

INITIAL STATEMENT OF REASONS

The California Department of Corrections and Rehabilitation (CDCR) proposes to amend and/or adopt sections 3000, 3043, 3075.2, 3078, 3078.1, 3078.2, 3078.3, 3078.4, 3078.5, 3078.6, 3097, 3195, 3320, and 3323 of the California Code of Regulations (CCR), Title 15, Division 3, governing the Alternate Custody Program (ACP).

In 2010, the Legislature passed and the Governor signed into law Senate Bill (SB) 1266 (Liu), which added section 1170.05 to the Penal Code (PC). This law provides that the Secretary of the CDCR is authorized to offer an alternative custody program under which female inmates, pregnant inmates, or inmates who immediately prior to incarceration were primary caregivers of dependent children, who are committed to state prison may be allowed to participate in a voluntary alternative custody program in lieu of confinement in state prison.

These proposed regulations provide for CDCR to allow non-violent, non-serious, non-registerable sex offense inmates currently housed in CDCR institutions to serve the remainder of their state prison sentence in the community if they volunteer to participate, and satisfy the eligibility and exclusionary criteria in proposed CCR sections 3078.2.

These regulations are necessary to implement, interpret and make specific the general provisions of PC Section 1170.05. This regulatory action provides authority and direction for the proper identification of inmates who meet the criteria to be considered for release under the ACP, ensures inmates released to the ACP are adequately supervised while in the community, and provides for their return to custody when appropriate. This action is necessary to ensure the main target population that is affected by these regulations, namely incarcerated inmates, have a complete understanding of the program and its components. This also establishes and clarifies to staff and inmates, standard statewide processes and procedures.

The department recognizes that portions of the language utilized in these sections duplicates state statute, more specifically in part, PC section 1170.05. This is necessary as the target population for the CCR Title 15, Division 3, includes incarcerated inmates. This population does not have immediate access to current PC editions for review. By duplicating the statutory language, the department can establish the foundation for these regulations to help ensure a complete understanding of the statutory authority. Because of this necessity, it is the department's position that any duplication of state statute in these regulations does not serve as the same purpose for the above referenced PC section, and as provided in Government Code (GC) section 11349(f), is necessary and allowed in order to satisfy the clarity standard as described in GC 11349(c).

The department has made an initial determination that no reasonable alternatives considered would be more effective in carrying out the purpose of this action or would be as effective, and less burdensome to affected private persons, than the action proposed.

The department has made an initial determination that no reasonable alternatives to the regulations have been identified or brought to the attention of the department that would lessen any adverse impact on small business.

The department has made an initial determination that the action will not have a significant adverse economic impact on business. Additionally, there has been no testimony or other evidence provided that would alter the department's initial determination.

The department has determined that this action imposes no mandates on local agencies or school districts, or a mandate which requires reimbursement pursuant to Part 7 (section 17561) of Division 4.

The department, in proposing amendments to these regulations, has not identified nor has it relied upon any technical, theoretical, or empirical study, report, or similar document.

Specific Purpose of Each Section Adoption/Amendment

Chapter 1. Rules and Regulations of Adult Operations and Programs

Article 1. Behavior

3000. Definitions.

Section 3000 is amended as follows:

The definition of Alternative Custody Program is added. This is necessary to establish the purpose of the Alternative Custody Program and to identify the inmates who are eligible to participate in the program.

The definition of Alternative Custody Program Participant is added. This is necessary to clarify the difference between an inmate who is confined to an institution and an Alternative Custody Program Participant who serves their sentence in the community.

The existing definition for Case Conference is revised to add the word “Review” and provide a more accurate and detailed description of what occurs during a Case Conference Review. It also references “case management expectations” to include ACP participants in the Case Conference Review process.

The existing definition for Face-to-Face Contact is revised to add the words “Alternative Custody Program participant” to clarify that ACP participants are also included. Also, the words “Division of Adult Parole Operations staff” are replaced by the words “a CDCR parole agent” to be more specific about which staff is responsible for the Face-to-Face Contact.

At the end of Section 3000 in the authority and reference citations, PC Section 1170.05 is added as a reference.

Article 3.5. Credits

3043. Credit Earning.

Subsections 3043(a) through (c)(1) are unchanged.

Subsection 3043(c)(2) is amended to add ACP and to cite the appropriate CCR section related to the ACP. This is necessary to establish pursuant to PC section 1170.05(a) that an ACP participant has the ability to earn credits in order to reduce his or her term of sentence.

Subsection 3043(c)(3) is unchanged.

Subsection 3043(c)(4) is amended to add ACP. This clarifies that an ACP participant may be eligible to earn milestone credits upon successful completion of an approved rehabilitative program.

Subsections 3043(c)(5) through (c)(7) are unchanged.

Subsection 3043(c)(7)(A) is amended. Current regulations allow six weeks of sentence reduction credits to be awarded in a 12-month period for achievement of specific program performance milestones. New language is added to establish when the 12-month period will begin for an ACP participant and to specify that the ACP Program Manager or designee is responsible for verifying an ACP participant's milestone credits. This is necessary for clear understanding and as a directive to staff.

Subsection 3043(c)(7)(B) is amended. New text is added to establish the verification and tracking process for an ACP participant's earned milestone credits. New text directs the ACP Case Manager to verify completion of a milestone credit using a CDCR Form 1502 Activity Report, and to submit to the ACP Program Manager within three business days. This language is necessary as a directive to staff and to ensure that this process is followed in a timely manner. It was determined by the Department that three working days is sufficient time to complete this part of the process. The Form 1502 Activity Report is a multi-purpose form already established in Title 15, Division 3 regulations.

Subsection 3043(c)(7)(C) is amended. New text establishes the ACP Program Manager or designee as the appropriate staff responsible for verifying the ACP participant's eligibility to earn milestone completion credits and completing the CDC Form 128-G, Classification Chrono and forwarding to Case Records. This is necessary as a directive to staff.

Subsections 3043(c)(8) through 3043(h) are unchanged.

At the end of Section 3043, in the authority and reference citations, PC Section 1170.05 is added as a reference.

Article 6.5. Intake, Release and Discharge of Inmates

3075.2. Releases.

Subsections 3075.2(a) through 3075.2(d)(7) are unchanged.

New subsection 3075.2(d)(8) is adopted to include provisions for an ACP participant's release allowance.

New subsection 3075.2(d)(8)(A) is adopted to establish an ACP participant may be eligible to receive a portion of his or her release allowance upon release and placement into ACP. This is necessary to assist an ACP participant who is in need of transportation and/or clothing for his or her transition into the community.

New subsection 3075.2(d)(8)(B) is adopted to establish that an ACP participant shall receive the remainder of his or her release allowance upon parole.

Subsections 3075.2(e) through 3075.2(e)(2) are unchanged.

At the end of Section 3075.2, in the authority and reference citations, PC Section 1170.05 is added as a reference.

New Article 6.8 is adopted.

Under Article 6.8, new sections 3078, 3078.1, 3078.2, 3078.3, 3078.4, 3078.5, and 3078.6 are adopted.

3078. Alternative Custody Program Definitions.

3078(a) adds the definition of Alternative Custody Program (ACP) Case Manager. This is necessary to identify staff responsible for the supervision of an ACP participant.

3078(b) adds the definition of Alternative Custody Program (ACP) Program Manager. This is necessary to identify staff responsible for the overall coordination of the ACP.

3078(c) adds the definition of Residential Home. This is necessary to identify an authorized location wherein an ACP participant may reside.

3078(d) adds the definition Transitional Care Facility. This is necessary to identify a program wherein an ACP participant may receive assistance when transitioning from a custody or treatment environment to his or her residence.

3078(e) adds the definition of Residential Drug or Treatment Program. This is necessary to identify a substance abuse or other treatment program wherein an ACP participant may reside.

3078.1. Alternative Custody Program General Policy.

3078.1(a) establishes the ACP, pursuant to PC section 1170.05, and clarifies the intent of the program.

3078.1(b) – 3078.1(b)(3) identifies, pursuant to PC section 1170.05, the restriction of housing options in the community for individuals approved for ACP placement.

3078.1(c) establishes, pursuant to PC section 1170.05, that ACP participants are eligible to receive applicable credits as though they were serving their sentence in a state prison. This also clarifies that ACP participants are subject to denial and loss of credits pursuant to PC 2932(a) for violations resulting in disciplinary action.

3078.1(d) establishes, pursuant to PC section 1170.05, that the decision whether to place any given inmate in the ACP is the sole discretion of the Secretary of the California Department of Corrections and Rehabilitation or the Secretary's designee.

3078.1(e) establishes that all inmates placed in the ACP continue to be subject to all applicable rules and regulations governing inmates in the CCR, Title 15, Division 3 even though they are serving their sentence in the community rather than in state prison.

3078.2. Alternative Custody Program Eligibility Criteria.

3078.2(a) – 3078.2(a)(3)(D) clarifies the statutory criteria, pursuant to PC section 1170.05, that an inmate must meet to be eligible for the ACP.

3078.2(b) establishes that eligible participants shall not have more than 24 months remaining to serve. This length of time is appropriate because it provides a reasonable period of community supervision and access to programs prior to the ACP participant's transition to Non-Revocable Parole (NRP) pursuant to PC 3000.03 or to post-release community supervision. Many of the ACP participants will be eligible for

(NRP) or for post-release community supervision and a reasonable period of community supervision and access to programs is necessary for that transition to be successful.

3078.2(c) establishes that inmates who meet exclusionary criteria listed in CCR 3078.3 shall not be eligible for ACP.

3078.3. Alternative Custody Program Exclusionary Criteria.

3078.3(a)(1) – (a)(4) includes statutory criteria, pursuant to PC section 1170.05 that will exclude an inmate from participating in the ACP program. These subsections also provide applicable PC references where terms such as “violent,” “serious” and “sex offender” are defined.

3078.3(a)(5) – (a)(16) establishes additional exclusionary criteria the department will utilize when screening inmates for placement in the ACP program. These exclusions and the reasons for each are as follows:

3078.3(a)(5) Inmates who have a history of escape from juvenile or adult custody within the last 10 years or inmates that have been reviewed for escape and assessed an administrative determinant of ESC, as defined in subsection 3375.2(b)(9), are excluded. This is necessary because these inmates are considered an increased flight risk.

3078.3(a)(6) Inmates who have any active or potential holds, warrants or detainers are excluded. This is necessary to ensure that the inmate is not wanted by other jurisdictions for crimes which could render the offender otherwise ineligible for ACP participation. Additionally, these inmates are considered an increased flight risk.

3078.3(a)(7) Inmates who have any active or potential United States Immigration and Customs Enforcement (USICE) holds are excluded. This ensures that the inmate is not wanted by USICE for potential deportation. Additionally, these inmates are considered an increased flight risk.

3078.3(a)(8) Inmates who have any active restraining orders are excluded. This is necessary to protect the safety of the community.

3078.3(a)(9) Inmates who have any in-custody Division A-C offenses, except for physical possession of alcohol, during the last 24 months of incarceration are excluded. This is necessary to identify offenders who demonstrate a pattern of recent behavior that is unacceptable in an institution setting, and therefore are not suitable for ACP placement in the community.

3078.3(a)(10) Inmates who have any security housing unit or psychiatric services unit terms in the last 12 calendar months are excluded. This is necessary to identify offenders who demonstrate a pattern of recent behavior that is unacceptable in an institution setting, and therefore are not suitable for ACP placement in the community.

3078.3(a)(11) Inmates who are currently classified as Close or Max Custody are excluded. This is necessary because the inmate’s behavior and/or other factors presents a threat to institutional safety and security, and therefore the inmate is not suitable for placement within the community.

3078.3(a)(12) Inmates who have any current or prior conviction for a sexually violent offense are excluded. This is necessary in order to ensure public safety.

3078.3(a)(13) Inmates who have validated prison gang membership or affiliation are excluded. This is necessary because the inmate's gang membership or affiliation presents a threat to institutional safety and security, and therefore the inmate is not suitable for placement within the community.

3078.3(a)(14) Inmates who have any probable or good cause finding for a violation of a condition of parole for a serious or violent offense are excluded. This population has previously exhibited behavior in the community that is not acceptable for ACP participation.

3078.3(a)(15) Inmates who have any probable or good cause finding for absconding parole in the last 24 calendar months are excluded. This is necessary because the offender has demonstrated behavior that renders him or her unlikely to succeed under the designated level of supervision in the ACP.

3078.3(a)(16) Inmates who are Parole Violator Return to Custody (PVRTC) or pending revocation status are excluded. This population is excluded because they have been deemed unsuitable for community placement based on a Board of Parole Hearing's decision to return them to custody.

3078.3(a)(17) Inmates previously received a sustained juvenile petition for a crime listed as a violent felony in PC section 667.5(c). This population is excluded due to inmates' documented history reflective of a violent criminal past.

3078.3(a)(18) Inmates previously received a sustained juvenile petition for a crime listed as a violent felony in PC sections 1192.7(c) and 1192.8. This population is excluded due to inmates' documented history reflective of a serious criminal past.

3078.3(b) – (b)(7) establishes additional exclusionary criteria the department will consider, on a case-by-case basis that may exclude inmates from participation in the ACP as follows:

3078.3(b)(1) Current or prior sexual offenses not excluded by PC 290 registration. This is necessary to individually evaluate any offenses that include a sexual element that may render him or her unsuitable for placement in the ACP.

3078.3(b)(2) Current psychiatric or medical conditions that require ongoing care. This is necessary to individually evaluate the inmate's psychiatric or medical condition to ensure his or her placement in the community will not disrupt necessary ongoing care.

3078.3(b)(3) Current or prior child abuse arrest(s) or conviction(s), probable/good cause finding(s) by BPH, or conviction(s) where the offense was related to abuse or neglect of a child. This is necessary to individually evaluate whether the potential ACP participant presents a threat to the safety of children that may render him or her unsuitable for placement in the ACP.

3078.3(b)(4) Current or prior convictions or probable or good cause findings for a violation of parole for stalking. This is necessary to individually evaluate whether a potential ACP participant presents a threat to the safety of the community.

3078.3(b)(5) Current or prior administrative determinants that result in a mandatory minimum placement score. This is necessary to individually evaluate any offenses that include specific elements that may render a potential ACP participant unsuitable for placement in the ACP.

3078.3(b)(6) Prior ACP participation that resulted in a return to an institution. This is necessary to individually evaluate the reasons for termination of any prior ACP participation and determine whether the individual inmate is a viable candidate for subsequent ACP placement.

3078.3(b)(7) Upon review of all case factors, no appropriate placement is available in the community. This is necessary to allow for those situations where no community placement can be identified that appropriately addresses the risks and needs presented by an individual inmate's case factors.

3078.4. Alternative Custody Program Processing.

3078.4(a)(1) establishes the CDCR Form 2234 (06/11), ACP Application and Voluntary Agreement, which is incorporated by reference. This form is necessary for potential participants to volunteer for the ACP, to identify where they would like to be placed, and for verification of the residence by Division of Adult Parole Operations (DAPO) staff. This form is included in this regulation package and copies are available for public review.

3078.4(a)(2) establishes the CDCR Form 2235 (06/11), Alternative Custody Program Screening Form, which is incorporated by reference. This form is a necessary document for use by classification staff to make an assessment(s) of an inmate's potential eligibility for the ACP. This form is included in this regulation package and copies are available for public review.

3078.4(a)(3) establishes the requirement of a validated assessment tool to determine placement, supervision and case-management of an offender in a community setting. This ensures appropriate placement of the ACP participant in order to meet his or her individual needs.

3078.4(b) – (b)(1)(I) establishes the Individualized Treatment and Rehabilitation Plan (ITRP) pursuant to PC Section 1170.05. The ITRP will be specific to each ACP participant, and will identify individual needs, program goals and expectations.

3078.4(b)(2) – (b)(2)(B) specifies that institution staff shall coordinate with the ACP Program Manager to identify appropriate placement in the community taking into account child dependency issues as well as proximity to victim(s) of the potential participant's crime. This is necessary to ensure public safety.

3078.4(b)(3) establishes that the participant is required to file for any county, state, or federal medical benefit program(s) for which the participant is eligible. This is necessary to ensure that the participant has appropriate medical coverage while in the community and will also assist in the participant's successful transition to parole status following their period of incarceration.

3078.4(b)(4) establishes the CDCR Form 1516-ACP (06/11), Requirements of the Alternative Custody Program which is incorporated by reference. This is a necessary document providing specific rules and conditions for participation in the ACP and requires the potential participant's signature acknowledging acceptance of these terms. This form is included in this regulation package and copies are available for public review.

3078.4(c)(1) – (c)(5) establishes a standardized department ACP process for reasons as specified below.

3078.4(c)(1) establishes the appropriate committee responsible for reviewing the case factors of each inmate who is considered for ACP and what information will be used when making an ACP placement consideration.

3078.4(c)(2) establishes the Classification Staff Representative as the appropriate level of staff responsible for endorsement of the inmate into ACP.

3078.4(c)(3) establishes that Case Records will be notified when an inmate is endorsed as an ACP participant to ensure the victim notification and the ACP release process is initiated. This is necessary to inform the victim of the release of an inmate to the community, prior to his or her release date.

3078.4(c)(4) – (c)(4)(C) establishes the requirement for law enforcement notification pursuant to PC section 1170.05.

3078.4(c)(5) provides that a designated location will handle all files related to the ACP participant while he or she is released to ACP to ensure consistency with monitoring case records functions. This is necessary because the institution that originally housed the inmate prior to placement into the ACP may not be the location responsible for the inmate's records while he or she is released to ACP.

3078.4(c)(6) provides that an inmate's annual classification review, as provided in CCR subsection 3376(d)(2), shall be suspended while the inmate is released to the ACP. This is necessary because housing and institution placement decisions are irrelevant while the participant is not housed in an institution.

3078.5 Alternative Custody Program Participant Case Management and Supervision.

3078.5(a) – 3078.5(a)(2)(D) identifies that DAPO staff are responsible for ACP case management and outlines specific responsibilities. This is necessary to identify DAPO as the appropriate division to manage an ACP participant in the community. It further specifies as a directive to staff the components of ACP case management.

3078.5(b) – 3078.5(b)(3) establishes that specific levels of supervision will be individualized for each participant. This is necessary to reinforce various types of ACP supervision methods an ACP participant may be subject to based on the evaluation of his or her case factors.

3078.5(c) reiterates the provisions of PC section 1170.05 specifying that ACP participants are subject to search and seizure with or without cause.

3078.5(d) establishes that any residential or program changes after initial ACP placement are to be coordinated among the ACP Program Manager, designated DAPO staff, and involved relevant staff from the participant's program. It further establishes that any such changes involving movement into or between any combination of Transitional Care Facilities and Residential Drug or Treatment Programs are to be coordinated between the ACP Program Manager and designated DAPO staff. This is necessary to ensure consistent adherence to the participant's ITRP and the management of available ACP resources.

3078.6. Alternative Custody Program Return to Institution.

3078.6(a) reiterates the provisions of PC 1170.05 specifying that ACP participants may be returned to state prison to serve the remainder of his or her original sentence with or without cause.

3078.6(b) – 3078.6(b)(7) establishes a requirement for DAPO staff to conduct a case conference regarding whether a participant should be returned to prison. This is necessary to provide guidance on how to manage a participant in the community while ensuring public safety if the participant fails to meet program expectations or the participant's needs cannot be met by available community programs.

Subchapter 2. Inmate Resources

Article 1.5. Inmate Wages and Deductions

3097. Inmate Restitution Fine and Direct Order Collections.

Subsection 3097(a) through 3097(h) are unchanged.

Subsection 3097(i) is amended to clarify that an ACP participant is subject to the collection of fines and direct orders of restitution. This is necessary so an ACP participant understands that participation in the program does not absolve him or her of these obligations.

Subsections 3097(j) through (o) are unchanged.

At the end of Section 3097 in the authority and reference citations, PC Section 1170.05 is added as a reference.

Article 9. Personal Property

3195. Release Clothing.

Section 3195 is amended to clarify that an ACP participant is eligible to receive release clothing prior to release to ACP.

At the end of Section 3195 in the authority and reference citations, PC Section 1170.05 is added as a reference.

Subchapter 4. General Institution Regulations

Article 5. Inmate Discipline

3320. Hearing Procedures and Time Limitations.

Subsection 3320(a) is amended. Existing regulations provide a process and timeline for notifying an inmate of a violation charged. New text is added to establish that an ACP participant who is removed from participation in the ACP and returned to an institution must be provided with required documentation within 15 days of their return to an institution. This is necessary to provide the inmate with sufficient opportunity to review the material and prepare for the disciplinary hearing.

3323. Disciplinary Credit Forfeiture Schedule.

Subsections 3323(a) through 3323(e) are unchanged.

Subsection 3323(e)(1) is amended to include the ACP. This is necessary to ensure that disciplinary offenses committed by ACP participants are properly classified.

Subsections 3323(e)(2) through 3323(e)(7) are unchanged.

Subsection 3323(e)(8) is amended to include the ACP. This is necessary to ensure that disciplinary offenses committed by ACP participants are properly classified.

Subsections 3323(e)(9) through 3323(f)(13) are unchanged.

Subsection 3323 (f)(14) is amended to include the ACP. This is necessary to ensure that disciplinary offenses committed by ACP participants are properly classified.

Subsections 3323(g) through 3323(h)(1) are unchanged.

Subsection 3323(h)(2) is amended to include the ACP. This is necessary to ensure that disciplinary offenses committed by ACP participants are properly classified.

Subsections 3323(h)(3) through 3323(k)(4) are unchanged.

At the end of Section 3323 in the authority and reference citations, PC Section 1170.05 is added as a reference.