

# PC 1170(d) Referrals

## STATUTE

### Penal Code section 1170, subdivision (d)(1)

When a defendant subject to this section or subdivision (b) of Section 1168 has been sentenced to be imprisoned in the state prison or county jail pursuant to subdivision (h) and has been committed to the custody of the secretary or the county correctional administrator, the court may, within 120 days of the date of commitment on its own motion, or at any time upon the recommendation of the secretary or the Board of Parole Hearings in the case of state prison inmates, or the county correctional administrator in the case of county jail inmates, recall the sentence and commitment previously ordered and resentence the defendant in the same manner as if he or she had not previously been sentenced, provided the new sentence, if any, is no greater than the initial sentence. The court resentencing under this subdivision shall apply the sentencing rules of the Judicial Council so as to eliminate disparity of sentences and to promote uniformity of sentencing. Credit shall be given for time served.

## REGULATIONS

### Title 15, Division 3, Section 3076, subdivision (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.

# PC 1170(d) Categories

	Category	Responsible Unit	Current Stage
1	Exceptional Conduct Referrals	Classification Services Unit (CSU)	Referrals based on behavior beyond simply complying with all regulations and procedures that demonstrate they have changed as a person and would be a positive asset to the community.
2	Law Enforcement Agency (LEA) Referrals	CSU	Referrals from an outside law enforcement agency (i.e. local or federal law enforcement agency, district attorney's office, etc.).
3	Retroactive Change-in-Law Referrals	Case Records Unit (CRU)/CSU	Referrals from the Office of Legal Affairs based on new legislation or case law with retroactive application.
4	Sentencing Discrepancy Referrals	CRU	Referrals from Case Records for sentencing discrepancies based on statutory or case law authority.

# PC 1170(d) – CRU

## Sentence Discrepancy Referrals

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- ☞ *People v Lopez* (2012) 208 Cal.App.4th 1049
- ☞ *People v Rodriguez* (2009) 47 Cal.4th 501
- ☞ *People v. Le* (2015) 61 Cal.4<sup>th</sup> 416
- ☞ *People v McCart* (1982) 32 Cal.3d 338
- ☞ *People v. Gonzalez* (2009) 178 Cal.App.4<sup>th</sup> 1325
- ☞ *People v. Manfredi* (2008) 169 Cal. App. 4<sup>th</sup> 622
- ☞ *People v. Cook* (2015) 60 Cal App. 4<sup>th</sup> 922
  
- ☞ Retroactive changes in law
  - Amendments to Penal Code section 12022.53, subdivision (h) (gun enhancements)