

**State of California
Office of Administrative Law**

In re:
**Department of Corrections and
Rehabilitation**

Regulatory Action:

Title 15, California Code of Regulations

**Adopt sections: 3076, 3076.1, 3076.2,
3076.5**

Amend sections: 3076.3, 3076.4

**Repeal sections: 3076, 3076.1, 3076.2,
3076.5**

**NOTICE OF APPROVAL OF EMERGENCY
REGULATORY ACTION**

**Government Code Sections 11346.1 and
11349.6, and Penal Code Section 5058.3**

OAL Matter Number: 2019-1121-01

**OAL Matter Type: Emergency Operational
Necessity (EON)**

The Department of Corrections and Rehabilitation proposed this emergency operational necessity action, pursuant to Penal Code section 5058.3, to amend regulations governing the recall of inmate commitments and resentencing of inmates pursuant to Penal Code section 1170(d).

OAL approves this emergency regulatory action pursuant to sections 11346.1 and 11349.6 of the Government Code, and section 5058.3 of the Penal Code.

This emergency regulatory action is effective on 1/1/2020 and will expire on 6/10/2020. The Certificate of Compliance for this action is due no later than 6/9/2020.

Date: December 10, 2019



Richard L. Smith
Senior Attorney

For: Kenneth J. Pogue
Director

Original: Ralph Diaz, Secretary
Copy: Josh Jugum

STD. 400 (REV. 01-2013)

| | | | |
|------------------|--------------------------|--------------------------|-------------------------------------|
| OAL FILE NUMBERS | NOTICE FILE NUMBER Z- | REGULATORY ACTION NUMBER | EMERGENCY NUMBER 2019-1121-01EON |
|------------------|--------------------------|--------------------------|-------------------------------------|

For use by Office of Administrative Law (OAL) only

2019 NOV 21 P 4:33

OFFICE OF
ADMINISTRATIVE LAW

NOTICE

REGULATIONS

ENDORSED - FILED
in the office of the Secretary of State
of the State of California

DEC 10 2019

3:09 PM

AGENCY WITH RULEMAKING AUTHORITY

California Department of Corrections and Rehabilitation

AGENCY FILE NUMBER (if any)

18-0882

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

| | | | | | |
|--------------------------------------------------------------------------------------------------------------------------------------------|--|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------|-------------------------------|-----------------------|
| 1. SUBJECT OF NOTICE | | TITLE(S) | FIRST SECTION AFFECTED | 2. REQUESTED PUBLICATION DATE | |
| 3. NOTICE TYPE <input type="checkbox"/> Notice as Proposed <input type="checkbox"/> Regulatory Action <input type="checkbox"/> Other | | 4. AGENCY CONTACT PERSON | | TELEPHONE NUMBER | FAX NUMBER (Optional) |
| OAL USE ONLY | | ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn | | NOTICE REGISTER NUMBER | PUBLICATION DATE |

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

| | | | |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------|
| 1a. SUBJECT OF REGULATION(S) Recommendation to Recall Sentence and Resentence | | 1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) | |
| 2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related) | | | |
| SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.) | | ADOPT 3076, 3076.1, 3076.2, 3076.5 | |
| | | AMEND 2076, 3076.1, 3076.2, 3076.3, 3076.4, 3076.5 per agency request | |
| TITLE(S) 15 | | REPEAL 3076, 3076.1, 3076.2, 3076.5 | |
| 3. TYPE OF FILING | | | |
| <input type="checkbox"/> Regular Rulemaking (Gov. Code §11346) | <input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute. | <input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.7(h)) | <input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100) |
| <input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4) | <input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1) | <input type="checkbox"/> File & Print | <input type="checkbox"/> Print Only |
| <input type="checkbox"/> Emergency (Gov. Code, §11346.1(b)) | | <input checked="" type="checkbox"/> Other (Specify) Emergency Op. Necessity PC 5058.3 | |
| 4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, 544 and Gov. Code §11347.1) | | | |
| 5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100) | | | |
| <input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a)) | <input type="checkbox"/> Effective on filing with Secretary of State | <input type="checkbox"/> §100 Changes Without Regulatory Effect | <input checked="" type="checkbox"/> Effective other (Specify) January 1, 2020 |
| 6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY | | | |
| <input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660) | <input type="checkbox"/> Fair Political Practices Commission | <input type="checkbox"/> State Fire Marshal | |
| <input type="checkbox"/> Other (Specify) | | | |
| 7. CONTACT PERSON Josh Jugum | TELEPHONE NUMBER 916 445-2266 | FAX NUMBER (Optional) | E-MAIL ADDRESS (Optional) joshua.jugum@cdcr.ca.gov |

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE

DATE

TYPED NAME AND TITLE OF SIGNATORY
RALPH M. DIAZ, SECRETARY

11/18/19

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

DEC 10 2019

Office of Administrative Law

TEXT OF PROPOSED REGULATIONS

In the following text, underline indicates newly added text and ~~strikethrough~~ indicates repealed text.

California Code of Regulations, Title 15, Division 3, Adult Institutions, Programs, and Parole.

Chapter 1. Rules and Regulations of Adult Operations and Programs.

New Article Heading 6.6 is adopted.

Article 6.6. Department Recommendation to Recall Sentence and Resentence Inmate

Section 3076 is re-titled. The existing text is deleted in full and replaced with the following text.

3076. Secretary's Authority. Recall of Commitment Recommendation Circumstances.

(a) Subdivision (d)(1) of Section 1170 of the Penal Code authorizes the Secretary to recommend to a sentencing court that the sentence and commitment previously imposed on an inmate be recalled and that the court resentence the inmate for any reason, subject to the Secretary's sound discretion.

(b) Subdivision (e)(1) of Section 1170 of the Penal Code authorizes the Secretary to recommend to a sentencing court that the sentence previously imposed on an inmate be recalled if the criteria found in subdivision (e)(2) of Section 1170 of the Penal Code are satisfied.

(c) The provisions of this article do not apply to condemned inmates and inmates sentenced to life without the possibility of parole.

~~(a) The Secretary, or designee, may recommend at any time to the sentencing court the recall of an inmate's commitment pursuant to Penal Code section 1170(d), if the inmate is not sentenced to death, for one or more of the following reasons:~~

~~(1) It is evident from the inmate's exceptional behavior that is so extraordinary beyond simply complying with all regulations and procedures during incarceration that they have changed as a person and would be a positive asset to the community.~~

~~(2) Information which was not made available to the court in pronouncing the inmate's sentence is brought to the attention of the Secretary, who deems the information would have influenced the sentence imposed by the court.~~

~~(3) The Secretary deems that circumstances have changed to the extent that the inmate's continued incarceration is not in the interest of justice.~~

~~(b) The Secretary, or designee, may recommend at any time to the sentencing court the recall of an inmate's commitment pursuant to PC section 1170(e), if the inmate is not sentenced to death or to a term of life without the possibility of parole, for one or more of the following reasons:~~

~~(1) The inmate is terminally ill with an incurable condition caused by an illness or disease that would produce death within six months, as determined by a physician employed by the California Department of Corrections and Rehabilitation.~~

~~(2) The inmate is permanently medically incapacitated with a medical condition, that renders him or her permanently unable to perform activities of basic daily living, and results in the inmate~~

requiring 24-hour total care, including, but not limited to coma, persistent vegetative state, brain death, ventilator dependency, loss of control of muscular or neurological function, and that incapacitation did not exist at the time of the original sentencing. Activities of basic daily living are breathing, eating, bathing, dressing, transferring, elimination, arm use, or physical ambulation.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 1170(d), 1170(e) and 5054, Penal Code.

Section 3076.1 is re-titled. The existing text is deleted in full and replaced with the following text.

3076.1 Recommendation Pursuant to subdivision (d) of Section 1170 of the Penal Code. Recall of Commitment Recommendation Consideration Factors for Penal Code Section 1170(d).

(a) Under any of the following circumstances, the Secretary may recommend to a sentencing court that the sentence and commitment previously imposed on an inmate be recalled and that the court resentence the inmate:

- (1) When an inmate demonstrates exceptional conduct as defined in subsection (b)(1);
- (2) When there is the substantial likelihood of a sentencing error as described in subsection (c)(1);
- (3) When there is a change in sentencing law as described in subsection (d)(1); or
- (4) When a referral is received from the head of a law enforcement agency, the head of a prosecutorial agency, or a judicial officer as described in Section 3076.2.

(b) Recommendation Based on Exceptional Conduct.

(1) An inmate may be considered for referral pursuant to subsection (a)(1) if their behavior while incarcerated demonstrates sustained compliance with departmental regulations, rules, and requirements, as well as prolonged participation in rehabilitative programming.

(2) Notwithstanding subsection (b)(1), inmates who meet the following criteria shall be excluded from consideration under this subsection:

(A) Inmates who are required to register pursuant to Section 290 of the Penal Code;

(B) Inmates who have not yet served 10 continuous years or 50% of their current commitment (for determinately sentenced inmates that means 50% of their Earliest Possible Release Date; for indeterminately sentenced inmates that means 50% of their Minimum Eligible Parole Date), whichever comes first;

(C) Inmates who have been found guilty of a serious or violent rules violation which qualifies as a Division A-1, A-2, B, C, or D offense as described in subsections 3323(b) through (f) within the last five years or whose serious or violent rules violation as described above is pending;

(D) Determinately sentenced inmates who are already scheduled for release within the next 18 months;

(E) Determinately sentenced inmates who, pursuant to subdivision (a)(1) of Section 32 of Article 1 of the California Constitution, are eligible for parole consideration within the next 18 months or have already been afforded parole consideration; or

(F) Indeterminately sentenced inmates who, pursuant to subdivision (a)(1) of Section 32 of Article 1 of the California Constitution or Sections 3041, 3051, or 3055 of the Penal Code, are scheduled for a parole hearing within the next 18 months or have already been afforded a parole hearing, regardless of the decision by the Board of Parole Hearings.

(3) Initial eligibility for consideration under subsection (a)(1) shall be determined by the Classification Services Unit.

(A) The Classification Services Unit shall review all referrals received from a Warden, the Director of the Division of Adult Institutions, or the Secretary.

(B) The Classification Services Unit shall not accept referrals from inmates or other parties on behalf of inmates.

(C) If an inmate is found ineligible for one of the reasons enumerated in subsection (b)(2), the Classification Services Unit shall document the reason or reasons for the inmate's ineligibility and a copy of the document shall be provided to the inmate and another copy placed in the inmate's central file within 10 business days of the decision.

(D) If an inmate is found eligible, the Classification Services Unit shall prepare a Cumulative Case Summary, which shall include all of the following information, and refer the matter to the Secretary:

1. Inmate's name and CDCR number;

2. Current commitment offense, brief description of the crime, and sentence;

3. County of commitment;

4. Summary of sustained juvenile petitions and adult criminal convictions;

5. Active or potential holds, warrants, and detainers;

6. Institutional behavior, including serious rules violation reports, drug test results, gang or disruptive group information, placement score, current housing assignment, a summary of work and educational assignments, and participation in rehabilitative programs and self-help activities;

7. Inmate visitor history (number of approved visitors and number of visits made during incarceration);

8. Victim notification requirements;

9. Other legally mandated notification requirements; and

10. A copy of the Abstract of Judgment and minute order for the inmate's current commitment offense, including plea agreements.

(4) Inmates considered under this section but deemed ineligible by the Classification Services Unit or not acted upon by the Secretary may only be reconsidered by the Department after two years have passed from the decision by the Classification Services Unit or the Secretary, whichever is later in time.

(c) Recommendation Based on the Substantial Likelihood of a Sentencing Error

(1) An inmate shall be eligible for consideration pursuant to subsection (a)(2) if their sentence, as reflected in the Abstract of Judgment, contradicts applicable sentencing laws at the time of their sentencing hearing or subsequent decisional law suggesting the substantial likelihood of a sentencing error.

(2) Notwithstanding subsection (c)(1), determinately sentenced inmates who are scheduled for release within the next six months shall be excluded from consideration under this section.

(3) Initial eligibility for consideration under subsection (a)(2) shall be determined by the Correctional Case Records Unit. Eligibility shall be determined by evaluating the Abstract of Judgment of each inmate and determining if there is a discrepancy between the inmate's sentence and the sentencing laws that existed at the time of the sentencing hearing or between the inmate's sentence and applicable judicial decisions. If an inmate is found eligible, the Correctional Case Records Unit shall refer the matter to the Secretary.

(d) Recommendation Based on a Change in Sentencing Law.

(1) An inmate may be considered for referral pursuant to subsection (a)(3) if the applicable sentencing laws at the time of their sentencing hearing are subsequently changed due to new statutory or case law authority with statewide application.

(2) Notwithstanding subsection (d)(1), inmates who meet the following criteria shall be excluded from consideration under this subsection:

(A) Inmates who have not yet served five continuous years or 50% of their current commitment (for determinately sentenced inmates that means 50% of their Earliest Possible Release Date; for indeterminately sentenced inmates that means 50% of their Minimum Eligible Parole Date), whichever comes first;

(B) Inmates who have been found guilty of a serious or violent rules violation which qualifies as a Division A-1, A-2, B, or C offense as described in subsections 3323(b) through (f) within the last one year or whose serious or violent rules violation as described above is pending;

(C) Determinately sentenced inmates who are already scheduled for release within the next 18 months;

(D) Determinately sentenced inmates who, pursuant to subdivision (a)(1) of Section 32 of Article 1 of the California Constitution, are eligible for parole consideration within the next 18 months or have already been afforded parole consideration; or

(E) Indeterminately sentenced inmates who, pursuant to subdivision (a)(1) of Section 32 of Article 1 of the California Constitution or Sections 3041, 3051, or 3055 of the Penal Code, are scheduled for a parole hearing within the next 18 months or who have already been afforded a parole hearing, regardless of the decision by the Board of Parole Hearings.

(3) Initial eligibility for consideration under subsection (a)(3) shall be determined by the Classification Services Unit or the Correctional Case Records Unit.

(A) If an inmate is found ineligible for one of the reasons enumerated in subsection (d)(2), the Classification Services Unit or the Correctional Case Records Unit shall document the reason or reasons for the inmate's ineligibility and a copy of the document shall be provided to the inmate and another copy placed in the inmate's central file within 10 business days of the decision.

(B) If an inmate is found eligible, the Classification Services Unit or the Correctional Case Records Unit shall prepare a Cumulative Case Summary as described in subsection (b)(3)(D) and refer the matter to the Secretary.

(4) Inmates considered under this section but deemed ineligible by the Classification Services Unit or the Correctional Case Records Unit, or not acted upon by the Secretary, may only be reconsidered by the Department after one year has passed from the decision by the Classification Services Unit, the Correctional Case Records Unit, or the Secretary, whichever is later in time.

(e) Decision by the Secretary.

(1) The Secretary shall reach a decision on any matter referred under this section within 10 business days of its receipt.

(2) If the Secretary elects to recommend an inmate for recall and resentencing, a recommendation letter and Cumulative Case Summary shall be forwarded to the sentencing court and a copy shall be provided to the inmate and another copy placed in the inmate's central file within 10 business days of the decision.

(3) If the Secretary elects not to recommend an inmate for recall and resentencing, a "General Chrono" (CDC Form 128-B; Rev. 4/74), which is incorporated by reference, shall be generated informing the inmate that the Secretary took no action and a copy shall be provided to the inmate and another copy placed in the inmate's central file within 10 business days of the decision.

(4) Pursuant to the broad discretion vested in the Secretary by statute, namely subdivision (d) of Section 1170 of the Penal Code, the Secretary's decision is final and not subject to administrative review.

~~For inmates meeting one or more of the recall eligibility requirements of section 3076(a), the Classification and Parole Representative, shall consider the following factors as may be applicable when recommending recall of commitment consideration for an inmate:~~

- ~~(a) The inmate's commitment offense.~~
- ~~(b) Whether the inmate has a history of affiliation with organized criminal activity, including, but not limited to, any known disruptive group, street gang, prison gang, terrorist group, or racketeering enterprise.~~
- ~~(c) The inmate is or is not designated as a Public Interest Case by the Classification Staff Representative, or their placement has or has not been ordered by the Departmental Review Board because of an unusual threat to the safety of persons or public interest in the inmate's case.~~
- ~~(d) Whether the inmate's prior criminal history includes violent acts against persons pursuant to Penal Code (PC) section 667.5(c) or PC section 1192.7(c), or registerable offenses pursuant to PC section 290.~~
- ~~(e) Whether there exists a documented victim or next of kin of the inmate's commitment offense in the community who would suffer fear from the release of the inmate back into the community.~~
- ~~(f) Whether the inmate's documented institutional behavior reflects a history of offenses involving force, violence, assault, arson or predatory sexual behavior.~~
- ~~(g) Whether the inmate has committed any other criminal acts, either prior to or during the current period of incarceration, that indicate he or she would be a danger to the public if released.~~

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 290, 1170(d), 3041,3043 3051, 3055 and 5054, Penal Code; Cal. Const., art. 1, sec. 32.

Section 3076.2 is re-titled. The existing text is deleted in full and replaced with the following text.

3076.2 Recommendation Based on a Law Enforcement, Prosecutorial, or Judicial Referral Recall of Commitment Processing for Penal Code Section 1170(d).

- (a) No more than 10 business days after receiving a request from the head of a law enforcement agency, head of a prosecutorial agency, or judicial officer asking that the Secretary consider recommending an inmate to a sentencing court pursuant to subdivision (d) of Section 1170 of the Penal Code, the Classification Services Unit shall prepare a Cumulative Case Summary as described in subsection (b)(3)(D) of Section 3076.1 and forward the request and the summary to the Secretary for consideration.
- (b) If the Secretary elects to recommend the inmate for recall and resentencing pursuant to subsections (a)(1), (a)(2), or (a)(3) of Section 3076.1, the Secretary shall, no more than 10 business days after receiving the Cumulative Case Summary, notify the District Attorney of the county that prosecuted the inmate resulting in his or her current incarceration in state prison and forward a copy of the recommendation and Cumulative Case Summary to the District Attorney.
- (c) If the District Attorney indicates his or her intent to recommend the inmate to the sentencing court pursuant to subdivision (d) of Section 1170 of the Penal Code, then the matter shall be considered closed. If the District Attorney does not respond to the Secretary within 10 business days of the Secretary's referral or indicates that he or she will not recommend the inmate to the sentencing court, then the Secretary shall independently recommend the inmate for recall of sentence and resentencing unless any information presented by the District Attorney in response causes the Secretary to reconsider.

~~(a) Requests for consideration which are initiated by the facility at any time or by the sentencing court more than 120 days after the date of the inmate's commitment shall be referred to the Classification and Parole Representative (C&PR).~~

~~(b) Upon receipt of the request, the C&PR shall consider the factors listed in section 3076.1 and review the inmate's central file to determine if the inmate is sentenced to death.~~

~~(1) If the inmate is sentenced to death, the C&PR shall document the reason for the ineligibility on a CDC Form 128-B (Rev. 04/74), General Chrono. The original CDC Form 128-B shall be filed in the inmate's central file and a copy, excluding any confidential material as defined in section 3321, sent to the inmate. A formal, written response shall be provided to the sentencing court or the Secretary, including the reason the inmate is not eligible for Penal Code (PC) section 1170(d) recall.~~

~~(2) If the inmate is not sentenced to death, the C&PR shall submit the request to the inmate's caseworker. The inmate's caseworker shall have five working days to prepare an evaluation report, noting the inmate's case factors as listed in section 3076.1, and include the following information and attachments:~~

~~(A) The inmate's cumulative case summary including, but not limited to the following information:~~

~~1. Inmate's name and CDC number.~~

~~2. Current commitment offense, brief description of the crime, and sentence.~~

~~3. County of commitment.~~

~~4. Prior juvenile and adult criminal history.~~

~~5. Active or potential holds, warrants, detainers.~~

~~6. Institutional adjustment, including rules violation reports, counseling chronos, pending disciplinary actions, gang/disruptive group information, placement score, current housing assignment, work and education assignments, and participation in self-help activities.~~

~~7. Mental health and developmental disability status.~~

~~(B) A list of any victim notification or other special notification requirements.~~

~~(C) The inmate's post-release plan.~~

~~(D) Abstract of Judgment for the inmate's current commitment offense.~~

~~(E) Probation Officer's Report for the inmate's current commitment offense.~~

~~(F) Institutional Staff Recommendation Summary.~~

~~(G) Legal Status Summary.~~

~~(H) CDC Form 112 (Rev. 09/83), Chronological History.~~

~~(I) The inmate's most recent Board of Parole Hearings Parole Consideration Report with the Lifer Parole Hearing Decision Face Sheet containing the Board of Parole Hearings' disposition (applies only to inmates who are sentenced to an indeterminate term).~~

~~(c) The C&PR shall review and forward the evaluation report to the warden or chief deputy warden within three working days.~~

~~(d) The warden or chief deputy warden shall review and sign the evaluation report and ensure it is forwarded to California Department of Corrections and Rehabilitation headquarters within three working days.~~

~~(e) The evaluation report for a PC section 1170(d) recall shall be referred to the Secretary, or designee, for review and consideration.~~

~~(1) If a positive recommendation for recall is made, and the inmate is sentenced to a determinate term, the Secretary, or designee's, recommendation shall be referred directly to the sentencing court.~~

~~(2) If the inmate is sentenced to an indeterminate term, the Secretary or designee's recommendation, whether positive or negative, shall be referred to the Board of Parole Hearings for review and consideration.~~

~~(f) When the court requests a post sentence report within 120 days of the inmate's sentencing, the inmate's caseworker shall evaluate all available information, and assess the inmate's potential for completing probation or other alternate sentencing, and the threat posed to the community if the inmate fails to realize that potential. The inmate's caseworker shall complete an evaluation report, as described in subsection 3076.2(b)(2), and forward the report to the C&PR within five working days.~~

~~(g) The C&PR shall have three working days to review the evaluation report and forward it to the warden or chief deputy warden.~~

~~(h) The warden or chief deputy warden shall review and sign the evaluation report and submit it directly to the sentencing court within three working days.~~

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 1170(d), 3043 and 5054, Penal Code.

Section 3076.3 is re-titled. The existing text remains unchanged.

3076.3. Recall of Commitment Recommendation Consideration Factors for Penal Code Section 1170(e) Recommendation Pursuant to subdivision (e) of Section 1170 of the Penal Code – Consideration Factors.

Subsections 3076.3 initial paragraph through 3076.3(j) remain unchanged.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 1170(e), 3043 and 5054, Penal Code; and *Martinez v. Board of Parole Hearings* (2010) 183 Cal.App.4th 578.

Section 3076.4 is re-titled. The existing text remains unchanged.

3076.4. Recall of Commitment Processing for Penal Code Section 1170(e) Recommendation Pursuant to subdivision (e) of Section 1170 of the Penal Code – Processes.

Subsections 3076.4 initial paragraph through 3076.4(j) are unchanged.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 1170(e), 3043 and 5054, Penal Code; and *Martinez v. Board of Parole Hearings* (2010) 183 Cal.App.4th 578.

Section 3076.5 is re-titled. The existing text is deleted in full and replaced with the following text.

3076.5 Victim Notification for Recall of Commitment Recommendations.

(a) Recommendation pursuant to subdivision (d) of Section 1170 of the Penal Code.

(1) No more than 10 business days after the Office of Victim and Survivor Rights and Services has been notified of a referral by the Department to the sentencing court pursuant to

subdivision (d) of Section 1170 of the Penal Code, based on exceptional conduct as described in subsection 3076.1(a)(1) or a law enforcement, prosecutorial, or judicial referral as described in subsection 3076.2, that office shall notify all victims registered with the Department pursuant to subdivision (b) of Section 679.03 of the Penal Code of the Department's action.

(2) No more than 10 business days after the Office of Victim and Survivor Rights and Services has been notified that the sentencing court has scheduled a hearing on a referral pursuant to subdivision (d) of Section 1170 of the Penal Code, based on the substantial likelihood of a sentencing error as described in subsection 3076.1(a)(2) or a change in sentencing law as described in subsection 3076.1(a)(3), that office shall notify all victims registered with the Department pursuant to subdivision (b) of Section 679.03 of the Penal Code of the Department's action.

(b) Recommendation pursuant to subdivision (e) of Section 1170 of the Penal Code. No more than 10 business days after the Office of Victim and Survivor Rights and Services has been notified of a referral by the Department to the sentencing court pursuant to subdivision (e) of Section 1170 of the Penal Code, that office shall notify all victims registered with the Department pursuant to subdivision (b) of Section 679.03 of the Penal Code of the Department's action.

(c) All notifications made pursuant to this section shall include the name and the address of the court that will consider the recall of the inmate's commitment.

~~When informed by department headquarters or the Board of Parole Hearings that an inmate's commitment has been recommended for recall to the sentencing court, the Classification and Parole Representative shall notify any victim of a crime committed by the inmate, or the victim's next of kin, provided that the victim or the victim's next of kin has formally requested notice about the status of the inmate in prison, including, but not limited to, notification of release, escape, a scheduled execution, an inmate's entry into a contract for the sale of the story of a crime, death, or of any hearing to review or consider the release or parole suitability or the setting of a parole date for the inmate, in writing; either by submitting a signed letter or a completed CDCR Form 1707 (Rev. 06/16), Request For Victim Services, which is incorporated by reference, to the Office of Victim and Survivor Rights and Services, and the requesting party has kept the department or the Board of Parole Hearings apprised of their current mailing address. The notification shall include the name and address of the court that will consider the recall of the inmate's commitment.~~

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 679.03, 1170(d), 1170(e), 2085.5, 3003, 3043, 3043.1, 3043.2, 3043.25, 3043.3, 3053.2, 3058.8, 3605, and 5054 and 5065.5, Penal Code.

NAME and NUMBER

CDC 128-B (Rev. 4/74)

DATE

GENERAL CHRONO

NAME and NUMBER

CDC 128-B (Rev. 4/74)

DATE

GENERAL CHRONO

NAME and NUMBER

CDC 128-B (Rev. 4/74)

DATE

GENERAL CHRONO

Office of Victim and Survivor Rights and Services (OVSRS)
P.O. Box 942883, Sacramento, CA 94283-0001
Toll Free Number: 1-877-256-6877 Fax Number: (916) 445-3737
Web: <http://www.cdcr.ca.gov/victims> Email: victimservices@cdcr.ca.gov



DO NOT MAIL THE COMPLETED FORM TO A PRISON. ALL INFORMATION WILL REMAIN CONFIDENTIAL.

- Check one: New/Revised Request for Victim Services Change of address/phone/e-mail only (complete sections A, D and E)
 Collection of court ordered restitution only/**no notification services** (complete sections A, D and E)

SECTION A. APPLICANT INFORMATION (Must be completed.)

- Check one: Victim of crime(s) committed by offender Witness who testified against the offender
 Family member of **victim**, indicate relationship: _____
(See page 2 – Section A)

Name of Victim(s): _____

Person requesting information. _____
(FIRST) (MIDDLE) (LAST)

Physical Address: _____
(STREET) (CITY) (STATE) (ZIP CODE)

Mailing Address (If different): _____
(STREET) (CITY) (STATE) (ZIP CODE)

Telephone: (____) _____ (____) _____ (E-MAIL) _____
(PRIMARY) (SECONDARY)

NOTE: It is your responsibility to keep the OVSRS informed of any changes to your contact information.

SECTION B. NOTIFICATION OF CHANGES TO OFFENDER'S CUSTODY STATUS (Complete if you want to request notification.)

To be notified of changes to the custody status of an offender, check the box below to indicate your preferred method* of receiving notices:

1. Send me notification by electronic mail (e-mail)
OR
2. Send me notification by mail
Please choose only one (1) mail delivery method:
 Regular Mail Certified Mail (signature required to receive)

Change in custody status includes release, death, escape, parole proceeding (Victims/Victims' family members only), contract, or scheduled execution.

NOTE: CDCR is unable to provide notification each time an offender is transferred between institutions.

* **NOTE: If the preferred method of notification you selected is not available, regular mail will be used to send the notice.**

SECTION C. CONDITIONS OF PAROLE/COMMUNITY SUPERVISION (Complete if you want to request special conditions.)

Requests for special conditions of parole/community supervision are considered but not guaranteed.

I request the following conditions when the offender is released on parole/community supervision:

1. Offender not be allowed to contact me while he/she is on parole/community supervision.
2. Offender not be allowed to live in the same county that I live in.

For direct victims/witnesses only:

3. Offender not be allowed to live within 35 miles of my home address (available only for specific types of crimes, see page 2)
NOTE: If you would like to provide additional information explaining your request, attach a separate sheet of paper.

SECTION D. OFFENDER IDENTIFICATION (Complete as much information as possible.)

Offender's Full Name (Print): _____ Date of Birth: _____
(FIRST) (MIDDLE) (LAST) MO DAY YEAR

CDCR Number (Offender ID): _____ Date Sentenced to Prison: _____
MO DAY YEAR

Court Case Number: _____ County of Sentencing: _____

SECTION E. APPLICANT SIGNATURE (Sign and date the completed form.)

Signature of Applicant: _____ Date: _____

**REQUEST FOR VICTIM SERVICES
CDCR 1707 (Rev. 06/16)****INSTRUCTIONS**

Read the following instructions carefully to fill out page 1 of the form so that it can be processed correctly. Sections A, D, and E must be completed. Complete all other sections, based on your needs. All information will remain confidential.

Check one of the three boxes at the top of the CDCR 1707 form to indicate if this is a **new/revised request for victim services**, a **change of address/phone/e-mail only**, or **Collection of court ordered restitution only/no notification services**. If you check **change of address/phone/e-mail only**, complete sections A, D, and E. If you check **Collection of court ordered restitution only/no notification services**, complete sections A, D, and E.

This section must be completed. Check the box that most accurately describes your relationship to the crime: **victim**, **witness**, or **family member of victim** and your relationship to the victim. (Example - spouse, child, sibling, grandparent or grandchild)

Please indicate the name(s) of the victim(s) of the crime committed by the offender.

Clearly print your name, physical address, mailing address (*if different*), your primary phone number, secondary phone number, and e-mail address.

NOTE: *In order to be entitled to receive notice the requesting party shall keep the department or board informed of his or her current contact information. (Penal Code sections 3043(a)(1), 3058.8(b))*

STATUS

Complete this section if you choose to request notification services. Check the most appropriate box(es).

You have one of two choices to receive notice of an offender's **release, escape, death, parole proceeding** (*Victims/Victims' family members only*), **contract, or scheduled execution**.

Check **Box 1** to register to receive notification by electronic mail (e-mail).

Check **Box 2** to register to receive notification by mail. Indicate whether you prefer to receive your notice by regular mail or certified mail. If the preferred method of notification you selected is not available regular mail will be used to send the notice.

NOTE: *It is your responsibility to request notification of an offender's criminal appeal. Please call the State of California, Office of the Attorney General, Victim Services Unit 1-877-433-9069.*

SUBMIT COMPLETED FORM BY MAIL, FAX OR E-MAIL (SCANNED COPY) TO:

California Department of Corrections and Rehabilitation
Office of Victim and Survivor Rights and Services
P.O. Box 942883, Sacramento, CA 94283-0001
Fax: (916) 445-3737 / E-mail: victimservices@cdcr.ca.gov

PRIVACY STATEMENT:

AGENCY STATEMENT: The California Department of Corrections and Rehabilitation (CDCR), CDCR 1707, Request for Victim Services.

OFFICE RESPONSIBLE FOR FORM: Office of Victim and Survivor Rights and Services, P.O. Box 942883, Sacramento, CA 94283-0001. The telephone number is 1-877-256-6877. **AUTHORITY:** California Constitution Article I, section 28, Penal Code sections 667.5, 679.03, 2085.5, 3003, 3043, 3058.8, 3605, 5065.5.

PROVIDING INFORMATION: The information requested is necessary to process your request for victim services and is voluntary. Failure to provide any of the information requested may prevent the OVSRS from processing your request. **All information will remain confidential per Penal Code section 679.03(c):** Your information may be shared with the investigating agency, the district attorney's office that prosecuted the case, and/or the State of California, Office of the Attorney General, Victim Services Unit.

Penal Code section 5065.5: When notified that an offender has entered into a contract for the sale of the story of a crime for which the offender was convicted CDCR will notify registered victims and victim's immediate family members.

Complete this section if you choose to request special conditions of parole/community supervision. You may check all the conditions that you wish to request or are eligible to receive however such conditions are not guaranteed.

Checking **Box 1** will request that the offender have **no contact** with you while he/she is on parole/community supervision.

Checking **Box 2** will request that the offender **not be allowed to live in the same county** that you live in.

Checking **Box 3** will request that the offender **not be allowed to live within 35 miles of your home address**. *Per Penal Code Section 3003, available only for the following crimes: murder or voluntary manslaughter, mayhem, rape, sodomy by force, oral copulation, lewd acts on a child under 14, any felony punishable by death or imprisonment in the state prison for life, stalking, felony with a great bodily injury enhancement, and continuous sexual abuse of a child.*

NOTE: *The third box applies to direct victims and witnesses only. (Penal Code section 3003)*

SECTION D. OFFENDER IDENTIFICATION

Provide as much information as you can in this section to ensure that we have the correct offender involved in your case. If you need help completing this section, you may contact the district attorney's office in the county where the trial was held.

SECTION E. APPLICANT SIGNATURE

Sign and date the completed form.

