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THIRD READING

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Bill No: AB 960  
Author: Ting (D)  
Amended: 8/1/22 in Senate  
Vote: 21

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SENATE PUBLIC SAFETY COMMITTEE: 4-1, 6/28/22  
AYES: Bradford, Kamlager, Skinner, Wiener  
NOES: Ochoa Bogh

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

ASSEMBLY FLOOR: 45-24, 6/3/21 - See last page for vote

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**SUBJECT:** Compassionate release

**SOURCE:** California Coalition for Women Prisoners  
Families Against Mandatory Minimums  
Root & Rebound  
UnCommon Law  
Union of American Physicians and Dentists  
White Coats for Black Lives

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**DIGEST:** This bill makes a number of changes to the compassionate release process.

**ANALYSIS:**

Existing law:

- 1) Establishes the compassionate release process and authorizes the Secretary of the California Department of Corrections and Rehabilitation (CDCR) to recommend to the court that an inmate's sentence be recalled if the Secretary determines that the inmate satisfies the eligibility criteria. (Pen. Code, § 1170, subd. (e)(1).)

- 2) Provides that the court has the discretion to resentence or recall if the court finds either of the following to be true:
  - a) The inmate is terminally ill with an incurable condition caused by an illness or disease that would produce death within 12 months, as determined by a physician employed by the department, and the conditions under which the inmate would be released or receive treatment do not pose a threat to public safety.
  - b) The inmate is permanently medically incapacitated with a medical condition that renders them permanently unable to perform activities of basic daily living, and results in the prisoner 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, and the conditions under which the inmate would be released or receive treatment do not pose a threat to public safety. (Pen. Code, § 1170, subd. (e)(2).)
- 3) Requires the court to hold a hearing to consider whether the inmate's sentence should be recalled within 10 days of receipt of a positive recommendation by the Secretary. (Pen. Code, § 1170, subd. (e)(3).)
- 4) Requires any physician employed by CDCR who determines that an inmate has 12 months or less to live to notify the chief medical officer of the prognosis. Requires the chief medical officer to notify the warden if the chief medical officers concurs with the prognosis. (Pen. Code, § 1170, subd. (e)(4).)
- 5) Requires the warden or the warden's representative to notify the prisoner of the recall and resentencing procedures within 48 hours of receiving notification, and to arrange for the inmate to designate a family member or other outside agent to be notified as to the inmate's medical condition and prognosis, and as to the recall and resentencing procedures. Requires the warden or the warden's representative to contact the inmate's emergency contact if the inmate is deemed mentally unfit. (Pen. Code, § 1170, subd. (e)(4).)
- 6) Requires the warden or the warden's representative to provide the inmate and their family member, agent, or emergency contact, updated information throughout the recall and resentencing process with regard to the inmate's medical condition and the status of the inmate's recall and resentencing proceedings. (Pen. Code, § 1170, subd. (e)(5).)

- 7) Authorizes the inmate or their family member or designee may independently request consideration for recall and resentencing by contacting the chief medical officer at the prison or the secretary. Provides that the Secretary may recommend to the court that the inmate's sentence be recalled if the Secretary determines that the inmate satisfies the eligibility criteria. Requires the Secretary to submit a recommendation for release within 30 days. (Pen. Code, § 1170, subd. (e)(6).)
- 8) Requires any recommendation for recall submitted to the court by the Secretary to include one or more medical evaluations, a postrelease plan, and findings regarding the eligibility criteria. (Pen. Code, § 1170, subd. (e)(7).)
- 9) Provides that the matter should be heard before the same judge of the court who sentenced the inmate if possible. (Pen. Code, § 1170, subd. (e)(8).)
- 10) Requires the inmate to be released by CDCR within 48 hours of receipt of the court's order if the court grants the recall and resentencing application, unless a longer time period is agreed to by the inmate. Requires the warden or the warden's representative to ensure that the inmate has each of the following in their possession at the time of release: a discharge medical summary, full medical records, state identification, parole or postrelease community supervision medications, and all property belonging to the prisoner. (Pen. Code, § 1170, subd. (e)(9).)
- 11) Requires the Secretary to issue a directive to medical and correctional staff employed by the department that details the guidelines and procedures for initiating a recall and resentencing procedure. Requires the directive to clearly state that any inmate who is given a prognosis of 12 months or less to live is eligible for recall and resentencing consideration, and that recall and resentencing procedures are required to be initiated upon that prognosis. (Pen. Code, § 1170, subd. (e)(10).)
- 12) Provides that compassionate release is available to an inmate who is sentenced to a county jail for a realigned felony. Clarifies that for purposes of those inmates, "Secretary" or "warden" means the county correctional administrator and "chief medical officer" means a physician designated by the county correctional administrator for this purpose. (Pen. Code, § 1170, subd. (e)(11).)
- 13) Excludes an inmate sentenced to death or a term of life without the possibility of parole from eligibility for compassionate release. (Pen. Code, § 1170, subd. (e)(12).)

This bill:

- 1) Authorizes the chief medical officer of the facility, instead of the Secretary, to determine that an incarcerated person satisfies the medical criteria for compassionate release. Requires CDCR recommend to the court that the person's sentence be recalled if the person meets the criteria.
- 2) Creates a presumption favoring recall and resentencing if the court finds that the person meets the eligibility criteria. Provides that the presumption may only be overcome if a court finds the person is an unreasonable risk of danger to public safety, as defined in subdivision (c) of Section 1170.18, based on the incarcerated person's current physical and mental condition.
- 3) Provides that a person is eligible for compassionate release if the person:
  - a) Has an incurable disease or medical condition with an end-of-life trajectory; or,
  - b) Is permanently medically incapacitated with a medical condition or functional impairment that renders them unable to complete one or more basic activities of daily living, or has progressive dementia or related cognitive impairment, and that incapacitation did not exist at the time of the original sentencing.
- 4) Requires the referral process to be consistent with the following timelines:
  - a) Requires the chief medical officer, or chief medical executive to review and sign off on the primary physician's, or their designee's, diagnosis and referral within five working days.
  - b) Requires the signed designated form to be submitted to the institution's Classification and Parole Representative (C&PR) within three working days of approval by the chief medical officer or chief medical executive.
  - c) Requires the C&PR to submit the matter to an incarcerated person's case worker within three working days of receipt of the designated form. Requires the case worker to prepare the evaluation report within five working days of receipt of the designated form from the C&PR.
  - d) Requires the C&PR to submit the evaluation report to the warden or chief deputy warden within three working days.

- e) Requires the warden or chief deputy warden to review and sign the evaluation report and send the report to the Statewide Chief Medical Executive within three working days.
  - f) Requires the Statewide Chief Medical Executive to review the referral to affirm medical eligibility. Requires the Statewide Chief Medical Executive to send the referral and evaluation report to the department's classification services unit within five working days.
  - g) Provides that CDCR's classification services unit has 14 days to review the evaluation report for completeness. Requires the classification services unit to refer the matter to the court for recall and resentencing upon finding that the referral and report is complete.
- 5) Requires that the referring physician or their designees from the department be available to the court or defense counsel as necessary throughout the recall and resentencing proceedings.
- 6) Provides, upon recommendation to the court for recall of sentence, that the incarcerated person has the right to counsel and, if indigent, the right to court appointed counsel.
- 7) Requires the Judicial Council to publicly release an annual report on the compassionate release program beginning January 1, 2024. Requires the report to include all of the following:
- a) The number of people who were referred to the court for recall and resentencing disaggregated by race, ethnicity, age, gender identity and further disaggregated by the type of criteria on which the referral was based. The report shall identify the following categories of criteria for recall and resentencing referrals: incurable disease or condition with an end-of-life trajectory; functional impairment; and cognitive impairment.
  - b) The number of people released by the court pursuant to this subdivision, disaggregated by race, ethnicity, age, and gender identity.
  - c) The number of people denied resentencing sought pursuant to this subdivision disaggregated by race, ethnicity, age, and gender identity.
  - d) Number of people who pass away before completing the recall and resentencing process disaggregated by race, ethnicity, age, and gender identity.

- e) Number of people denied resentencing sought pursuant to this subdivision for lack of release plans with data disaggregated by race, ethnicity, age, and gender identity.
  - f) Number of cases pending decision with data disaggregated by race, ethnicity, age, and gender identity.
- 8) Makes other conforming changes, including removing references to the Secretary of CDCR and replacing it with chief medical officer.

## Background

Existing law establishes the compassionate release process. (Pen. Code, § 1170, subd. (e).) A person is eligible for compassionate release if they are terminally ill with an incurable condition caused by an illness or disease that would produce death within 12 months or permanently medically incapacitated with a medical condition that renders them permanently unable to perform activities of basic daily living, and results in the prisoner 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. In addition, release must not pose a threat to public safety. (Pen. Code, § 1170, subd. (e)(2).) Individuals who are sentenced to death or life without the possibility of parole are not eligible for compassionate release. (Pen. Code, § 1170, subd. (e)(12).)

Existing law delineates the procedures related to compassionate release. Any physician employed by CDCR who determines that an incarcerated person has 12 months or less to live is required to notify the chief medical officer of the prognosis. (Pen. Code, § 1170, subd. (e)(4).) The chief medical officer is required to notify the warden if the chief medical officer concurs with the prognosis. (*Ibid.*) The Secretary of CDCR is authorized to recommend to the court that an incarcerated person's sentence be recalled if the Secretary determines that the person satisfies the eligibility criteria. (Pen. Code, § 1170, subd. (e)(1).) Any recommendation for recall submitted to the court by the Secretary must include one or more medical evaluations, a postrelease plan, and findings regarding the eligibility criteria. (Pen. Code, § 1170, subd. (e)(7).)

The court is required to hold a hearing to consider whether the incarcerated person's sentence should be recalled within 10 days of receipt of a positive recommendation by the Secretary. (Pen. Code, § 1170, subd. (e)(3).) The incarcerated person must be released by CDCR within 48 hours of receipt of the

court's order if the court grants the recall and resentencing application, unless a longer time period is agreed to by the inmate. (Pen. Code, § 1170, subd. (e)(9).)

Existing law also authorizes the incarcerated person or their family member or designee to independently request consideration for recall and resentencing by contacting the chief medical officer at the prison or the Secretary. (Pen. Code, § 1170, subd. (e)(6).) The Secretary may recommend to the court that the incarcerated person's sentence be recalled if the Secretary determines that the inmate satisfies the eligibility criteria. Existing law further provides that the Secretary is required to submit a recommendation for release within 30 days. (*Ibid.*)

A person whose sentence is recalled via Penal Code Section 1170, subdivision (e), is no longer subject to the jurisdiction of the department and is not placed on supervision, and cannot be returned to prison if the person's health improves.

This bill makes a number of changes to the compassionate release process. First, this bill authorizes the chief medical officer of the facility, instead of the Secretary, to determine whether an incarcerated person satisfies the medical criteria for compassionate release. Next, this bill requires CDCR recommend to the court that the person's sentence be recalled if the person meets the eligibility criteria. This bill additionally creates a presumption favoring recall and resentencing if the court finds that the person meets the eligibility criteria, and provides that the presumption may only be overcome if the court finds the person is an unreasonable risk of danger to public safety based on the incarcerated person's current physical and mental condition. This bill also changes the eligibility criteria for compassionate release and provides detailed timelines for the referral process.

**FISCAL EFFECT:** Appropriation: No      Fiscal Com.: Yes      Local: Yes

**SUPPORT:** (Verified 8/8/22)

California Coalition for Women Prisoners (co-source)

Families Against Mandatory Minimums (co-source)

Root & Rebound (co-source)

UnCommon Law (co-source)

Union of American Physicians and Dentists (co-source)

White Coats for Black Lives (co-source)

American Federation of State, County and Municipal Employees, AFL-CIO

Anti-Recidivism Coalition

California Public Defenders Association

Californians for Safety and Justice  
Californians United for a Responsible Budget  
Chinese for Affirmative Action  
Dream Corps Justice  
Essie Justice Group  
Initiate Justice  
Los Angeles County District Attorney's Office  
National Association of Social Workers, California Chapter  
Prosecutors Alliance of California  
San Francisco Public Defender  
Smart Justice California

**OPPOSITION:** (Verified 8/8/22)

California Narcotics Officers Association

ASSEMBLY FLOOR: 45-24, 6/3/21

AYES: Aguiar-Curry, Bauer-Kahan, Bennett, Berman, Bloom, Bryan, Burke, Calderon, Carrillo, Chau, Chiu, Daly, Friedman, Gabriel, Cristina Garcia, Eduardo Garcia, Gipson, Lorena Gonzalez, Grayson, Holden, Jones-Sawyer, Kalra, Lee, Levine, Low, McCarty, Medina, Mullin, Nazarian, O'Donnell, Quirk, Quirk-Silva, Reyes, Luz Rivas, Robert Rivas, Blanca Rubio, Santiago, Stone, Ting, Villapudua, Ward, Akilah Weber, Wicks, Wood, Rendon

NOES: Bigelow, Boerner Horvath, Chen, Choi, Cunningham, Megan Dahle, Davies, Flora, Fong, Frazier, Gallagher, Irwin, Kiley, Lackey, Mathis, Mayes, Muratsuchi, Nguyen, Patterson, Petrie-Norris, Seyarto, Smith, Valladares, Voepel

NO VOTE RECORDED: Arambula, Cervantes, Cooley, Cooper, Gray, Maienschein, Ramos, Rodriguez, Salas, Waldron

Prepared by: Stephanie Jordan / PUB. S. /  
8/10/22 14:24:52

\*\*\*\* END \*\*\*\*