

INITIAL STATEMENT OF REASONS:

The California Department of Corrections and Rehabilitation (CDCR) proposes to amend Sections 3006, 3134.1, and 3135 of the California Code of Regulations (CCR), Title 15, Division 3, concerning obscene material disallowed from the institution as contraband. These amendments clarify Department regulations, in accordance with statute, concerning obscene material.

The Department first promulgated regulations concerning obscene material as contraband in 1995 in order to align with PC Section 2601(c) as amended by Senate Bill 1260. This amendment allowed prison authorities to exclude obscene publications or writings, and mail containing information concerning where, how, or from whom this matter may be obtained. PC provides a definition for obscene matter, and includes a specific standard that must be met for publications to be considered obscene material. However, there is variance among CDCR institutions concerning the publications designated obscene material, and disallowed as contraband. To eliminate this disparity, the Department proposes to amend its regulations concerning contraband as obscene material for clarify and to better align itself with statute concerning the statutory criteria for obscene material, as established by PC. The statutory criteria for obscene material is especially critical when making a determination of text-only material, as there are no clear markers, as provided for by statute, identifying the publication as obscene material. The Department's intent with these amendments is to permit the inmate population to possess all personal publications that do not meet the statutory criteria for obscene material as prescribed by PC.

The proposed amendments to the regulations designate the Division of Adult Institutions (DAI) as the Department's sole authority to designate text-only publications as obscene material and place the text-only publication on the Department's Centralized List of Disapproved Publications. DAI will ensure the text-only publications meet the statutory criteria required for an obscene material designation, as provided for by PC. However, for the safety and security of all persons within a prison; CDCR staff, CDCR inmates, and visitors, institutions may withhold publications as needed, and on a temporary basis only, pending this obscene material determination from DAI. Institutions that have temporarily withheld a text-only publication from an inmate must also submit a request to DAI for a final determination of publication as obscene material, as provided for by statute, and also include a compelling rationale for the designation of obscene material that is based on the criteria for obscene material as established in PC. In addition, because the Department is transitioning from use of the terms, "prison gang," "disruptive group," and "street gang" to the term, "Security Threat Group" (STG), these regulations utilize the term STG. New language is added to state that written materials and photographs that indicate an association with a validated member or associate of a Security Threat Group, as well as recruitment material for a Security Threat Group, shall be disallowed into the institution and included on the Department's Centralized List of Disapproved Publications.

These regulations are necessary to comply with PC Sections 311 and 2601 concerning publications as obscene material disallowed from CDCR institutions as contraband. These amendments provide for CDCR staff to appropriately and consistently identify obscene material as provided for by statute, and disallow as contraband, only those books, magazines, and publications that are dutifully determined obscene material, as established by statute.

CONSIDERATION OF ALTERNATIVES:

The Department must determine that no reasonable alternatives considered, 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 this action is proposed, would be as effective and less burdensome to affected private persons than the action proposed, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Currently, no reasonable alternatives have been brought to the attention of the Department that would alter the Department's initial determination.

ECONOMIC IMPACT ASSESSMENT:

In accordance with Government Code Section 11346.3(b), the CDCR has made the following assessments regarding the proposed regulations:

Creation of New or the Elimination of Existing Jobs within the State of California

The Department has determined that the proposed regulations will not have an impact on the creation of new or the elimination of existing jobs within California as the proposed regulations affect the internal management of prisons only.

Creation of New, Expansion, or the Elimination of Existing Businesses within the State of California

The Department has determined that the proposed regulations will not have an impact on the creation of new or the elimination of existing businesses within California, or affect the expansion of businesses currently doing business in California as the proposed regulations affect the internal management of prisons only.

Significant Adverse Economic Impact on Business

The Department has made an initial determination that the regulatory action will not have a significant adverse economic impact on business. The proposed regulations do not have a direct impact on California businesses as the proposed regulations affect the internal management of prisons only.

Local Mandates

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.

Benefits of the Regulations:

The proposed regulatory action will benefit CDCR staff and inmates by providing clarity concerning the statutory standard for obscene material, promoting fairness and social equality on a statewide basis, preventing discrimination, and reduce animosity within the prisons concerning disallowed material, improving worker safety. In addition, the proposed regulatory action, increases an openness and transparency in business and government as Department regulations and Penal Code are consistent and in alignment.

Materials Relied Upon:

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 and Rationale for each Section, per Government Code 11346.2(b)(1):

Chapter 1. Rules and Regulations of Adult Operations and Programs

Article 1. Behavior

3006. Contraband.

Subsections 3006(c) – 3006(c)(15) are unchanged.

Subsection 3006(c)(15)(A) is amended to remove the text “or describes” in reference to sexual conduct as it applies to the written material that is subject to the statutory definition of obscene material. Obscene material is

defined in part by the Department, in compliance with PC, as material “when taken as a whole, depicts or describes sexual conduct.” The subsection is reorganized for clarity and reader-ease, and new subsection 3006(c)(15)(D) designates the Division of Adult Institutions as the Department’s sole authority to designate text-only publications as obscene material. The term, “describes” is no longer applicable to this subsection as CDCR institution staff does not determine whether text-only material is obscene material, and it is necessary to remove this language to eliminate confusion.

Subsections 3006(c)(15)(B) is unchanged.

Subsection 3006(c)(15)(C) is amended to reorganize the subsection for greater clarity and readability, condensing language where appropriate, and removing unnecessary and duplicate language.

The second appearance of the word “material” is replaced with the text “pictures or images,” and the word “depict” is added to the end of the sentence. The text now reads: “Material subject to the tests in paragraphs (A) or (B) includes, but is not limited to pictures or images that depict.”

It is necessary to replace the word “material” with the text “pictures or images” for clarity because new subsection 3006(c)(15)(D) states that the Division of Adult Institutions is the only authority in the Department to designate text-only publications as obscene material and the reference to text-only publications is no longer applicable here. For clarity within this subsection, it is necessary to utilize language that specifically refers to the illustrations included with a publication. Additionally, it is necessary to add the word “depict” to the subsection as the immediately following subsections, 3006(c)(15)(C)(1)-(6), all describe visual images that show identifiable sexual conduct.

Subsections 3006(c)(15)(C)(1) and (2) are amended to remove the text “Depicts, displays, or describes.” These changes are necessary for clarity as the subsection 3006(c)(15)(C) is reorganized to include the word “depict” and it is necessary to remove duplicative language to eliminate confusion.

Subsections 3006(c)(15)(C)(3) is amended to delete the words “Portrays the” from the beginning of the sentence. This change is necessary for clarity within the subsection as the word “depict” is added to the introductory subsection, 3006(c)(15)(C), and it is necessary to remove duplicative language to eliminate confusion.

Subsections 3006(c)(15)(C)(4) – 3006(c)(15)(C)(6) are amended to delete the word “portrays.” These changes are necessary for clarity, as subsection 3006(c)(15)(C) is reorganized for easier readability, adding the word “depict” to the introductory sentence of the subsection. It is necessary to remove duplicative language to eliminate confusion.

Subsection 3006(c)(15)(D) is adopted to establish that text-only material shall not be considered obscene unless designated by the Division of Adult Institutions (DAI) and that DAI shall then place the text-only material on the Centralized List of Disapproved Publications that is subject to subsection 3134.1(e). This change is necessary to ensure inmates’ rights by designating a central location within the Department to ensure that a text-only publication meets the statutory criteria of obscene material that is set forth in PC. This change is also necessary for clarity to CDCR staff and CDCR inmates alike of new procedures.

Subsections 3006(c)(16) – 3006(c)(17) are unchanged.

Subsection 3006(c)(17)(A) is amended to add the word “fully” in reference to frontal nudity as it pertains to the exposed female breast(s) or the genitalia of either gender. This change is necessary for clarity by specifying the degree of the bodily exposure that must be present to be considered frontal nudity.

Subsections 3006(c)(17)(B) – 3006(c)(18) are unchanged.

Subsection 3006(c)(19) is adopted to establish that inmates shall also not possess or have under their control written material or photographs that indicate an association with a validated member or associate of a Security

Threat Group, as described in subsections 3378(c)(8)(C)-(D). This change is necessary to ensure the safety and security of the institutions by disallowing publications that indicate an association with groups that are oppositional to authority and society. References to subsections 3378(c)(8)(C) and 3378(c)(8)(D) are included for a description of corresponding Department regulations concerning the process for determining an association with a validated member or associate of a Security Threat Group.

Subsection 3006(d) is unchanged.

Subchapter 2. INMATE RESOURCES

Article 4. Mail

3134.1. Processing of Publications.

Subsections 3134.1(a) – 3134.1(c) are unchanged.

Subsection 3134.1(d) is amended for clarity and easier readability.

On line two, the new text “on a temporary basis by the institution” is added in reference to the timeframe that books, magazines, or publications are withheld from or denied to an inmate. This change is necessary to ensure inmates’ rights by only temporarily withholding a publication from an inmate, if needed to ensure the safety and security of the institution. As stated in the new paragraph of this subsection, a temporarily disallowed publication shall not be permanently denied to an inmate unless it has been determined by the Division of Adult Institutions (DAI) that the book, magazine, or publication is in fact obscene material as provided for by PC. As stated on page five of this document, DAI will ensure that a publication meets the statutory criteria for obscene material. This change is also necessary for clarity to CDCR staff of new procedures.

Editorial changes are made to the second full sentence (line four) of the subsection, including deleting the words “has,” “previously been,” and “a,” and adding the text “the current,” in reference to the requirement of one notification letter per institution to be sent to the publisher advising of the temporary denial of book, magazine, or publication when the item is not included on the current Centralized List of Disapproved Publications. These changes are necessary for clarity by using present, precise language when referencing the Department’s Centralized List of Disapproved Publications to clarify that the Department is referring to the contents of the current, up-to-date, Centralized List of Disapproved Publications, not to the contents that may have been included at one time on a previous version of the Centralized List of Disapproved Publications. The sentence now reads, “A book, magazine, or publication denied to an inmate(s) based on a violation of departmental regulation or policy, and that is not included on the current Centralized List of Disapproved Publications pursuant to subsection 3134(e), shall only require one notification letter per institution to be sent to the publisher.”

Beginning on the tenth line, the sentence, “The institution shall also notice the Division of Adult Institutions to request inclusion of the disallowed publication on the centralized list of banned publications” is deleted. This change is necessary for clarity as the information concerning the process that institutions must observe once temporarily denying/withholding a publication from an inmate is expanded upon and included in its own new paragraph within this subsection. It is necessary to remove this duplicate language to minimize confusion.

On line twelve, the introductory language, “In addition” is added to the sentence that references the CDCR staff procedure regarding informing inmates of withheld publications. This change is necessary for clarity and easier readability by using appropriate narrative language and grammar to present information and procedures.

The reference information for the CDC Form 1819, Notification of Disapproval-Mail/Packages/Publications is updated. The form is updated and the previous revision date is deleted and replaced with the appropriate revision date of “08/08.” The letter “R” is added to the reference of the Form 1819 as the Department’s name was revised to “California Department of Corrections and Rehabilitation” in the 2005 Department reorganization and the Form 1819 is now a “CDCR” form. These changes are necessary for clarity regarding this form by correctly referencing

CDCR Form 1819, helping to eliminate confusion. In addition for consistency, the format reference of the CDCR Form 1819 is corrected to match the format that is utilized throughout the CCR and the text, “which is incorporated by reference” is added in reference to the CDCR Form 1819 to reflect that the CDCR Form 1819 is a part of these proposed regulations.

As previously stated, a second paragraph is added to the subsection and states the process to be followed by institutional staff upon the temporary denial of a book, magazine, or publication. Institutions that temporarily deny or withhold a publication item from an inmate shall notice the Division of Adult Institutions (DAI) to request inclusion of the temporarily disallowed publication on the Centralized List of Disapproved Publications. The new paragraph states that disallowance of the publication shall become permanent if DAI affirms the inclusion of the publication on the Centralized List of Disapproved Publications, and also further states that if DAI denies the institution’s request for inclusion of the publication on the Centralized List of Disapproved Publications, the institution shall deliver the publication to the inmate within 15 calendar days, upon notification from DAI. This change is necessary to help protect inmates’ rights concerning text-only publications that have been denied to an inmate on the basis of contraband as “obscene material” by designating a central location that can consistently apply statute to determine whether or not a book, magazine, or publication in fact meets the statutory criteria for obscene material, as specified by PC, and promptly delivering the publication to the inmate if it is determined the book, magazine, or publication does not meet the statutory criteria for obscene material. This change is also necessary to clarify to CDCR staff of new procedures concerning withholding an item from an inmate, and subsequently designating the withheld book, magazine, or publication as obscene material.

For clarity, the term “Centralized List of Disapproved Publications” is capitalized in this subsection and throughout the document, and a correction to the reference of the Centralized List of Disapproved Publications is made to replace the word “Banned” with the word utilized in the official title, “Disapproved.” Other non-substantive changes are made for clarity and easier readability.

Subsection 3134.1(e) is amended.

On the third line of the subsection, the term “sexual content” is replaced with the text “obscene material as described in subsection 3006(c)(15)” and in the fifth line, the term “nudity” is replaced with the text “sexually explicit images that depict frontal nudity as described in subsection 3006(c)(17).” These changes are necessary for clarity by using specific language for specified terms that also include cross-references of applicable existing Department regulations.

Also on the fifth line, the text “STG recruitment material” is added in reference to the type of publications that may be placed on the Centralized List of Disapproved Publications. This change is necessary for the safety and security of the institutions by stating that publications concerning recruitment for any Security Threat Group will be placed on the Centralized List of Disapproved Publications as these groups are deviant in nature, opposed to authority and society. This change reflects consistency within Department regulations concerning disallowed material and Security Threat Groups.

Also on the fifth line, the term “etc.” is removed from the end of the sentence that provides examples of publications that would be disallowed from the institutions. This change is necessary to minimize confusion by removing duplicative language as a variation of the phrase “including, but not limited to,” is already present in the sentence and the term “etc.” is not needed.

Additionally, on line six, the word “this” is replaced with the word “the” to reference the Department’s Centralized List of Disapproved Publications. This change is necessary for additional clarity within this subsection in reference to the Department’s Centralized List of Disapproved Publications by utilizing a descriptive word that refers to a singular item, not to one of many documents which may be available.

3135. Disturbing or Offensive Correspondence.

Subsections 3135(a) – 3135(c)(13) are unchanged.

Subsection 3135(c)(14) is adopted to establish that correspondence containing written material or photographs that indicate an association with a validated member or an associate of a Security Threat Group, as described in subsections 3378(c)(8)(C)-(D), are disallowed from the facility, per subsection 3135(c). References to subsections 3378(c)(8)(C) and 3378(c)(8)(D) are included for a description of corresponding Department regulations concerning the process for determining an association with a validated member or associate of a Security Threat Group. These changes are necessary to preserve the safety and security of the institution by disallowing publications containing propaganda of groups deviant in nature, opposed to authority and society, and to provide clarity to CDCR staff and inmates concerning the specific items (written material and photographs) that staff will review when making a determination about an inmate's association with a validated member or associate of a Security Threat Group.

Subsection 3135(d) is amended to remove the text "or describes" in reference to the sexual conduct as it applies to obscene material, which inmates may not have within their possession or have under their control. Obscene material is defined in part by the Department in compliance with PC as material "when taken as a whole, depicts or describes sexual conduct." It is necessary to remove the text "or describes" for clarity within this subsection as the new sentence added after subsection 3135(d)(7) designates the Division of Adult Institutions as the Department's sole authority to designate text-only material obscene material, and the term "describes" is no longer relevant in this subsection. For clarity, only the applicable language that refers to visual sexual conduct remains in this subsection because CDCR institution staff does not determine whether text-only material is obscene material. Additionally, this change provides consistency with Department regulations concerning obscene material.

The text "pictures and images that depict" is added to the end of the subsection in reference to the examples of the material that shall be subject to the statutory determination of obscene material described in this section: material that when taken as a whole, 1) depicts sexual conduct, and 2) lacks serious literary, artistic, political, or scientific value. This change is necessary for clarity and reader-ease as the immediately following subsections, 3135(d)(1)-3135(d)(7), each describe visual images that show easily-identifiable sexual conduct as provided for by PC, and the subsection is reorganized to present information in a more clear and concise manner.

Subsection 3135(d)(1) is amended to delete the word "portrays" from the beginning of each subsection. This change is necessary for clarity because as previously stated, the text "pictures or images that depict" is added to the introductory sentence of the subsection, 3135(d), and this text in the subsection is duplicative and no longer needed.

Subsections 3135(d)(2) – 3135(d)(7) are amended to remove the text "portrays, displays, describes, or represents" from the beginning of each subsection. This change is necessary for clarity as the text "pictures or images that depict" is added to the introductory sentence of the subsection, 3135(d), and this text in the subsection is duplicative and no longer needed.

A sentence is adopted following subsection 3135(d)(7) to establish that text-only material shall not be considered obscene unless designated by the Division of Adult Institutions (DAI), and that DAI shall then place the designated text-only material on the Centralized List of Disapproved Publications that is subject to subsection 3134.1(e). This change is necessary to ensure inmates' rights by ensuring that text-only publications meet the statutory criteria of obscene material as provided for in statute. This change is also necessary to provide clarity to CDCR staff of new procedures concerning designating text-only publications as obscene material.

Subsection 3135(e) is unchanged.