

# Judicial Council of California • Administrative Office of the Courts

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## INVITATION TO COMMENT

### LEG14-03

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Title	Action Requested
Proposed Legislation (Criminal Justice Realignment): Recalling Sentences under Penal Code section 1170(d)(1)	Review and submit comments by June 18, 2014
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Penal Code section 1170(d)(1)	January 1, 2016
Proposed by	Contact
Criminal Law Advisory Committee Hon. Tricia A. Bigelow, Chair	Arturo Castro, 415-865-7702 arturo.castro@jud.ca.gov

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### Executive Summary and Origin

The Criminal Law Advisory Committee proposes amending Penal Code section 1170(d)(1) to apply existing court authority to recall felony prison sentences to new county jail sentences under Penal Code section 1170(h)(5). This proposal was developed at the request of criminal law judges to expand existing recall authority to a new category of felony sentence engendered by recent criminal justice realignment legislation.

### Background

Penal Code section 1170(d)(1)<sup>1</sup> authorizes courts to recall felony prison sentences on their own motion within 120 days of a defendant's commitment to custody or anytime upon recommendation of state prison officials. Section 1170(d)(1) is generally designed to vest courts with broad authority to resentence "for any reason rationally related to lawful sentencing" (*Dix v. Superior Court* (1991) 53 Cal.3d 442, 456), including correcting sentencing errors and considering facts that were not available at the time of the original sentencing. By its express terms, section 1170(d)(1) only applies to *state prison* sentences.

Criminal justice realignment legislation implemented broad changes to felony sentencing laws, including replacing prison sentences for certain felony offenses with county jail sentences under section 1170(h)(5). The legislation, however, did not amend section 1170(d)(1) to apply existing

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<sup>1</sup> All further statutory references are to the Penal Code.

*The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.*

court discretion to recall felony sentences to the new county jail sentences under section 1170(h)(5).

### **The Proposal**

The Criminal Law Advisory Committee proposes amending section 1170(d)(1) to apply existing court authority to recall felony prison sentences to the new county jail sentences under section 1170(h)(5). The committee believes that the general purpose of section 1170(d)(1)—to authorize courts to resentence for any reason rationally related to lawful sentencing, including correcting sentencing errors and considering facts not available at the time of the original sentencing—applies equally to the recall of county jail sentences under section 1170(h)(5). By expanding court discretion to recall sentences, this proposal is designed to enhance judicial discretion, promote uniform and effective sentencing practices, and update longstanding sentencing laws to reflect recent criminal justice realignment legislation.

### **Alternatives Considered**

None

### **Implementation Requirements, Costs, and Operational Impacts**

No significant implementation requirements, costs, or operational impacts are expected.

## **Request for Specific Comments**

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so please quantify.
- What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems.
- Would 12 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

### **Attachment**

1. The text of the proposed legislation is attached at page 3.

Section 1170(d)(1) of the Penal Code would be amended, effective January 1, 2016, to read as follows:

1 When a defendant subject to this section or subdivision (b) of Section 1168 has been sentenced  
2 to be imprisoned in the state prison or county jail under paragraph (5) of subdivision (h) and has  
3 been committed to the custody of the secretary or county sheriff, the court may, within 120 days  
4 of the date of commitment on its own motion, or at any time upon the recommendation of the  
5 secretary or the Board of Parole Hearings or county sheriff, recall the sentence and commitment  
6 previously ordered and resentence the defendant in the same manner as if he or she had not  
7 previously been sentenced, provided the new sentence, if any, is no greater than the initial  
8 sentence. The court resentencing under this subdivision shall apply the sentencing rules of the  
9 Judicial Council so as to eliminate disparity of sentences and to promote uniformity of  
10 sentencing. Credit shall be given for time served.  
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