

REGULATION AND POLICY MANAGEMENT BRANCH

P.O. Box 942883
Sacramento, CA 94283-0001



May 23, 2022

NOTICE OF CHANGE TO TEXT AS ORIGINALLY PROPOSED

Pursuant to the provisions of Government Code Sections 11346.8(c) and 11349.4, and Section 44 of Title 1 of the California Code of Regulations (CCR), the California Department of Corrections and Rehabilitation (CDCR or department) hereby provides notice of proposed changes made to CCR Sections 3076, 3076.1, 3076.2, 3076.3, 3076.4, and 3076.5, regarding Recall of Commitment and Resentencing of Inmates pursuant to Penal Code (PC) 1170.03.

You are receiving this notice and revised text because you provided written comment, commented at the public hearings held on May 7, 2021 and May 28, 2021, or requested notice of changes.

To provide notice of the proposed changes to the public, this Notice will be posted on the CDCR website at: [CDCR Pending Regulations](#).

The proposed emergency regulations were filed with the Office of Administrative Law (OAL) on November 21, 2019, and approved on a temporary emergency basis effective January 1, 2020. Notice of Change to Regulations 21-04 was published in the OAL Regulatory Notice Register on March 19, 2021. These regulations are no longer in emergency effect.

The department has determined that changes to the proposed permanent regulations are necessary. Effective January 1, 2022, Assembly Bill 1540 amended the Penal Code to renumber the provisions of law that these regulations implement from PC section 1170(d)(1) to 1170.03(a)(1). The provisions that authorized the Secretary to make these recommendations are unchanged by this renumbering.

Penal Code (PC) section 1170(d)(1) authorized the Secretary of the California Department of Corrections and Rehabilitation (CDCR) to recommend that the court recall the sentence and commitment of an inmate in the custody of CDCR and resentence the inmate in the same manner as if they had not previously been sentenced, provided the new sentence, if any, is no greater than the initial sentence.

Statutory requirements pertaining to sex offender registration also changed after this rulemaking action was initially adopted on an emergency basis. Effective January 1, 2021, amendments to the penal code as a result of Senate Bill 384 created a tiered system of registration for sex offenders. The amendments establish three tiers of registration for periods of at least 10 years, at least 20 years, and life, for a conviction for specified sex offenses.

Amendments to the proposed text originally noticed to the public are indicated by **bold double underline** for newly added text and ~~**bold double strikethrough**~~ for text deleted from the original proposed text. The single underline and single strikethrough formatting from the original proposed text noticed to the public has been retained in this amended text. These proposed changes are

being made available for public comment. Only those comments relating directly to the amendments that are indicated by **bold double underline** or ~~**bold double underline**~~ will be considered.

The attached text contains the following changes:

Subsection 3076.1(b)(1) is amended to remove language that was insufficiently clear. The department determined that the deleted language was vague and unnecessary.

Subsection 3076.1(b)(2) is amended to remove outdated text. The deleted text referred to a January 1, 2021 change to exclusionary criteria. As this date is now past, the language is irrelevant and is deleted for clarity.

Subsection 3076.1(b)(3)(D) is amended. This subsection now provides that an inmate who does not have any exclusionary factors pursuant to subsection 3076.1(b)(2) shall have their name submitted to the Secretary. The Secretary has broad authority under PC 1170.03 to use her judgment to decide whether an inmate should be recommended for recall of commitment and resentencing. This amendment recognizes that broad authority by establishing that the Secretary will make the decision as to whether a Cumulative Case Summary should be created for the inmate in question. Compiling a Cumulative Case Summary is a lengthy and time-consuming process that requires significant research. This change will allow the department to concentrate its limited resources for this program on inmates who have a better chance of a recommendation for resentencing.

Subsection 3076.1(d)(3)(B) is amended. This subsection now provides that an inmate who does not have any exclusionary factors pursuant to subsection 3076.1(d)(2) shall have their name submitted to the Secretary. The Secretary has broad authority under PC 1170.03 to use her judgment to decide whether an inmate should be recommended for recall of commitment and resentencing. This amendment recognizes that broad authority by establishing that the Secretary will make the decision as to whether a Cumulative Case Summary should be created for the inmate in question. Compiling a Cumulative Case Summary is a lengthy and time-consuming process that requires significant research. This change will allow the department to concentrate its limited resources for this program on inmates who have a better chance of a recommendation for resentencing.

New subsection 3076.1(d)(3)(B)1. is adopted to mirror an identical provision in subsection 3076.1(b)(3)(D) that requires the Classification Services Unit to prepare a Cumulative Case Summary.

New subsection 3076.1(d)(3)(B)2. is adopted to establish that a Cumulative Case Summary is not necessary when the inmate's name was submitted to the Secretary by the Correctional Case Records Unit.

Additionally, outdated penal code and other references have been updated throughout the regulations.

Amendments to the Initial Statement of Reasons

In addition to the changes to the text, the department determined that additional statements of necessity were needed for specific provisions of the proposed regulations. Those additional statements are shown below underlined.

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. These registrants who have committed offenses that require Tier 2 or 3 registration 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.)

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. As public safety is a paramount aspect of the department's mission, 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. This length of time demonstrating rehabilitative efforts is evidence of a genuine commitment to personal growth and improvement.

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. This timeframe will also allow for the department to focus its limited resources for the resentencing process on those inmates who have already served more time in CDCR custody.

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 departmental entities with access to the department's records necessary to determine eligibility pursuant to subsection (d)(2) and refer a case under this subsection.

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. An inmate may choose to use the courts to attempt to overturn the Secretary's decision.

Documents Incorporated by Reference

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

CDCR Form 1707 Request for Victim Services (Rev. 06/16), is repealed. This form was erroneously labeled as deleted in the original Notice of Change to Regulations.

CDC Form 112 Chronological History (Rev. 9/83), is deleted. This form was erroneously labeled as repealed in the original Notice of Change to Regulations.

Contact Person

Inquiries regarding this notice should be directed to Joshua Jugum, Regulation and Policy Management Branch, California Department of Corrections and Rehabilitation, P.O. Box 942883, Sacramento, CA 94283-0001, by telephone at (916) 445-2266, or e-mail at RPMB@cdcr.ca.gov. In the event the contact person is unavailable, inquiries should be directed to Ying Sun, Associate Director, RPMB, at (916) 445-2269.

Submission of Public Comments

The comment period for these revisions will close on June 8, 2022. Please submit comments by e-mail to RPMB@cdcr.ca.gov or in writing to Joshua Jugum, Regulation and Policy Management Branch, Department of Corrections and Rehabilitation, P.O. Box 942883, Sacramento, CA, 94283-0001, before the close of the public comment period. Comments must be received or postmarked no later than 5:00 p.m. on June 8, 2022. Only those comments relating directly to the enclosed amendments indicated by **bold double underline** or ~~**bold double underline**~~ will receive a response in the Final Statement of Reasons.



YING SUN, Associate Director
Regulation and Policy Management Branch
Department of Corrections and Rehabilitation

Attachment

TEXT OF PROPOSED REGULATIONS – NCR 21-04 RENOTICE

Amendments to the proposed text originally noticed to the public are indicated by **bold double underline** for newly added text and ~~**bold double strikethrough**~~ for text deleted from the original proposed text. The single underline and single strikethrough formatting from the original proposed text noticed to the public is retained in this text.

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

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

Article 6.6. Department Recommendation to Recall Sentence and Resentence Inmate

3076. Secretary's Authority.

(a) Subdivision (a)(1) of Section 1170.03 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).03, 1170(e) and 5054, Penal Code.

3076.1 Recommendation Pursuant to subdivision (a)(1) of Section 1170.03 of the Penal Code.

(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 pursuant to subsection 3076.1(b)(2)(C) 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 completion of educational and vocational programs, as evidenced by the award of substantial amounts certificates, 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,~~

~~(A) a~~(A) 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.

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

~~(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.

(HG) 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 to have no exclusionary case factors pursuant to subsection 3076.1(b)(2), the Classification Services Unit shall submit the inmate's name to the Secretary. The Secretary may elect to decline to make a referral to the sentencing court, or direct the Classification Services Unit to prepare a Cumulative Case Summary, which shall include all of the following information:

~~(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 to have no exclusionary case factors pursuant to subsection 3076.1(d)(2), the Classification Services Unit (CSU) or the Correctional Case Records Unit shall submit the inmate's name to the Secretary. The Secretary may elect to decline to make a referral to the sentencing court, or:

1. If the inmate was submitted to the Secretary by CSU, direct CSU to prepare a Cumulative Case Summary, as described in subsection 3076.1(b)(3)(D), or:

2. If the inmate was submitted to the Secretary by the Correctional Case Records Unit, a recommendation letter shall be forwarded to the sentencing court.

~~(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 refer 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 ~~(a)~~(1) of Section 1170.03 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, 1170.03~~(d)~~(4), 3041, 3051, 3055 and 5054, Penal Code; Cal. Const., art. 1, sec. 32.

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 ~~(a)~~(1) of Section 1170.03 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 thereafter after learning of the District Attorney's decision not to refer, or 90 calendar days after making the referral to the District Attorney described in subsection (a), whichever comes first, 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 pursuant to subsection 3076(a).

(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(~~ad~~)(1), 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 ~~(a)~~**(1)** of Section 1170.**03** 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 ~~(a)~~**(1)** of Section 1170.**03** 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 ~~(a)~~**(1)** of Section 1170.**03** 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.**03(d)**, 1170(e), and 5054 , 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.

