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# SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair  
2021 - 2022 Regular

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**Bill No:** AB 960                      **Hearing Date:** June 28, 2022  
**Author:** Ting  
**Version:** May 27, 2022  
**Urgency:** No                                      **Fiscal:** Yes  
**Consultant:** SJ

**Subject:** *Medical parole*

## HISTORY

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

**Prior Legislation:** None

**Support:** 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:** California Narcotic Officers' Association

**Assembly Floor Vote:** 45 - 24

## PURPOSE

*The purpose of this bill is to make change to the compassionate release statute.*

*Existing law* establishes the compassionate release process and authorizes the Secretary of 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).)

*Existing law* provides that the court has the discretion to resentence or recall if the court finds either of the following to be true:

- 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.

- 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).)

*Existing law* 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).)

*Existing law* 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).)

*Existing law* 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).)

*Existing law* 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).)

*Existing law* 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).)

*Existing law* 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).)

*Existing law* 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).)

*Existing law* 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).)

*Existing law* 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).)

*Existing law* 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).)

*Existing law* 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* 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.

*This bill* 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.

*This bill* provides that a person is eligible for compassionate release if the person:

- Has an incurable disease or medical condition with an end-of-life trajectory; or,
- 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.

*This bill* requires the referral process to be consistent with the following timelines:

- 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.
- 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.

- 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.
- Requires the C&PR to submit the evaluation report to the warden or chief deputy warden within three working days.
- 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.
- 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.
- 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.

*This bill* 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.

*This bill* 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.

*This bill* 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:

- 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.
- The number of people released by the court pursuant to this subdivision, disaggregated by race, ethnicity, age, and gender identity.
- The number of people denied resentencing sought pursuant to this subdivision disaggregated by race, ethnicity, age, and gender identity.
- Number of people who pass away before completing the recall and resentencing process disaggregated by race, ethnicity, age, and gender identity.
- 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.
- Number of cases pending decision with data disaggregated by race, ethnicity, age, and gender identity.

*This bill* makes other conforming changes, including removing references to the Secretary of CDCR and replacing it with chief medical officer.

## COMMENTS

### 1. Need For This Bill

According to the author:

The eligibility criteria for the Compassionate Release program remain too narrow and the process too cumbersome for a population that poses the lowest risk to public safety. As a result, very few people are granted relief and, consequently, many die while awaiting a referral to the court. For instance, between January 2015 and April 2021, 306 people were referred for compassionate release, yet 95 people died before the process could be completed and only 53 people were successfully released. Consequently, the State is spending more money to cover costly health care services for a population that is nearing death or requiring thoughtful medical attention. AB 960 would streamline and improve California's Compassionate Release program under the California Department of Corrections and Rehabilitation (CDCR) in order to address our State's most vulnerable population's needs.

### 2. Compassionate Release

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).) People 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 inmate 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 inmate's sentence be recalled if the Secretary determines that the inmate 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 inmate's sentence should be recalled within 10 days of receipt of a positive recommendation by the Secretary. (Pen. Code, § 1170, subd. (e)(3).) The inmate 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 inmate 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 inmate'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.

### 3. Effect of This Bill

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 that 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 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 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.

This bill changes the eligibility criteria for compassionate release. It provides that a person is eligible for compassionate release if the person:

- Has an incurable disease or medical condition with an end-of-life trajectory; or,
- 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.

This bill provides detailed timelines for the referral process. Specifically, this bill 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. This bill then 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. The C&PR is required to submit the matter to an incarcerated person's case worker within three working days of receipt of the designated form, and the case worker is required to prepare the evaluation report within five working days of receipt of the designated form from the C&PR. The C&PR is required to submit the evaluation report to the warden or chief deputy warden within three working days. The warden or chief deputy warden is required to review and sign the evaluation report and send the report to the Statewide Chief Medical Executive within three working days. The Statewide Chief Medical Executive is then required to review the referral to affirm medical eligibility and to send the referral and evaluation report to CDCR's classification services unit within five working days. Finally, CDCR's classification services unit has 14 days to review the evaluation report for completeness, and must refer the matter to the court for recall and resentencing upon finding that the referral and report is complete.

This bill provides, upon recommendation to the court for recall of sentence, that the incarcerated person has the right to counsel. This bill also 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.

Finally, this bill requires the Judicial Council to publicly release an annual report on the compassionate release program beginning January 1, 2024 that includes data on the number of people who were referred to the court for recall and resentencing; the number of people released; the number of people denied resentencing, including for lack of release plans; the number of people who pass away before completing the recall and resentencing process; and the number of cases pending decision. All of those data points are required to include specified disaggregated demographic information.

#### **4. Argument in Support**

According to Smart Justice California:

California law permits courts to resentence certain people meeting strict medical criteria to time served so that they may live their final months outside of a prison. Unfortunately, this system, referred to as compassionate release, is hampered by eligibility criteria that are too narrow and a process that is unduly cumbersome. According to a recent analysis of CDCR data, 31% of people who were considered for compassionate release between January 2015 and April 2021 died before the process could be complete. Additionally, the Secretary of the CDCR denied more than one in four compassionate release applications that reached their desk during this time period. Ultimately, only 53 people, 17% of people who were considered for compassionate release based on medical referral, were released between January 2015 and April 2021.

AB 960 offers common sense reforms to California's compassionate release process by allowing the state to safely release those who are the most expensive to incarcerate and least likely to reoffend. This bill would reform medical eligibility to better serve the population and ensure the courts are able to consider and rule in a timely way on all petitions from medically eligible incarcerated individuals. This does not undermine public safety; instead it ensures the incapacitated and dying get a proper judicial review.

California's prisons were not designed to serve as hospice centers and nursing homes. Continuing to incarcerate terminally ill and medically incapacitated people does not make us safer and is a considerable waste of finite resources. People who are near death should be safely released and allowed to live their remaining months outside of a prison.

**5. Argument in Opposition**

The California Narcotic Officers' Association writes:

The Medical Parole laws, were carefully crafted by then Senator Mark Leno and received support from a wide array of stakeholders. The California Narcotic Officers Association does not believe that a valid case can be made for making drastic changes in what is a well-crafted document. We must, therefore, respectfully oppose Assembly Bill 960.

**-- END --**