California provides compassionate release to eligible prisoners who have serious medical conditions and who are elderly through three separate laws:

- **Medical Parole**, covering prisoners who are permanently medically incapacitated;¹
- **Recall of Sentence**, for prisoners who are permanently incapacitated or terminally ill;² and
- **Elderly Parole**, for prisoners age 60 and older.³

## MEDICAL PAROLE

### I. ELIGIBILITY

**Medical Condition** - To be eligible for Medical Parole, a prisoner must be permanently medically incapacitated, with a medical condition that (1) makes him or her permanently unable to perform “activities of basic daily living” and (2) results in a need for 24-hour care.⁴

- Activities of daily living are defined as “breathing, eating, bathing, dressing, transferring, elimination, arm use, or physical ambulation.”⁵

- The prisoner’s incapacitation must not have existed at the time of sentencing.⁶

**Exclusions** - Prisoners will not be considered for Medical Parole if they are:

- Sentenced to death or life in prison without the possibility of parole;⁷

- Serving a sentence for which Medical Parole is prohibited;⁸ or

- Serving a sentence for first-degree murder in which the victim was a “peace officer.”⁹

### II. APPLICATION/REFERRAL

**Identification** - The Department of Corrections and Rehabilitation (Department) primary care physicians are directed to identify prisoners they believe meet the Medical Parole medical criteria. Upon doing so, they are directed to submit a recommendation to the facility’s Chief Medical Officer/Head Physician that the prisoner be referred to the California Board of Parole Hearings (Board) for consideration.¹⁰

**Prisoner/Family Requests** - A request for Medical Parole consideration can also be submitted to the facility’s Chief Medical Officer/Head Physician by a prisoner, his or her family member, an attorney, or “other individual appropriately authorized” to act on behalf of the prisoner.¹¹
III. DOCUMENTATION AND ASSESSMENT

Referral Decision/Chief Medical Officer -

- **Primary Care Physician Recommendations** - Within 30 days of receiving a physician’s recommendation that a prisoner be considered for Medical Parole, the Chief Medical Officer (1) reviews the Medical Parole Form 7478 and any submitted documentation and (2) makes a decision regarding referral to the Board.  
  
  - If the Chief Medical Officer does not agree with the primary care physician’s recommendation, he or she must put the reasons in writing and return the Medical Parole form to the physician. The Chief Medical Officer is also responsible for notifying the prisoner and/or the prisoner’s designee of the reason for denial in writing.  
  
  - If the Chief Medical Officer agrees with the primary care physician’s recommendation, he or she refers the prisoner’s Medical Parole Form 7478 and case. Note that the Medical Parole statute says that the case is referred to the Board at this point, but the regulations say that it simply moves on to the next step in the Department process - the Classification and Parole (C&P) Representative.  

- **Prisoner Requests** - Within 30 days of receiving a request for Medical Parole consideration from a prisoner, family member, or other authorized individual, the Chief Medical Officer consults with the prisoner’s primary care physician to determine whether the Medical Parole medical criteria is met.  
  
  - If the Chief Medical Officer does not believe that the prisoner meets the medical criteria, he or she will provide the prisoner or other authorized individual with a written explanation of the reasons for denying the request.  
  
  - If the Chief Medical Officer decides the prisoner meets the medical criteria, he or she will move the case forward. As was referenced above, the Medical Parole statute says that the case is referred to the Board at this point, but the regulations say that it simply moves on to the C&P Representative.  

**Department Processing** - Within 30 working days of the Chief Medical Officer’s decision, the prisoner must be referred to the Board for Medical Parole consideration. All of the following tasks must be completed by the Department during that 30-day period, with the responsible office generally having three to five working days to complete each task:

- **Statutory Eligibility/ C&P Representative** - The C&P Representative reviews the prisoner’s file to determine statutory eligibility for Medical Parole. If the prisoner is not eligible, the C&P Representative notes the reason on Medical Parole Form 7478 and returns it to the Chief Medical Officer, who then notifies the prisoner or prisoner’s designee in writing of the reasons for the denial. If the prisoner meets the statutory requirements, the C&P Representative returns Form 7478 to the Chief
Medical Officer and requests an evaluation report from the prisoner's caseworker.\textsuperscript{23}

- \textit{Evaluation Report/Caseworker} - The prisoner’s caseworker completes an evaluation report and submits it to the C&P Representative.\textsuperscript{24} The report must include details of the individual’s criminal history, “institutional adjustment,” mental health status, a risk assessment score, and institutional staff recommendations.\textsuperscript{25}

- \textit{Review/C&P Representative} - The C&P Representative reviews the evaluation report and attachments and forwards all of the information to the Warden (or the Warden’s designee).\textsuperscript{26}

- \textit{Review/Warden} - The Warden signs and forwards the original evaluation report and attachments to the Classification Services Unit.\textsuperscript{27}

- \textit{Placement/Prison Health Care Services} - After the Chief Medical Officer receives the evaluation report (simultaneously with the evaluation report review by the C&P Representative and Warden), he or she forwards the Medical Parole Form 7478 and all the relevant documentation to the designated California Prison Health Care Services office. That office identifies a suitable placement for the prisoner, documents the required placement plan information, and forwards everything to the Division of Adult Parole Operations Re-Entry Unit.\textsuperscript{28}

- \textit{Placement Plan Review/Division of Adult Parole Operations Re-Entry Unit (Re-Entry Unit)} - The Re-Entry Unit forwards the Medical Parole Form 7478 and all attachments to the appropriate parole unit, where an assigned parole agent reviews the recommended placement for the prisoner. The agent documents an assessment of the plan and forwards it to the designated Prison Health Care Services staff, noting approval or disapproval of the proposed placement and Medical Parole conditions. A copy is also forwarded to the Classification Services Unit.\textsuperscript{29}

  - If the agent does not approve the placement, he or she documents the reasons on the Medical Parole Form 7478 and sends it back to the Prison Health Care Services office for consideration of an alternative placement.\textsuperscript{30}

- \textit{Review/Classification Services Unit} - The Classification Services Unit reviews the Medical Parole Form 7478, the evaluation report, and all other related documents “for completeness” and forwards everything to the Board.\textsuperscript{31}

\section*{IV. DECISION-MAKING PROCESS}

\textbf{Decision Maker} - The California Board of Parole Hearings makes the final decision as to whether to release a prisoner on Medical Parole.\textsuperscript{32}

- Upon receiving a recommendation from an institution’s Chief Medical Officer that a prisoner be granted Medical Parole, the Board makes an independent judgment regarding whether “the conditions under which he or she would be released would not reasonably pose a threat to public safety.”\textsuperscript{33}
Notice - The Department must provide notification of a prisoner’s upcoming Medical Parole hearing to the county where the prisoner was convicted and, if different, the proposed county of release, at least 30 days or “as soon as feasible” prior to the date of the hearing.  

Hearings - Medical Parole hearings are conducted by two-person panels of the Board. If there is a tie vote, the matter is referred to the full Board for a decision. Medical Parole hearings may be heard “in absentia.”

- Note that the Board uses the “Resource Utilization Guide IV (RUG-IV)” Assessment Tool, as completed by the prisoner’s primary care physician, to determine whether an incapacitated prisoner qualifies for placement in a licensed health care facility.

Conditions - The Board and the Division of Adult Parole Operations have the authority to impose “reasonable conditions” on prisoners released on Medical Parole, including the requirement that they be electronically monitored. In addition, the prisoner/parolee will generally have to be examined periodically by a Board-selected physician, who submits a report and diagnosis to the Board.

V. POST-DECISION

Pre-Release Process - When the Board approves release of a prisoner on Medical Parole, it notifies the C&P Representative to (1) ensure a Medical Parole “packet” is processed and forwarded to the parole unit that will be supervising the prisoner and (2) complete the required notifications.

- Notice - The Department provides notification of the prisoner’s upcoming Medical Parole release to the county where he or she was convicted and, if different, the proposed county of release at least 30 days “or as soon as feasible” prior to the time release is scheduled.

- Medical Information - Upon a prisoner’s release, the Department is directed to provide a discharge medical summary, full medical records, and “parole medications.” After release, any additional records will be sent to the individual’s forwarding address.

- Public Benefits - At the time a prisoner is placed on Medical Parole supervision, the Department is directed to ensure that the prisoner has applied for any federal entitlement programs for which he or she is eligible.

Effect of Medical Parole Request on Nonmedical Parole Eligibility - Medical Parole consideration does not affect eligibility for any other form of parole or release provided by California law. Note that prisoners who were sentenced to an indeterminate prison term will continue to have “life parole consideration” hearings.

Supervision - Former prisoners who have been released on Medical Parole have assigned parole agents who ensure compliance with all conditions of parole.
may have general and/or special conditions that apply. If the Board imposes a “special condition of medical parole,” only the Board may remove or modify the condition.

**Denials and Appeal Rights** - Although the statute and regulation do not provide information on appealing decisions made during the different steps of the process, the Prison Law Office in San Quentin has published the following guidelines for challenging actions (or lack of action):

- If a physician refuses to refer a prisoner for Medical Parole or determines that the prisoner is not eligible, the prisoner can file a medical appeal and ask the Prison Law Office for assistance. “After completing the 602 process, a prisoner who wants to challenge a doctor’s decision about medical parole eligibility may be able to file a state court *habeas corpus* [petition] challenging the decision.”

- If a prisoner is referred for a Medical Parole hearing and the Board (1) doesn’t schedule a timely hearing or (2) denies parole, the Prison Law Office advises prisoners not to file an administrative appeal because the Board does not have a general administrative appeal process. However, “[a] prisoner denied expanded medical parole by the [Board] may be able to file a state court *habeas corpus* [petition] challenging the denial. Under traditional medical parole rules, the court would determine whether some evidence supports the [Department] or [Board’s] decision.”

**Revocation/Termination** - If the Board determines that, based on a physician’s examination, the parolee’s medical condition has improved to the extent that he or she no longer qualifies for Medical Parole, the Board will return the parolee to the custody of the Department. In addition, if the agent makes a determination that the parolee is a threat to him or herself, another person, or to public safety, he or she can make a recommendation to return the parolee to custody.

- A former prisoner who was serving a *determinate* sentence remains on Medical Parole until his or her normal release date, at which point any normal parole or Post-Release Community Supervision would start.

- A former prisoner who was serving an *indeterminate* sentence, who is placed on Medical Parole prior to his or her “minimum eligible” parole date, will become eligible for consideration under the regular parole rules once his or her minimum eligible parole date is reached.

**VI. REPORTING/STATISTICS**

California law does not require the Board to report on how many prisoners have been granted and/or denied Medical Parole.

- Note that the Board provides statistical data on its website for 2015 and 2016 that includes a column for “Medical Parole.” However, the numbers are under the heading “Scheduled Proceedings,” so it is not clear if the numbers reported are
individuals approved for Medical Parole or just those considered: 37 prisoners in 2016 and 57 prisoners in 2015.  

A May 26, 2017 news article reported that, as of that date, there were 25 prisoners on Medical Parole according to Joyce Hayhoe, Director of Communications and Legislation for California Correctional Healthcare Services.  

**RECALL OF SENTENCE**  
The sentencing court may, on the recommendation of the Secretary of the California Department of Corrections and Rehabilitation (Department), the Board of Parole Hearings (Board), or both, “recall” the sentence of an eligible prisoner who is permanently incapacitated or has a terminal illness. 

I. ELIGIBILITY  
**Medical Condition** - To be eligible for Recall of Sentence, a prisoner must be permanently incapacitated or terminally ill, defined as follows:

- **Permanently medically incapacitated** is defined as having a medical condition that renders the prisoner unable to perform activities of basic daily living and results in the need for 24-hour “total care.” Examples of eligible conditions include a coma, persistent vegetative state, brain death, ventilator-dependency, and loss of control of muscular or neurological function. 
  - Activities of “basic daily living” are defined as breathing, eating, bathing, dressing, transferring, elimination, arm use, or physical ambulation. 
  - The incapacitation must not have existed at the time of the prisoner’s original sentencing. 

- **Terminally ill** is defined as having an incurable condition caused by an illness or disease that did not exist at the time of sentencing and that will produce death within six months, as determined by a Department physician. 

Exclusions - Prisoners who are sentenced to death or who are serving a life sentence without the possibility of parole are not eligible for a Recall of Sentence. 

II. APPLICATION/REFERRAL  
**Department Identification** - Any Department physician who determines a prisoner has six months or less to live can initiate the Recall of Sentence process by notifying the Chief Medical Officer. If the Chief Medical Officer agrees with the prognosis, he or she notifies the Warden. 

- The California Penal Code requires the Secretary to issue a directive to medical
and correctional staff clearly stating that any prisoner who is given a prognosis of six months or less to live is eligible for recall and resentencing, and detailing the guidelines and procedures.  

**Prisoner/Family Request** - The prisoner, a family member, or the prisoner’s “designee” may also independently request consideration for a Recall of Sentence by contacting the Department Secretary or the facility’s Chief Medical Officer.

### III. DOCUMENTATION AND ASSESSMENT

Within 48 hours of receiving notification that a prisoner might be eligible for Recall of Sentence, the Warden must (1) notify the prisoner of the process and (2) arrange for a family member or representative to be notified about the Recall process and updated about the prisoner’s medical condition and prognosis.

**Documentation/Medical Staff** - The prisoner’s physician documents the illness, functional status (including any limitations in performing activities of daily living), ambulatory status, the reason why the prisoner has six months or less to live or is permanently medically incapacitated and in need of 24-hour care, and the prisoner’s desire to participate in the Recall of Sentence process.  

- If they do not concur with the prognosis, the Recall of Sentence process ends.
- If they agree with the prognosis, they submit the appropriate signed form (Department Form 128-C) to the Classification and Parole (C&P) Representative within.

**Evaluation Report/Classification and Parole (C&P) Representative** - The C&P Representative and the prisoner’s caseworker look at a range of factors to determine the threat to public safety, if any. These factors include the commitment offense, history of organized criminal activity, and whether the court knew of the prisoner’s medical condition at the time of sentencing.  

- The C&P Representative also looks at whether there are verifiable community resources appropriate and immediately available to provide support and to meet the prisoner’s medical and/or psychological needs upon release.

**Review/Warden** - The Warden reviews and signs the evaluation report and forwards it to the Department Secretary’s office.

**Recommendation/Secretary** - If the Secretary approves the recommendation for Recall, the steps taken next depend on the prisoner’s sentence:

- If the prisoner is serving a *determinate* sentence, the recommendation is referred directly to the prisoner’s sentencing court.
• If the prisoner is serving an indeterminate sentence, the Secretary sends a recommendation (positive or negative) to the Board of Parole Hearings for review and consideration. Recommendations include the prisoner’s medical evaluations, a post-release plan, and any additional documentation related to his or her condition.

**Recommendation/Board of Parole Hearings** - The Board independently evaluates whether the prisoner qualifies before making a recommendation to the sentencing court. That decision is made at the Board’s next regularly scheduled meeting, usually within a month.

**IV. DECISION-MAKING PROCESS**

**Decision Maker** - The sentencing court makes all decisions regarding a Recall of Sentence. However, as noted above, recommendations for Recall are made by the Secretary of the California Department of Corrections and Rehabilitation, the Board of Parole Hearings, or both.

**Notification** - When prisoners are recommended to the sentencing court for a Recall of Sentence and release, the C&P Representative must notify the relevant crime victims (or next of kin) if they have formally requested notice about a prisoner’s status.

**Hearing** - Within 10 days of receiving a positive recommendation from the Secretary or the Board, the court must hold a hearing to consider whether the prisoner’s sentence should be “recalled.”

• To be eligible for a Recall of Sentence, the court must determine that the conditions under which the prisoner would be released or receive treatment do not pose a threat to public safety.

**V. POST-DECISION**

**Release** - If the court approves the Recall application, the Department must release the prisoner within 48 hours of receiving the order unless the prisoner agrees to a longer time period. If the prisoner agrees to waive the 48-hour release requirement, the Department can ask the sentencing court to include in its order that the prisoner be released within 30 calendar days to allow for the coordination of his or her housing and medical needs in the community.

At the time of release, the Warden must ensure that the prisoner has his or her discharge medical summary, full medical records, state identification, post-parole medications, and all of his or her property.

**Denials and Appeals** - Denials of a request for Recall of Sentence are not discussed in any detail in the California Penal Code or Department rules. Just as with Medical Parole, the Prison Law Office in San Quentin has published guidelines for challenging actions (or lack of action) at different steps in the process:

• If a prison physician refuses to determine whether the prisoner has a qualifying
terminal illness, or determines that the prisoner does not have such an illness, the Prison Law Office says he or she should file a “medical appeal.” The Prison Law Office can assist prisoners in challenging a doctor’s decision by filing a state court habeas corpus petition challenging the decision.  

- If prison medical staff determine that a prisoner has a qualifying terminal illness but the Department does not process the request in a timely manner, or decides not to refer the case to the Board or the sentencing court, the prisoner can file a “regular” administrative appeal.  

- If the Board refuses to recommend a Recall of Sentence, a prisoner can proceed directly to filing a court action.  

- A prisoner can file a state court petition for a writ of habeas corpus challenging the Department or Board decision not to recommend a Recall of Sentence. On review, the court will determine whether the evidence supports the decision.  

- If a superior court denies a Recall of Sentence release, a prisoner may file a direct appeal in the court of appeal.  

**VI. REPORTING/STATISTICS**

California law does not require courts to report on how many sentences have been recalled for medical reasons.  

- A May 2017 news article from the Monterey Justice Project said that in 2016-2017 the California Medical Facility, the only hospice unit for prisoners, had 53 qualified prisoners apply for Recall of Sentence. Only six were granted, with “some” of those individuals dying before release.  

**ELDERLY PAROLE**

The California Board of Parole Hearings (Board) can grant Elderly Parole to older prisoners who have served at least 25 years in prison. The Elderly Parole law passed the California General Assembly and it was signed by the governor on Oct. 11, 2017. The new legislation codifies the parole process that has been in place since 2014 due to a court ruling.  

**I. ELIGIBILITY**

**Age** - To be eligible under the Elderly Parole program, a prisoner must be 60 years of age or older and have served a minimum of 25 years of continuous incarceration on his or her current sentence.  

**Exclusions** - Prisoners are not eligible for Elderly Parole if they were sentenced: (1) under California’s “Three Strikes” law; (2) to death; (3) to life without parole; or (4) for first-degree murder of a “peace officer.”
II. APPLICATION/REFERRAL

The law notes that the Board must consider a prisoner’s eligibility for Elderly Parole when scheduling a parole suitability hearing date or considering hearing requests under other state parole provisions.\(^\text{100}\)

- As of Jan. 1, 2018, there are no additional details on the new law regarding how a prisoner (or someone on his or her behalf) can apply for Elderly Parole.

III. DOCUMENTATION AND ASSESSMENT

There is no detailed information in the Elderly Parole law about the documentation that will be needed and the assessment process that will be utilized leading up to a referral to the Board.

IV. DECISION-MAKING PROCESS

**Decision Maker** — The Board of Parole Hearings makes all final decisions on Elderly Parole requests.

**Decision** - In making its decision, the Board will consider whether the prisoner’s age, time served, and diminished physical condition, if any, have reduced his or her risk for future violence.\(^\text{101}\)

The only additional information provided regarding the Board’s decision-making process, as of Jan. 1, 2018, is the following:

- The Board meets with prisoners who are eligible according to the age/time-served criteria.\(^\text{102}\) If the Board decides the prisoner is “suitable” for parole under the Elderly Parole guidelines, it can release the prisoner.\(^\text{103}\)

- If the Board does not grant release after the meeting, it will set a date and time for an Elderly Parole hearing.\(^\text{104}\)

V. POST-DECISION

There are no details in the bill regarding supervision and other “post-decision” aspects of Elderly Parole.

VI. REPORTING/STATISTICS

California does not currently require the Department or Board to report on how many prisoners are granted or denied Elderly Parole.

- Prior to passage of the new law in 2017, when the Department and Board were under court order\(^\text{105}\) to process and release elderly prisoners, the following statistics were reported:
NOTES

2 Cal. Penal Code § 1170 (e); Cal. Code Regs. tit. 15, §§ 3076 through 3076.5.
3 Cal. Penal Code § 3055.
4 Cal. Penal Code 3550 § (a); Cal. Code Regs. tit. 15, § 3359.1 (a) (1).
5 Cal. Penal Code 3550 § (a) (1); Cal. Code Regs. tit. 15, § 3359.1 (a) (1).
6 Cal. Penal Code 3550 § (a); Cal. Code Regs. tit. 15, § 3359.1 (a) (2).
7 Cal. Penal Code § 3550 (b) (1); Cal. Code Regs. tit. 15, §§ 3359.1 (a) (3) and (4).
8 Cal. Penal Code § 3550 (b) (2).
9 Id. at (b) (3). “Peace officer” includes any sheriff, undersheriff, or deputy sheriff; chief of police or chief, director, or chief executive officer of a municipal public safety agency that performs police functions or a public safety agency or district; any marshal or deputy marshal of a superior court or county; any port warden or port police officer; or any inspector or investigator in the office of a district attorney. Cal. Penal Code § 830.1.
10 Cal. Penal Code § 3550 (c); Cal. Code Regs. tit. 15, §§ 3359.1 (b) (1) and 3359.2 (a), referencing Form 7478-Medical Parole. Note that the Medical Parole statute and rules use the terms Chief Medical Officer, head physician, and Chief Medical Executive interchangeably. The use of “Chief Medical Officer” in this summary encompasses all three of those terms.
11 Cal. Penal Code § 3550 (d); Cal. Code Regs. tit.15, §§ 3359.1 (b) (2) - (4). The requests will not be considered if the prisoner’s physician has previously reviewed eligibility for Medical Parole within the last 90 days. Cal. Code Regs. tit. 15, § 3359.1 (c). “Family members” include a legal spouse; registered domestic partner; natural parents; adoptive parents; step-parents or foster parents; grandparents; natural, step, or foster brothers or sisters; natural and adoptive children; grandchildren; and legal stepchildren of the prisoner. Cal. Code Regs. tit.15, § 3000.
12 Cal. Penal Code § 3550 (c); Cal. Code Regs. tit. 15, § 3359.2 (b).
13 Cal. Penal Code § 3550 (c); Cal. Code Regs. tit. 15, § 3359.2 (b) (1).
14 Cal. Penal Code § 3550 (c); Cal. Code Regs. tit. 15, § 3359.2 (b) (2).
15 Cal. Penal Code § 3550 (c); Cal. Code Regs. tit. 15, § 3359.2 (b) (2).
16 Cal. Penal Code § 3550 (d).
17 Id.
18 Id.
19 Cal. Code Regs. tit. 15, § 3359.2 (b) (2).
21 Cal. Code Regs. tit. 15, § 3359.2 (c).
22 Id. at (c) (1).
23 Id. at (c) (2).
24 Id. at (d).
25 Id. For a full list of the information the evaluation report must contain, see Cal. Code Regs. 15, §§ 3359.2 (d) (1) - (15).
26 Cal. Code Regs. tit. 15, § 3359.2 (e).
27 Id. at (f).
28 Cal. Code Regs. tit. 15, § 3359.2 (g). The placement plan is part of the “parole plan” requirement in Cal. Penal Code § 3550 (e).
29 Id. at (h).
30 Id. at (h) (1).
31 Id. at (i).
Cal. Penal Code §§ 3550 (a) and (g); Cal. Code Regs. tit. 15, § 3559.1 (d).

Cal. Penal Code §§ 3550 (k) (1) and (k) (2).


Cal. Penal Code § 3550 (f).

Id.

Expanded Medical Parole, supra note 35. The RUG-IV is a tool used throughout the U.S. to evaluate eligibility for Medicare and Medicaid reimbursement for placement in a skilled nursing facility. Note the correct title of this tool (which is used nationally) is Resource Utilization Group (not Guide) IV. “RUGs” are categories that reflect the levels of resources needed in long-term care settings, primarily to facilitate Medicare and Medicaid payments.

Cal. Penal Code § 3550 (h).

Id.

Cal. Code Regs. tit. 15, § 3359.3 (a).

Cal. Penal Code §§ 3550 (k) (1) and (k) (2).

Id. at (i).

Id.

Id. at (j).


Cal. Code Regs. tit. 15, § 3359.3 (a).

Cal. Code Regs. tit. 15, § 3359.5 (b).

Id. at (b) (5).


Id.

Cal. Penal Code § 3550 (h); Cal. Code Regs. tit. 15, § 3359.6 (a) (1).

Cal. Code Regs. tit. 15, § 3359.6 (a) (2).

Cal. Penal Code § 3550 (h) (1).

Id. at (h) (2).

See Board of Parole Hearings, Parole Suitability and Hearing Decision Information, on the Board’s website at http://www.cdcrc.ca.gov/BOPH/statistical_data.html.

Id.


Cal. Penal Code § 1170 (e) (1); Cal. Code Regs. tit. 15, §§ 3076 (b) (1) and (2). Recall of Sentence is a discretionary power of the Courts. Cal. Penal Code at § 1170 (e) (2).

Cal. Penal Code § 1170 (e) (2) (C); Cal. Code Regs. tit. 15, § 3076 (b) (2).

Cal. Code Regs. tit. 15, § 3076 (b) (2).

Cal. Penal Code § 1170 (e) (2).

Id. at (e) (2) (A); Cal. Code Regs. tit. 15, § 3076 (b) (1).

Cal. Penal Code § 1170 (e) (2).

Id. at (e) (4); Cal. Code Regs. tit. 15, § 3076.4.

Cal. Penal Code § 1170 (e) (10).


Cal. Penal Code §§ 1170 (e) (4) and (5). If the prisoner is “mentally unfit,” the Warden must notify the prisoner’s emergency contact and provide the information. Id.


Id. at (b) (1).

Id. at (b).

Cal. Code Regs. tit. 15, §§ 3076.3 (a) - (j) and 3076.4 (d).

Cal. Code Regs. tit. 15, § 3076.3 (h).

Cal. Code Regs. tit. 15, § 3076.4 (e).

Id. at (f).

Id. at (g) (1).
The law says that “if possible” the matter should be heard before the same judge who sentenced the prisoner. Cal. Penal Code § 1170 (e) (8).

Cal. Code Regs. tit. 15, § 3076.4 (e) (3). Note that the California Code of Regulations doesn’t say anything about a hearing - it simply says that if the recall and resentencing application is granted, the prisoner must be released within 48 hours. Cal. Code Regs. tit. 15, § 3076.4 (h).

Cal. Penal Code § 1170 (e) (2) (B).

Id. at (e) (9).


Cal. Penal Code 1170 (e) (9); Cal. Code Regs. tit. 15, § 3076.4 (j).


A prisoner who believes he or she has less than six months to live should label the 602 as an emergency appeal to try to get a quicker response.” Id.

Id. at 8.

Id.

Id.

Robinson & Dobrzyn, supra note 59.

Assembly Bill 1488, adding a new Section 3055 to the Penal Code. The law became effective on Jan. 1, 2018.

On Feb. 10, 2014, the three-judge court overseeing Plata/Coleman v. Brown, a class action case lawsuit on prison overcrowding, issued an order that, among other things, required the state to create a new parole process so that prisoners age 60 and older who have been in prison for at least 25 years would be referred to the Board of Parole Hearings for consideration. See California Board of Parole Hearings Memo, Elderly Parole Program, June 16, 2014, http://www.cdcr.ca.gov/BOPH/docs/Policy/Elderly_Parole_Program_Overview.pdf.

Cal. Penal Code § 3055 (a). The sentence served can be either determinate (a set length) or indeterminate (life with the possibility of parole).

Id. at (g).

Id. at (h).

Id. at (d).

Id. at (c).

Id. at (e), referencing Cal. Penal Code section § 3041.

Id.

Id. at (f). Note that no Elderly Parole hearing is necessary if the prisoner is released pursuant to other statutory provisions prior to the date of the hearing.

