

# Memorandum

Date: **November 5, 2018**

To: Associate Directors, Division of Adult Institutions  
Wardens  
Classification and Parole Representatives  
Correctional Counselors II  
Correctional Counselors I  
Correctional Case Records Managers

Subject: **PENAL CODE SECTION 1170(d)(1) RECALL OF COMMITMENT PROCESSES**

The purpose of this memorandum is to provide information regarding the identification and referral of inmates for recall of sentence and resentencing, as outlined in the California Code of Regulations (CCR), Title 15, Section 3076 Recall of Commitment Recommendation Circumstances. Pursuant to Penal Code (PC) Section 1170(d)(1), the Agency Secretary of the California Department of Corrections and Rehabilitation (CDCR) or designee may, at any time, recommend that the sentencing court recall an inmate's sentence and commitment previously imposed and resentence an inmate, provided the new sentence is no greater than the initial sentence.

There are currently three categories reviewable for referral to the court for possible recall of sentence: Exceptional Conduct, Sentencing Discrepancy, and Retroactive Changes in Law. The following provides a summary of each category:

## **Exceptional Conduct**

An inmate who demonstrates exceptional behavior during incarceration, that indicates the inmate has been rehabilitated and would be an asset to the community, may be referred to the court for resentencing due to exceptional conduct. Any institution staff or volunteer may provide an inmate's name and CDCR number to the Classification Services Unit (CSU) for consideration for referral to the court. The CSU will review the case and, if appropriate, will make a recommendation to the Agency Secretary to request a recall of commitment from the court. All referrals should be directed to [CDCR-DAI-1170-D-Recall-of-Sentence@cdcr.ca.gov](mailto:CDCR-DAI-1170-D-Recall-of-Sentence@cdcr.ca.gov). A referral may also be made via law enforcement agencies or other outside entities, such as a district attorney's office.

The CSU shall review the inmate's behavior during incarceration, including, but not limited to:

- Evidence of participation in self-help groups, vocational, and educational programs.
- Positive programming, including no serious rules violations or security housing unit terms in the past five years.
- Evidence of laudatory chronos and letters of support.
- Recommendations from staff and volunteers.

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Per the Department Operations Manual, Section 62020.7, requests for consideration of Recall of Sentence and Commitment from private citizens, attorneys or family members shall not be initiated by departmental staff. In these instances, the requesting party should be directed to request such consideration to the sentencing court.

### **Sentencing Discrepancy**

Based on statutory or case law authority, these are identified by new or old case law information brought forward via an inmate appeal, information submitted through the Legal Processing Unit, or information provided via the Office of Legal Affairs (OLA).

### **Retroactive Change in Law**

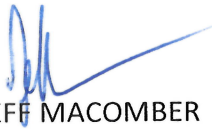
Based on new legislation or case law with retroactive application.

### **Additional Information**

All cases referred to the court through this PC Section 1170(d)(1) process will have an Alert, "**1170(d)**," scanned into the Electronic Records Management System. These cases are closely tracked by headquarters' staff and require staff to notify Case Records any time court documents are received for any of these inmates, to include out-to-court removal orders.

Please inform all persons concerned of the contents of this memorandum, which shall be maintained and utilized pending regulatory changes to CCR, Title 15, Sections 3076.1 and 3076.2.

If you have any questions, please contact the following staff: Questions regarding exceptional conduct, please contact Mike Masters, Captain, CSU, at (916) 324-3598. For questions regarding sentencing discrepancies, please contact Tara Rios, Correctional Case Records Administrator, Case Records Services, at (916) 323-1154. For questions regarding retroactive changes in law, please contact Eric Duesdieker, Staff Counsel, OLA, at (916) 323-2924.



JEFF MACOMBER  
Director (A)  
Division of Adult Institutions

cc: Connie Gipson      Jennifer Barretto      Heidi Dixon      Tara Rios  
Sandra Alfaro      Brian Moak      Mike Masters      Eric Duesdieker