

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, Penal Code (PC) Section 5058, in order to implement, interpret and make specific PC Section 5054, proposes to adopt and amend Sections 3000, 3006, 3170.1, 3172.1, 3173.2, 3315 and 3323 in the California Code of Regulations (CCR), Title 15 concerning wireless communication devices in CDCR facilities.

PUBLIC HEARING:

Date and Time: February 9, 2012 – 10:00 am to 11:00 am
Place: Department of Corrections and Rehabilitation
Kern/Colorado Room
1515 S Street
Sacramento, CA. 95811
Purpose: To receive comments about this action.

PUBLIC COMMENT PERIOD:

The public comment period will close, February 9, 2012, at 5:00 p.m. 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:

Randy Blackwell, CCII
Regulation and Policy Management Branch
Telephone (916) 445-2220

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

Kimberlyn Young, Associate Warden
Solano State Prison
Telephone (707) 451-0182 ext 3240

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 Section 17500 through 17630.

FISCAL IMPACT STATEMENT:

- Cost or savings to any state agency: See STD. 399 and attachment.
- Other nondiscretionary cost or savings imposed on local agencies: See STD. 399 and attachment.
- Cost or savings in federal funding to the state: See STD. 399 and attachment.

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:

Penal Code (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 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 director. 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 Government Code Section 11340.

This action provides the following:

- The California Department of Corrections and Rehabilitation proposes to amend and or adopt sections 3000, 3006, 3170.1, 3172.1, 3173.2, 3315 and 3323 of the California Code of Regulations (CCR), Title 15, Division 3, governing cell phones/wireless communication devices and the components thereof within a secure perimeter.
- On October 5, 2011, Governor Edmond G. Brown signed into law emergency legislation Senate Bill (SB-26) which created a new crime as defined in Penal Code (PC) 4576 and became effective immediately upon signing. This new law contains the following elements:

Inmate Possession

An inmate in possession of a cell phone or wireless communication device shall be subject to credit forfeiture up to 90 days.

Smuggling

Any person, employee or nonemployee, who possesses a cell phone or wireless communication device with the intent to deliver, or delivers, to an inmate is guilty of a misdemeanor, punishable by six months in jail and a fine of up to \$5,000 per device.

Visitor Protection

Visitors who bring a cell phone or wireless communication device or any of its components into a prison without intent to deliver to an inmate shall have the device(s) or component(s) temporarily confiscated but will not be prosecuted.

- Governor Brown issued Executive Order B-11-11, ordering strong measures to be taken immediately to ensure public safety and the secure operations of California prisons.
- On December 9, 2011, a Certificate of Compliance was issued making the emergency regulation action permanent (OAL file no.2011-1121-02EON) which incorporated and implemented new and revised rules governing cell phones/wireless communication devices and components thereof within a secure perimeter based on SB-26.
- Amends the definition of Dangerous Contraband to include cell phone/wireless communication devices or any components thereof and adds new language “or could be used to facilitate a crime or could be used to aid an escape.” This will clarify existing language which has been found to create confusion to field staff, inmates and the public regarding dangerous contraband.
- Defines “Possession” and “Constructive Possession” as established by California Case Law.