

NOTICE OF EMERGENCY REGULATIONS

California Code of Regulations Title 15, Crime Prevention and Corrections Department of Corrections and Rehabilitation

NOTICE IS HEREBY GIVEN that the Secretary of the California Department of Corrections and Rehabilitation (CDCR), pursuant to the authority granted by Government Code Section 12838.5 and Penal Code (PC) Section 5055, and the rulemaking authority granted by PC Section 5058 and 5058.3, in order to implement, interpret and make specific PC Section 5054, proposes to amend Sections 3076 through 3076.3 and adopt Sections 3076.4 and 3076.5 of the California Code of Regulations (CCR), Title 15, Division 3, concerning the recall of an inmate's commitment.

PUBLIC HEARING:

Date and Time: September 15, 2011 – 10:30 a.m. to 11:30 a.m.
Place: Department of Corrections and Rehabilitation
Kern Room
1515 S Street – North Building
Sacramento, CA 95811
Purpose: To receive comments about this action.

PUBLIC COMMENT PERIOD:

The public comment period will close September 15, 2011, at 5:00pm. Any person may submit public comments in writing (by mail, by fax, or by e-mail) regarding the proposed changes. To be considered by the Department, comments must be submitted to the CDCR, Regulation and Policy Management Branch, P.O. Box 942883, Sacramento, CA 94283-0001; by fax at (916) 324-6075; or by e-mail at RPMB@cdcr.ca.gov before the close of the comment period.

CONTACT PERSON:

Please direct any inquiries regarding this action to:

Timothy M. Lockwood, Chief
Regulation and Policy Management Branch
Department of Corrections and Rehabilitation
P.O. Box 942883, Sacramento, CA 94283-0001
Telephone (916) 445-2269

In the event the contact person is unavailable, inquires should be directed to the following back-up person:

R. Ruiz
Regulation and Policy Management Branch
Telephone (916) 445-2309

Questions regarding the substance of the proposed regulatory action should be directed to:

M. Rocha
Classification Services Unit
Telephone (916) 323-2670

LOCAL MANDATES:

This action imposes no mandates on local agencies or school districts, or a mandate which requires reimbursement of costs or savings pursuant to Government Code Sections 17500 – 17630.

FISCAL IMPACT STATEMENT:

- Cost or savings to any state agency: *None*
- Other nondiscretionary cost or savings imposed on local agencies: *None*
- Cost or savings in federal funding to the state: *None*

EFFECT ON HOUSING COSTS:

The Department has made an initial determination that the proposed action will have no significant effect on housing costs.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES:

The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT ON BUSINESS:

The Department has initially determined that the proposed regulations will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

EFFECT ON SMALL BUSINESSES:

The Department has determined that the proposed regulations may not affect small businesses. It is determined that this action has no significant adverse economic impact on small business because they are not affected by the internal management of state prisons.

ASSESSMENTS OF EFFECTS ON JOB AND/OR BUSINESS CREATION, ELIMINATION OR EXPANSION:

The Department has determined that the proposed regulation will have no affect on the creation of new, or the elimination of existing jobs or businesses within California, or affect the expansion of businesses currently doing business in California.

CONSIDERATION OF ALTERNATIVES:

The Department must determine that no reasonable alternative considered by the Department, or that has otherwise been identified and brought to the attention of the Department, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons, than the proposed regulatory action. Interested persons are accordingly invited to present statements or arguments with respect to any alternatives to the changes proposed at the scheduled hearing or during the written comment period.

AVAILABILITY OF PROPOSED TEXT AND INITIAL STATEMENT OF REASONS:

The Department has prepared, and will make available, the text and the Initial Statement of Reasons (ISOR) of the proposed regulations. The rulemaking file for this regulatory action, which contains those items and all information on which the proposal is based (i.e., rulemaking file) is available to the public upon request directed to the Department's contact person. The proposed text, ISOR, and Notice of Proposed Action will also be made available on the Department's website <http://www.cdcr.ca.gov>.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS:

Following its preparation, a copy of the Final Statement of Reasons may be obtained from the Department's contact person.

AVAILABILITY OF CHANGES TO PROPOSED TEXT:

After considering all timely and relevant comments received, the Department may adopt the proposed regulations substantially as described in this Notice. If the Department makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department adopts the regulations as revised. Requests for copies of any

modified regulation text should be directed to the contact person indicated in this Notice. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW:

PC Section 5000 provides that commencing July 1, 2005, any reference to the Department of Corrections in this or any code, refers to the CDCR, Division of Adult Operations.

PC Section 5050 provides that commencing July 1, 2005, any reference to the Director of Corrections, in this or any other code, refers to the Secretary of the CDCR. As of that date, the office of the Director of Corrections is abolished.

PC Section 5054 provides that commencing July 1, 2005, the supervision, management, and control of the state prisons, and the responsibility for the care, custody, treatment, training, discipline, and employment of persons confined therein are vested in the Secretary of the CDCR.

PC Section 5058 authorizes the Director to prescribe and amend regulations for the administration of prisons.

PC Section 5058.3 authorizes the Director to adopt, amend, or repeal emergency regulations conducted pursuant to GC Section 11340.

This action provides the following:

- Amends Sections 3076 through 3076.3 of the CCR, Title 15, Division 3 in order to incorporate the new PC provisions established by Assembly Bill (AB) 1539.
- Adopts into the CCR new Sections 3076.4, and 3076.5, concerning Recall of Commitment.
- Brings the Department into compliance with PC Section 1170(e) as amended by the passage of AB 1539. PC provisions governing Recall of Commitment now include permanently medically incapacitated inmates as eligible for recall consideration. This is designed to save the state the cost of health care of these inmates and the associated guarding costs by considering for recall another inmate population who may pose a decreased risk to society as a result of their advanced medical condition.
- Describes “Activities of Daily Living, “ as defined by statute which are the criteria that CDCR physicians will use to evaluate an inmate’s degree of incapacitation.
- Establishes the process by which inmates will be considered for a Recall of Commitment recommendation.
- Establishes in the regulations, three existing forms and two new forms related to the Recall of Commitment process. Additionally, existing form CDC 127 (06/01), Notification in Case of Inmate Death, Serious Injury, or Serious Illness is the current version of this form and replaces any other references to this form. The Department will update Title 15 and the Department of Operations Manual to reflect this correction. All five forms have been incorporated by reference into the regulations and have been made available to the public for review.
 - CDCR 7385 (Rev. 09/09), Authorization for Release of Information
 - CDC 127 (Rev. 06/01), Notification in Case of Inmate Death, Serious Injury, or Serious Illness
 - CDCR 3038 (12/10), Notification to Inmate/Inmate Designee Recall and Re-Sentencing Procedure
 - CDCR 3039 (12/10), Waiver of Defendant’s Personal Presence at the Recall and Re-Sentencing Hearing
 - CDCR 1707 (Rev. 04/08), Request for Victim Services