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Secretary of CDCR*

*Exempt from filing fees per  
Gov. Code § 6103*

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SACRAMENTO

**ALLIANCE FOR CONSTITUTIONAL  
SEX OFFENSE LAWS, INC., a California  
non-profit corporation; and ANTOINE  
DENELL JORDAN, an individual,**  
  
Petitioners,  
  
v.  
  
**KATHLEEN ALLISON, in her official  
capacity as Secretary of the California  
Department of Corrections and  
Rehabilitation,**  
  
Respondent.

Case No. 34-2021-80003671-CU-WM-GDS

**MEET AND CONFER DECLARATION**

Date: December 17, 2021  
Time: 11:00 a.m.  
Dept: 21  
Judge: The Hon. Shelleyanne W.L.  
Chang

I, Yun Hwa Harper, declare:

1. I am an attorney at law, duly admitted and licensed to practice law in this Court. I am employed as a deputy attorney general for the State of California in the Correctional Writs and Appeals section. In that capacity, I am the attorney representing respondents in this matter. The following statements are based on my own personal knowledge, except for those facts based on

1 information and belief, which I believe to be true. If called upon as a witness to testify about the  
2 following facts, I could, and would, competently testify about the following facts.

3 2. On July 6, 2021, the summons, petition and complaint for declaratory relief was filed  
4 in the Sacramento County Superior Court.

5 3. The petition and complaint for declaratory relief challenges a portion of emergency  
6 regulations promulgated by California Department of Corrections and Rehabilitation which sets  
7 out the circumstances under which the Secretary may exercise her discretion to recommend that  
8 the court recall an inmate's sentence. The petition alleges that the Secretary acted in excess of  
9 her authority by excluding inmates who are required to register under Penal Code section 290  
10 contrary to the legislative mandate in Penal Code section 1170(d)(1). This exclusion relates to  
11 exceptional conduct, one of four circumstances for which an inmate may be referred for recall  
12 and resentencing.

13 4. On August 9, 2021, I sent an email to Janice Bellucci, attorney of record for the  
14 petitioners in this matter to arrange a time to meet and confer. On September 2, 2021, I sent a  
15 follow up email to Janice Bellucci to arrange a time to meet and confer about the intended  
16 demurrer.

17 5. On September 7, 2021, the parties met and conferred. We discussed the Secretary's  
18 position that that claims raised in the petition failed as a matter of law. The parties did not reach  
19 an agreement resolving the matters raised by the demurrer to the petition and complaint for  
20 declaratory relief.

21 I declare under penalty of perjury under the laws of the State of California that the  
22 foregoing is true and correct. Executed this 10th day of September, 2021, at Sacramento,  
23 California.

24 Yun Hwa Harper

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26 Yun Hwa Harper  
Deputy Attorney General

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*Attorneys for Respondent Kathleen Allison,  
Secretary of CDCR*

*Exempt from filing fees per  
Gov. Code § 6103*

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SACRAMENTO

**ALLIANCE FOR CONSTITUTIONAL  
SEX OFFENSE LAWS, INC., a California  
non-profit corporation; and ANTOINE  
DENELL JORDAN, an individual,**  
  
Petitioners,  
  
v.  
  
**KATHLEEN ALLISON, in her official  
capacity as Secretary of the California  
Department of Corrections and  
Rehabilitation,**  
  
Respondent.

Case No. 34-2021-80003671-CU-WM-GDS

**REQUEST FOR JUDICIAL NOTICE IN  
SUPPORT OF DEMURRER**

Date: December 17, 2021  
Time: 11:00 a.m.  
Dept: 21  
Judge: The Hon. Shelleyanne W.L.  
Chang

**INTRODUCTION**

Respondent Secretary Kathleen Allison, respectfully request this Court take judicial notice of an official document, pursuant to Evidence Code section 452, subdivisions (c) and (h).

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1 **DOCUMENT SUBJECT TO JUDICIAL NOTICE**

2 1. Initial Statement of Reasons found in Notice of Change to Regulations 21-04 noticed  
3 to the public on March 19, 2021 (obtained from the public website of the California Department  
4 of Corrections and Rehabilitation at https://www.cdcr.ca.gov/regulations/wp-  
5 content/uploads/sites/171/2021/03/NCR\_2104\_Master\_File\_for\_posting\_ADA.pdf?label=Notice  
6 %20of%20Change%20to%20Regulations%202104%20noticed%20to%20the%20public%20on%  
7 20March%2019,%202021&from=https://www.cdcr.ca.gov/regulations/cdcr-regulations/new-  
8 rules-page/). (Exh 1.)

9 **LEGAL AUTHORITY**

10 “Judicial notice is the recognition and acceptance by the court, for use by the trier of fact or  
11 by the court, of the existence of a matter of law or fact that is relevant to an issue in the action  
12 without requiring formal proof of the matter.” (*Lockley v. Law Office of Cantrell, Green, Pekich,*  
13 *Cruz & McCort* (2001) 91 Cal.App.4th 875, 882.) Official acts of legislative, executive, and  
14 judicial departments of the State of California are properly noticed. (Evid. Code, § 452, subd.  
15 (c).) Government agency web sites and the information on those web sites are proper subjects of  
16 judicial notice. (*Cruz v. County of L.A.* (1985) 173 Cal.App.3d 1131, 1134.)

17 For instance, information on the United States Census Bureau’s web site as well as the  
18 California Department of Transportation’s web site was subject to judicial notice as “official acts”  
19 and “public records” under Evidence Code section 452, subdivisions (c) and (h). (*Moehring v.*  
20 *Thomas* (2005) 126 Cal.App.4th 1515, 1524, fns. 4, 5; *Shaw v. People ex rel. Chiang* (2009) 175  
21 Cal.App.4th 577, 606 fn. 10 [Department of Transportation’s web site definition of mass  
22 transportation].) A computer printout from such a web site is self-authenticating. (Evid. Code, §  
23 1552, subd. (a); *Ampex v. Cargle* (2005) 128 Cal.App.4th 1569, 1573 fn. 2.)

24 **LEGAL STATEMENT**

25 Here, exhibit one is available on a government web site and relevant to this proceeding and  
26 do not require formal proof regarding the facts stated within the documents. Exhibit one is an  
27 official act of the California Department of Corrections and Rehabilitation, a department within  
28

1 the executive branch. A such, this record is judicially noticeable under Evidence Code section  
2 452, subdivision (c) and (h). Respondents' request for judicial notice should be granted.

3 **CONCLUSION**

4 Based on the foregoing, respondent requests the Court judicially notice the attached exhibit  
5 in support of respondent's demurrer.

6 Dated: September 10, 2021

Respectfully submitted,

7 ROB BONTA  
8 Attorney General of California  
9 JULIE A. MALONE  
Supervising Deputy Attorney General

10 Yun Hwa Harper

Digitally signed by Yun Hwa  
Harper  
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11 YUN HWA HARPER  
12 Deputy Attorney General  
*Attorneys for Respondent Kathleen Allison,  
Secretary of CDCR*

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# **EXHIBIT 1**

## **INITIAL STATEMENT OF REASONS**

The California Department of Corrections and Rehabilitation (CDCR or the Department) proposes to adopt new Article 6.6 under Chapter 1, of Title 15, Division 3 of the California Code of Regulations, concerning referrals by the Secretary to the sentencing court for recall of commitment pursuant to Penal Code Section 1170, subdivision (d)(1). Existing Sections 3076 through 3076.5, currently under Article 6.5, are being moved to new Article 6.6 and are being reorganized and amended. Some of the existing language from these sections has been retained, amended, or, for more appropriate placement and organization, relocated into different sections.

These regulations are adopted to establish a standardized process for referrals of California state prison inmates. Within the regulations, the Department will set forth the criteria for referral consideration. Section 3076 indicates the Secretary's authority to make such referrals and establishes certain exclusionary criteria. Section 3076.1 establishes four circumstances in which referrals can be made and describes the process for such referrals in the first three circumstances. Section 3076.2 describes the process for the fourth circumstance concerning recommendations from law enforcement, prosecutors, and judicial officers. The text of Sections 3076.3 and 3076.4 remained unchanged but the sections are retitled. Section 3076.5 establishes the process for providing notification to victims of crimes when the inmate who committed the crime is referred or recommended for recall and resentencing.

### **CONSIDERATION OF ALTERNATIVES:**

Currently, no reasonable alternatives have been proposed that are less burdensome and equally effective in achieving the purposes of these regulations in a manner that ensures full compliance with the authorizing statute. Nor has an alternative been proposed that would lessen any adverse impact on small businesses.

### **ECONOMIC IMPACT ASSESSMENT:**

In accordance with Government Code Section 11346.3, subdivision (b), the Department has made the following assessments regarding the proposed regulations:

#### **Creation or Elimination of Jobs within the State of California**

The Department has determined that the proposed regulations did create new jobs within California. The California Department of Corrections and Rehabilitation received funding for 13 new permanent positions and 2 limited-term positions.

#### **Creation of New Businesses or Elimination of Existing Businesses within the State of California**

The Department has determined that the proposed regulations did not create new businesses or eliminate existing businesses within California, as the proposed regulations only affect the internal management of California prisons.

#### **Expansion of Businesses Currently Doing Business within the State of California**

The Department has determined that the proposed regulations did not expand businesses currently doing businesses within California, as the proposed regulations only affect the internal management of California prisons.

## **Benefits to the Health and Welfare of California Residents, Worker Safety, and the State's Environment**

The Department has determined that the proposed regulations may benefit the health and welfare of California residents by providing opportunities for eligible inmates to contribute to their communities earlier than they might have otherwise. The Department has determined that the proposed regulations do not impact worker safety or the State's environment, as the proposed regulations only affect the internal management of California prisons.

### **DETERMINATIONS:**

The Department has determined that no reasonable alternatives to the proposed regulations have been identified or brought to the attention of the Department that would lessen any adverse impact on small business.

The Department has determined that the proposed regulations impose no mandates on local agencies or school districts, or a mandate which requires reimbursement Part 7 (Section 17561) of Division 4.

### **BENEFITS OF THE REGULATIONS:**

Currently, CDCR uses the provision under PC Section 1170(d)(1) on a limited basis for the recall and resentencing of inmates who demonstrate exemplary behavior during incarceration. However, the Department's historical use of the provisions does not make full use of the opportunities provided under the law. The Department proposes to use PC Section 1170(d)(1) to its full potential, which includes requesting the recall and resentencing of commitments for inmates with exceptional conduct and sentencing errors. Such changes would allow the Department to fully apply the law and develop an equitable process for inmates to be considered for recall and resentencing.

Through this process, known internally as the Recall and Resentence Recommendation Program, the Department seeks to make our prisons and communities safer by encouraging and motivating inmates to participate in rehabilitative programs and service opportunities that create skills, employability, and hope. This in turn will lead to improved inmate behavior and a safer prison environment for inmates and staff alike. Public safety is enhanced when inmates choose to pursue and accomplish tangible academic, vocational and personal/behavioral achievements to position themselves for earlier consideration before the Board or for successful transition to society.

### **DOCUMENTS RELIED UPON:**

The Department, in proposing additions and/or amendments to these regulations, has not relied upon any technical, theoretical, or empirical study, report, or similar document.

### **SPECIFIC PURPOSE AND RATIONALE FOR EACH SECTION, PER GOVERNMENT CODE SECTION 11346.2(b)(1):**

New Article 6.6 Department Recommendation to Recall Sentence and Resentence Inmate is adopted.

#### **Section 3076.**

Recall of Commitment Recommendation Circumstances. The existing text is being deleted and new text adopted to clarify and define the Secretary's authority for the Recall and Resentence Recommendation Program.

Existing Subsections 3076(a) through 3076(b)(2) are deleted to adopt the following new provisions.



Subsection 3076(a) is adopted to clarify the Secretary's authority under Penal Code (PC) Section 1170, subdivision (d)(1), and to establish that these regulations define the scope of the Secretary's authority to recommend the recall of sentences and the resentencing of inmates based on exceptional conduct, sentencing discrepancies, retroactive changes in sentencing law, and law enforcement, prosecutorial, or judicial referrals.

Subsection 3076(b) is adopted to clarify the Secretary's authority under PC Section 1170, subdivision (e)(1), and to establish that these regulations define the scope of the Secretary's authority to recommend the recall of sentences and the resentencing of inmates based on a terminal illness or permanent medical incapacitation.

Subsection 3076(c) is adopted to establish that, in accordance with PC Sections 1170(a)(3) and 1170(e)(2)(C), these regulations do not apply to condemned inmates and inmates sentenced to life without the possibility of parole.

**Existing Section 3076.1 is re-titled and the existing text is deleted and new provisions adopted.**

Subsections 3076.1(a) through (a)(4) are adopted to establish the specific circumstances in which recommendations pursuant to PC Section 1170(d)(1) may be made. The first circumstance, referred to as "Exceptional Conduct," was chosen for inmates who, over an extended period of time, have demonstrated proactive participation in the rehabilitative process preparing them for release back into society. The second circumstance, referred to as "Sentencing Discrepancies," was chosen to correct sentences that do not appear to conform to existing law. The third circumstance, "Retroactive Changes in Sentencing Law," was chosen to extend uniformity of sentencing to those who were convicted of the same offense prior to the change in law. The fourth circumstance, referred to as "Law Enforcement, Prosecutorial, or Judicial Referral," was chosen to reward significant cooperation by inmates with law enforcement, prosecutorial, or judicial officers.

Subsection 3076.1(b) is amended to establish criteria for exceptional conduct referrals, pursuant to PC Section 1170(d)(1).

Subsection 3076.1(b)(1) is adopted to establish what constitutes exceptional conduct while incarcerated. Exceptional conduct is demonstrated through sustained compliance with Departmental rules and prolonged participation in rehabilitative programming. The Department determined that exceptional conduct requires these two components because they best demonstrate the inmate's ability to behave in a pro-social manner if released, and to demonstrate the necessary tools to succeed in the community. Pro-social behavior can be demonstrated when an inmate complies with Department rules for an extended period of time. Tools for success can best be demonstrated when an inmate participates in extensive programs designed to help their transition back to the community. Achieving long term compliance with rules and participating in programming over a period of years demonstrates exceptional effort to improve one's self on the inmate's part.

Rules violations in the Department are divided between serious and administrative. Serious rule violations often involve criminal activity, violence, or other anti-social behavior. Any serious disciplinary infraction involving a Division A-1, A-2, B, C, or D offense pursuant to Section 3323 while incarcerated is not indicative of the effort needed to be considered exceptional. In contrast, administrative violations are less likely to reflect anti-social tendencies and are therefore not necessarily disqualifying.

Inmates earn rehabilitative credits in the Department through the following programs: Milestone Completion courses, Rehabilitative Achievement Credit, and Educational Merit credit. All three of these credit programs require advancement toward educational or vocational achievements. Furthermore, credits are only awarded after the inmate successfully completes the required hours and any assignments and/or examinations. Earning substantial amounts of credit demonstrates a commitment by the inmate to improve one's self in ways that translate to success in the community. Thus setting apart these inmates as exceptional in comparison to those inmates who only occasionally earn credits.

Subsection 3076.1(b)(2) is adopted to establish specific exclusionary criteria to ensure public safety.

Subsection 3076.1(b)(2)(A) is adopted to establish certain felony convictions as exclusionary criteria. Under existing law, inmates convicted of a sexual offense that currently requires or will require that they register pursuant to PC Section 290 are excluded from consideration because these crimes reflect the determination of the people of the State of California (through initiatives and the legislature) that, "Sex offenders pose a potentially high risk of committing further sex offenses after release from incarceration or commitment, and the protection of the public from reoffending by these offenders is a paramount public interest." (PC Section 290.03.) Also, when the people of the State of California approved Proposition 35 on November 6, 2012, they declared that "Protecting every person in our state, particularly our children, from all forms of sexual exploitation is of paramount importance." (See Proposition – Californians Against Sexual Exploitation Act, 2012 Cal. Legis. Serv. Prop. 35 (Proposition 35) (WEST), section 2, paragraph 1.) The Department has determined that the Recall and Resentencing Recommendation Program should apply a similar exclusionary criteria for public safety, until January 1, 2021, when PC Section 290 will be amended by legislative act (SB 384).

Subsection 3076.1(b)(2)(B) establishes that beginning January 1, 2021, inmates required to register as Tier 2 or Tier 3 pursuant to PC Section 290 are excluded from consideration because those tiers represent the most serious types of sex offenses under the penal code. More specifically, a Tier 1 offense is not a serious or violent felony and only requires registration for a minimum of 10 years, while a Tier 2 and Tier 3 offense requires registration for a minimum of 20 years and life respectively.

Subsection 3076.1(b)(2)(C) is adopted to establish ten years of continuous custody in the Department as the minimum time period before eligibility. The Department determined that ten years in the custody of the Department is a sufficient length of time to ensure that inmates have demonstrated a pattern of positive rehabilitative programming for a sustained period of time. Because the Department cannot verify all behavior and rehabilitative efforts that took place prior to the inmate's arrival in Department custody, only time served in the Department's custody will count toward eligibility.

Subsection 3076.1(b)(2)(D) is adopted to establish criteria that ensures only those inmates who have demonstrated compliance with Departmental regulations are eligible. Inmates who commit certain serious disciplinary rules violations have demonstrated an inability to maintain a pro-social standard of conduct. The Department has determined that these inmates are more of a risk to public safety if given the opportunity to have their sentences recalled.

Subsection 3076.1(b)(2)(E) is adopted to exclude those inmates sentenced to determinate sentences who have less than 18 months to serve. The Department has determined that inmates with less than 18 months to serve do not have sufficient time remaining for the referral process to be completed. 18 months will provide the courts with sufficient time to review, schedule, and conduct hearings.

Subsection 3076.1(b)(2)(F) is adopted to exclude determinately sentenced inmates who have less than 18 months to serve prior to their parole suitability hearing. The Department has determined that inmates with less than 18 months to serve before a parole suitability hearing do not have sufficient time remaining for the referral process to be completed before the Board of Parole Hearings conducts a parole suitability hearing. Otherwise, the referral process would be duplicative of a parole suitability hearing which is statutorily required and similarly analyzes an inmate's risk to public safety.

Furthermore, subsection 3076.1(b)(2)(G) is adopted to exclude indeterminately sentenced inmates who have been denied parole by the Board of Parole Hearings. The Department has determined that once an inmate has been afforded an opportunity to appear before the Board for parole consideration, regardless of outcome, then the Board is best suited for determining the inmate's risk of public safety.

Subsection 3076.1(b)(2)(H) is adopted to exclude those inmates for whom there is no legal possibility of a shorter sentence. In criminal sentencing law, offenses may be punished in a triad ranging from lowest to mid-range to highest in time to serve. The Department has determined that when an inmate has been sentenced to the lowest level sentence of the sentencing triad for a single count with no enhancements or lesser-included offenses, a referral to the sentencing court is futile because the sentencing court has no discretion to shorten the sentence.

Subsection 3076.1(b)(3) is adopted to establish that the Classification Services Unit (CSU) will determine initial eligibility for consideration. The Classification Services Unit is the appropriate entity with access to the Department's records necessary to refer a case under this subsection.

Subsection 3076.1(b)(3)(A) is adopted to establish and clarify that CSU shall only review inmates that are referred to them by Wardens, the Director of the Division of Adult Institutions, or the Secretary of the Department. This will ensure that referrals are made by individuals in the best position to have complete information about an inmate's behavioral and rehabilitative conduct while incarcerated and that the inmate meets the exceptional conduct criteria.

Subsection 3076.1(b)(3)(B) is adopted to establish that CSU does not accept self-referrals from inmates or inmate family members, friends, or attorneys. The persons listed in this section do not have access to all of the inmate's case factors which are necessary to make a determination whether or not the inmate meets the exceptional conduct criteria.

Subsection 3076.1(b)(3)(C) is adopted to establish when an inmate will be notified that they have been excluded for not meeting the criteria listed under subsection 3076.1(b)(2). The Department determined that 10 days is a reasonable time in which to prepare documentation to ensure the inmate is promptly notified of their ineligibility.

Subsections 3076.1(b)(3)(D)(1)-(10) are adopted to establish that CSU staff shall prepare an evaluation report, known as a Cumulative Case Summary, which shall include specific information necessary for the Secretary and potentially a sentencing judge to make an informed decision. The specific information listed in subsection (1) through (10) were included because they provide a comprehensive overview of all the negative and positive information found in the Department's records related to the inmate, including criminal record, activities while incarcerated, and family or community support.

Subsection 3076.1(b)(4) is adopted to ensure that the limited Department resources available for this program are not used to reconsider the same individual more than once every two years so that other inmates may have an opportunity to be considered. The Department determined that two

years is an appropriate time prior to receiving reconsideration because the referral process can take several months between the initial identification of the inmate and court consideration.

Subsection 3076.1(c) is adopted to afford CDCR the discretion to recommend recall of sentence in cases with a sentence discrepancy, pursuant to PC Section 1170(d)(1).

Subsection 3076.1(c)(1) is adopted to establish that the Department may refer an inmate to the sentencing court if the sentence reflected in the inmate's Abstract of Judgment is contrary to the sentencing laws at the time of their sentencing hearing or subsequent controlling case law. The Department has determined that in the interest of justice it should notify the sentencing court when there is a substantial likelihood that such a sentencing error has occurred. Sentencing discrepancies include a sentence that is not authorized by statute, or a sentence that is later deemed invalid by a court of law in a controlling case.

Subsection 3076.1(c)(2) is adopted to establish that determinately sentenced inmates with six months or less remaining on their sentence are excluded from a recall of sentence based on sentencing discrepancy. The Department has determined that inmates with less than six months to serve do not have sufficient time remaining for the referral process to be completed. Six months will provide the courts with sufficient time to review, schedule, and conduct hearings. In this instance, the Department intends to expedite the referral process to be completed in six months (as opposed to 18 months for those inmates considered for referral due to exceptional conduct) because if a sentencing error has occurred it should be corrected soon enough to avoid any possible over-detention.

Subsection 3076.1(c)(3) is adopted to establish a screening criteria. The Correctional Case Records Unit staff shall determine eligibility by examining the inmate's Abstract of Judgment to determine if a sentencing discrepancy has occurred based on the laws at the time of sentencing, or subsequent court decisions. Correctional Case Records is the Department entity with access to the appropriate records to determine whether a discrepancy has occurred.

Subsection 3076.1(d) is adopted to afford CDCR the discretion, pursuant to PC Section 1170(d)(1), to recommend recall of sentence when a change in sentencing law with retroactive application takes effect.

Subsection 3076.1(d)(1) adopted to establish that the Department may refer an inmate to the sentencing court if, since the time the inmate was sentenced, new sentencing laws have been enacted vesting the court with discretion they did not possess at the time of the original sentencing hearing. The Department has determined that in the interest of justice it should notify the sentencing court when a change in statutory law, or case law with a statewide application, takes effect.

Subsection 3076.1(d)(2) is adopted to establish specific exclusionary criteria to ensure public safety.

Subsection 3076.1(d)(2)(A) is adopted to establish that inmates must serve five years of their sentence in CDCR custody before becoming eligible for referral pursuant to subsection 3076.1(d). This provision recognizes that any referral to the sentencing court based on a retroactive change in sentencing law necessitates the exercise of discretion by the judge, typically based on the judge's evaluation of the inmate's behavior while in CDCR custody. Therefore, the Department determined that five years of custodial history in the Department was a reasonable length of time to present to the judge for consideration.

Subsection 3076.1(d)(2)(B) is adopted to establish criteria that ensures only those inmates who have demonstrated compliance with departmental regulations are eligible. Inmates who commit

certain serious disciplinary rules violations have demonstrated an inability to maintain a pro-social standard of conduct. The department has determined that these inmates are more of a risk to public safety if given the opportunity to have their sentences recalled.

Subsection 3076.1(d)(2)(C) is adopted to establish that inmates sentenced to determinate sentences with 18 months or less remaining on their sentence are excluded from the provisions of this subsection. This is necessary as the process takes longer than 18 months, and the inmate must have an appropriate amount of time left to serve in order for the process to be completed.

Subsection 3076.1(d)(2)(D) is adopted to exclude determinately-sentenced inmates who have less than 18 months to serve prior to their parole suitability hearing. The department has determined that inmates with less than 18 months to serve before a parole suitability hearing do not have sufficient time remaining for the referral process to be completed before the Board of Parole Hearings (BPH) conducts a parole suitability hearing. Otherwise, the referral process would be duplicative of a parole suitability hearing which is statutorily required and similarly analyzes an inmate's risk to public safety.

Subsection 3076.1(d)(2)(E) is adopted to establish that inmates sentenced to indeterminate sentences and scheduled for a parole hearing within 18 months or less, or who have already attended a parole hearing, regardless of the outcome of that hearing, are excluded from the provisions of this subsection. This is necessary as the process takes longer than 18 months, and the recall process shall not impede the BPH process.

Subsection 3076.1(d)(3) is adopted to establish that the Classification Services Unit or the Correctional Case Records Unit will screen and review cases for eligibility. The Classification Services Unit and the Correctional Case Records Unit are the appropriate entities with access to the Department's records necessary to refer a case under this subsection.

Subsection 3076.1(d)(3)(A) is adopted to establish when an inmate will be notified that they have been excluded for not meeting the criteria listed under subsection 3076.1(d)(2). The Department determined that 10 days is a reasonable time in which to prepare documentation to ensure the inmate is promptly notified of their ineligibility.

Subsection 3076.1(d)(3)(B) is adopted to establish that CSU staff shall prepare an evaluation report, known as a Cumulative Case Summary, which shall include specific information necessary for the Secretary and potentially a sentencing judge to make an informed decision.

Subsection 3076.1(d)(4) is adopted to ensure that the limited Department resources available for this program are not used to reconsider the same individual more than once every two years so that other inmates may have an opportunity to be considered. The Department determined that two years is an appropriate time prior to receiving reconsideration because the referral process can take several months between the initial identification of the inmate and court consideration.

Subsection 3076.1(e) is adopted to establish provisions regarding the Secretary's decision whether or not to refer the inmate to the sentencing court for resentencing.

Subsection 3076.1(e)(1) is adopted to establish that the Secretary shall reach a decision on any matter under this section within 10 business days of receiving the referral. The Department determined that requiring that a decision be reached within 10 business days would ensure prompt referral to a court if the Secretary approves the action. This timeframe also provides the Secretary sufficient time to conduct their review of the inmate's records, which may be extensive.

Subsection 3076.1(e)(2) is adopted to establish a procedure for when the Secretary makes the decision to refer an inmate to the courts for a recall of sentence review. The recommendation letter

and, when required pursuant to subsection 3076.1(b)(3)(D), a Cumulative Case Summary shall be forwarded to the sentencing court and copies of the recommendation letter shall be provided to the inmate and another copy shall be placed in the inmate's central file. This process will ensure the sentencing court and the inmate receive copies of the records that the Secretary relied upon when reaching his or her decision. The Department determined that 10 business days is an appropriate and sufficient amount of time to ensure prompt dissemination to the sentencing court and the inmate.

Subsection 3076.1(e)(3) is adopted to establish a procedure to notify the inmate when the Secretary makes the decision not to refer the inmate to the courts for a recall of sentence review. A CDC Form 128-B General Chrono shall be generated informing the inmate that the Secretary decided not to refer the inmate's case to the courts for a review for recall of sentence. A copy of the CDC Form 128-B General Chrono shall be provided to the inmate and another placed in the inmate's central file. The Department determined that 10 business days is an appropriate and sufficient amount of time to ensure prompt dissemination to the inmate.

Subsection 3076.1(e)(4) is adopted to establish that the Secretary's decision is not subject to administrative review. This provision reflects the broad discretion vested in the Secretary to decide whether a referral under PC 1170(d)(1) shall be made on a case-by-case basis. Additionally, this provision reflects that a decision by the Secretary is not administratively appealable within the Department because the Secretary is the highest authority in the Department.

**Existing Section 3076.2 is re-titled and the existing text is deleted and new provisions adopted.**

Subsection 3076.2(a) is amended to establish a process by which an outside law enforcement, prosecutorial, or other judicial agency may recommend an inmate for referral for recall of sentence. This is necessary as outside law enforcement agencies, prosecutorial, or judicial agencies sometimes reach out to inmates for assistance with specific criminal cases. Sometimes, the assistance these agencies receive from the inmate results in further criminal convictions for many unsolved crimes such as murders; racketeering rings, gang activity, etc. These agencies may not have been able to solve these crimes had it not been for the assistance they received from the inmate; therefore, this regulation affords these agencies an opportunity to assist the inmate to reduce their sentence or give them the opportunity for recall of sentence pursuant to PC Section 1170(d)(1). Furthermore, recent legislative amendments to PC Section 1170(d)(1) give prosecutors independent authority to refer an inmate for resentencing. This subsection establishes a process for the Department to refer an inmate to the District Attorney's office responsible for the original prosecution of the inmate. The Department determined that ten business days is an appropriate and sufficient amount of time to process these requests from law enforcement agencies.

Subsection 3076.2(b) is adopted to establish a process for cases in which the District Attorney's office declines to pursue resentencing or the District Attorney does not respond with a decision to the Classification Services Unit within 90 calendar days of the referral. The Department will commence its own referral process under the same provisions used in cases of exceptional conduct as described in Section 3076.1(b). This process will ensure the inmate's cooperation with law enforcement that resulted in a recommendation from the law enforcement agency is given due consideration by either the District Attorney's office that prosecuted the inmate, or the Department. The Department determined that 90 days was an appropriate period of time to wait for the District Attorney's response, as the District Attorney must review the inmate's records and complete an internal review process which will differ depending on the size of each District Attorney's office.

Subsection 3076.2(c) is adopted to establish that if the District Attorney's office chooses to refer the case, the matter shall be considered closed by the Department, as the inmate's cooperation with