

3. Repealed by operation of Government Code section 11346.1(g) (Register 2008, No. 22).

3076. Recall of Commitment Recommendation Circumstances.

(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.

HISTORY:

1. New section filed 5-20-92 as an emergency; operative 5-20-92 (Register 92, No. 21). A Certificate of Compliance must be transmitted to OAL 9-17-92 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 5-20-92 order transmitted to OAL 9-9-92; disapproved by OAL and order of repeal of 5-20-92 order filed on 10-22-92 (Register 92, No. 43).
3. New section refiled 10-23-92 as an emergency; operative 10-22-92 pursuant to Government Code section 11346.1(h) (Register 92, No. 43). A Certificate of Compliance must be transmitted to OAL 2-23-93 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 10-23-92 order including amendment of first paragraph and subsection (b) transmitted to OAL 12-18-92 and filed 2-3-93 (Register 93, No. 6).
5. Amendment of section and Note filed 7-7-2011 as an emergency pursuant to Penal Code section 5058.3(a)(2); operative 7-7-2011 (Register 2011, No. 27). Pursuant to Penal Code section 5058.3(c), a Certificate of Compliance must be transmitted to OAL by 12-14-2011 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 7-7-2011 order transmitted to OAL 12-5-2011 and filed 1-19-2012 (Register 2012, No. 3).

3076.1. Recall of Commitment Recommendation Consideration Factors for Penal Code Section 1170(d).

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 1170(d), 3043 and 5054, Penal Code.

HISTORY:

1. New section filed 5-20-92 as an emergency; operative 5-20-92 (Register 92, No. 21). A Certificate of Compliance must be transmitted to OAL 9-17-92 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 5-20-92 order transmitted to OAL 9-9-92; disapproved by OAL and order of repeal of 5-20-92 order filed on 10-22-92 (Register 92, No. 43).
3. New section refiled 10-23-92 as an emergency; operative 10-22-92 pursuant to Government Code section 11346.1(h) (Register 92, No. 43). A Certificate of Compliance must be transmitted to OAL 2-23-93 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 10-23-92 order including amendment of first paragraph and subsection (c) transmitted to OAL 12-18-92 and filed 2-3-93 (Register 93, No. 6).
5. Amendment of section heading and section filed 7-7-2011 as an emergency pursuant to Penal Code section 5058.3(a)(2); operative 7-7-2011 (Register 2011, No. 27). Pursuant to Penal Code section 5058.3(c), a Certificate of Compliance must be transmitted to OAL by 12-14-2011 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 7-7-2011 order transmitted to OAL 12-5-2011 and filed 1-19-2012 (Register 2012, No. 3).
7. Amendment of subsection (c) filed 6-26-2012 as an emergency; operative 7-1-2012 (Register 2012, No. 26). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 12-10-2012 or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 6-26-2012 order transmitted to OAL 12-5-2012 and filed 1-17-2013 (Register 2013, No. 3).

3076.2. Recall of Commitment Processing for Penal Code Section 1170(d).

(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.

HISTORY:

1. New section filed 5-20-92 as an emergency; operative 5-20-92 (Register 92, No. 21). A Certificate of Compliance must be transmitted to OAL 9-17-92 or emergency language will be repealed by operation of law on the following day.
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4. Certificate of Compliance as to 10-23-92 order including amendment of subsections (a)(1), (a)(3)-(5) and (b)(2) transmitted to OAL 12-18-92 and filed 2-3-93 (Register 93, No. 6).
5. Amendment of section heading and section filed 7-7-2011 as an emergency pursuant to Penal Code section 5058.3(a)(2); operative 7-7-2011 (Register 2011, No. 27). Pursuant to Penal Code section 5058.3(c), a Certificate of Compliance must be transmitted to OAL by 12-14-2011 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 7-7-2011 order transmitted to OAL 12-5-2011 and filed 1-19-2012 (Register 2012, No. 3).

3076.3. Recall of Commitment Recommendation Consideration Factors for Penal Code Section 1170(e).

For inmates meeting one or more of the recall eligibility requirements of section 3076(b), the Classification and Parole Representative (C&PR), 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 court was aware of the inmate's medical condition at the time of sentencing.

(e) 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 offense pursuant to PC section 290.