

**State of California
Office of Administrative Law**

In re:
Department of Corrections and
Rehabilitation

Regulatory Action:

Title 15, California Code of Regulations

Adopt sections:

Amend sections: 3076.4

Repeal sections:

**NOTICE OF APPROVAL OF CHANGES
WITHOUT REGULATORY EFFECT**

**California Code of Regulations, Title 1,
Section 100**

OAL Matter Number: 2021-0212-01

OAL Matter Type: Nonsubstantive (N)

This change without regulatory effect filing by the Department of Corrections and Rehabilitation updates the requirements to initiate the sentence recall process in order to align with Penal Code section 1170.

OAL approves this change without regulatory effect as meeting the requirements of California Code of Regulations, title 1, section 100.

Date: April 2, 2021



Lindsey S. McNeill
Senior Attorney

**For: Kenneth J. Pogue
Director**

**Original: Kathleen Allison, Secretary
Copy: Julie Inderkum**

NONSUBSTANTIVE

NOTICE PUBLICATION REGULATIONS SUBMISSION (See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-	REGULATORY ACTION NUMBER 2021-0212-01N	EMERGENCY NUMBER
For use by Office of Administrative Law (OAL) only			
NOTICE		REGULATIONS	
AGENCY WITH RULEMAKING AUTHORITY California Department of Corrections and Rehabilitation			AGENCY FILE NUMBER (if any)

ENDORSED - FILED
in the office of the Secretary of State
of the State of California

APR 02 2021

1:03 PM

2021 FEB 12 P 3:23
OFFICE OF
ADMINISTRATIVE LAW

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE	TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	NOTICE REGISTER NUMBER	PUBLICATION DATE	

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Compassionate Release	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (including title 26, if toxics related)	
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT
	AMEND 3076.4
TITLE(S) 15	REPEAL

3. TYPE OF FILING			
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input checked="" type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input type="checkbox"/> Other (Specify) _____	

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)			
<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input type="checkbox"/> Effective on filing with Secretary of State	<input checked="" type="checkbox"/> §100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify)

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY			
<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal	
<input type="checkbox"/> Other (Specify) _____			

7. CONTACT PERSON Julie Inderkum	TELEPHONE NUMBER 916-691-3587	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional) Julie.Inderkum@cdcr.ca.gov
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE <i>Kathleen Allison</i>	DATE 2/11/2021
TYPE, NAME AND TITLE OF SIGNATORY Kathleen Allison, Secretary, CDCR	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

APR 02 2021

Office of Administrative Law

TEXT OF PROPOSED REGULATIONS

In the following, ~~strikethrough~~ indicates deleted text and underline indicates added, amended, or moved text.

California Code of Regulations, Title 15, Division 3, Adult Institutions, Programs, and Parole

Chapter 1. Rules and Regulations of Adult Operations and Programs

Article 6.6. Department Recommendation to Recall Sentence and Resentence Inmate (Refs & Annos)

Section 3076.4 is amended to read:

3076.4. Recommendation Pursuant to Subdivision (e) of Section 1170 of the Penal Code - Processes.

A physician employed by the California Department of Corrections and Rehabilitation (CDCR) who determines an inmate meets the eligibility requirements described in section 3076(b), shall initiate the recall process on behalf of the inmate. The inmate or ~~his or her~~their family member or designee may also independently request Penal Code (PC) section 1170(e) recall consideration by contacting the institution's Chief Medical Officer (CMO) or Chief Medical Executive (CME), or the Secretary.

(a) The physician shall document on a CDC Form 128-C (Rev. 01/96), Chrono - Medical-Psychiatric-Dental, the inmate's illness, functional status, including the inmate's abilities or limitations in performing activities of daily living, ambulatory status, the reason why the inmate has ~~six months~~ 12 months or less to live or is permanently medically incapacitated, and ~~his or her~~their desire to participate in the recall process.

(b) The CMO or CME, Deputy Medical Executive, and Statewide Chief Medical Executive, California Prison Health Care Services, shall have five working days to review and sign the CDC Form 128-C, approving the physician's prognosis. The signed CDC Form 128-C shall be submitted to the C&PR within three working days following the Statewide Chief Medical Executive's approval.

(1) If the CMO or CME, or the Deputy Medical Executive, or the Statewide Chief Medical Executive do not concur with the physician's prognosis, the recall of commitment process shall be terminated.

(c) The C&PR shall review the CDC Form 128-C and the inmate's central file.

(1) If the inmate is sentenced to death or to life without the possibility of parole, the Classification and Parole Representative (C&PR) shall document the reason for the ineligibility on a CDC Form 128-B (Rev. 04/74), General Chrono, and file the original in the inmate's central file. A copy of the CDC Form 128-B excluding any confidential information, as defined in section 3321, shall be sent to the inmate and the inmate's physician.

(2) If the inmate is not sentenced to death or to life without the possibility of parole, medical staff shall explain the recall of commitment process to the inmate within 48 hours of notification and arrange for the inmate to designate a family member or other outside agent on CDCR Form 7385 (Rev. 09/09), Authorization for Release of Information, which is incorporated by reference. The inmate's designee shall be informed about the recall of commitment process and the inmate's medical condition. If the inmate is mentally unfit to designate a family member or other outside

agent, medical staff shall contact the inmate's emergency contact listed on the Notification in Case of Inmate Death, Serious Injury, or Serious Illness (see section 3357) and advise them of the recall process.

(d) The C&PR shall submit the CDC Form 128-C 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 3076.3, which consists of the following information and attachments:

(1) CDC Form 128-C.

(2) The inmate's cumulative case summary, including, but not limited to the following information:

(A) Inmate's name and CDC number.

(B) Current commitment offense, brief description of the crime, and sentence.

(C) County of commitment.

(D) Prior juvenile and adult criminal history.

(E) Active or potential holds, warrants, detainees.

(F) 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.

(G) Mental health and developmental disability status.

(3) A list of any victim notification or other special notification or registration requirements.

(4) The inmate's post-release plan.

(5) CDCR Form 7385 (Rev. 09/09), Authorization for Release of Information.

(6) CDCR Form 3038 (12/10) Notification to Inmate/Inmate Designee - Recall and Re-sentencing Procedure, which is incorporated by reference.

(7) CDCR Form 3039 (12/10), Waiver of Defendant's Personal Presence at the Recall and Re-sentencing Hearing, which is incorporated by reference.

(8) Abstract of Judgment for the inmate's current commitment offense.

(9) Probation Officer's Report for the inmate's current commitment offense.

(10) Institutional Staff Recommendation Summary.

(11) Legal Status Summary.

(12) CDC Form 112 (Rev. 09/83) Chronological History.

(13) 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).

(e) The C&PR shall review and forward the evaluation report to the warden or chief deputy warden within three working days.

(f) The warden or chief deputy warden shall review and sign the evaluation report and ensure it is forwarded to CDCR headquarters within three working days.

(g) The evaluation report for a PC section 1170(e) 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 recommendation shall be referred directly to the sentencing court and shall include one or more medical evaluations, the findings of which must determine the inmate meets the criteria set forth in PC section 1170(e)(2), and a post-release plan.

~~(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.~~

(h) Pursuant to PC section 1170(e)(9), if the sentencing court grants the recall and resentencing application, the inmate shall be released by the department within 48 hours of receipt of the court's order, unless a longer time period is agreed to by the inmate or ordered by the court. If the inmate has agreed to waive the 48-hour release requirement, the department shall request the sentencing court include in its order that the inmate shall be released within 30 calendar days to allow for the coordination of ~~his or her~~their housing and medical needs in the community to a location where access to care is available.

(i) If the Division of Adult Parole Operations (DAPO) is coordinating the inmate's placement within the community, the C&PR shall provide a copy of the release order to DAPO upon receipt from the sentencing court.

(j) At the time of release, medical staff shall ensure the inmate has each of the following in ~~his or her~~their possession; a discharge medical summary, full medical records, State identification, parole medication, and all property belonging to the inmate. After discharge, any additional records shall be sent to the inmate's forwarding address.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 1170(e), 3043 and 5054, Penal Code; and *Martinez v. Board of Parole Hearings* (2010) 183 Cal.App.4th 578.