b>Retroactivity Note:</b> Pen. Code, § 1170, subd. (d)(12) states: “This subdivision shall have retroactive application.” Note that this provision existed before the Senate Bill No. 567 amendments.</li> </ul>

Statute Amended / Added	Bill	Important Highlights
<p>Pen. Code, § 1170.1 (amended)</p> <p><a href="#">Link to text of Pen. Code, § 1170.1 showing amendments.</a></p>	<p>Senate Bill No. 567, Section 2</p>	<p><b><i>Sentencing Enhancements—Aggravating Factors Justifying an Upper Term for an Enhancement Must be Admitted or Found True Beyond a Reasonable Doubt at Trial by the Jury or by the Judge in a Court Trial</i></b></p> <ul style="list-style-type: none"> <li>• Pen. Code, § 1170.1, subd. (d) has been amended to provide that, if an enhancement is punishable by one of three terms, “the court than shall, in its sound discretion, order imposition of a sentence not to exceed the middle term,” except as provided in paragraph (2) of the statute. (Pen. Code, § 1170.1, subd. (d)(1).)</li> <li>• Pen. Code, § 1170.1, subd. (d)(2) states that “[t]he court may impose a sentence exceeding the middle term only when there are circumstances in aggravation that justify the imposition of a term of imprisonment exceeding the middle term, and the facts underlying those circumstances have been stipulated to by the defendant, or have been found true beyond a reasonable doubt at trial by the jury or by the judge in a court trial.”</li> </ul>

Statute Amended / Added	Bill	Important Highlights
<p>Pen. Code, § 1170.03 (added)</p> <p><a href="#">Link to text of Pen. Code, § 1170.03 showing relocation and amendments, including findings and declarations.</a></p> <p><b>Update Note:</b> Assembly Bill No. 200 (signed by the Governor on 6/30/2022 / effective immediately) renumbered § 1170.03 to Pen. Code, § 1172.1</p>	<p>Assembly Bill No. 1540, Section 3.1 (See also Assembly Bill No. 124)</p>	<p><b><i>Pen. Code, § 1170, subd. (d)(1) Recall and Resentencing Provision Moved and Amended</i></b></p> <ul style="list-style-type: none"> <li>• The Pen. Code, § 1170, subd. (d)(1) recall and resentencing provision has been amended and moved to new Pen. Code, § 1170.03. (The recall and resentencing procedure for juvenile offenders sentenced to LWOP remains in Pen. Code, § 1170, subd. (d), see above.)</li> <li>• Assembly Bill No. 1540 includes findings and declarations regarding lengthy sentences and declining crime rates, including the following: “It is the intent of the Legislature that resentencing proceedings pursuant to Section 1170.03 of the Penal Code apply ameliorative laws passed by this body that reduce sentences or provide for judicial discretion, regardless of the date of the offense or conviction.” (§ 1(i).)</li> <li>• The Attorney General may now recommend recall of a sentence if the Department of Justice originally prosecuted the case. (Pen. Code, § 1170.03, subd. (a)(1).)</li> <li>• In recalling and resentencing, the court may now “[v]acate 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, with the concurrence of both the defendant and the” prosecuting agency. (Pen. Code, § 1170.03, subd. (a)(3)(B).)</li> <li>• In recalling and resentencing a person, the court must now “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 under subdivision (b) of Section 1016.7 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, § 1170.03, subd. (a)(4).)</li> </ul>

Statute Amended / Added	Bill	Important Highlights
		<ul style="list-style-type: none"> <li>○ Assembly Bill No. 124 adds Pen. Code, § 1016.7. Subdivision (b) defines a “youth” as “any person under 26 years of age on the date the offense was committed.”</li> <li>● “The court shall state on the record the reasons for its decision to grant or deny recall and resentencing.” (Pen. Code, § 1170.03, subd. (a)(6).)</li> <li>● “Resentencing may be granted without a hearing upon stipulation by the parties.” (Pen. Code, § 1170.03, subd. (a)(7).)</li> <li>● “Resentencing shall not be denied, nor a stipulation rejected, without a hearing where the parties have an opportunity to address the basis for the intended denial or rejection. If a hearing is held, the defendant may appear remotely and the court may conduct the hearing through the use of remote technology, unless counsel requests their physical presence in court.” (Pen. Code, § 1170.03, subd. (a)(8).)</li> <li>● If a resentencing request is from CDCR, the Board of Parole Hearings, a county correctional administrator, a district attorney, or the Attorney General, all of the following shall apply:             <ul style="list-style-type: none"> <li>○ “The court shall provide notice to the defendant and set a status conference within 30 days after the date that the court received the request. The court’s order setting the conference shall also appoint counsel to represent the defendant.”</li> <li>○ “There shall be 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 in” Pen. Code, § 1170.18, subd. (c).</li> </ul> </li> </ul> <p>(Pen. Code, § 1170.03, subd. (b).)</p>

Statute Amended / Added	Bill	Important Highlights
<p>Pen. Code, § 236.15 (added)</p> <p><a href="#">Link to text of Pen. Code, § 236.15.</a></p>	<p>Assembly Bill No. 124, Section 1</p>	<p><b><i>New Petition Process for Vacating Nonviolent Convictions/Arrests Where the Arrest/Conviction was a Direct Result of Being a Victim of Intimate Partner Violence or Sexual Violence</i></b></p> <ul style="list-style-type: none"> <li>• Pen. Code, § 236.15 has been added and this statute outlines the procedure for a person who was arrested for or convicted of any nonviolent offense committed while the person was a victim of intimate partner violence or sexual violence to petition the court (under penalty of perjury) for vacatur relief of their convictions and arrests. (Pen. Code, § 236.15, subd. (a)-(b).)</li> <li>• “The petitioner shall establish, by clear and convincing evidence, that the arrest or conviction was the direct result of being a victim of intimate partner violence or sexual violence.” (Pen. Code, § 236.15, subd. (a).)</li> <li>• “After considering the totality of the evidence presented, the court may vacate the conviction and expunge the arrests and issue an order if it finds all of the following:” <ul style="list-style-type: none"> <li>○ “That the petitioner was a victim of intimate partner violence or sexual violence at the time the nonviolent offense was committed.”</li> <li>○ “The commission of the crime was a direct result of being a victim of intimate partner violence or sexual violence.”</li> <li>○ “The victim is engaged in a good faith effort to distance themselves from the perpetrator of the harm.”</li> <li>○ “It is in the best interest of the petitioner and in the interests of justice.”</li> </ul> </li> <li>• (Pen. Code, § 236.15, subd. (g).)</li> <li>• “Notwithstanding this section, a petitioner shall not be relieved of any financial restitution order that directly benefits the victim of a nonviolent offense, unless it has already been paid.” (Pen. Code, § 236.15, subd. (i).)</li> <li>• “If the court denies the application because the evidence is insufficient to establish grounds for vacatur, the denial may be without prejudice. The court may state the</li> </ul>

Statute Amended / Added	Bill	Important Highlights
		<p>reasons for its denial in writing or on the record that is memorialized by transcription, audio tape, or video tape, and if those reasons are based on curable deficiencies in the application, allow the applicant a reasonable time period to cure the deficiencies upon which the court based the denial.” (Pen. Code, § 236.15, subd. (s).)</p> <ul style="list-style-type: none"> <li>• A person who was arrested as, or found to be, a person described in Welf. &amp; Inst. Code, § 602 “because they committed a nonviolent offense while they were a victim of intimate partner violence or sexual violence, may petition the court for relief under this section. If the petitioner establishes that the arrest or adjudication was the direct result of being a victim of intimate partner violence or sexual violence the petitioner is entitled to a rebuttable presumption that the requirements for relief have been met.” (Pen. Code, § 236.15, subd. (j).)</li> <li>• “Nonviolent offense” means any offense not listed in Pen. Code, § 667.5, subd. (c). (Pen. Code, § 236.15, subd. (t)(1).)</li> <li>• “‘Vacate’ means that the arrest and any adjudications or convictions suffered by the petitioner are deemed not to have occurred and that all records in the case are sealed and destroyed pursuant to this section.” (Pen. Code, § 236.15, subd. (t)(2).)</li> <li>• The statute includes additional information about the petition process.</li> <li>• The petition process set forth in Pen. Code, § 236.15 is very similar to the petition process for relief for victims of human trafficking. (See Pen. Code, § 236.14.)</li> </ul>

Statute Amended / Added	Bill	Important Highlights
Pen. Code, § 236.23 (amended)  <a href="#">Link to text of Pen. Code, § 236.23 showing amendments.</a>	Assembly Bill No. 124, Section 2	<p><b><i>Expansion of Affirmative Defense for Human Trafficking Victims</i></b></p> <ul style="list-style-type: none"> <li>• Pen. Code, § 236.23 was amended to expand the affirmative defense provided in that statute for human trafficking victims.</li> <li>• Prior to this amendment, the affirmative defense set forth in section 236.23 did not apply to:             <ul style="list-style-type: none"> <li>○ A serious felony, as defined in Pen. Code, § 1192.7, subd. (c)</li> <li>○ A violent felony, as defined in Pen. Code, § 667.5, subd. (c)</li> <li>○ A violation of Pen. Code, § 236.1</li> </ul>             (Pen. Code, § 236.23, subd. (a).)           </li> <li>• Now the defense “does not apply to a violent felony, as defined in” Pen. Code, § 667.5, subd. (c). The serious felony and Pen. Code, § 236.1 exclusions were removed. (See Pen. Code, § 236.23, subd. (a).)</li> <li>• In addition to the records already listed in the statute, the following information may also be presented to establish the affirmative defense: “Information contained in governmental agency reports, which is relevant to the identification of a victim of human trafficking by a peace officer pursuant to Section 236.2, may be presented pursuant to this subdivision even if a peace officer did not make an identification pursuant to Section 236.2.” (Pen. Code, § 236.23, subd. (c).)</li> <li>• <b><u>Retroactivity Note:</u></b> For <i>Estrada</i> retroactivity arguments, see <i>People v. Wright</i> (2006) 40 Cal.4th 81, 94-95, which discusses retroactivity of an affirmative defense.</li> </ul>

Statute Amended / Added	Bill	Important Highlights
Pen. Code, § 236.24 (added)  <a href="#">Link to text of Pen. Code, § 236.24.</a>	Assembly Bill No. 124, Section 3	<p><b><i>New Affirmative Defense for Victims of Intimate Partner Violence or Sexual Violence</i></b></p> <ul style="list-style-type: none"> <li>• Pen. Code, § 236.24 establishes a new affirmative “defense to a charge of a crime that the person was coerced to commit the offense as a direct result of being a victim of intimate partner violence or sexual violence at the time of the offense and had a reasonable fear of harm.” (Pen. Code, § 236.24, subd. (a).)</li> <li>• This defense does not apply to a violent felony, as defined in Pen. Code, § 667.5, subd. (c). (Pen. Code, § 236.24, subd. (a).)</li> <li>• If, in a proceeding pursuant to Welf. &amp; Inst. Code, § 602, “the juvenile court finds that the offense on which the proceeding is based was committed as a direct result of the minor being a victim of intimate partner violence or sexual violence, and the affirmative defense established in subdivision (a) is established by a preponderance of the evidence, the court shall dismiss the proceeding and order the relief prescribed in” Welf. &amp; Inst. Code, § 786. (Pen. Code, § 236.24, subd. (f).)</li> <li>• This new statute is comparable to Pen. Code, § 236.23 (affirmative defense for human trafficking victims).</li> <li>• The statute sets forth the procedure for raising the defense and sealing records if the defendant prevails on the affirmative defense. (See Pen. Code, § 236.24, subds. (b)-(e).)</li> <li>• <b><u>Retroactivity Note:</u></b> For <i>Estrada</i> retroactivity arguments, see <i>People v. Wright</i> (2006) 40 Cal.4th 81, 94-95, which discusses retroactivity of an affirmative defense.</li> </ul>

Statute Amended / Added	Bill	Important Highlights
Pen. Code, § 1016.7 (added)  <a href="#">Link to text of Pen. Code, § 1016.7.</a>	Assembly Bill No. 124, Section 4	<p><b><i>Mitigating Factors Prosecution Must Consider During Plea Negotiations</i></b></p> <ul style="list-style-type: none"> <li>• Pen. Code, § 1016.7 has been added to the Penal Code and provides that “[i]n the interest of justice, and in order to reach a just resolution during plea negotiations, the prosecutor shall consider during plea negotiations, among other factors, the following circumstances as factors in support of a mitigated sentence if any of the following were a contributing factor in the commission of the alleged offense:”             <ul style="list-style-type: none"> <li>○ “The person has experienced psychological, physical, or childhood trauma, including, but not limited to, abuse, neglect, exploitation, or sexual violence.”</li> <li>○ The person is a youth, or was a youth at the time of the commission of the offense. (A “youth” “includes any person under 26 years of age on the date the offense was committed.”)</li> <li>○ “Prior to the instant offense, or during the commission of the offense, the person is or was a victim of intimate partner violence or human trafficking.”</li> </ul> </li> </ul>