



For Informational Purposes

December 26, 2018

Penal Code 1170(d) Recall of Commitment Referrals Frequently Asked Questions

The court received a Penal Code 1170(d) resentencing recommendation for a sentence resulting from a plea. What is the basis for a court's authority to recall that sentence?

The language in 1170(d) was amended effective June 27, 2018, to extend a court's power to resentence under that section to judgments entered pursuant to a plea agreement, if in the interest of justice.

The court received an 1170(d) resentencing recommendation based upon a change in statute that went into effect after the inmate was sentenced. What is the basis for a court's authority to sentence an inmate in line with a subsequent change in the law?

The *Estrada* rule holds that legislative changes that decrease criminal penalties are to be retroactively applied to those cases not yet final on appeal (In re *Estrada* (1965) 63 Cal.2d 740). When a court accepts jurisdiction over an inmate's sentence pursuant to an 1170(d) resentencing recommendation, that case is again in the sentencing phase. Because the case is no longer final on appeal, it is therefore subject to all subsequently enacted retroactive changes in law.

Is there an obligation to notify victims?


Yes, victims are entitled to reasonable notice of any public hearings, and to be heard at said hearings upon request (Cal. Const., art. I, § 28, subd. (b), pars. (7) and (8)).

Does California Department of Corrections and Rehabilitation (CDCR) contact victims?

Yes, those victims who are registered in the CDCR system will receive notification of the 1170(d) referral to the courts. The notification will include the type of 1170(d) referral as well as provide the contact information of the court that will be reviewing the referral. Victims will also be encouraged to contact the CDCR Office of Victim and Survivor Rights and Services for further questions or concerns.

Are there any limitations on what changes a court makes during resentencing pursuant to 1170(d)?

Aside from the statutory prohibition on sentencing an inmate to a longer term than that of the initial sentence, a court may resentence an inmate in any way that they could



legally do if they were sentencing the inmate for the first time, including staying the punishment for a count or enhancement, or striking a count or enhancement in its entirety.

The court received an 1170(d) resentencing recommendation for an inmate who has been incarcerated for a significant amount of time, such that resentencing the inmate might lead to immediate release. Are there any issues that might arise from such a resentencing?

Pursuant to *People v. Kemper* (1980) 112 Cal. App. 3d 434, (re)sentencing that results in an inmate being overdue for release will result in custody credits in excess of the inmate's maximum term of confinement being applied to shorten the post-incarceration supervisory term (for example, parole).

The court is contemplating resentencing an inmate in such a way that it might lead to both immediate release and excess custody credits applying to (or completely exhausting) the inmate's post-incarceration supervisory term. Is there a way to address this issue?

If a court wishes to maintain what it considers to be an adequate post-incarceration supervisory term, the court may request the inmate waive enough credits to preserve post-incarceration supervision.

How might a court maintain what it has determined to be an adequate post-incarceration supervisory term?


If a court indicates in the Abstract of Judgement (AOJ) that custody credits have been waived by an inmate to allow for a specified post-incarceration supervisory term, CDCR will calculate the appropriate number of post-sentence credits that will need to be waived to allow for the specified supervisory term after the inmate's release.

For example, on the AOJ under the section entitled "Other orders" (numbered 13 on the CR-290 revised July 1, 2012) if a court wanted to maintain a three-year parole period, it could state that "Defendant has waived enough credits that they have available a (3) year period of parole on this release from state prison."

What are the benefits of post-incarceration supervision?

With a parole term remaining, CDCR's Division of Adult Parole Operations (DAPO) would maintain the authority to impose appropriate supervision conditions, enable the inmate to receive pre-release assessment and planning, and obtain assistance identifying barriers, case-specific resources, and community-based programs that may apply to the inmate's circumstances. For details please see the attached DAPO Pre and Post-Release Services Chart.

What are the benefits of releasing an inmate back to prison prior to release?



DAPO provides some pre-release services to inmates scheduled to be released to either Post Release Community Supervision or parole. Which services are available depends upon the length of the remaining prison term after resentencing. For details please see the attached DAPO Pre and Post-Release Services Chart.

Contact information:

For questions about CDCR's transition services please contact CDCR's Division of Adult Parole Operations via email at:

DAPORRRP@cdcr.ca.gov

For questions related to referrals for exceptional conduct or retroactive change in statute (e.g., gun enhancements pursuant to PC 12022.53), including any questions about Cumulative Case Summaries, please contact CDCR's Classification Services Unit via email at:

CDCR-DAI-1170-D-Recall-of-Sentence@cdcr.ca.gov

For questions related to sentencing discrepancy referrals, or questions related to credits, please contact CDCR's Case Records Services via email at:

CDCRDAICRS1170dRRRP@CDCR.CA.GOV

For questions about victim services, please contact CDCR's Office of Victim and Survivor Rights and Services:

(877) 256-6877 or via email at victimservices@cdcr.ca.gov