



Department of Corrections and Rehabilitation
NOTICE OF CHANGE TO REGULATIONS

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| Sections: 3076, 3076.1, 3076.2, 3076.3, 3076.4, 3076.5 | NCR Number: 21-04 | Publication Date: March 19, 2021 | Effective Date: January 1, 2020 |
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INSTITUTION POSTING AND CERTIFICATION REQUIRED

This Notice announces the proposed amendment of Sections 3076, 3076.1, 3076.2, 3076.3, 3076.4, and 3076.5 of the California Code of Regulations (CCR), Title 15, Crime Prevention and Corrections, Division 3, Chapter 1, regarding the recall of inmate commitments and resentencing of inmates pursuant to Penal Code section 1170(d)(1).

PUBLIC COMMENT PERIOD

The public comment period will close on **May 7, 2021**. Any person may submit written comments about the proposed regulations by mail to the California Department of Corrections and Rehabilitation (CDCR), Regulation and Policy Management Branch (RPMB), P.O. Box 942883, Sacramento, CA 94283-0001, or by e-mail to RPMB@cdcr.ca.gov. All written comments must be received or postmarked no later than **May 7, 2021**.

PUBLIC HEARING INFORMATION

Due to the COVID-19 public health emergency, CDCR will utilize teleconference for its hearings, consistent with the Governor's Executive Order N-29-20 and guidelines issued by the California Department of Public Health. Comments provided at this teleconference public hearing will be given the same significance and weight as written comments submitted during the public comment period. A public hearing will be held on **May 7, 2021**. The teleconference will open to the public from **10:00 am until 11:00 am**. If you would like to participate: Call 1-844-867-6169 (TTY/TDD: Dial 711). When prompted, enter participant code 1780160. The purpose of the hearing is to receive comments about these proposed regulations. It is not a forum to debate the proposed regulations. No decision regarding the permanent adoption of these regulations will be rendered at this hearing.

POSTING

This Notice shall be posted immediately upon receipt at locations accessible to inmates, parolees, and employees in each Department facility and field office not later than five calendar days after receipt. Also, institutions and facilities shall make this Notice available for review by inmates in segregated housing who do not have access to the posted copies, and shall distribute it to inmate law libraries and advisory councils. CDCR Form 621-A (Rev. 05/19), Certification of Posting, shall be returned to RPMB by mail or email. See Department Operations Manual Section 12010.6.7 for posting and certification of posting procedures.

CONTACT PERSON

Inquiries regarding this Notice should be directed to Josh Jugum, by mail to California Department of Corrections and Rehabilitation, RPMB, P.O. Box 942883, Sacramento, CA 94283-0001, by telephone at (916) 445-2266, or by e-mail to RPMB@cdcr.ca.gov. Inquiries regarding the subject matter of these regulations should be directed to Eric Duesdieker, Office of Legal Affairs, at (916) 323-2924.

Original Signed By:

KATHLEEN ALLISON
Secretary
California Department of Corrections and Rehabilitation

Attachments

NOTICE OF PROPOSED REGULATIONS
California Code of Regulations
Title 15, Crime Prevention and Corrections
Department of Corrections and Rehabilitation

NOTICE IS HEREBY GIVEN that the Secretary of the California Department of Corrections and Rehabilitation (CDCR or Department), proposes to amend Sections 3076, 3076.1, 3076.2, 3076.3, 3076.4, and 3076.5 into Title 15, Division 3, Chapter 1, regarding the recall of inmate commitments and resentencing of inmates pursuant to Penal Code section 1170(d)(1).

PUBLIC COMMENT PERIOD

The public comment period begins **March 19, 2021** and closes on **May 7, 2021**. Any person may submit written comments by mail addressed to the primary contact person listed below, or by email to rpmb@cdcr.ca.gov, before the close of the comment period. For questions regarding the subject matter of the regulations, call the program contact person listed below.

PUBLIC HEARING INFORMATION

Due to the COVID-19 public health emergency, CDCR will utilize teleconference for its hearings, consistent with the Governor's Executive Order N-29-20 and guidelines issued by the California Department of Public Health. Comments provided at this teleconference public hearing will be given the same significance and weight as written comments submitted during the public comment period. A public hearing will be held on **May 7, 2021**. The teleconference will open to the public from **10:00 am until 11:00 am**. If you would like to participate by teleconference: Call 1-844-867-6169 (TTY/TDD: Dial 711). When prompted, enter participant code 1780160. The purpose of the hearing is to receive comments about these proposed regulations. It is not a forum to debate the proposed regulations. No decision regarding the permanent adoption of these regulations will be rendered at this hearing.

CONTACT PERSONS

Primary Contact

Josh Jugum
Telephone: (916) 445-2266
Regulation and Policy
Management Branch
P.O. Box 942883
Sacramento, CA 94283-0001

Back-Up

Y. Sun
Telephone: (916) 445-2269
Regulation and Policy
Management Branch
P.O. Box 942883
Sacramento, CA 94283-0001

Program Contact

Eric Duesdieker
Telephone: (916) 323-2924
Office of Legal Affairs

AUTHORITY AND REFERENCE

Government Code Section 12838.5 provides that commencing July 1, 2005, CDCR succeeds to, and is vested with, all the powers, functions, duties, responsibilities, obligations, liabilities, and jurisdiction of abolished predecessor entities, such as: Department of Corrections, Department of the Youth Authority, and Board of Corrections.

Penal Code (PC) Section 5000 provides that commencing July 1, 2005, any reference to Department of Corrections in this or any code, refers to the CDCR, Division of Adult Operations. **PC Section 5050** provides that commencing July 1, 2005, any reference to the Director of Corrections in this or any other code, refers to the Secretary of the CDCR. As of that date, the office of the Director of Corrections is abolished.

PC Section 5054 provides that commencing July 1, 2005, the supervision, management, and control of the State prisons, and the responsibility for the care, custody, treatment, training, discipline, and employment of persons confined therein are vested in the Secretary of the CDCR.

PC Section 5055 provides that commencing July 1, 2005, all powers and duties previously granted to and imposed upon the Department of Corrections shall be exercised by the Secretary of the CDCR.

PC Section 5058 authorizes the Director to prescribe and amend rules and regulations for the administration of prisons and for the administration of the parole of persons.

PC Section 5058.3 authorizes the Director to certify in a written statement filed with Office of Administrative Law that the operational needs of the Department require adoption, amendment, or repeal of regulation on an emergency basis.

INFORMATIVE DIGEST / POLICY STATEMENT OVERVIEW

Penal Code section 1170(d)(1) 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 provided the new sentence is no greater than the initial sentence.

This action will:

Implement regulations in furtherance of Penal Code section 1170(d)(1) by establishing specific criteria for such recommendations under the following circumstances:

- When an inmate demonstrates exceptional conduct: if the inmate's behavior while incarcerated demonstrates sustained compliance with departmental regulations, rules, and requirements as well as prolonged participation in rehabilitative programming..
- When there is the substantial likelihood of a sentencing error: if the inmate's 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.
- When there is a change in sentencing law: 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
- When a referral is received from the head of a law enforcement agency, the head of a prosecutorial agency, or a judicial officer asking that the Secretary consider recommending an inmate to a sentencing court pursuant to Penal Code section 1170(d)(1).

DOCUMENTS INCORPORATED BY REFERENCE

Form CDC 128-B (Rev. 4/74)

SPECIFIC BENEFITS ANTICIPATED BY THE PROPOSED REGULATIONS

Currently, CDCR uses the provision under PC Section 1170(d)(1) on a limited basis for the recall and resentencing of inmates who demonstrate exemplary behavior during incarceration. However, the Department's historical use of the provisions does not make full use of the opportunities provided under the law. The Department proposes to use PC Section 1170(d)(1) to its full potential, which includes requesting the recall and resentencing of commitments for inmates with exceptional conduct and sentencing errors. Such changes would allow the Department to fully apply the law and develop an equitable process for inmates to be considered for recall and resentencing.

Through this process, known internally as the Recall and Resentence Recommendation Program, the Department seeks to make our prisons and communities safer by encouraging and motivating inmates to participate in rehabilitative programs and service opportunities that create skills, employability, and hope. This in turn will lead to improved inmate behavior and a safer prison environment for inmates and staff alike. Public safety is enhanced when inmates choose to pursue and accomplish tangible academic, vocational and personal/behavioral achievements to position themselves for earlier consideration before the Board or for successful transition to society.

EVALUATION OF INCONSISTENCY / INCOMPATIBILITY WITH EXISTING LAWS AND REGULATIONS

Pursuant to Government Code 11346.5(a)(3)(D), the Department has determined the proposed regulations are not inconsistent or incompatible with existing regulations. After conducting a review for any regulations that would relate to or affect this area, the Department has concluded that these are the only regulations that concern the recall of inmate commitments and resentencing of inmates pursuant to Penal Code section 1170(d)(1).

LOCAL MANDATES

This action imposes no mandates on local agencies or school districts, or a mandate which requires reimbursement of costs or savings pursuant to Government Code Sections 17500 - 17630.

FISCAL IMPACT STATEMENT

- Cost or savings to any state agency:

Net cost of \$1,939,054 in fiscal year (FY) 2018-19, \$1,641,729 in FY 2019-20, \$1,069,443 in FY 2020-21, \$785,535 in FY 2021-22, and \$730,492 in FY 2022-23.

- Cost to any local agency or school district that is required to be reimbursed: *None*
- Other nondiscretionary cost or savings imposed on local agencies: *None*
- Cost or savings in federal funding to the state: *None*

EFFECT ON HOUSING COSTS

The Department has made an initial determination that the proposed action will have no significant effect on housing costs.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT ON BUSINESS

The Department has made an initial determination that the proposed regulations will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states, because the proposed regulations place no obligations or requirements on any business.

EFFECT ON SMALL BUSINESSES

The Department has determined that the proposed regulations will not affect small businesses. This action has no significant adverse economic impact on small business because they place no obligations or requirements on any business.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

The Department has determined that the proposed regulation will have no effect on the creation of new, or the elimination of existing, jobs or businesses within California, or effect the expansion of businesses currently doing business in California. The Department has determined that the proposed regulation will have no effect on worker safety or the state's environment. These regulations may benefit the welfare of California residents by incentivizing inmates to participate in rehabilitative programs, thereby helping to reduce recidivism. Additionally, these regulations may benefit the health and welfare of California residents by providing opportunities for eligible inmates to contribute to their communities earlier than they might have otherwise.

CONSIDERATION OF ALTERNATIVES

The Department must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed regulatory action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law. Interested persons are invited to present statements or arguments with respect to any alternatives to the changes proposed during the written comment period or at a scheduled hearing should one be scheduled.

AVAILABILITY OF PROPOSED TEXT AND INITIAL STATEMENT OF REASONS

The Department has prepared and will make available the text and the Initial Statement of Reasons (ISOR) of the proposed regulations. The rulemaking file for this regulatory action, which contains those items and all information on which the proposal is based (i.e., rulemaking file) is available to the public upon request directed to the Department's contact person. The proposed text, ISOR, and Notice of Proposed Regulations will also be made available on the Department's website: www.cdcr.ca.gov.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Following its preparation, a copy of the Final Statement of Reasons may be obtained from the Department's contact person.

AVAILABILITY OF CHANGES TO PROPOSED TEXT

After considering all timely and relevant comments received, the Department may adopt the proposed regulations substantially as described in this Notice. If the Department makes modifications which are sufficiently related to the originally proposed text, it will make the modified text, with the changes clearly indicated, available to the public for at least 15 days before the Department adopts, amends or repeals the regulations as revised. Requests for copies of any modified regulation text should be directed to the contact person indicated in this Notice. The Department will accept written comments on the modified regulations for at least 15 days after the date on which they are made available.

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)(1) 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 discrepancy 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 recommendation pursuant to subsection (a)(1) if their behavior while incarcerated demonstrates sustained compliance with departmental rules and prolonged participation in rehabilitative programming. Sustained compliance with departmental rules is most often demonstrated by the lack of any serious disciplinary actions during the length of an inmate's incarcerations and few, if any, administrative disciplinary actions during that same time. Prolonged participation in rehabilitative programming is most often demonstrated by continuous and successful enrollment in educational and vocational programs, as evidenced by the award of substantial amounts of Milestone Completion Credit, Rehabilitative Achievement Credit, or Educational Merit Credit.

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

(A) Prior to January 1, 2021, an inmate who is required to register pursuant to Section 290 of the Penal Code.

(B) On or After January 1, 2021, an inmate who is required to register as a tier two or three offender pursuant to Sections 290(d)(2)(A) and 290(d)(3) of the Penal Code.

(C) Inmates who have not yet served ten continuous years of custody in the Department;

(D) 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;

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

(F) 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

(G) 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.

(H) An inmate who is convicted of a single offense and is serving the low (mitigated) term for which there is no lesser-included offense, sentence enhancement, or alternative sentencing scheme which might result in a shorter sentence if the court legally resentenced the inmate.

(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 as described in subsection (b)(3)(C), or not acted upon by the Secretary as described in subsection (e)(3), shall not be reconsidered by the Department for two years from the date the decision was documented by the Classification Services Unit or the Secretary, whichever is later in time.

(c) Referral Based on the Substantial Likelihood of a Sentencing Discrepancy.

(1) An inmate may be considered for referral 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 court decisions suggesting the substantial likelihood of a sentencing discrepancy.

(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

Judgement 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 subsequent court decisions. If an inmate is found eligible, the Correctional Case Records Unit shall refer the matter to the Secretary.

(d) Referral 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 of CDCR custody;

(B) 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 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 by the Classification Services Unit, a Cumulative Case Summary as described in subsection (b)(3)(D) shall be prepared, and the matter referred to the Secretary.

(4) Inmates considered under this section but deemed ineligible by the Classification Services Unit or the Correctional Case Records Unit as described in subsection (d)(3)(A), or not acted upon by the Secretary as described in (e)(3), shall not be reconsidered by the Department for two years from the date the decision was documented 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 under this section within 10 business days of receiving the referral.

(2) If the Secretary elects to recommend an inmate for recall and resentencing, a recommendation letter and, when required pursuant to subsection 3076.1(b)(3)(D), a 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)(1) of Section 1170 of the Penal Code, the Secretary's decision is final and not subject to internal 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)(1), 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 Referral 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 referring an inmate to a sentencing court pursuant to subdivision (d)(1) of Section 1170 of the Penal Code, the Classification Services Unit shall forward a copy of the request to the District Attorney of the county that prosecuted the inmate resulting in their current incarceration in state prison for consideration pursuant to the District Attorney's independent authority to initiate such a referral.

(b) If the District Attorney elects not to refer the inmate for recall and resentencing or the District Attorney does not respond with a decision to the Classification Services Unit within 90 calendar days of the referral, then the Classification Services Unit shall, no more than 10 business days after learning of the District Attorney's decision, 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.

(c) If the District Attorney elects to refer the inmate to the sentencing court, then the matter shall be considered closed.

~~(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)(1) 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)(1) 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)(1) of Section 1170 of the Penal Code, based on the substantial likelihood of a sentencing discrepancy 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.

ADOPT

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.

SECTION A. APPLICANT INFORMATION

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))*

SECTION B. NOTIFICATION OF CHANGES TO OFFENDER'S CUSTODY 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.

SECTION C. CONDITIONS OF PAROLE/COMMUNITY SUPERVISION

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.

INITIAL STATEMENT OF REASONS

The California Department of Corrections and Rehabilitation (CDCR or the Department) proposes to adopt new Article 6.6 under Chapter 1, of Title 15, Division 3 of the California Code of Regulations, concerning referrals by the Secretary to the sentencing court for recall of commitment pursuant to Penal Code Section 1170, subdivision (d)(1). Existing Sections 3076 through 3076.5, currently under Article 6.5, are being moved to new Article 6.6 and are being reorganized and amended. Some of the existing language from these sections has been retained, amended, or, for more appropriate placement and organization, relocated into different sections.

These regulations are adopted to establish a standardized process for referrals of California state prison inmates. Within the regulations, the Department will set forth the criteria for referral consideration. Section 3076 indicates the Secretary's authority to make such referrals and establishes certain exclusionary criteria. Section 3076.1 establishes four circumstances in which referrals can be made and describes the process for such referrals in the first three circumstances. Section 3076.2 describes the process for the fourth circumstance concerning recommendations from law enforcement, prosecutors, and judicial officers. The text of Sections 3076.3 and 3076.4 remained unchanged but the sections are retitled. Section 3076.5 establishes the process for providing notification to victims of crimes when the inmate who committed the crime is referred or recommended for recall and resentencing.

CONSIDERATION OF ALTERNATIVES:

Currently, no reasonable alternatives have been proposed that are less burdensome and equally effective in achieving the purposes of these regulations in a manner that ensures full compliance with the authorizing statute. Nor has an alternative been proposed that would lessen any adverse impact on small businesses.

ECONOMIC IMPACT ASSESSMENT:

In accordance with Government Code Section 11346.3, subdivision (b), the Department has made the following assessments regarding the proposed regulations:

Creation or Elimination of Jobs within the State of California

The Department has determined that the proposed regulations did create new jobs within California. The California Department of Corrections and Rehabilitation received funding for 13 new permanent positions and 2 limited-term positions.

Creation of New Businesses or Elimination of Existing Businesses within the State of California

The Department has determined that the proposed regulations did not create new businesses or eliminate existing businesses within California, as the proposed regulations only affect the internal management of California prisons.

Expansion of Businesses Currently Doing Business within the State of California

The Department has determined that the proposed regulations did not expand businesses currently doing businesses within California, as the proposed regulations only affect the internal management of California prisons.

Benefits to the Health and Welfare of California Residents, Worker Safety, and the State's Environment

The Department has determined that the proposed regulations may benefit the health and welfare of California residents by providing opportunities for eligible inmates to contribute to their communities earlier than they might have otherwise. The Department has determined that the proposed regulations do not impact worker safety or the State's environment, as the proposed regulations only affect the internal management of California prisons.

DETERMINATIONS:

The Department has determined that no reasonable alternatives to the proposed regulations have been identified or brought to the attention of the Department that would lessen any adverse impact on small business.

The Department has determined that the proposed regulations impose no mandates on local agencies or school districts, or a mandate which requires reimbursement Part 7 (Section 17561) of Division 4.

BENEFITS OF THE REGULATIONS:

Currently, CDCR uses the provision under PC Section 1170(d)(1) on a limited basis for the recall and resentencing of inmates who demonstrate exemplary behavior during incarceration. However, the Department's historical use of the provisions does not make full use of the opportunities provided under the law. The Department proposes to use PC Section 1170(d)(1) to its full potential, which includes requesting the recall and resentencing of commitments for inmates with exceptional conduct and sentencing errors. Such changes would allow the Department to fully apply the law and develop an equitable process for inmates to be considered for recall and resentencing.

Through this process, known internally as the Recall and Resentence Recommendation Program, the Department seeks to make our prisons and communities safer by encouraging and motivating inmates to participate in rehabilitative programs and service opportunities that create skills, employability, and hope. This in turn will lead to improved inmate behavior and a safer prison environment for inmates and staff alike. Public safety is enhanced when inmates choose to pursue and accomplish tangible academic, vocational and personal/behavioral achievements to position themselves for earlier consideration before the Board or for successful transition to society.

DOCUMENTS RELIED UPON:

The Department, in proposing additions and/or amendments to these regulations, has not relied upon any technical, theoretical, or empirical study, report, or similar document.

SPECIFIC PURPOSE AND RATIONALE FOR EACH SECTION, PER GOVERNMENT CODE SECTION 11346.2(b)(1):

New Article 6.6 Department Recommendation to Recall Sentence and Resentence Inmate is adopted.

Section 3076.

Recall of Commitment Recommendation Circumstances. The existing text is being deleted and new text adopted to clarify and define the Secretary's authority for the Recall and Resentence Recommendation Program.

Existing Subsections 3076(a) through 3076(b)(2) are deleted to adopt the following new provisions.

Subsection 3076(a) is adopted to clarify the Secretary's authority under Penal Code (PC) Section 1170, subdivision (d)(1), and to establish that these regulations define the scope of the Secretary's authority to recommend the recall of sentences and the resentencing of inmates based on exceptional conduct, sentencing discrepancies, retroactive changes in sentencing law, and law enforcement, prosecutorial, or judicial referrals.

Subsection 3076(b) is adopted to clarify the Secretary's authority under PC Section 1170, subdivision (e)(1), and to establish that these regulations define the scope of the Secretary's authority to recommend the recall of sentences and the resentencing of inmates based on a terminal illness or permanent medical incapacitation.

Subsection 3076(c) is adopted to establish that, in accordance with PC Sections 1170(a)(3) and 1170(e)(2)(C), these regulations do not apply to condemned inmates and inmates sentenced to life without the possibility of parole.

Existing Section 3076.1 is re-titled and the existing text is deleted and new provisions adopted.

Subsections 3076.1(a) through (a)(4) are adopted to establish the specific circumstances in which recommendations pursuant to PC Section 1170(d)(1) may be made. The first circumstance, referred to as "Exceptional Conduct," was chosen for inmates who, over an extended period of time, have demonstrated proactive participation in the rehabilitative process preparing them for release back into society. The second circumstance, referred to as "Sentencing Discrepancies," was chosen to correct sentences that do not appear to conform to existing law. The third circumstance, "Retroactive Changes in Sentencing Law," was chosen to extend uniformity of sentencing to those who were convicted of the same offense prior to the change in law. The fourth circumstance, referred to as "Law Enforcement, Prosecutorial, or Judicial Referral," was chosen to reward significant cooperation by inmates with law enforcement, prosecutorial, or judicial officers.

Subsection 3076.1(b) is amended to establish criteria for exceptional conduct referrals, pursuant to PC Section 1170(d)(1).

Subsection 3076.1(b)(1) is adopted to establish what constitutes exceptional conduct while incarcerated. Exceptional conduct is demonstrated through sustained compliance with Departmental rules and prolonged participation in rehabilitative programming. The Department determined that exceptional conduct requires these two components because they best demonstrate the inmate's ability to behave in a pro-social manner if released, and to demonstrate the necessary tools to succeed in the community. Pro-social behavior can be demonstrated when an inmate complies with Department rules for an extended period of time. Tools for success can best be demonstrated when an inmate participates in extensive programs designed to help their transition back to the community. Achieving long term compliance with rules and participating in programming over a period of years demonstrates exceptional effort to improve one's self on the inmate's part.

Rules violations in the Department are divided between serious and administrative. Serious rule violations often involve criminal activity, violence, or other anti-social behavior. Any serious disciplinary infraction involving a Division A-1, A-2, B, C, or D offense pursuant to Section 3323 while incarcerated is not indicative of the effort needed to be considered exceptional. In contrast, administrative violations are less likely to reflect anti-social tendencies and are therefore not necessarily disqualifying.

Inmates earn rehabilitative credits in the Department through the following programs: Milestone Completion courses, Rehabilitative Achievement Credit, and Educational Merit credit. All three of these credit programs require advancement toward educational or vocational achievements. Furthermore, credits are only awarded after the inmate successfully completes the required hours and any assignments and/or examinations. Earning substantial amounts of credit demonstrates a commitment by the inmate to improve one's self in ways that translate to success in the community. Thus setting apart these inmates as exceptional in comparison to those inmates who only occasionally earn credits.

Subsection 3076.1(b)(2) is adopted to establish specific exclusionary criteria to ensure public safety.

Subsection 3076.1(b)(2)(A) is adopted to establish certain felony convictions as exclusionary criteria. Under existing law, inmates convicted of a sexual offense that currently requires or will require that they register pursuant to PC Section 290 are excluded from consideration because these crimes reflect the determination of the people of the State of California (through initiatives and the legislature) that, "Sex offenders pose a potentially high risk of committing further sex offenses after release from incarceration or commitment, and the protection of the public from reoffending by these offenders is a paramount public interest." (PC Section 290.03.) Also, when the people of the State of California approved Proposition 35 on November 6, 2012, they declared that "Protecting every person in our state, particularly our children, from all forms of sexual exploitation is of paramount importance." (See Proposition – Californians Against Sexual Exploitation Act, 2012 Cal. Legis. Serv. Prop. 35 (Proposition 35) (WEST), section 2, paragraph 1.) The Department has determined that the Recall and Resentencing Recommendation Program should apply a similar exclusionary criteria for public safety, until January 1, 2021, when PC Section 290 will be amended by legislative act (SB 384).

Subsection 3076.1(b)(2)(B) establishes that beginning January 1, 2021, inmates required to register as Tier 2 or Tier 3 pursuant to PC Section 290 are excluded from consideration because those tiers represent the most serious types of sex offenses under the penal code. More specifically, a Tier 1 offense is not a serious or violent felony and only requires registration for a minimum of 10 years, while a Tier 2 and Tier 3 offense requires registration for a minimum of 20 years and life respectively.

Subsection 3076.1(b)(2)(C) is adopted to establish ten years of continuous custody in the Department as the minimum time period before eligibility. The Department determined that ten years in the custody of the Department is a sufficient length of time to ensure that inmates have demonstrated a pattern of positive rehabilitative programming for a sustained period of time. Because the Department cannot verify all behavior and rehabilitative efforts that took place prior to the inmate's arrival in Department custody, only time served in the Department's custody will count toward eligibility.

Subsection 3076.1(b)(2)(D) is adopted to establish criteria that ensures only those inmates who have demonstrated compliance with Departmental regulations are eligible. Inmates who commit certain serious disciplinary rules violations have demonstrated an inability to maintain a pro-social standard of conduct. The Department has determined that these inmates are more of a risk to public safety if given the opportunity to have their sentences recalled.

Subsection 3076.1(b)(2)(E) is adopted to exclude those inmates sentenced to determinate sentences who have less than 18 months to serve. The Department has determined that inmates with less than 18 months to serve do not have sufficient time remaining for the referral process to be completed. 18 months will provide the courts with sufficient time to review, schedule, and conduct hearings.

Subsection 3076.1(b)(2)(F) is adopted to exclude determinately sentenced inmates who have less than 18 months to serve prior to their parole suitability hearing. The Department has determined that inmates with less than 18 months to serve before a parole suitability hearing do not have sufficient time remaining for the referral process to be completed before the Board of Parole Hearings conducts a parole suitability hearing. Otherwise, the referral process would be duplicative of a parole suitability hearing which is statutorily required and similarly analyzes an inmate's risk to public safety.

Furthermore, subsection 3076.1(b)(2)(G) is adopted to exclude indeterminately sentenced inmates who have been denied parole by the Board of Parole Hearings. The Department has determined that once an inmate has been afforded an opportunity to appear before the Board for parole consideration, regardless of outcome, then the Board is best suited for determining the inmate's risk of public safety.

Subsection 3076.1(b)(2)(H) is adopted to exclude those inmates for whom there is no legal possibility of a shorter sentence. In criminal sentencing law, offenses may be punished in a triad ranging from lowest to mid-range to highest in time to serve. The Department has determined that when an inmate has been sentenced to the lowest level sentence of the sentencing triad for a single count with no enhancements or lesser-included offenses, a referral to the sentencing court is futile because the sentencing court has no discretion to shorten the sentence.

Subsection 3076.1(b)(3) is adopted to establish that the Classification Services Unit (CSU) will determine initial eligibility for consideration. The Classification Services Unit is the appropriate entity with access to the Department's records necessary to refer a case under this subsection.

Subsection 3076.1(b)(3)(A) is adopted to establish and clarify that CSU shall only review inmates that are referred to them by Wardens, the Director of the Division of Adult Institutions, or the Secretary of the Department. This will ensure that referrals are made by individuals in the best position to have complete information about an inmate's behavioral and rehabilitative conduct while incarcerated and that the inmate meets the exceptional conduct criteria.

Subsection 3076.1(b)(3)(B) is adopted to establish that CSU does not accept self-referrals from inmates or inmate family members, friends, or attorneys. The persons listed in this section do not have access to all of the inmate's case factors which are necessary to make a determination whether or not the inmate meets the exceptional conduct criteria.

Subsection 3076.1(b)(3)(C) is adopted to establish when an inmate will be notified that they have been excluded for not meeting the criteria listed under subsection 3076.1(b)(2). The Department determined that 10 days is a reasonable time in which to prepare documentation to ensure the inmate is promptly notified of their ineligibility.

Subsections 3076.1(b)(3)(D)(1)-(10) are adopted to establish that CSU staff shall prepare an evaluation report, known as a Cumulative Case Summary, which shall include specific information necessary for the Secretary and potentially a sentencing judge to make an informed decision. The specific information listed in subsection (1) through (10) were included because they provide a comprehensive overview of all the negative and positive information found in the Department's records related to the inmate, including criminal record, activities while incarcerated, and family or community support.

Subsection 3076.1(b)(4) is adopted to ensure that the limited Department resources available for this program are not used to reconsider the same individual more than once every two years so that other inmates may have an opportunity to be considered. The Department determined that two

years is an appropriate time prior to receiving reconsideration because the referral process can take several months between the initial identification of the inmate and court consideration.

Subsection 3076.1(c) is adopted to afford CDCR the discretion to recommend recall of sentence in cases with a sentence discrepancy, pursuant to PC Section 1170(d)(1).

Subsection 3076.1(c)(1) is adopted to establish that the Department may refer an inmate to the sentencing court if the sentence reflected in the inmate's Abstract of Judgment is contrary to the sentencing laws at the time of their sentencing hearing or subsequent controlling case law. The Department has determined that in the interest of justice it should notify the sentencing court when there is a substantial likelihood that such a sentencing error has occurred. Sentencing discrepancies include a sentence that is not authorized by statute, or a sentence that is later deemed invalid by a court of law in a controlling case.

Subsection 3076.1(c)(2) is adopted to establish that determinately sentenced inmates with six months or less remaining on their sentence are excluded from a recall of sentence based on sentencing discrepancy. The Department has determined that inmates with less than six months to serve do not have sufficient time remaining for the referral process to be completed. Six months will provide the courts with sufficient time to review, schedule, and conduct hearings. In this instance, the Department intends to expedite the referral process to be completed in six months (as opposed to 18 months for those inmates considered for referral due to exceptional conduct) because if a sentencing error has occurred it should be corrected soon enough to avoid any possible over-detention.

Subsection 3076.1(c)(3) is adopted to establish a screening criteria. The Correctional Case Records Unit staff shall determine eligibility by examining the inmate's Abstract of Judgment to determine if a sentencing discrepancy has occurred based on the laws at the time of sentencing, or subsequent court decisions. Correctional Case Records is the Department entity with access to the appropriate records to determine whether a discrepancy has occurred.

Subsection 3076.1(d) is adopted to afford CDCR the discretion, pursuant to PC Section 1170(d)(1), to recommend recall of sentence when a change in sentencing law with retroactive application takes effect.

Subsection 3076.1(d)(1) adopted to establish that the Department may refer an inmate to the sentencing court if, since the time the inmate was sentenced, new sentencing laws have been enacted vesting the court with discretion they did not possess at the time of the original sentencing hearing. The Department has determined that in the interest of justice it should notify the sentencing court when a change in statutory law, or case law with a statewide application, takes effect.

Subsection 3076.1(d)(2) is adopted to establish specific exclusionary criteria to ensure public safety.

Subsection 3076.1(d)(2)(A) is adopted to establish that inmates must serve five years of their sentence in CDCR custody before becoming eligible for referral pursuant to subsection 3076.1(d). This provision recognizes that any referral to the sentencing court based on a retroactive change in sentencing law necessitates the exercise of discretion by the judge, typically based on the judge's evaluation of the inmate's behavior while in CDCR custody. Therefore, the Department determined that five years of custodial history in the Department was a reasonable length of time to present to the judge for consideration.

Subsection 3076.1(d)(2)(B) is adopted to establish criteria that ensures only those inmates who have demonstrated compliance with departmental regulations are eligible. Inmates who commit

certain serious disciplinary rules violations have demonstrated an inability to maintain a pro-social standard of conduct. The department has determined that these inmates are more of a risk to public safety if given the opportunity to have their sentences recalled.

Subsection 3076.1(d)(2)(C) is adopted to establish that inmates sentenced to determinate sentences with 18 months or less remaining on their sentence are excluded from the provisions of this subsection. This is necessary as the process takes longer than 18 months, and the inmate must have an appropriate amount of time left to serve in order for the process to be completed.

Subsection 3076.1(d)(2)(D) is adopted to exclude determinately-sentenced inmates who have less than 18 months to serve prior to their parole suitability hearing. The department has determined that inmates with less than 18 months to serve before a parole suitability hearing do not have sufficient time remaining for the referral process to be completed before the Board of Parole Hearings (BPH) conducts a parole suitability hearing. Otherwise, the referral process would be duplicative of a parole suitability hearing which is statutorily required and similarly analyzes an inmate's risk to public safety.

Subsection 3076.1(d)(2)(E) is adopted to establish that inmates sentenced to indeterminate sentences and scheduled for a parole hearing within 18 months or less, or who have already attended a parole hearing, regardless of the outcome of that hearing, are excluded from the provisions of this subsection. This is necessary as the process takes longer than 18 months, and the recall process shall not impede the BPH process.

Subsection 3076.1(d)(3) is adopted to establish that the Classification Services Unit or the Correctional Case Records Unit will screen and review cases for eligibility. The Classification Services Unit and the Correctional Case Records Unit are the appropriate entities with access to the Department's records necessary to refer a case under this subsection.

Subsection 3076.1(d)(3)(A) is adopted to establish when an inmate will be notified that they have been excluded for not meeting the criteria listed under subsection 3076.1(d)(2). The Department determined that 10 days is a reasonable time in which to prepare documentation to ensure the inmate is promptly notified of their ineligibility.

Subsection 3076.1(d)(3)(B) is adopted to establish that CSU staff shall prepare an evaluation report, known as a Cumulative Case Summary, which shall include specific information necessary for the Secretary and potentially a sentencing judge to make an informed decision.

Subsection 3076.1(d)(4) is adopted to ensure that the limited Department resources available for this program are not used to reconsider the same individual more than once every two years so that other inmates may have an opportunity to be considered. The Department determined that two years is an appropriate time prior to receiving reconsideration because the referral process can take several months between the initial identification of the inmate and court consideration.

Subsection 3076.1(e) is adopted to establish provisions regarding the Secretary's decision whether or not to refer the inmate to the sentencing court for resentencing.

Subsection 3076.1(e)(1) is adopted to establish that the Secretary shall reach a decision on any matter under this section within 10 business days of receiving the referral. The Department determined that requiring that a decision be reached within 10 business days would ensure prompt referral to a court if the Secretary approves the action. This timeframe also provides the Secretary sufficient time to conduct their review of the inmate's records, which may be extensive.

Subsection 3076.1(e)(2) is adopted to establish a procedure for when the Secretary makes the decision to refer an inmate to the courts for a recall of sentence review. The recommendation letter

and, when required pursuant to subsection 3076.1(b)(3)(D), a Cumulative Case Summary shall be forwarded to the sentencing court and copies of the recommendation letter shall be provided to the inmate and another copy shall be placed in the inmate's central file. This process will ensure the sentencing court and the inmate receive copies of the records that the Secretary relied upon when reaching his or her decision. The Department determined that 10 business days is an appropriate and sufficient amount of time to ensure prompt dissemination to the sentencing court and the inmate.

Subsection 3076.1(e)(3) is adopted to establish a procedure to notify the inmate when the Secretary makes the decision not to refer the inmate to the courts for a recall of sentence review. A CDC Form 128-B General Chrono shall be generated informing the inmate that the Secretary decided not to refer the inmate's case to the courts for a review for recall of sentence. A copy of the CDC Form 128-B General Chrono shall be provided to the inmate and another placed in the inmate's central file. The Department determined that 10 business days is an appropriate and sufficient amount of time to ensure prompt dissemination to the inmate.

Subsection 3076.1(e)(4) is adopted to establish that the Secretary's decision is not subject to administrative review. This provision reflects the broad discretion vested in the Secretary to decide whether a referral under PC 1170(d)(1) shall be made on a case-by-case basis. Additionally, this provision reflects that a decision by the Secretary is not administratively appealable within the Department because the Secretary is the highest authority in the Department.

Existing Section 3076.2 is re-titled and the existing text is deleted and new provisions adopted.

Subsection 3076.2(a) is amended to establish a process by which an outside law enforcement, prosecutorial, or other judicial agency may recommend an inmate for referral for recall of sentence. This is necessary as outside law enforcement agencies, prosecutorial, or judicial agencies sometimes reach out to inmates for assistance with specific criminal cases. Sometimes, the assistance these agencies receive from the inmate results in further criminal convictions for many unsolved crimes such as murders, racketeering rings, gang activity, etc. These agencies may not have been able to solve these crimes had it not been for the assistance they received from the inmate; therefore, this regulation affords these agencies an opportunity to assist the inmate to reduce their sentence or give them the opportunity for recall of sentence pursuant to PC Section 1170(d)(1). Furthermore, recent legislative amendments to PC Section 1170(d)(1) give prosecutors independent authority to refer an inmate for resentencing. This subsection establishes a process for the Department to refer an inmate to the District Attorney's office responsible for the original prosecution of the inmate. The Department determined that ten business days is an appropriate and sufficient amount of time to process these requests from law enforcement agencies.

Subsection 3076.2(b) is adopted to establish a process for cases in which the District Attorney's office declines to pursue resentencing or the District Attorney does not respond with a decision to the Classification Services Unit within 90 calendar days of the referral. The Department will commence its own referral process under the same provisions used in cases of exceptional conduct as described in Section 3076.1(b). This process will ensure the inmate's cooperation with law enforcement that resulted in a recommendation from the law enforcement agency is given due consideration by either the District Attorney's office that prosecuted the inmate, or the Department. The Department determined that 90 days was an appropriate period of time to wait for the District Attorney's response, as the District Attorney must review the inmate's records and complete an internal review process which will differ depending on the size of each District Attorney's office.

Subsection 3076.2(c) is adopted to establish that if the District Attorney's office chooses to refer the case, the matter shall be considered closed by the Department, as the inmate's cooperation with

law enforcement will receive consideration from the sentencing court.

Section 3076.3 is retitled for clarity and is otherwise unchanged.

Section 3076.4 is retitled for clarity and is otherwise unchanged.

Section 3076.5 is retitled and the existing text is deleted and new provisions adopted.

Section 3076.5(a) is adopted to establish provisions for notification of victims when inmates are referred for recall and resentencing pursuant to PC Section 1170(d)(1) .

Subsection 3076.5(a)(1) is adopted to establish provisions regarding notification of victims when inmates have been referred or recommended for resentencing 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. State law requires that victims be noticed of a sentencing hearing, including resentencing, so that they have the opportunity to be heard before the court reaches a decision. The Department will comply with this requirement by providing notice when a referral has been made to the court which may result in a resentencing hearing. The Department determined that 10 business days is a sufficient and appropriate period of time to identify any victims registered with the Department and provide them with notice once the Secretary has made the referral.

The Department notes that referrals from these categories are based upon an inmate's conduct after they were incarcerated, thus the courts' decision-making will be largely based on post-conviction factors. Furthermore, because referrals based on these two categories often involve inmates who have been incarcerated for significantly longer than those from the other two categories, the Department has determined that registered victims should be notified when the referral letter is sent to the court to provide as much time as possible to prepare for the resentencing hearing, if one is held.

Subsection 3076.5(a)(2) is adopted to establish provisions regarding notification of victims when inmates have been referred for resentencing based on the substantial likelihood of a sentencing discrepancy as described in subsection 3076.1(a)(2) or a change in sentencing law as described in subsection 3076.1(a)(3). State law requires that victims be noticed of a sentencing hearing, including resentencing, so that they have the opportunity to be heard before the court reaches a decision. The Department will comply with this requirement by providing notice when the Department is notified of the court's decision to schedule a hearing. The Department determined that 10 business days from the date CDCR receives notice that the court has scheduled a resentencing hearing is a sufficient and appropriate period of time to identify the victim and provide notice of the hearing date, time and location in the manner requested by the victim (i.e., email, phone call, letter). This is because referrals based on sentencing discrepancies and retroactive changes in sentencing law are primarily based upon legal factors, not post-conviction factors. Furthermore, because courts are well equipped to address the legal issues that will drive the outcomes in these cases, the Department has determined that registered victims should be notified when the resentencing hearing is scheduled to provide sufficient time to appear at the resentencing hearing.

Subsection 3076.5(b) is adopted to establish provisions regarding notification of victims when inmates have been referred for resentencing due to terminal illness or medical incapacity pursuant to PC Section 1170(e)(1). State law requires that victims be noticed of a sentencing hearing, including resentencing, so that they have the opportunity to be heard before the court reaches a decision. The Department will comply with this requirement by providing notice when a referral has been made to the court which may result in a resentencing hearing. The Department determined that 10 business days is a sufficient and appropriate period of time to identify any victims registered with the Department and provide them with notice once the Secretary has made the referral.

The Department notes that referrals from this category are based upon an inmate's medical condition, thus the courts' decision-making will be largely based on post-conviction factors. Furthermore, because referrals based on this category often involve inmates who have been incarcerated for significantly longer than those from the other categories, the Department has determined that registered victims should be notified when the referral letter is sent to the court to provide as much time as possible to prepare for the resentencing hearing, if one is held.

Subsection 3076.5(c) is adopted to establish that 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. This is necessary to ensure victims are able to attend the resentencing hearing should they choose to do so.