

Memorandum

Date: December 19, 2019

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

Subject: **REVISED CALIFORNIA PENAL CODE SECTION 1170(D)(1) RECALL OF COMMITMENT PROCESSES**

This memorandum is to announce newly adopted regulations, criteria and policies relating to the referral of inmates for Recall of Sentence and Resentencing. This memorandum amends the previous memorandum dated November 5, 2018, titled, California Penal Code, Section 1170(d)(1) Recall of Commitment Processes.

The California Department of Corrections and Rehabilitation (CDCR) has established a process for identifying and referring inmates for Recall of Sentence and Resentencing, pursuant to Penal Code (PC) Section 1170(d)(1). The Secretary of CDCR may, at any time, recommend that the Sentencing Court recall a previously imposed sentence and resentence an inmate, provided the new sentence is no greater than the initial sentence. The provisions of this article do not apply to condemned inmates and inmates sentenced to life without the possibility of parole.

The Classification Services Unit (CSU), Division of Adult Institutions (DAI), Recall and Resentencing Recommendation Program (RRRP), identifies inmates for potential referral to the Sentencing Court based upon Exceptional Conduct and Changes in Sentencing Law.

EXCEPTIONAL CONDUCT

Recommendations for Exceptional Conduct may be considered for referral pursuant to the California Code of Regulations (CCR), Title 15, Section 3076.1(a)(1), if an inmate's behavior, while incarcerated, demonstrates sustained compliance with departmental rules, regulations, and policies as well as documented evidence of prolonged participation in Self-Help, Vocational, and Educational Programming.

Pursuant to CCR, Title 15, Section 3076.1(2), inmates who meet the following criteria shall be excluded from consideration under this section:

- Required to register pursuant to PC Section 290
- Have served less than ten continuous years or 50 percent of their current commitment date in CDCR, whichever comes first
- Have been found guilty of a serious or violent Rules Violation Report (RVR) which qualifies as a Division A-1, A-2, B, C, or D offense as described in CCR, Title 15, Section 3323(b) through (e) within the last five years or whose serious or violent RVR as described above is pending

- Determinate Sentences scheduled for release within the next 18 months
- Determinate Sentences eligible for parole consideration [Youthful Parole Eligibility Date (YPED), Elderly Parole Eligibility Date (EPED), and Non-Violent Second Striker (NVSS)], within the next 18 months or have already been afforded parole consideration
- Indeterminate Sentences scheduled for a Parole Suitability Hearing within the next 18 months or have already been afforded a Parole Suitability Hearing, regardless of the decision by the Board of Parole Hearings (BPH)

Institutional staff and volunteers may elect to refer an inmate for Exceptional Conduct by following Local Operational Procedures. CSU-RRRP will only accept Exceptional Conduct referrals from Wardens that are generated through departmental email to CDCR-DAI-1170-D-Recall-of-Sentence@cdcr.ca.gov. CSU-RRRP does not accept referrals from defense attorneys, inmates, inmate family members, private citizens, or special groups.

Exceptional Conduct referral emails shall only include the inmate's name and CDCR Number.

Note: Do not send any attachments or supporting documentation with the referral, as CSU-RRRP does not retain them. Ensure that any information recommending an inmate is submitted to your institution's Case Records Office for scanning into the inmate's file within the Electronic Records Management System (ERMS) database, for future reference.

CHANGE IN SENTENCING LAW

Effective January 1, 2018, PC 12022.53(h) was revised. This section previously required a sentencing court to impose enhancements for personal use of a firearm in the commission of enumerated felonies. Courts are now empowered with the discretion to strike or dismiss a personal use firearm enhancement at sentencing or resentencing, pursuant to PC Section 1170(d) in the interest of justice.

Pursuant to CCR, Title 15, Section 3076.1(e) inmates who meet the following criteria shall be excluded from consideration under this section:

- Have not yet served five continuous years or 50 percent of their current commitment, whichever comes first
- Have been found guilty of a serious or violent RVR which qualifies as a Division A-1, A-2, B, or C offense as described in CCR, Title 15, Section 3323(b)-(e) within the last one year or whose serious or violent RVR as described above is pending
- Determinate Sentences scheduled for release within the next 18 months

- Determinate Sentences eligible for parole consideration (YPED, EPED, NVSS) within the next 18 months or have been already afforded parole consideration
- Indeterminate Sentences scheduled for a parole suitability hearing within the next 18 months or have already been afforded a parole suitability hearing, regardless of the decision by BPH

Inmates are screened for eligibility solely utilizing a list generated by the Office of Research, based upon qualifying offenses. Therefore, referrals from defense attorneys, institutional staff, volunteers, inmates, inmate family members, private citizens or special groups, will not be accepted.

PROCESSING OF EXCEPTIONAL CONDUCT REFERRALS/CHANGE IN SENTENCING LAW CASES

If an inmate meets the criteria for Exceptional Conduct or change in Sentencing Law, CSU-RRRP shall review all case factors. If an inmate is found eligible, CSU-RRRP shall prepare a Cumulative Case Summary (CCS) and Evaluation Report to be reviewed by both the Director of DAI and the Secretary of CDCR.

Institutional staff, including the Investigative Services Unit, shall be contacted for Exceptional Conduct Referrals only. This is required in order to ascertain additional information about the inmate's institutional behavior and to ensure the inmate is not currently the subject of an investigation. The names of contacted staff will not be included in any documentation.

If an inmate is found ineligible, CSU-RRRP shall generate a General Chrono (CDCR Form 128-B) documenting the reason or reasons for ineligibility. A copy of the CDCR Form 128-B shall be provided to the inmate through institutional mail and another copy shall be scanned into the inmate's file within the ERMS database under the General Chrono's Section.

SECRETARY'S DECISION

In the event the Secretary elects to make a referral, a letter and CCS shall be forwarded to the Sentencing Court. Copies of these documents shall be provided to the inmate through institutional mail, and another copy shall be scanned into the inmate's file within the ERMS database under the Miscellaneous Section.

If the Secretary elects to take no action, CSU-RRRP will generate a CDCR Form 128-B informing the inmate. Copies shall be provided to the inmate through institutional mail and another copy shall be scanned into the inmate's file within the ERMS database under the General Chrono and Miscellaneous Sections.

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Pursuant to the broad discretion vested in the Secretary of CDCR by statute, namely PC Section 1170(d)(1), the Secretary's decision is final and not subject to any Administrative Review.

COURT ACTION

The court may reduce an inmate's term of imprisonment by modifying the judgement, including a judgement entered after a plea agreement, if it is in the interest of justice. The court is not obligated, nor required to respond to CDCR's Letter of Referral and/or bring about any court action based upon the referral. In most instances, the court or Public Defender's Office will notify the inmate if their case is being considered for resentencing.

If you have any questions, please contact Mike Masters, Correctional Captain, CSU, at CDCR-DAI-1170-D-Recall-of-Sentence@cdcr.gov.



CONNIE GIPSON
Director
Division of Adult Institutions

Attachment

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