

**State of California  
Office of Administrative Law**

**In re:**  
Department of Corrections and  
Rehabilitation

**Regulatory Action:**

**Title 15, California Code of Regulations**

**Adopt sections:** 3410.2  
**Amend sections:** 3000, 3173.2, 3287, 3410.1  
**Repeal sections:**

**NOTICE OF APPROVAL OF CERTIFICATE OF  
COMPLIANCE**

**Government Code Sections 11349.1 and  
11349.6(d)**

**OAL Matter Number: 2015-0615-05**

**OAL Matter Type: Certificate of Compliance  
(C)**

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The Department of Corrections and Rehabilitation submitted a certificate of compliance for the emergency regulatory action adopting section 3410.2 and amending sections 3000, 3173.2, 3287, and 3410.1 of title 15 of the California Code of Regulations to provide for canine searches. This regulatory action was certified on September 5, 2014 as an operational necessity by the Undersecretary and deemed an emergency by the Legislature pursuant to Penal Code section 5058.3. OAL approves this regulatory action pursuant to section 11349.6(d) of the Government Code.

**Date:** July 27, 2015

**/s/ Craig Tarpenning**

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**Craig S. Tarpenning  
Assistant Chief Counsel**

**For: DEBRA M. CORNEZ  
Director**

**Original: Jeffrey Beard  
Copy: Gail Long**

**NOTICE PUBLICATION/REGULATIONS SUBMISSION****CERT**

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-2014-1014-09	REGULATORY ACTION NUMBER 2015-0615-05C	EMERGENCY NUMBER
For use by Office of Administrative Law (OAL) only		For use by Office of Administrative Law (OAL) only	
NOTICE		REGULATIONS	
AGENCY WITH RULEMAKING AUTHORITY Department of Corrections and Rehabilitation			AGENCY FILE NUMBER (if any) 14-0057

**ENDORSED - FILED**  
In the office of the Secretary of State  
of the State of California

JUL 27 2015

3:21 PM

**A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)**

1. SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE	
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed <input type="checkbox"/> Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON		TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		ACTION ON PROPOSED NOTICE		NOTICE REGISTER NUMBER 2014, 442	PUBLICATION DATE 10/31/2014

**B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)**

1a. SUBJECT OF REGULATION(S) Canine Searches		1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) 2014-0918-01 EON, 2015, 0304, 02 EON	
2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)			
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)		ADOPT 3410.2	
		AMEND 3000, 3173.2, 3287, 3410.1	
TITLE(S) 15		REPEAL	
3. TYPE OF FILING			
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)		<input checked="" type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §511346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §511349.3, 11349.4)		<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input type="checkbox"/> File & Print	
<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)		<input type="checkbox"/> Other (Specify) _____	
<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)		<input type="checkbox"/> Print Only	
4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)			
5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)			
<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))		<input checked="" type="checkbox"/> Effective on filing with Secretary of State	
		<input type="checkbox"/> §100 Changes Without Regulatory Effect	
		<input type="checkbox"/> Effective other (Specify) _____	
6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY			
<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)		<input type="checkbox"/> Fair Political Practices Commission	
<input type="checkbox"/> Other (Specify) _____		<input type="checkbox"/> State Fire Marshal	
7. CONTACT PERSON Gail Long		TELEPHONE NUMBER (916) 445-2276	FAX NUMBER (Optional) (916) 324-6075
		E-MAIL ADDRESS (Optional) gail.long@cdcr.ca.gov	

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE

DATE

TYPED NAME AND TITLE OF SIGNATORY

SCOTT KERNAN, Undersecretary, Operations

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

JUL 27 2015

Office of Administrative Law

## TEXT OF ADOPTED REGULATIONS

In the following, all new language is indicated by underline and deleted text is indicated by ~~strikethrough~~.

### Chapter 1. Rules and Regulations of Adult Operations and Programs

#### Article 1. Behavior

##### 3000. Definitions

Section 3000 is amended to alphabetically merge the definitions below with those that exist in the regulations:

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Canine means a dog that is trained specifically to assist CDCR personnel. Departmental canines are primarily responsible for searching for illegal drugs, tobacco, and cell phones. The department's most commonly used breeds are Labrador Retrievers, German Shepherds, and Belgian Malinois; however, Beagles and German ~~Short Hair~~ Shorthaired Pointers may also be used. ~~Departmental canines are designated as Peace Officers and the~~ Any intentional injury of a departmental canine will be prosecuted as described in Penal Code section 600.

Canine Handler means a departmental Peace Officer trained in the handling, care, instruction, and use of a departmental canine, including recognition of the canine's alert to the odor of items the canine is trained to detect.

Air Scan Search means when a departmental canine is instructed to "scan" or sniff the air in an attempt to detect the odor of drugs, tobacco, or cell phones on a person or within specific articles of property. The canine handler will allow the dog to move freely past individuals and objects. Should the canine detect the odor of any drugs, tobacco, or cell phones the canine will display a positive canine alert.

Positive Canine Alert means a change in behavior that departmental canines are trained to perform when they detect the odor of marijuana, heroin, cocaine, methamphetamine, tobacco, and cell phones. This change in behavior alerts the handler the canine has detected the odor of drugs, tobacco, or cell phones. Passive canines are trained to perform signals including but not limited to sitting and/or staring at the detected contraband. Active canines are trained to perform signals including but not limited to scratching and/or staring at the detected contraband.

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NOTE: Authority cited: Sections 243(f)(4), 2717.3, 3000.03, 5058, 5058.3 and 1170.05, Penal Code; Section 10115.3(b), Public Contract Code; and Sections 4525(a), 4526 and 14837, Government Code. Reference: Sections 186.22, 243, 314, 530, 532, 600, 646.9, 653m, 832.5, 1170.05, 1203.8, 1389, 2080, 2081.5, 2600, 2601, 2700, 2717.1, 2717.6, 2932.5, 3003.5(a), 3020, 3450, 3550, 4570, 4576, 5009, 5050, 5054, 5068, 7000 et seq. and 11191, Penal Code; Sections 1132.4, and 1132.8, Labor Code; Sections 10106, 10108, 10108.5, 10115, 10115.1, 10115.2, 10115.3 and 10127, Public Contract Code; and Section 999, Military and Veterans Code; Section 391, Code of Civil Procedure; Section 297.5, Family Code; Sections 8550, 8567, 12838 and 12838.7, Government Code; Governor's Prison Overcrowding State of Emergency Proclamation dated October 4, 2006; *In re Bittaker*, 55 Cal.App. 4th 1004, 64 Cal. Rptr. 2d 679; Section 11007, Health and Safety Code; and *Madrid v. Cate* (U.S.D.C. N.D. Cal. C90-3094 TEH).

#### Subchapter 2. Inmate Resources

## Article 7. Visiting

### 3173.2. Searches and Inspections.

Subsections 3173.2(a) through 3173(b) are unchanged.

Subsection 3173.2(c) is unchanged and shown for reference:

(c) Visitors shall be required to submit to contraband and/or metal detection device(s) and/or electronic drug detectors including, but not limited to, ION scanners and other available contraband and/or metal detecting device(s) technology, and a thorough search of all personal items, including inspection of a wheelchair, implant, prosthesis or assistive devices, prior to being allowed to visit with an inmate. Visitors shall be subject to search by passive canines as follows:

**New subsections 3173.2(c)(1) through 3173.2(c)(6)(d) are adopted to read:**

(1) Any person coming onto the grounds of any department facility is subject to search by a department canine as part of the department's drug interdiction program.

(2) Direct Search of Visitors using Passive Alert Canines.

Prior to beginning the search of visitors using passive alert canines, the Search Operations Commander or designee shall be responsible for determining if the search will be of all visitors entering or exiting an area, or only those selected on a random basis. The random selection method shall be documented on the Canine Search ~~Air Scan Results~~ Log prior to the commencement of the searches. The random pattern shall not be altered unless approved by the Search Operations Commander.

(A) The canine handler shall make a courteous Visitor Search Announcement informing the visitor(s) that he/she is conducting passive air scan searches of visitors using passive alert canines and that the purpose of the scan is to detect illegal drugs.

(B) The canine handler shall request consent to conduct a passive air scan search of any visitor prior to conducting the passive air scan search. The visitor, including attorneys or legal organizations as identified in section 3141(c)(9) and employees of other government agencies, shall be informed that: (1) he/she does have the right to refuse the search, and (2) ~~Any~~ visitor who refuses to be searched in this manner shall be denied contact visiting but may be authorized for a non-contact visit if available on that same day.

(C) The visitor shall be directed to not interact with the canine in any way.

(D) While inadvertent contact is a possibility, the handler shall not instruct the canine to contact the visitor.

(E) If the visitor seems excessively nervous, the handler shall attempt to reassure the visitor that the procedure is safe.

(3) Results of a Canine Search.

(A) If the canine does not give a positive canine alert during an air scan search of a visitor, the visitor shall be permitted to resume his/her visitor processing.

(B) If the canine does alert during an air scan search of the visitor, the visitor shall be required to submit to an unclothed body search as a condition of contact visiting. Refusal to submit to the search shall result in the denial of contact visiting for that day and approval for non-contact visiting only, if available. All requests for unclothed body searches, the reason for the request, and specific facts on which the search is based shall be

documented on CDCR Form 888 (Rev. ~~01/03~~ 04/15), Notice of Request for Search, which is incorporated by reference. This form shall include the subject's name, date, and signature of person authorizing the search. Should the visitor refuse to be searched or in instances where drugs or contraband are discovered, a CDC Form 887-B (Rev. 01/03), Notice of Visitor Warning/ Termination/ Suspicion/ Denial/ Revocation, which is incorporated by reference, shall be completed. This form shall specify the reason for the denial of visiting and time frames for which the denial/suspension are in effect.

(C) A visitor found in possession of drugs and/or cell phones shall be referred to the institution's Investigative Services Unit (ISU) for possible arrest and shall be suspended from visiting at any CDCR facility pursuant to section 3176.3, except that the suspension shall be for three years on the first occasion and shall be a permanent exclusion on any subsequent occasions.

(D) Any confiscated controlled substance or other contraband shall be handled as evidence.

(E) Whenever a canine handler finds contraband, the find shall be reported to the on duty supervisor. The supervisor shall determine what action shall be taken.

(F) In instances when a positive canine alert is given, or if drug paraphernalia is discovered on the person of a visitor, the visitor shall be required to submit to an unclothed body search as a condition of contact visiting.

(G) A visitor's refusal to submit to a required unclothed body search shall result in the denial of contact visiting for that day and approval for non-contact visiting only, if available, for the next two consecutive visits unless that visitor submits to an unclothed body search.

(H) Any visitor who refuses to submit to an unclothed body search after a positive canine alert and/or positive Electronic Drug Detection Equipment (EDDE) alert three times within a twelve-month period may be suspended from visiting at all CDCR facilities pursuant to section 3176.3, except that any such suspension shall not exceed one year.

(I) All requests for unclothed body searches, the reason for the request, and specific facts on which the search is based shall be documented on CDCR Form 888 (Rev. ~~01/03~~ 04/15), Notice of Request for Search, which is incorporated by reference. This form shall include the subject's name, date, and signature of person authorizing the search. Should the visitor refuse to be searched or in instances where drugs or contraband are discovered, a CDC Form 887-B (Rev. 01/03), Notice of Visitor Warning/ Termination/ Suspicion/ Denial/ Revocation, which is incorporated by reference, shall be completed. This form shall specify the reason for the denial of visiting and time frames for which the denial/suspension are in effect.

(4) Positive Canine Alert due to prescribed medications.

(A) When conducting scans of inmate visitors, there may be occasions when legitimate circumstances exist that may result in a positive canine alert. The cause of this alert may be the visitor's use of prescribed medications that contain narcotics and other drugs for which the canine has been trained to alert.

(B) Should the visitor claim that a positive canine alert is due to one or more prescribed medications, that person must provide current documentation in the form of a doctor's, licensed physician's assistant's or certified nurse practitioner's verification or a valid prescription for the medication that is suspected to have caused the positive alert before they will be permitted a contact visit.

(C) If the visitor has provided valid documentation and the prescribed medication is found to be the source of the positive scan, the Visiting Lieutenant may authorize a regular visit.

(D) If documentation is not readily available, a non-contact visit may be authorized, if available.

(5) Outside Law Enforcement Agencies.

Local police officers or other law enforcement officers shall not be involved in the search of visitors.

(6) Arrests/Citations/District Attorney Referral.

(A) Visitors who are searched and found in possession of drugs or contraband are subject to arrest. If an arrest is initiated, those arrested, along with the drugs or contraband discovered shall be turned over to the institution's ~~Investigative Services Unit (ISU)~~.

(B) Once the pre-booking process has been completed by CDCR staff, the arrestee(s) shall be transported without delay by CDCR personnel or by the local police/sheriff's department to a designated detention facility. Arrestee(s) shall not be held at the pre-booking area beyond a reasonable amount of time necessary to complete the process.

(C) If any visitor is found in possession of drugs or contraband, the ISU Lieutenant/Search Commander shall make any decision to arrest, issue a citation, or refer the matter to the District Attorney's office for prosecution.

(D) In all cases where a visitor is arrested and/or issued a citation for committing a criminal act while on institution grounds, a copy of CDCR 837-A (Rev. 07/05), Crime/Incident Report, Part A - Cover Sheet, which is incorporated by reference, arrest reports, and staff reports documenting the arrest will be forwarded to the local District Attorney's office in accordance with existing departmental regulations in sections 3176.2 and 3316(a).

**Subsections 3173.2(d) through 3173.2(i)(2) are unchanged.**

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 4573, 4573.5, 4576, ~~and~~ 5054 and 6402, Penal Code.

## **Subchapter 4. General Institution Regulations**

### **Article 2. Security**

#### **3287. Cell, Property, and Body Inspections.**

**Subsections 3287 (a) through 3287 (b)(5) are unchanged.**

**Subsection 3287(c) is unchanged and shown for reference.**

(c) Inspections of inmate cell or living areas, property, work areas, and body shall be conducted on an unannounced, random basis as directed by the institution head. Such inspections shall be conducted no more frequently than necessary to control contraband, recover missing or stolen property, or maintain proper security of the institution.

**New Subsections 3287(c)(1) through 3287(c)(3)(b) are adopted to read:**

(1) Inmates shall be subject to passive air scan searches by a passive alert canine.

(2) Direct Searches of inmates: The canine handler shall make an announcement informing the inmate(s) that he/she is conducting passive air scan searches using a passive alert canine and that the purpose of the scan is to detect illegal drugs. The inmate does not have the right to refuse the search. An inmate who refuses to be

searched may be subject to disciplinary action and subject to additional search and urine testing for the presence of drugs.

(A) While inadvertent contact is a possibility, the handler shall not instruct the canine to contact the inmate.

(B) If the inmate seems excessively nervous, the handler shall attempt to reassure the inmate that the procedure is safe.

(3) Results of a Canine Search. If the canine gives a positive canine alert during a passive air scan search of the inmate, the inmate shall submit to an unclothed body search and urinalysis testing.

(A) Any confiscated controlled substance shall be handled as evidence.

(B) Whenever a Canine handler finds contraband, the find shall be reported to the on duty supervisor. The supervisor shall determine what action shall be taken.

**Subsection 3287 (d) is unchanged.**

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 5054 and 6402, Penal Code; and *Jordan v. Gardner*, 986 F.2d 1521.

## **Subchapter 5. Personnel**

### **Article 2. Employees**

**Section 3410.1 is amended to read:**

#### **3410.1 Searches of Employees, Contractors, Attorneys, and Volunteers for Contraband and Illegal Drugs.**

(a) All persons who are employed by the department, employees of other government agencies, contract employees, contractors and their employees, ~~and volunteers,~~ and attorneys or legal organizations as identified in section 3141(c)(9) authorized to practice law in California, another state, or the District of Columbia who come onto institutional grounds are subject to a search of their person, private property, and vehicles for contraband and illegal drugs before entering, or while inside, any department facility or department grounds via the use of contraband and/or metal detection equipment and/or electronic drug detectors including, but not limited to, ION scanners and other available contraband and/or metal detecting device(s) technology, and passive alert canines may be used for this purpose.

(b) By entering or attempting to enter a department facility or department grounds, employees, employees of other government agencies, contract employees, contractors and their employees, ~~and volunteers,~~ and attorneys or legal organizations as identified in section 3141(c)(9) authorized to practice law in California, another state, or the District of Columbia consent to being searched for contraband and illegal drugs.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 4573, 4573.5, 4574, 4576, ~~and 5054 and 6402~~, Penal Code.

**New Section 3410.2 and title are adopted and new subsections 3410.2(a) through 3410.2(b)(6) are adopted to read:**

#### **New subsection 3410.2 Passive Alert Canine Searches of Employees, Contractors, Attorneys, and Volunteers.**

(a) An employee, employees of other government agencies, contract employees, contractors and their employees, ~~and~~ volunteers, and attorneys or legal organizations as identified in section 3141(c)(9) authorized to practice law in California, another state, or the District of Columbia coming onto the grounds of any department facility is subject to search by a department canine as part of the department's drug interdiction program. Passive alert canines shall be used to combat the introduction of illegal drugs and contraband being smuggled into CDCR facilities.

(b) Direct searches of employees, employees of other government agencies, contract employees, contractors and their employees, ~~and~~ volunteers, and attorneys or legal organizations as identified in section 3141(c)(9) authorized to practice law in California, another state, or the District of Columbia by Canine Units.

Prior to beginning a search of employees, employees of other government agencies, contract employees, contractors and their employees, ~~and~~ volunteers, and attorneys or legal organizations as identified in section 3141(c)(9) authorized to practice law in California, another state, or the District of Columbia using passive alert canines, the Search Operations Commander or designee shall be responsible for determining if the search will be of all employees entering or exiting an area, or only those selected on a random basis (e.g., every 3rd or 5th). The random selection method shall be documented on the Canine Search Air Scan Results Log prior to the commencement of the searches. The random pattern shall not be altered unless approved by the Search Operations Commander.

(1) The canine handler shall inform employees, employees of other government agencies, contract employees, contractors and their employees, ~~and~~ volunteers, and attorneys or legal organizations as identified in section 3141(c)(9) authorized to practice law in California, another state, or the District of Columbia that he/she is conducting passive air scan searches of individuals using passive alert canines and that the purpose of the scan is to detect illegal drugs.

(2) The canine handler shall inform each employee, employees of other government agencies, contract employees, contractors and their employees, ~~and~~ volunteers, and attorneys or legal organizations as identified in section 3141(c)(9) authorized to practice law in California, another state, or the District of Columbia that the passive canines have been trained to detect the presence of contraband by smell and to alert their handlers to that detection by sitting down or staring.

(3) Employees, employees of other government agencies, contract employees, contractors and their employees, ~~and~~ volunteers, and attorneys or legal organizations as identified in section 3141(c)(9) authorized to practice law in California, another state, or the District of Columbia shall be directed to not interact with the canine in any way.

(4) While inadvertent contact is a possibility, the handler shall not instruct the canine to contact the individual being scanned.

(5) If the subject of the air scan search seems excessively nervous, the handler shall attempt to reassure the person that the procedure is safe, but the person shall not be permitted to pass into the institution without being scanned.

(c) Passive air scan searches by Canines. All positive air scan results shall be documented on the Canine ~~Positive~~ Air Scan Results Log. A passive air scan search may be conducted under one or both of the following conditions:

(1) A passive air scan search may be conducted in open areas where groups of employees, employees of other government agencies, contract employees, contractors and their employees, ~~or~~ volunteers, or attorneys or legal organizations as identified in section 3141(c)(9) authorized to practice law in California, another state, or the

District of Columbia are walking and/or congregated, e.g., main entrances, administration buildings, in service training areas, sallyports, hallways, housing units, visiting rooms, or yards, etc.

(2) A passive air scan search of any employee, employees of other government agencies, contract employees, contractors and their employees, ~~or~~ volunteers, or attorneys or legal organizations as identified in section 3141(c)(9) authorized to practice law in California, another state, or the District of Columbia may also be initiated based upon reasonable suspicion.

(d) Positive Canine Alert.

(1) If the canine alerts during the air scan search of an employee, employees of other government agencies, contract employees, contractors and their employees, ~~or~~ volunteers, or attorneys or legal organizations as identified in section 3141(c)(9) authorized to practice law in California, another state, or the District of Columbia, supervisory staff shall be notified immediately. The employee, employees of other government agencies, contract employees, contractors and their employees, ~~or~~ volunteers, or attorneys or legal organizations as identified in section 3141(c)(9) authorized to practice law in California, another state, or the District of Columbia will be subject to a patdown search by same gender supervisory staff in a private setting. Any item being brought into the facility by that employee, employees of other government agencies, contract employees, contractors and their employees, ~~or~~ volunteers, or attorneys or legal organizations as identified in section 3141(c)(9) authorized to practice law in California, another state, or the District of Columbia will be subject to a thorough search. If no contraband is discovered, the individual shall be allowed to enter the institution.

(2) The Office of Internal Affairs (OIA) Regional Special Agent in Charge or OIA Administrator Officer of the Day shall be contacted for consideration of an exigent investigation prior to the search of any departmental employee, employees of other government agencies, contract employee, contractor and their employee, ~~or~~ volunteer, or attorney or legal organization as identified in section 3141(c)(9) authorized to practice law in California, another state, or the District of Columbia when there is a reasonable suspicion that the employee, employees of other government agencies, contract employee, contractor and/or their employee, ~~and~~ volunteer, and attorney or legal organization as identified in section 3141(c)(9) authorized to practice law in California, another state, or the District of Columbia is or will be in possession of illegal drugs or contraband and when the employee, employees of other government agencies, contract employee, contractor and their employee, ~~or~~ volunteer, or attorney or legal organization as identified in section 3141(c)(9) authorized to practice law in California, another state, or the District of Columbia is individually selected. This shall not apply to random, gate or area searches. In the event there are exigent circumstances where the need to act is immediate, OIA shall be notified as soon as possible thereafter.

(3) An employee, employees of other government agencies, contract employee, contractor and their employees, ~~or~~ volunteers, or attorneys or legal organizations as identified in section 3141(c)(9) authorized to practice law in California, another state, or the District of Columbia found in possession of drugs and/or cell phones shall be referred to the institution's Investigative Services Unit (ISU) for possible arrest.

(4) Employees of other government agencies, contract employees, contractors and their employees, and volunteers can refuse to submit to the search; however, refusal shall result in the denial of entry and may lead to exclusion from all CDCR institutions. Attorneys or legal organizations as identified in section 3141(c)(9) authorized to practice law in California, another state, or the District of Columbia can refuse to submit to the search; however, refusal shall result in the denial of entry and permanent exclusion from CDCR institutions. however, refusal shall result in the denial of a contact visit, but a non-contact visit may be authorized if available on the same day. Alternatively, the appointment shall be rescheduled for another day. Departmental employees do not have the right to refuse the search.

(5) Outside Law Enforcement Agencies shall not be involved in the search process.

(6) Arrests/Citations/District Attorney Referral. Persons who are searched and found in possession of drugs or contraband are subject to arrest. If an arrest is initiated, those arrested, along with the drugs or contraband discovered shall be turned over to the institution's ~~Investigative Services Unit (ISU)~~.

(A) Once the pre-booking process has been completed by CDCR staff, the arrestee(s) shall be transported by CDCR personnel or by the local police/sheriff's department to a designated detention facility. Arrestee(s) shall not be held at the pre-booking area beyond a reasonable amount of time necessary to complete the process.

(B) If any employee, employee of other government agencies, contract employee, contractor and/or their employee, ~~or~~ volunteer, or attorney or legal organization as identified in section 3141(c)(9) authorized to practice law in California, another state, or the District of Columbia is found in possession of drugs or contraband, the ISU Lieutenant/Search Commander shall make any decision to arrest, issue a citation, or refer the matter to the District Attorney's office for prosecution.

(C) In all cases where an employee, employee of other government agencies, contract employee, contractor and/or their employee, ~~or~~ volunteer, or attorney or legal organization as identified in section 3141(c)(9) authorized to practice law in California, another state, or the District of Columbia is arrested and/or issued a citation for committing a criminal act while on institution grounds, a copy of CDCR 837-A (Rev. 07/05), Crime/Incident Report, Part A-Cover Sheet, which is incorporated by reference, arrest reports, and staff reports documenting the arrest shall be forwarded to the local District Attorney's office in accordance with existing departmental regulations in sections 3176.2 and 3316(a).

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 4573, 4573.5, 4574, 4576, ~~and~~ 5054 and 6402, Penal Code.

## **FINAL STATEMENT OF REASONS:**

The Initial Statement of Reasons is incorporated by reference.

## **UPDATES TO THE INITIAL STATEMENT OF REASONS**

The Notice of Emergency Regulations was published on October 17, 2014, The Notice of Change to Regulations was mailed the same day to persons who requested to be placed on the Department's mailing list to receive notifications of rulemaking actions. These documents were also posted on the Department's Internet and Intranet websites.

The public hearing was held December 16, 2014. One individual commented at the public hearing. This comment is discussed below under the heading "*Summary and Comment Received at the Public Hearing.*" During the 45-day public comment period 57 commenters responded. These comments are discussed below under the heading "*Summaries and Responses to Comments Received During the 45-Day Comment Period.*" During a review of these comments, it was determined that accommodations should be included in a modified text.

On March 4, 2015, CDCR submitted a request to the Office of Administrative Law (OAL) for an Emergency Readoption of these regulations. This request was approved on March 17, 2015. During the review of this request, one commenter responded and a change to text was made for clarification. This change to text was included in the Emergency Filing of the regulations and posted on the Department's Internet and Intranet websites. This comment is discussed below under the heading "*Summaries and Responses to Comments Received During Readoption.*"

A 15-Day Renotice, which included revisions to the revised text of the regulations, a copy of Penal Code 6402 and Form CDCR 888 were distributed on April 20, 2015, to all persons whose comments were received during the public comment period and all person who requested notification of the availability of such changes. These documents were also posted on the Department's Internet and Intranet websites. The changes and reasons for them are found below under the heading "*Changes to Text as Originally Noticed to the Public.*" During the 15-Day comment period, four commenters responded. These comments are discussed below under the heading "*Summaries and Responses to Comments Received During the 15-Day Renotice.*"

During a review of these comments, a second 15-Day Renotice, which included the amended text, was distributed on May 19, 2015, to all persons whose comments were received and all persons who requested notification of the availability of such changes. These documents were also posted on the Department's Internet and Intranet websites. The changes and reasons for them are found below under the heading "*Changes to Text as Originally Noticed to the Public.*" During the second Renotice, six commenters responded. These comments are discussed below under the heading "*Summaries and Responses to Comments Received During the 2<sup>nd</sup> 15-Day Renotice.*"

## **LOCAL MANDATE**

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.

## **DETERMINATION**

The Department has determined that no reasonable alternative considered would be more effective in carrying out the purpose for which this regulation is proposed; or would be as effective and less burdensome to affected private persons than the proposed action; or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The Department has determined these proposed changes are the only regulations identified by the Department and no testimony or practical alternative has been offered that would alter the Department's decision.

## **INCORPORATED BY REFERENCE**

Forms CDCR 837-A (Rev. 07/05), CDC 887-B (01/03), CDCR 888 (Rev. 04/15) were made available to the public throughout the rulemaking, and will continue to be made available upon request. To publish these documents into the California Code of Regulations would be cumbersome and impractical, and would increase costs to the Department.

## **CHANGES TO TEXT AS ORIGINALLY NOTICED TO THE PUBLIC**

**Section 3000 is amended** to remove the words "Departmental canines are designated as Peace Officers" because the language is unnecessary as the operative part of the sentence is the latter: "[any] intentional injury of a departmental canine will be prosecuted as described in Penal Code section 600." Also, a correction is made to the spelling of Shorthaired Pointers.

**The Note section is amended** to add Penal Code sections 243(f)(4) and 600 that was inadvertently left out of the original text.

**Subsection 3173.2(c)(2)(B) is amended** to make clear that attorneys and employees of other government agencies are included in this subsection.

**Sections 3173.2, 3287, 3410.1, and 3410.2 are amended** to add Penal Code (PC) section 6402 in the reference section as it was inadvertently left out of the original text. PC 6402, which became effective in June of 2014, provides specific instructions to the Department regarding contraband interdiction efforts. A copy of PC 6402 is included with this Notice.

**Subsection 3173.2(c)(2) is amended** to revise the log name by removing the word "Search" and adding the words "Air Scan Results" to reflect the correct title of the log. This was inadvertently left out of the original text. The log with the correct title was included in the original Notice, therefore, is not included with this Notice.

**Subsections 3173.2(c)(3)(A), 3410.2(b)(5), and 3410.2(d)(1) is amended** to add the word "search" to clarify that the air scan is a type of search.

**Subsection 3173.2(c)(3)(B) is amended** to add the word "contact" to ensure understanding that a positive canine alert will result in an unclothed body search as a condition for contact visits.

**Subsections 3173.2(c)(3)(B) and 3173.2(c)(3)(I) are amended** to reflect a new revision date of Form CDCR 888 (Rev. 04/15), Notice Of Request For Search. This form is revised to add the word "clothed"

in two places as consent is required for either type of search. A copy of this form is included with this Notice.

**Subsection 3173.2(c)(4)(B) is amended** to add “licensed physician’s assistants” and “certified nurse practitioners” to the regulations as medical providers who see and often write prescriptions for patients. This is necessary so individuals who have a positive canine alert due to prescription medications have the opportunity to provide verification of a valid prescription or documented verification for the prescribed medication by a provider they may normally or routinely see for their prescriptions, or when their physician is not available. This change was made as a result of public comments.

**Sections 3410.1 and 3410.2 are amended** to add the word “Attorneys” to the titles for clarification.

**Subsections 3410.1(a) through 3410.2(d)(5)(C) are amended** to specify that persons authorized to practice law in California are included in this section as a result of public comments.

**Subsection 3410.2(c) is amended** to remove the word “Positive” and add “Air Scan Results” to correct the title of the log.

### **CHANGES TO TEXT AS ORIGINALLY NOTICED TO THE PUBLIC (2<sup>nd</sup> 15-DAY RENOTICE)**

**Non-substantive changes** are made to subsections 3173.2(c)(3)(B) and 3173.2(c)(3)(I) to remove the word “Rev.” from CDC Form 887-B (Rev. 01/03) because this was a new form adopted in 2003 and is not revised in these regulations.

**Non-substantive changes** are made to subsections 3173.2(c)(3)(C) and 3410.2(d)(3) to add the words “the institution’s Investigative Services Unit” to define the acronym, and subsections 3173.2(c)(6)(A) and 3410.2(d)(6) to remove the words “Investigative Services Unit” and use only the acronym.

**Subsection 3410.2(d)(4) is amended** to specify that in the event of a positive canine alert, attorneys or legal organizations have the opportunity to have a non-contact visit the same day, if available, or reschedule an appointment. These options were not available in the 1<sup>st</sup> 15-Day Renotice and are in response to public comments.

### **SUMMARY AND COMMENT RECEIVED AT THE PUBLIC HEARING**

Public hearing was held on December 16, 2014, at 9:00 a.m. One commenter provided comments at the public hearing.

#### **SPEAKER #1**

**Speaker Comment 1A:** Commenter is concerned that because many people are afraid of dogs, the use of dogs in searches of visitors, family member, children, and lawyers will be an undue burden on people that will dissuade many from visiting and make it more difficult for attorneys to do their job and represent their clients.

**Response to Speaker 1A:** CDCR acknowledges that commenter’s concern and will continue to comply with Title 15 and the Americans with Disabilities Act (ADA). It is not CDCR’s intent to dissuade anyone from visiting. CDCR is concerned about the continuation of a positive visiting experience and trains staff on the interaction with members of the public, staff, visitors, etc. to ensure continued professionalism. Canine handlers are adequately trained on the custody and control of their detection animal and how it interacts with the public. Currently, CDCR is not aware of any instances where departmental canines have attacked anyone during canine searches.

**Speaker Comment 1B:** Commenter is concerned that dog searches have a propensity to false alerts and dogs may be alerting to subtle signals from their handler, such as, a turn of the head or slight gesture of the hand, which can cause a false alert that may require a visitor to be subjected to a more invasive strip search or give up their right or visit or have limitations placed on their visit.

**Response to Speaker 1B:** CDCR is not aware of a high rate of positive errors with the use of drug detection canines. The Department follows up with clothed and unclothed body searches rather than relying on the canine alert alone. The air scan canine teams have attended a 280-hour Basic Canine Academy, which conforms with Law Enforcement Canine Guidelines set by the California Commission on Peace Officer Standards and Training (POST). Only a Passive Response Certified Narcotic Detection Team with a minimum of six months of experience in the field shall be considered for air scan training and certification. Once selected for an Air Scan Service Dog Academy the handler and canine must attend a 120-hour air scan academy and then successfully certify in the methods of air scan searching. Upon successful completion the Air Scan Service Dog will be able to successfully complete air scans on individuals. During this training the handler and canine are taught how to move around the person without stopping. This will prevent any false alerts. Also, the canines are taught to alert on the odor of narcotics not by a command or motion of the handler.

**Speaker Comment 1C:** Commenter would encourage CDCR to consider other alternatives, such as not to use canines to search, or modify the regulations to provide guidelines for correctional officers as to when it is appropriate to use canines to search. Commenter states that current regulations leave an enormous amount of discretion to correctional officers to decide whether to search every person or conduct random searches with canines that can lead to unfair application in terms of who is subject to search and in this situation there is the risk that personal bias and prejudice will impact how they actually implement the regulation.

**Response to Speaker 1C:** CDCR intends to implement various drug interdiction strategies, which includes Air Scan searches with a canine. The Search Operations Commander shall be responsible for determining the random selection method prior to the commencement of any search operation. **Also see Response 4B.**

**Speaker Comment 1D:** Commenter encourages CDCR to think about specific parameters on the canine search such as, how close a dogs can get to someone, is it appropriate for a canine to sniff a child, and if someone expresses fear of a dog, an alternative short of a strip search? Commenter requests CDCR consider using small, less intimidating dogs such as beagles to search.

**Response to Speaker 1D:** Minors are subject to the same regulations as adults except as stated in Title 15, Sections 3173 and 3173.1. While inadvertent contact is a possibility, the handler shall not instruct the canine to contact the visitor. If the visitor seems excessively nervous, the handler shall attempt to reassure the visitor that the procedure is safe. The Department's most commonly used breeds are Labrador Retrievers, German Shepard's, and Belgian Malinois; however, Beagles and German Shorthaired Pointers may also be used. Unfortunately, adult visitors have been known to utilize children and infants in their attempts to smuggle illegal drugs into prisons.

**Speaker Comment 1E:** Commenter agrees preventing illegal and controlled substances from entering the prison is a very important goal and simply encourages CDCR to consider other alternatives and modifications to the regulations to make it less intimidating for people to visit, keep in contact with their family members and children so that when they leave prison they have a better change of successfully rehabilitating and reentering society, ultimately achieving commenters goal of reducing crime, and a safer community.

**Response to Speaker 1E: See Speaker Response 1C.**

**SUMMARIES AND RESPONSES TO COMMENTS RECEIVED DURING THE 45-DAY COMMENT PERIOD**

**COMMENTS #1**

**Comment 1A:** Commenter agrees that the increase in utilization of mental health crisis services is directly related to the drug trade in institutions and it is well known that it is easier to get drugs in prison than outside. Commenter states the morbidity and mortality of drug use in prison causes drug debts, which can lead to physical assaults, threats against one's family, and force inmates to do things to pay off the debt.

**Response 1A:** Although the above comment does address an aspect or aspects of the subject proposed regulatory action and must be summarized pursuant to GC section 11346.9(a)(3), it is either insufficiently related to the specific action or actions proposed, or generalized or personalized to the extent that no meaningful response can be formulated by the Department in refutation of or accommodation to the comment.

**COMMENTS #2**

**Comment 2A:** Commenter applauds the efforts to keep drugs out of the prisons, but strongly oppose the different procedures for visitors who must undergo a procedure that includes a metal detector, empty pockets, and take off outer layers of clothing, and staff who are not searched on the way in.

**Response 2A:** The regulations proposed by CDCR include the searching of staff, employees of other government agencies, volunteers, contractors, etc. and do not exclude any persons seeking entry. Staff cannot refuse a search following a positive canine alert. Visitors can refuse a search under these regulations although they forfeit a contact visit for that day. CDCR believes that these regulations will benefit all staff, visitors, inmates, as well as members of the public, but notes a distinct difference between the processing of staff and the processing of visitors to our institutions.

**Comment 2B:** Commenter understands that there is often a high positive error with canine searches. The only way to check for that is to have another system for further searching when a canine alerts and anyone who receives a canine alert ought to be put through the same secondary procedure.

**Response 2B: See Response, Speaker 1B.**

**Comment 2C:** Commenter states if visitors must be put through an unclothed body search, it is unfair staff has a lesser secondary procedure since staff are more likely to bring in significant amounts of contraband. Staff should have the same procedures as visitors and if that is not sufficient, add canine searches and unclothed searches for everyone. The cost of canines, ION scanners, and unclothed body searches may be unnecessary if staff were subject to the current searches of visitors.

**Response 2C:** Canine search regulations apply to all persons seeking entry to institutions of the Department. CDCR notes that there are different requirements for staff and visitors and is conducting searching in compliance with the current California Penal Code, section 6402. Visitors can elect to refuse a search following a positive canine alert although they forfeit a contact visit for that day. Staff cannot.

**Comment 2D:** Commenter would like to add a provision that CDCR evaluate results after a 6 month trial to determine how many false alerts the dogs made, what other problems emerged, and where and how often contraband was discovered. Commenter also states the increases in delays and handling false alerts should be considered.

**Response 2D:** CDCR plans to continually monitor all drug interdiction efforts to determine continued efficiency and cost effectiveness. The Department recognizes the importance of visiting and understands the need to process visitors quickly and efficiently so as to not cause undue delay. CDCR has prepared for the regulatory searches and does not foresee any significant delay in processing.

### **COMMENTER #3**

**Comment 3A:** Commenter references subsection 3410.2(d)(1) and states the language is too full of loopholes and provides additional text that states employees shall be required to submit to an unclothed body search as a condition of admittance to the institution.

**Response 3A:** CDCR does not foresee problems with the current language. Employees are required to submit to a body search and a search of their personal items and property based upon a positive canine alert.

**Comment 3B:** Commenter states special consideration should not be given to State employees because it violates law enforcement code of ethics and betrays public trust.

**Response 3B:** CDCR does not believe the regulations give special consideration to employees. **See Responses 2A and 2C.**

### **COMMENTER #4**

**Comment 4A:** Commenter states that although the Notice indicates the proposed regulations will not have an impact on jobs or businesses within California with the expansion of search methods, it cannot be true and in fact, may create additional job opportunities.

**Response 4A: See Response 1A.**

**Comment 4B:** Commenter believes there may be other alternatives, for example, if a canine alerts, but discovers no contraband on the visitor, a pat-down search may be another alternative to provide the necessary security.

**Response 4B:** Canine alerts in and of themselves do not discover contraband. Canine alerts provide probable cause for additional searching. Clothed body searches of visitors are authorized and currently in use pursuant to Title 15, Section 3173.2. The proposed regulations authorize an unclothed body search of a visitor after a positive canine alert only as a condition of contact visiting. Visitors may refuse to consent to a clothed body search and may be authorized a non-contact visit if space is available.

**Comment 4C:** Commenter referencing subsection 3173.2(c)(3)(F) states a pat-down search instead of an unclothed body search is more appropriate if there is a positive canine alert and no contraband is discovered. Commenter agrees with the need to stop the introduction of contraband, but argues that the privacy of the visitor outweighs reasonable suspicion without more evidence.

**Response 4C:** CDCR does not agree that the privacy of a visitor duly outweighs the reasonable need to conduct a search after a positive canine alert. Positive canine alerts have been upheld in court as probable cause, which is beyond reasonable suspicion, to perform and/or continue a search.

**COMMENTER #5:**

**Comment 5A:** Commenter finds the proposed regulations to be unconstitutional and unjust, and references the Initial Statement of Reasons and subsection 3410.2(D)(1), which applies to employees who alert are subject to a pat-down and if no contraband is found, are allowed to enter the institution, yet a visitor alerts and does not voluntarily agree to an unclothed search, may not be allowed to enter the institution. Commenter states a constitutional and just alternative would be to have everyone who has a positive canine alert be subject to an unclothed body search.

**Response 5A:** CDCR does not find the regulations are unconstitutional. **Also see Responses 2A and 4B.**

**COMMENTER #6**

**Comment 6A:** Commenter references the Notice and states commenter is not aware of any instance of a visitor who introduces contraband into a prison is not arrested and prosecuted, prisoners are referred to the district attorney for prosecution, and in instances where staff caught trafficking drugs, tobacco, and cell phones into prison, commenter believes are neither arrested or prosecuted. There is mandatory language for visitors and inmates who shall be searched and if found with contraband are arrested and criminally prosecuted, and passive language for staff who are subject to search and if caught with trafficking drugs, tobacco, and cell phones are not prosecuted, but ask to retire with benefits. Commenter asks for an explanation for the discrepancy in the language.

**Response 6A:** CDCR refers all cases of felony misconduct to the local district attorney for prosecution consideration. CDCR cannot control which cases district choose to prosecute nor do they control the outcome of the judicial system. CDCR does not have an option within any law, rule, or policy to offer employees a retirement option in lieu of prosecution.

**Comment 6B:** Commenter states that according to the Notice the decision to search or arrest any visitor or staff is at the discretion of the Search Operations Commander and asks if the searches will be consistent, balanced, and equal and why the CDCR arrests and promotes criminal prosecution of visitor and not staff.

**Response 6B:** CDCR strives to operate each of its locations with consistency. **See Responses 2C and 6A.**

**COMMENTER #7**

**Comment 7A:** Commenter references text and believes it is not correct to announce that the search is for drugs, when it is for tobacco, drugs, contraband, and cellphones. People who may be subject to either type of search are entitled to know what the search is designed to accomplish.

**Response 7A:** The canines trained for air scans are only trained for the detection of the odor of narcotics and for contraband detection, to include tobacco and cell phones. The searches are designed to stop the introduction of illegal drugs into our institutions in order to ensure that we are providing the best drug free environment possible for the inmate population.

**Comment 7B:** Commenter urges CDCR to examine the entire filing to ensure all sections speak to drugs, tobacco, contraband, and cellphone so that no items are deleted or overlooked.

**Response 7B:** CDCR has examined the entire filing and is satisfied that no items have intentionally been deleted or overlooked.

#### **COMMENTER #8**

**Comment 8A:** Commenter understands the proposed canine drug detection process will be instituted without a trial period and asks how many individuals are tagged and what the success rate of tagging is. Commenter states these questions should be tabulated and reviewed at some point to determine if this process is accurate and effective and asks CDCR to consider a review after a set time, three months or six months, before changing practices throughout the California State Prison system.

**Response 8A:** See Response 2D.

#### **COMMENTER #9**

**Comment 9A:** Commenter states that current regulations are already sufficient to allow for an officer to detect if a visitor is carrying in contraband. Commenter also states canine searches have been shown to be severely lacking in reliability and have a high rate of false alerts and will result in visitors being denied visitation wrongly, unfairly, and unnecessarily, and recommends CDCR revoke implementation of these regulations in full.

**Response 9A:** CDCR is not aware of drug detection canines lacking reliability. CDCR does not believe existing regulations are adequate to detect contraband as is evidenced by the rate that the inmate population tests positive for the presence of illegal narcotics. As stated in the Initial Statement of Reasons, there were over 4000 documented incidents recorded in 2013 related to drugs in our prisons. The presence of illegal drugs in institutions reinforces the strength of prison based gangs, leads to inmate-on-inmate violence due to drug dependency, and increases the possibility of inmate-on-staff attacks because of the reduced inhibition effects of some drugs. (see Initial Statement of Reasons).

**Comment 9B:** Commenter states CDCR has proposed that a clothed pat-down search conducted by same-gender guard, randomly or after a positive alert by a canine is sufficient in keeping contraband out of prisons; however, a fully unclothed strip search applied to a visitor rather than employee or volunteer is unnecessary, unreasonable, and does not keep contraband and weapons out of prison. CDCR cites a higher arrest rate for visitors to justify differential treatment of visitors and employees. It is unlikely visitors, who have supervised visits and less contact time with inmates are capable of organizing large amounts of drugs to enter prison. It may be more likely a small number of employees or volunteers who have frequent, regular, and unsupervised access inside of prisons could be responsible for a large percentage of drugs entering prisons. Commenter recommends visitors never be subjected to an unclothed body search and any positive alert should trigger the same search for employees and visitors, a pat-down search over the persons cloths conducted by a same gender employee.

**Response 9B:** See Responses 2A, 2C, and 4B.

**Comment 9C:** Commenter states breeds of dogs should be limited to less intimidating dogs such as Labrador Retrievers, Beagles, and German Shorthaired Pointers.

**Response 9C:** CDCR has trained Labrador Retrievers and German Shorthaired Pointers for the searching

of persons. **Also see Initial Statement of Reasons, Section 3000.**

**Comment 9D:** Commenter recommends random search selection criteria be the same for visitor and staff.

**Response 9D:** CDCR is using identical criteria for the random selection of staff and visitors for search. CDCR will randomly choose persons for search and will not single any person out.

**Comment 9E:** Commenter states a visitor's refusal to submit to a canine search should not result in a refusal of a contact visit, but the visitor should have the option of a clothed pat-down search by a same gender guard and at the very least, be guaranteed a non-contact visit.

**Response 9E:** CDCR does not believe that a clothed body search provides the same level of security necessary for entry and contact visiting. An optional searching criterion is not a reasonable alternative to security. Non-contact visiting cannot be guaranteed by CDCR under these circumstances based on current facility design, the priority given to previously scheduled, non-contact visitors, as well as, overall visiting capacity. **Also see Responses 4B and 4C.**

**Comment 9F:** Commenter states a positive canine alert should never lead to an unclothed body search, instead visitors, staff, and inmates should have the option of an unclothed pat-down by the same gender guard. There is no reason to subject visitors to a strip search when a pat-down is sufficient for staff and volunteers.

**Response 9F: See Response 9E.**

**Comment 9G:** Commenter suggests a visitor should never be refused a contact visit or be suspended from visiting all CDCR facilities based on their refusal to submit to an unclothed strip search, which could mean one single positive canine alert can result in a visitor being banned from visiting for a full year, and should be offered the option of a clothed pat-down search and guaranteed a non-contact visit.

**Response 9G: See Responses 4B, 9A, 9E, and 9F.**

**Comment 9H:** Commenter states a positive canine alert on a previous visit in which no drugs or contraband are discovered should not require an unclothed body search as a condition of subsequent visits and suggests the visitor should start with a clean slate.

**Response 9H:** All positive alerts from a departmental canine in which the visitor consents to an unclothed body search and no contraband is discovered will not be used as a consideration for future visiting.

**Comment 9I:** Commenter states it is crucial to keep track of false positives and documentation of any contraband found during an unclothed or pat-down search that was the result of a positive canine alert must be included, and recommends records be kept on each dog and handler and after three documented false positives alerts on visitors, employees, contractors, or inmates, or combination thereof, the dog or handler must be decommissioned and banned from further use in this operation.

**Response 9I:** CDCR plans to continually monitor all drug interdiction efforts to determine continued efficiency and cost effectiveness. CDCR is tracking all searches and results associated with these regulations. All positive alerts from a departmental canine in which the visitor consents to an unclothed body search and no contraband is discovered are not a consideration for future visiting. **Also see**

## **Response 2D.**

**Comment 9J:** Commenter recommends if documentation for prescription medication is not available a non-contact visit should be guaranteed.

**Response 9J:** CDCR cannot guarantee visiting to any person under these circumstances based upon design capacity, the priority given to previously scheduled, non-contact visitors, and the number of visitors received into a specific location.

**Comment 9K:** Commenter recommends that individuals subject to unclothed body searches have the right, and be informed of that right, to bring a witness to guard against false accusations, sexual misconduct by officers, or other misconduct by officers who might see an advantage in planting evidence.

**Response 9K:** CDCR will continue to follow current law contained in both Title 15 as well as the California Penal Code as it pertains to the searching of staff, visitors, employees of other government agencies, contractors, and their employees, and volunteers. CDCR will not grant additional witnesses to these events outside of current law.

**Comment 9L:** Commenter recommends no minor children should be subjected to an unclothed strip search, and minors accompanying visitors should receive at most, a fully clothed pat-down search, by a same gender guard, with a parent or other adult witness for the entirety of the search.

**Response 9L:** Minors are subject to the same regulations as adults except as stated in Sections 3173 and 3173.1. Unfortunately, adult visitors have been known to utilize children and infants in their attempts to smuggle illegal drugs into prisons.

## **COMMENTERS #9 THROUGH #22 ARE THE SAME.**

### **COMMENTER #23**

**Comment 23A:** Commenter states the same comments as Commenter #9, but also states that the cost for training search dogs and handlers will likely range from \$700,000 on up further exemplifying that these regulations are not cost effective and inefficient to reach the documented goal.

**Response 23A:** CDCR does not agree the cost of training drug detection canines and handlers is inefficient and cost prohibitive. CDCR affirms that the security of its institutions is paramount and this training was conducted within budgetary constraints. **Also see the Economic Impact Assessment in the Initial Statement of Reasons.**

### **COMMENTER #24:**

**Comment 24A:** Commenter states the same comments as Commenter #9, but also has concerns that children and adult visitors will be traumatized by the presence of canines and strip searches; the regulations will decrease the likelihood of caregivers bringing children to visit; unfairly affect financially marginalized families and will limit visitations for destitute families; infringe upon children's rights to have contact with their incarcerated parent; increase animosity between correctional officers, inmates, and visitors; and children will develop negative associations with uniformed officers, which will adversely affect relationships with police officers in their communities.

**Response 24A:** It is not CDCR's intent to cause adverse impact on any persons entering our facilities.

CDCR strives to continually improve methods used for searching visitors and impede illegal substances entering institutions in order to ensure institutional safety and to provide a positive visiting experience. The regulations will yield a safer, healthier, drug and contraband free visiting experience and ultimately result in a safer environment for all in the institution.

**Comment 24B:** Commenter states if visits decrease, inmates will have less incentive to engage in positive behavior.

**Response 24B:** CDCR does not believe visiting will decrease as a result of these regulations.

**Comment 24C:** Commenter states visitor process will take long and cut into limited visiting time.

**Response 24C:** The Department recognizes the importance of visiting and understands the need to process visitors quickly and efficiently so as to not cause undue delay. CDCR has planned for the implementation of the search program and does not foresee any undue delay in processing visitors for visiting.

**Comment 24D:** Commenter states dogs respond to cues from their handler and false positives could occur because of favoritism.

**Response 24D:** See Response Speaker 1B.

**Comment 24E:** Commenter states these searches will produce false positives for visitors who have handled money tainted with illegal substances and single out those struggling with addiction.

**Response 24E:** CDCR will randomly select persons according to protocol for search and will not single out any particular person. Also see Responses Speaker 1B and Commenter 9D.

**Comment 24F:** Commenter states prison workers and guards bring in most of the contraband and these regulations will not decrease drug use or trafficking.

**Response 24F:** The commenter has provided no objective and independent evidence to substantiate this allegation. Additionally, this allegation has not been proven by evidence available to the Department. The Department maintains that staff who are discovered trafficking contraband into the institution will be referred for criminal prosecution as well as administrative investigation and penalty. The regulations proposed by CDCR include the searching of staff, employees of other government agencies, volunteers, contractors, etc. and do not exclude any persons seeking entry. These regulations will benefit all staff, visitors, inmates, as well as members of the public, but notes a distinct difference between the processing of staff and the processing of visitors into our institutions. A visitor may refuse a search after a positive alert but forfeits a contact visit for that day. Staff cannot refuse a search following a positive canine alert. These regulations will reduce drug discoveries in prison.

#### **COMMENTER #25**

**Comment 25A:** Commenter states canine searches are highly unreliable that will result in visitors being denied visitations wrongly, unfairly, and unnecessarily. Commenter further states that CDCR cites no research or data that shows the proposed measures will be effective in reducing drug or contraband smuggling into State prison.

**Response 25A:** The CDCR has determined that the regulations are needed as part of an effective drug and contraband interdiction strategy. Current search methods are not sufficient as evidenced by the baseline inmate urinalysis testing data cited in the ISOR. **Also see Responses Speaker 1B and Commenter 9A.**

**Comment 25B:** Commenter states the proposed regulations will have an adverse impact on reunification and affect women disproportionately and impinge on their liberties. Commenter also states women and their children are the vast majority of people who visit prisons and with one in five having been a victim of sexual assault, the likelihood of these proposed search procedures unnecessarily compounding trauma is great.

**Response 25B:** It is not CDCR's intent to cause adverse impact on any persons entering our facilities. CDCR is concerned about the continuation of a positive visiting experience and trains staff on the interaction with members of the public, staff, visitors, etc. to ensure continued professionalism.

**Comment 25C:** Commenter states that many children are afraid of dogs and already stressed by visiting a prison to see their parent and the trauma of the sniff/search experience can magnify this fear and being unclothed by a correctional officer can create a negative impression of law enforcement personnel and has potential lifetime harmful effects.

**Response 25C: See Response to Speaker 1A.**

**Comment 25D:** Commenter agrees that some drugs make their way into prison through visiting; however, even if canine searches successfully find people who have drug residue on their bodies or clothing, it is a long way from smuggling drugs to their loved ones and there are procedures in place to reduce that amount.

**Response 25D: See Response 9A.**

**Comment 25E:** Commenter states visitation is important in maintaining connection with family members, an important mechanism for inmates to stay motivated, and provides a strong motivation for positive inmate behavior, however, it is likely the new policies will only decrease the number of families who visit because it will disincentivize (sic) families who fear putting themselves or their children through such invasive procedures. Commenter has grave concerns about the efficacy of the proposed regulations and request they not be implemented at this time.

**Response 25E: See Responses 24A and 24B.**

## **COMMENTER #26**

**Comment 26A:** Commenter states there will be baseless unclothed searches of both staff and visitor because of the problem with contamination from currency, prescription ordered medications, and legal forms of poppy seeds and opioids.

**Response 26A:** The Department will randomly select persons for search according to protocol and will not single out any particular person. Canines are trained to alert to certain narcotics. Canines are not trained to detect all narcotics and narcotic-related material. Drug detection canines are not known for alerting to poppy seeds and legal medications. **Also see Responses 7A, 9D, and 24E.**

**Comment 26B:** Commenter states obtaining proof of prescription from a physician addressed to the institution is an almost insurmountable and unreasonable hurdle for visitors and staff because the federal

mandate for health insurance has caused lengthy waits for access to a physician and services are limited to a nurse practitioner.

**Accommodation 26B:** CDCR has amended the language to CCR subsection 3173.2(c)(4)(B) to allow for more than one avenue for visitors to provide documentation of the prescribed medication. CDCR has included licensed physician's assistant and certified nurse practitioner to the text as alternative resources for visitors to obtain proof of prescriptions if the physician is not available. Furthermore, the text also allows for visitors to present a valid prescription for the medication as a method to documentation. This change was included in the Notice of Changes to Text in the Renote dated 4/20/2015.

**Comment 26C:** Commenter references a CNN report and states because of contamination of cocaine on currency; cross contamination of individuals who do not use drugs, but who resides with individuals who are licensed to consume Cannabis; and caregivers who dispense Schedule III drugs; and consumed food similar in chemical signature to illegal medications will result in illegal profiling and increased unclothed body searches because of false positives and the inability of canine to distinguish the odor of poppy seeds used for flavoring. Commenter further states this will increase access time for all visitors to visiting room because of the delays precipitated by unclothed searches.

**Response 26C:** CDCR does not believe the search regulations will result in false positives for those who handle money. If that were a true consideration, many persons would have a positive canine alert as most persons handle money. CDCR canines are trained to alert to certain narcotics, not all narcotics and narcotic-related material. There are many training methods that the canines undergo to assure they are only alerting on certain narcotics. **Also see Responses 2D, 7A, and 26A.**

**Comment 26D:** Commenter states that none of the institutions have sufficient facilities to deal with increased unclothed searches of visitors, a direct consequence of false positive by the canines, and none of the visiting rooms are allocated increased staffing, both male and female, to allow for the increased unclothed searches of visitors. If only ten percent of 200 visitors (a low number based upon historical experience) present a false positive, and each of the visitors who test positive require a ten minute search plus five minutes to dress and undress, the examination time is 300 minutes, or five hours during the six hour daily visiting period. The implementation of this proposal effectively terminates visiting.

**Response 26D:** CDCR has adequate facilities in place to address the need for the searching of persons and maintains the ability and resources to perform searches and inspections as necessary to maintain the safety and security of Department institutions. The Department disagrees that the regulations will terminate visiting. **Also see Response 2D.**

**Comment 26E:** Commenter states the proposed regulations do not provide for increased staffing for employee searches. The domino effect of staff unclothed searches will be a lower number of staff available inside the institution, with the concomitant effect of increases in lockdowns, cancellation of programming, delays in meal distribution, and a general disruption of institutional activities. Thus, rehabilitation will be dramatically crippled.

**Response 26E:** CDCR has accounted for the resources necessary to address the searching of persons. CDCR does not foresee a reduction in rehabilitation as a result of searches, but instead a reduction in the use of illegal narcotics among the inmate population. CDCR has adequately planned for the implementation of the search program and does not foresee any undue delay. **Also see Response 26D.**

**Comment 26F:** Commenter states the regulations do not provide for an exception for an individual who repeatedly submits to an unclothed search and the result demonstrates there is no controlled substance or

other contraband.

**Response 26F: See Response 9H.**

**Comment 26G:** Commenter states the regulations do not provide for a letter authorizing the use of prescribed medications by a Nurse Practitioner on behalf of a physician confirming legal use.

**Accommodation 26G: See Response 26B.**

**Comment 26H:** Commenter states there is no doubt contraband is the most significant cause of violence in an institution and the highest priority should be interdiction of contraband; however, just as CDCR rejected the use of Backscatter X-rat devices for visitors and staff because of abuse questionable efficacy, the use of canine alerts should be rejected until secondary technology that does not require unclothed search assures a high rate of accuracy for the actual presence of illegal contraband. Until there can be absolute guarantee of protection from unwarranted searches, this application to visitors and staff should be rejected.

**Response 26H:** The CDCR has no knowledge of canine searching being highly unreliable. **Also see Response 9A.**

**COMMENTS #27**

**Comment 27A:** Commenter states canines as well as the handler have an error record that is too high to justify submitting visitors to a strip search.

**Response 27A:** The commenter does not provide any evidence or objective research to support their allegation. **Also see Response Speaker 1B.**

**Comment 27B:** Commenter states the regulations require the handler to inform visitors the dogs are searching for drugs; however, because other forms of contraband are listed as possible targets of the search, everyone subject to canine searches should be informed of what is being sought and/or what might be detected by such a search.

**Response 27B:** The Department will not disclose the specific drugs tested to safeguard against possible attempts to circumvent detection of illegal substances. **Also see Response 26C.**

**Comment 27C:** Commenter references Section 3410.2 and asks if employees and non-visitors are advised of the nature of the alert the canine gives, why not visitors.

**Response 27C:** The Department unintentionally omitted explaining the nature of the alert to non-visitors. This will be corrected in the next revision. In the meantime, please refer to the definitions in section 3000 for Air Scan Search and Positive Canine Alert which explains the nature of the alert.

**Comment 27D:** Commenter states that if CDCR insists on using dogs to justify an invasion of privacy and violation of human rights, commenter offers the following be added to the regulations and strictly enforced: "For each individual animal and each individual handler, complete records must be kept of each false positive alert. After three documented false positive alerts on visitors, employees, contractors or inmates, or on any combination thereof, that animal or handler or both must be decommissioned and banned from further use in this operation. In addition, any visitor who is victim of the false alert should

have and be informed that they have the option to sign and keep for their personal records a copy of said documentation of the false positive

**Response 27D:** The Department disagrees. Visitor may request a copy of any forms they are asked to sign. **Also see Response 9I.**

**Comment 27E:** Commenter states that if employees and other non-visitors are guaranteed privacy and a same sex staff member to conduct the unclothed body search in the regulations, visitors and inmates must get the same guarantee within the regulation itself, not just on Form 888.

**Response 27E:** The Department disagrees. **See Response 9K.**

**Comment 27F:** Commenter states if unclothed body searches are to be conducted, the subject of the search must have the right and be informed of the right to bring a witness to guard against false accusations, sexual misconduct by officers, or other misconduct by officers who might see an advantage in planting evidence as consequences for the visitor of such misconduct on the part of an officer are too grave to do otherwise. Commenter states this must be added to Form 888.

**Response 27F:** The Department disagrees. **See Response 9K.**

**Comment 27G:** Commenter states it is grossly unjust and unfair that employees and contractors are not to be subject to the same strip searches as visitors. If the problem is as serious as stated in the ISOR, why not strip search the employees and non-visitors and if strip searches are too intrusive, humiliating and traumatizing for employees and contractors, then they are certainly too intrusive, humiliating and traumatizing for visitors.

**Response 27G:** **See Responses 2A and 2C.**

**Comment 27H:** Commenter states the phrase “unless that visitor submits to an unclothed body search” at the end of paragraph (G) is confusing.

**Response 27H:** CDCR disagrees and does not find the language to be confusing.

**Comment 27I:** Commenter asks why paragraph (I) is included when it is already on the same page in paragraph (B).

**Response 27I:** Text in subsection 3173.2(c)(3)(B) refers to a positive alert to air scan searches. Text in 3173.2(c)(3)(F) refers to unclothed body search when drug paraphernalia is discovered on a visitor, and text in 3173.2(c)(3)(I) refers to all requests for unclothed body searches.

## **COMMENTER #28**

**Comment 28A:** Commenter has concerns that canine searches will cause fear to children, babies, and adults, especially those with existing phobias and will make the visiting experience uncomfortable. Commenter raises the concern that the use of canines could result in a possible attack even if the handler has the dog on a six inch leash, it can get loose. We are dealing with animals with animal instincts.

**Response 28A:** CDCR is concerned about the continuation of a positive visiting experience and trains staff on the interaction with members of the public, staff, visitors, etc. to ensure continued

professionalism. Canine handlers are adequately trained on the custody and control of their detection animal and how it interacts with the public. Currently, CDCR is not aware of any instances where departmental canines have attacked anyone during canine searches. **Also see Response to Speaker 1A.**

**Comment 28B:** Commenter states Electronic Drug Detection Equipment (EDDE) is not reliable in detecting contraband and no longer used in federal prisons or any other prison in the nation. Commenter references the Notice and states that dogs may detect prescription drugs that are not illegal drugs, which proves dogs are as unreliable as the electronic drug devices.

**Response 28B:** The Department has no knowledge of EDDE being highly unreliable and has ensured training has been provided to EDDE operators that address clearing the machine between tests to eliminate the possibility of residue being left in the machine. The equipment currently in use is the Smith's Detection ION Scan 400B. It is a reliable and sensitive detector that can identify small amounts of residue of a variety of drugs with a false positive rate of less than one percent. CDCR canines are trained to alert to certain narcotics. Not all narcotics and narcotic-related material. There are many training methods the canines go through to assure they are only alerting on narcotics. **Also see Responses Speaker 1B and Commenters 7A and 9A.**

**Comment 28C:** Commenter states the use of dogs and other devices will overwhelmingly be used in disproportionally ways to harass families and friends and compares the visiting experience like a Nazi concentration camp with numerous check points and dogs, instead of helping inmates build bridges to their friends and families.

**Response 28C:** Reducing drugs and contraband from entering state prisons produces safe and healthy visiting, increases staff safety, reduces staff corruption and encourages positive inmate programming and rehabilitation. Based on the 2013 test results cited in the ISOR, the Department must do more to reduce the availability of and use of drugs in the prison system. Therefore, the Department seeks to implement various drug interdiction strategies, including air scan searches with a canine to measure their success. CDCR does not perceive visiting in the manner depicted by the commenter. **Also see Response 9A.**

#### **COMMENTS #29**

**Comment 29A:** Commenter states the proposed regulations target visitors and inmates as opposed to as staff and contractors as staff and contractors enter institutional premises without passing through a metal detector, have the most direct and least fettered access to prisoners, and only subject to a pat-down in the event of a positive canine alert, while visitors would not only be subject to strip-searches at the penalty of losing their visit and possibly their next two visits, may also be suspended from visiting all CDCR facilities for a year if they decline to be strip-search three times within a twelve month period, while inmates cannot refuse a strip search without being subject to disciplinary action, further searches, and urine testing.

**Response 29A:** Inmates may appeal any CDCR decision, action, condition, policy, or regulation that has a material adverse effect upon their welfare and for which there is no other prescribed method of departmental review/remedy available. **Also see Responses 2A and 2C.**

#### **COMMENTS #30**

**Comment 30A:** Commenter states CDCR must realize that it is nearly impossible for prisoners to obtain drugs unless they are smuggled in by guards, other staff, or contracted help (who are often not searched at all) and just because a person has a friend or relative in prison, that does not prove that he or she is a

criminal. The Constitution requires probable cause (or a warrant) for any searches of person, car, or home.

**Response 30A:** The commenter does not provide any evidence or data to support their accusation. CDCR provides the following documentation that not all drugs are smuggled in by guards, other staff, or contracted help. At Kern Valley State Prison on October 11, 2014, while monitoring Closed Circuit Television, visiting staff observed an inmates and his wife near the vending machines in the visiting room. Closer observation revealed a large suspicious bulge near the wife's right waistband area. The wife was escorted to the ISU room where she voluntarily relinquished one bindle which contained 23.5 grams of marijuana and 14.9 grams of Crystal Methamphetamine. A subsequent investigation resulted in the recovery of a second bindle with 19.9 grams of tobacco and 28.7 grams of marijuana. Further investigation resulted in the inmate attempting to discard a third bindle into a trash can that contained 22.1 grams of Tobacco and 28.6 grams of marijuana. **Also see Response 24F.**

**Comment 30B:** Commenter understands the justification for the new rules is some sort of emergency involving a few cases inside prison that are vaguely related to drugs and urges CDCR to abandon these regulations.

**Response 30B:** Penal Code section 5058.3 gives the Department statutory authority to adopt, amend, or repeal regulations as an emergency if the operational needs of the Department so require. Illegal substances constitute an ongoing threat to the safety and security of institution staff, inmates and the public. The Department must step up its drug interdiction efforts.

#### **COMMENTER #31**

**Comment 31A:** Commenter states the proposed regulations target visitors and inmates as opposed to staff or contractors who have the most direct and least fettered access to prisoners and are only subject to a pat-down whereas, visitors would be subject to strip-searches, at the penalty of losing their visit and possibly their next two visits, should they decline the strip-search and any visitor who refuses a strip-search following a positive alert three times within a twelve-month period may be suspended from visiting all CDCR facilities for a year. Inmates similarly, cannot refuse a strip search without being subject to disciplinary action and being subject to unspecified further searches and urine testing.

**Response 31A: See Response 29A.**

#### **COMMENTER #32**

**Comment 32A:** Commenter states no emergency exists to justify the emergency regulations as CDCR staff may already conduct pat-down and other searches if they believe a person is attempting to carry in contraband.

**Response 32A: See Response 9A.**

**Comment 32B:** Commenter states the proposed regulations target visitors and those incarcerated as opposed to staff or contractors who enter institutional premises without so much as passing through a metal detector and have the most direct and least fettered access to prisoners. Yet, in the event of a "positive canine alert," they would only be subject to a pat-down whereas those visiting loved ones would be subject to strip-searches.

**Response 32B: See Responses 2A, 2C, 5A, and 29A.**

**Comment 32C:** Electronic drug detectors and dogs are unreliable.

**Response 32C:** CDCR does not have any evidence that these items are unreliable nor does the commenter supply any such evidence to support their assertion. **Also see Response 28B.**

**Comment 32D:** Commenter asks what CDCR means when it says that the money to enforce these new regulations will come from existing resources and asks how CDCR can find money or resources to implement the new search regulations without being able to use existing resources dedicated for rehabilitation funding.

**Response 32D: See Response 23A.**

### **COMMENTS #33**

**Comment 33A:** Commenter states the proposed regulation to demand strip searches of certain people visiting prisoners in California jails is truly disgusting and unnecessary.

**Response 33A:** CDCR disagree and provides an example why unclothed body searches are sometimes necessary. On October 5, 2014, at Salinas Valley State Prison a visitor was detained based on suspicion of attempting to smuggle a controlled substance into the institution. She denied having any contraband on her person, but agreed to be searched and signed a form CDCR 888, Notice of Request for Search. While performing the unclothed body search two bindles of controlled substance concealed in her hair tie, were discovered. The contraband tested positive for 2.4 grams of methamphetamines and 8.9 grams of hashish. **Also see Response 30A.**

### **COMMENTS #34**

**Comment 34A:** Commenter asks if the training facilities where the dogs are trained are accredited by a reputable accreditation agency.

**Response 34A: See Response Speaker 1B.**

**Comment 34B:** Commenter asks if the dogs undergo examinations after they have been purchased like the way correction officers must requalify in firearms use at regular intervals.

**Response 34B:** At a minimum, scent training shall be conducted annually, quarterly, and at the discretion of the Statewide Canine Coordinator, assuring each service dog's competency. Obedience training shall be conducted separate from detection scent training and shall be conducted to the extent necessary for the assigned handler to adequately control his/her service dog. Additionally, each departmental canine handler and service dog shall be recertified annually by the Statewide Canine Coordinator and shall complete all phases of certification (Pass or Fail).

**Comment 34C:** Commenter asks if these dogs can differentiate between someone smuggling tobacco into a prison and someone who had a cigarette in a smoke-filled car immediately before entering the visitor processing center, someone who recently used a cellphone to play a game prior to entering a prison, someone who recently came into contact with a lithium battery, or whatever the dogs alert for electronic devices and if visitors subject to the above will have to submit to a strip search.

**Response 34C:** CDCR air scan canines are trained to alert to certain narcotics and not all narcotics and narcotic related material. There are many training methods the canines go through to assure they are only alerting on narcotics. **Also see Responses Speaker 1B and Commenters 7A and 34B.**

**Comment 34D:** Commenter asks why visitors are blackmailed into a strip search when a canine alerts and prison staff, contractors, and volunteers only get a pat down search.

**Response 34D:** Canine search regulations apply to all persons seeking entry to institutions of the Department. CDCR notes that there are different requirements for staff and visitors and is conducting searching in compliance with California Penal Code, section 6402. Visitors are not “blackmailed” into a strip search. Visitors may refuse a search following a positive alert although they forfeit a contact visit for that day. Visitors are still eligible for a non-contact visit, if available. However, staff cannot refuse a search following a positive alert. **Also see Responses 2A and 2C.**

**Comment 34E:** Commenter states that staff, contractors, and volunteers who get a positive alert get a pat down by someone of the same gender; however, visitors and inmates do not have that same language codified in their sections.

**Response 34E:** Title 15, subsection 3173.2(d)(4), Searches and Inspections, states that additional searches will be conducted by staff of the same gender as the visitor.

**Comment 34F:** Commenter states that many people have a great fear of dogs and asks what happens to the visitor who was traumatized after being bitten by a dog in their past and freaks out when in the presence of a dog, will they be traumatized again by the CDCR canine or the CDCR strip search because of their psychological fears?

**Response 34F:** See Response to Speaker 1A.

#### **COMMENTER #35**

**Comment 35A:** Commenter states the proposed regulations state that if the canine alerts during an air scan, visitors shall be required to submit to an unclothed body search as a condition of visiting; however, employees will be subject to a pat down search by the same gender supervisory staff in a private setting and this is discrimination. Commenter urges CDCR to reconsider the variance between how certain people are treated while attempting to enter any institution as it is abundantly clear the majority of contraband items are not introduced by visitors.

**Response 35A:** Departmental staff cannot refuse a search after a positive canine alert. **Also see Responses 2A, 2C, 4B, and 9E.**

#### **COMMENTER #36**

**Comment 36A:** Commenter asks how \$30,000 per scanner can be justified when the CDCR is constantly saying there is not enough money for rehabilitation or education programs that would benefit inmates especially in solitary confinement.

**Response 36A:** The Department is adopting a layered approach to Drug Interdiction by using preventive methods as well as rehabilitative programs to achieve an overall drug-free environment, which in turn will benefit all inmates.

**Comment 36B:** Commenter asks what is the exact cost of training search dogs and personnel?

**Response 36B:** CDCR has implemented the program via the use of a budget change proposal for the current fiscal year and intends to expand the various drug interdiction strategies as additional funds and resources become available. This information is currently available via the Internet at <http://www.lao.ca.gov/reports/2014/budget/criminal-justice/criminal-justice-021914.aspx>.

**Comment 36C:** Commenter asks what is being done to track contraband coming in through guards and other staff and contractors and why are they not subject to strip searches too?

**Response 36C:** CDCR tracks all crimes occurring on institution property. **Also see Response 24F.**

**Comment 36D:** Commenter states that the CDCR says it wants to promote family bonds and closeness, yet strip searches are in total contradiction to this.

**Response 36D:** The Department disagrees with the commenter and does recognize the importance of family in the rehabilitation of an offender. CDCR strives to provide an environment free from illegal drugs, which in turn will benefit the inmate population and the public by fostering a visiting environment which is safe, healthy and rehabilitative to the inmate and their families. The Department's efforts in minimizing and eliminating the introduction of dangerous contraband and drugs into the institutions are paramount in providing a safer work environment for all employees, visitors, and inmates. If CDCR's drug interdiction strategies are successful at deterring all persons entering state institutions from attempting to smuggle drugs and contraband, the need for body searches of any kind will diminish. **Also see Response 9A.**

**Comment 36E:** Commenter asks when Secretary Beard was talking about increasing contraband surveillance back in his June 2012 confirmation hearing, what is the rationale behind making these "emergency" regulations now.

**Response 36E:** Penal Code section 5058.3 gives the Department statutory authority to adopt, amend, or repeal regulations as an emergency if the operational needs of the Department so require. Illegal substances constitute an ongoing threat to the safety and security of institution staff, inmates and the public. The Department strives to improve its drug interdiction efforts. When a state department is implementing a major new program or activity, like canine searches of visitors, staff, contractors, and volunteers, it takes time to get authorization, secure additional resources and necessary equipment, develop and promulgate regulations to govern the program and train staff and canines before implementation can take place. These regulations went into emergency effect on October 28, 2014, sixteen months after the Secretary's confirmation hearing. Furthermore, the incidences of drug use in prison that are documented in the Initial Statement of Reasons have not improved while implementation plans were developed and activated. Because the problem of drug use in prison persists, the justification for emergency adoption of regulations remains.

**Comment 36F:** Commenter asks how can CDCR justify the expense and program with the appalling false-positive rate and unreliability of ION Scanners and dog alerts.

**Response 36F:** CDCR is not aware of an appalling false positive rate and notes drug detection canines are used by U.S. Customs and Border Protection, Transportation Security Administration and hundreds of law enforcement agencies throughout the nation with great success. Furthermore, the commenter does not supply any evidence or objective data to support his allegation of a high false-positive rate for canine alerts. **Also see Responses Speaker 1B and Commenters 9A and 28B.**

**Comment 36G:** Commenter asks if there are safeguards that will prevent an innocent bystander from being tagged by a canine air search and asks how ‘air’ can be scanned individually.

**Response 36G:** Persons are randomly selected for search by a departmental canine. Canine searches are not performed in a haphazard manner, but in a room or area specifically designated for search. Persons cannot accidentally walk into a known search area; they are directed by staff.

**Comment 36H:** Commenter asks how you can assure a perfect system and what safeguards are there to ensure redress if a visitor has been falsely accused.

**Response 36H:** CDCR cannot guarantee perfection. The Department trains its staff to operate within the law and continually monitors performance to achieve the best environment possible and have adopted language to assure that only two separate scans that both reveal positive results for illegal substances would be considered a positive alert that would then lead to the request to search a visitor. Visitors may address any complaint they have pursuant to the same procedures currently in place. Visitors who believe they have been falsely accused may write and send their concerns to the appointing authority. Visitors may utilize the appeal process, which is described in Title 15, Section 3179, Appeals Relating to Visiting.

**Comment 36I:** Commenter doesn’t believe there are no reasonable alternatives, especially when correctional officers are known to bring in contraband and to plant it as evidence from time to time.

**Response 36I:** See Responses 2C, 6A, 9D, and 24F.

**Comment 36J:** Commenter asks where the money is coming from for these expensive amendments to regulations.

**Response 36J:** See the Economic Impact Assessment in the Initial Statement of Reasons.

**Comment 36K:** Commenter asks how you can say this provides a safer environment for visitors when it adds to stress and potential for false positives especially if searches are on a random basis.

**Response 36K:** The deterrent of any attempt at introducing illegal substances and contraband into our institutions creates a safer and healthier environment for visitors, staff, and inmates alike. Also see Response 9D.

**Comment 36L:** Commenter states there is no positive effect for public health and safety if illegal drugs are being brought in by staff that is not being caught.

**Response 36L:** The regulations also subject staff to more searching than in previous Department policy. And unlike visitors, staff cannot refuse a search following a positive alert. Also see Responses 2A, 2C, 9D, and 24 F.

**Comment 36M:** Commenter references subsection 3173.2(c)(1)(E) and states you cannot reassure a visitor that the procedure is safe when there is a risk of a false positive.

**Response 36M:** CDCR endeavors for the safest environment possible. See Responses Speaker 1B and Commenters 9A, 36F, and 36H.

**COMMENTS # 37**

**Comment 37A:** Commenter does not object to the use of canines, but objects to the fact visitors are subjected to strip searches and not staff, otherwise it is profiling.

**Response 37A:** The Department disagrees. Canine alerts provide for additional searching as a condition of contact visiting. Staff cannot refuse a search following a positive alert. CDCR disagrees that requiring an unclothed body search as a condition of contact visiting is profiling. Positive canine alerts have been upheld by courts as sufficient probable cause to perform and/or continue a search. **Also see Responses 2A, 2C, 4B, and 35A.**

#### **COMMENTS #38**

**Comment 38A:** Commenter states staff and contractors typically enter institutional premises without so much as passing through a metal detector, have the most direct and least fettered access to prisoners, and are only subject to a pat-down in the event of a positive canine alert, while visitors would be subject to strip-searches, the penalty of losing their visit and possibly their next two visits, and they may also be suspended from visiting all CDCR facilities for a year if they decline the strip-search, while those incarcerated, cannot refuse a strip-search without being subject to disciplinary action and subject to further searches and urine testing. Commenter requests the regulations apply fairly to everyone.

**Response 38A:** The regulations proposed by CDCR include the searching of staff, employees of other government agencies, volunteers, contractors, etc. and do not exclude any persons seeking entry. CDCR believes that these regulations will benefit all staff, visitors, inmates, as well as members of the public but notes a distinct difference between the processing of staff and the processing of visitors to our institutions. Visitors may refuse a search following a positive canine alert although they forfeit contact visiting for that day. Temporary suspension from visiting only occurs if a visitor repeatedly refuses a search following positive canine alerts. **Also see Response 29A.**

#### **COMMENTS #39**

**Comment 39A:** Commenter recommends the policy specifically identify what substances the canines are trained to alert on and what procedures will be used if the “passive air scan canine searches” include substances that are legitimately handled by CCHCS staff including prescription drugs and narcotics drugs.

**Response 39A:** See Responses 27B.

**Comment 39B:** Commenter states if canine are trained to alert on cell phones, the policy should address procedures for employees who are legitimately authorized to carry Department issued cell phones.

**Response 39B:** CDCR has local operating procedures which address employees and their use of Departmental issued cell phones.

**Comment 39C:** Commenter asks CDCR to clarify who does the actual searches of visitors and that only trained drug detection staff are used to do unclothed body searches on female visitors, because female medical staff have been asked to assist when a female officer was not available.

**Response 39C:** CDCR will only use trained staff of the same gender to conduct unclothed body searches.

#### **COMMENTS # 40**

**Comment 40A:** Commenter is opposed to the inhumane treatment that CDCR would inflict on visitors and the lack of respect shown them and states employees and contractors are not subject to strip searches, only pat-down searches, while visitors have the option of pat down, strip search, or leaving with no visit then or the next two visits will have to be non-contact.

**Response 40A:** The regulations proposed by CDCR include the searching of staff, employees of other government agencies, volunteers, contractors, etc. and do not exclude any persons seeking entry. CDCR believes that these regulations will benefit all staff, visitors, inmates, as well as members of the public but notes a distinct difference between the processing of staff and the processing of visitors to our institutions. A visitor may refuse a search after a positive alert but forfeits a contact visit for that day, but may be authorized for a non-contact visit if available. Staff cannot refuse a search following a positive canine alert. **Also see Responses 2A, 2C, and 9E.**

**Comment 40B:** Commenter states employees & contractors have an appeals process that is not available to visitors, which represents a double standard and unfair practice.

**Response 40B:** The Department disagrees. Inmate visitors/citizens have the same rights as employees and contractors to appeal. **See Response 36H.**

**Comment 40C:** Commenter states there is case history that shows canines can give off false positives and they do bite.

**Response 40C:** The Department disagrees. Accidental/unintentional canine bites in Law Enforcement are extremely rare. CDCR has made every effort, through continuous training to reduce the likelihood of an accidental/unintentional canine bite. **Also see Response Speaker 1B.**

**Comment 40D:** Commenter states minors being subjected to search procedures could prove to be discouraging to visitors and traumatic to a child.

**Response 40D:** CDCR strives to continually improve methods used for searching visitors and impede illegal substances entering institutions in order to ensure institutional safety and to provide a positive visiting experience. The regulations will result in a safer environment in the institutions and ultimately a safer visiting experience. Minors are subject to the same regulation as adults except as stated in Title 15, Sections 3173 and 3173.1. Unfortunately, adult visitor have been known to utilize children and infants in their attempts to smuggle illegal drugs in prison. Recently, at one of the CDCR facilities an infant, while on a family visit, became unconscious and was taken by ambulance to the hospital, where the medical staff determined that the infant had overdosed on heroin that was attempted to be smuggled in its diaper.

#### **COMMENTS #41**

**Comment 41A:** Commenter states canine searches are highly unreliable and may respond to subtle, unintentional gesture by the handler that could produce false positive alerts and visitors are punished unnecessarily as a visitor may to undergo an invasive strip search and only have a non-contact visit for the next two visits.

**Response 41A:** **See Response Speaker 1B.**

**Comment 41B:** Commenter states ION Scanners are unreliable and can produce false positive alerts without the visitor being in possession of contraband or from residue left from prior scans.

**Response 41B:** The Department has no knowledge of Electronic Drug Detection Equipment (EDDE) being highly unreliable and has ensured training has been provided to EDDE operators that address clearing the machine between tests to eliminate the possibility of residue being left in the machine. The equipment currently in use is the Smith's Detection ION Scan 400B. It is a reliable and sensitive detector that can identify small amounts of residue of a variety of drugs with a false positive rate of less than one percent.

**Comment 41C:** Commenter is concerned these regulations will discourage visitation as one positive alert will lead to an intrusive strip search lead to the visit being cancelled, or put behind glass. The regulations allow a visitor to refuse the unclothed body search, but then are only allowed a non-contact visit if a room is available and the restriction for having refused the search is then enforced for the next two visits and this would discourage future visits.

**Response 41C:** CDCR is equally concerned with the continuation of a positive visiting experience and believes that the proposed regulations will result in a safer and healthier environment in the institutions and ultimately a safer visiting experience. The regulations proposed by CDCR include the searching of staff, employees of other government agencies, volunteers, contractors, etc. and do not exclude any persons seeking entry. CDCR believes that these regulations will benefit all staff, visitors, inmates, as well as members of the public but notes a distinct difference between the processing of staff and the processing of visitors to our institutions. If the Department is successful in deterring and reducing the number of attempts to smuggle drugs and contraband into the institutions, there will be fewer body searches and fewer instances where individuals forfeit their contact visits, or in the case of staff, lose their jobs. **Also see Response 36H.**

**Comment 41D:** Commenter states the regulations allow prison staff to choose whether to canine search all visitors or only a random selection of visitors, which leaves room for potential abuse of applying this regulation in a way that unfairly singles out certain individuals, has the potential to result in an invasive search or restrictions from visiting, and undermines the stated intended effect of the regulations.

**Response 41D:** The Department disagrees. The regulations proposed by CDCR include the searching of staff, employees of other government agencies, volunteers, contractors, etc. and do not exclude any persons seeking entry. CDCR believes that these regulations will benefit all staff, visitors, inmates, as well as members of the public but notes a distinct difference between the processing of staff and the processing of visitors to our institutions. **Also see Responses Speaker 1C and Commenters 9D, 26A, and 36G.**

**Comment 41E:** Commenter states the regulations do not specify what alternatives might be available to someone who may, for medical reasons, cannot undergo an ION Scanner search.

**Response 41E:** The Department is unaware of any medical condition which may preclude an individual from going through the ION Scanner process. CDCR will continue to comply with Title 15 and the ADA.

**Comment 41F:** Commenter states the proposed regulations create a risk of false positives and intrusive and humiliating searches, loss of visits, and conflict with established California prison law and policy that promotes family visitation. Commenter further states it is important they not do more harm via the reduction in visiting than the good they hope to accomplish by reducing the introduction of contraband to facilities.

**Response 41F:** The Department disagrees. CDCR is equally concerned with the continuation of a

positive visiting experience and believes that the regulations will result in a safer and healthier environment in the institutions and ultimately a safer visiting experience. The regulations proposed by CDCR include the searching of staff, employees of other government agencies, volunteers, contractors, etc. and do not exclude any persons seeking entry. CDCR believes that these regulations will benefit all staff, visitors, inmates, as well as members of the public but notes a distinct difference between the processing of staff and the processing of visitors to our institutions.

**Comment 41G:** Commenter states that three positive alerts from a canine, ION Scanner, or both requires visitors to undergo a strip each time or be suspended from visiting for one year even if no contraband is found; however, the regulations do not specify how this type of suspension would apply to legal visitors.

**Accommodation:** Language within Sections 3410.1 and 3410.2 is added to clarify that attorneys or legal representatives will be afforded a non-contact visit. This revision was included in the Notice of Change to Text as Originally Adopted dated 4/20/15.

**Comment 41H:** Commenter states these proposed regulations pose additional problems to an over-booked, inflexible visiting schedule with no indication it will be improved.

**Response 41H:** The Department disagrees. CDCR will continue to follow current law contained in both Title 15, Section 3173.2 as well as California Penal Code section 6402 as it pertains to the searching of staff, visitors, employees of other government agencies, contractors, and their employees, and volunteers.

#### **COMMENTER #42**

**Comment 42A:** Commenter states the proposed amendments require visitors to submit to canine search and expose them to unclothed strip searches while not requiring the same for staff. Commenter recommends that visitors never be subjected to an unclothed strip search and any positive alert should require a pat-down search for employees and visitors.

**Response 42A:** Visitors may refuse a search following a positive canine alert although they forfeit contact visiting for that day. Staff cannot refuse a search following a positive canine alert. The regulations proposed by CDCR include the searching of staff, employees of other government agencies, volunteers, contractors, etc. and do not exclude any persons seeking entry. CDCR believes that these regulations will benefit all staff, visitors, inmates, as well as members of the public but notes a distinct difference between the processing of staff and the processing of visitors to our institutions. **Also see Responses 2A, 2C, 9E, 34D, and 35A.**

**Comment 42B:** Commenter states refusal to submit to a canine search should not result in a visitor being refused a contact visit, but have the option of a clothed pat-down search and a non-contact visit should be guaranteed.

**Response 42B:** The Department disagrees. Canine alerts provide for additional searching as a condition of contact visiting. A non-contact visit as a result of a refusal to search cannot be guaranteed by the Department due to facility design capacity and the priority of other visitors who already have a scheduled non-contact visit. **Also see Responses 4B and 35A.**

#### **COMMENTER #43**

**Comment 43A:** Commenter says Section 3000 states the canine and the canine handler should be trained, but sets no standards for either, therefore, is not clear and in violation of Government Code

section 11349.1. Adequate training is critical to the proper functioning of the dogs and the regulations should require that both the canine and the handler be certified according to nationally recognized standards.

**Response 43A:** Training of canine and canine handlers are conducted at the Departmental Canine Academy, as set forth in the Departmental Operations Manual, section 52050.27. The standards used by the Department are consistent with the California Commission on Peace Officer Standards and Training (POST) Law Enforcement Canine Guidelines. A copy of the POST Law Enforcement Canine Guidelines can be found at [http://lib.post.ca.gov/Publications/Canine\\_Guidelines.pdf](http://lib.post.ca.gov/Publications/Canine_Guidelines.pdf).

**Comment 43B:** Commenter suggests any regulations should set acceptable parameters for hours to be worked by canines and states many estimates suggest that a dog may work for thirty minutes to an hour before needing a rest and canines worked beyond this period may result in excessive false positives.

**Response 43B:** The handlers are trained to discern when their assigned canine is getting tired. The handlers are also taught to know how long their assigned canine can work before getting tired.

**Comment 43C:** Commenter states subsection 3173.2(c)(1) does not apply to attorneys and is not necessary as there is no evidence that attorneys are responsible for the introduction of contraband into the prisons. Commenter states under subsection 3178(h) approved attorney shall be processed into the institution/facility in the same manner and restrictions as regular visitors and under the proposed regulations, subject to unclothed body searches, suspension from visits, and possible arrest after a positive alert. Commenter feels the proposed regulations should clearly state attorneys are not subject to these general visitor regulations.

**Accommodation 43C: See Response 41G.**

**Comment 43D:** Commenter states subsection 3173.2(c)(2) lacks clarity because it directs that searches be conducted by a random selection method, but it doesn't define what that means and it is inconsistent with subsection 3410.2(b) that gives an example of a random method. Commenter also states this section is not clear because it allows the search operations commander to alter a random method, but does not the state under what circumstances. Commenter recommends this section be modified to state random selection can be altered only if there is reasonable suspicion to search visitors not randomly selected.

**Response 43D:** The Department disagrees. CDCR will continue to follow current law contained in both the Title 15 as well as the California Penal Code as it pertains to the searching of an employee, employees of other government agencies, contract employees, contractors and their employees, volunteers, visitors, and inmates. All searches are random and not every person entering and exiting an institution will be searched. Searches and will be conducted within resources at random intervals, random days, random times, in random areas. There is no regulatory process that allows for the targeting of any person, in the absence of probable cause or reasonable suspicion. **Also see Response Speaker 1C and Commenters 9D and 36G.**

**Comment 43E:** Commenter states subsection 3173.2(c)(2)(B) lacks clarity as it is not clear whether visitors are informed that if they refuse a search they will be denied contact visits, but may be able to have a non-contact visit that day.

**Response 43E:** The Department agrees and has revised subsection 3173.2(c)(2)(B) for clear understanding.

**Comment 43F:** Commenter believes subsection 3173.2(c)(3)(B) is not necessary because it requires the visitor to submit to an unclothed body search if the canine alerts. Since employees, volunteers, officials, are not subject to an unclothed body search even though they have more access to prisoners and have been found to smuggle contraband into prisons, it is not necessary to strip search visitors. Commenter states a dog alert should at most be subject to a pat down search the same as employees and others.

**Response 43F:** The Department disagrees. Canine alerts provide for additional searching as a condition of contact visiting. **Also see Response 4B.**

**Comment 43G:** Commenter references several studies that show dogs are unreliable predictors of drug possession with the largest source of concern to be handler bias which can affect the outcome of a search, therefore, the inherently intimidating nature of dog searches, inaccuracies of dog alerts, and lack of training or certification standards support revision of this regulation so that visitors are not subject to unclothed body search because of a positive alert.

**Response 43G: See Response Speaker 1B.**

**Comment 43H:** Commenter states subsection 3173.2(c)(3)(C) lacks clarity and necessity and conflicts with subsection 3173.2(c)(4)(B) as it is not clear whether a visitor is automatically suspended for visiting for three years if found in possession of drugs or a cell phone. Commenter states if there is evidence visitors intended to smuggle drugs or cell phones into the prison, they should only be referred for possible arrest and suspended from visiting.

**Response 43H:** Subsection 3173.2(c)(3)(C) pertains to a visitor found in possession of drugs and/or cell phones and subsection 3173.2(c)(4)(B) pertains to a canine alert to prescribed medication.

**Comment 43I:** Commenter states subsection 3173.2(c)(4)(B) has a provision that a visitor carrying prescribed medication, but not have the prescription on their person, may subsequently provide a doctor's verification for the prescription, but under subsection 3173.2(c)(3)(C) the visitor will be arrested before providing verification and these sections conflict. This conflict must be resolved and it shows someone should only be referred for an arrest if there is evidence the visitor intended to smuggle contraband into the prison.

**Response 43I:** The Department disagrees. Subsection 3173.2(c)(4)(B) pertains specifically to an alert due to prescription drugs. Subsection 3173.2(c)(3)(C) refers to "drugs," however, if the alert is to prescription drugs that contain narcotics and other drugs for which the canine has been trained to alert to, the visitor would be given the opportunity to provide doctor's verification. Pursuant to subsection 3173.2(c)(4)(D), if documentation for the prescription drug is not readily available, a non-contact visit may be authorized, if available.

**Comment 43J:** Commenter states subsection 3173.2(c)(6)(A) lacks clarity and necessity for the same reasons as subsection 3173.2(c)(3)(C).

**Response 43J:** Subsection 3173.2(c)(6)(A) is specific to drugs or contraband. **Also see Response 43I.**

**Comment 43K:** Commenter states subsection 3410.2(b) is not clear as it allows the Search Operations Commander to alter a random selection method, but does not address the circumstances under which it may be altered. Commenter states the section should be modified so that the selection method cannot be altered unless there is reasonable suspicion to search visitors who are not randomly selected.

**Response 43K:** The Search Commander will not arbitrarily alter the random search method; however, the Department reserves the right to alter the search method upon probable cause to ensure institutional security.

**Comment 43L:** Commenter states subsections 3410.2(d)(3) and (6) are not necessary because possession of drugs and cell phone can be an innocent act and unrelated to smuggling. Commenter believes cases should only be referred for possible arrest if there is evidence the person intended to smuggle the drugs or cell phone into the prison.

**Response 43L:** The Department disagrees with the commenter. CDCR will continue to follow current law contained in both Title 15 as well as the California Penal Code. Furthermore, CDCR refers all cases of felony misconduct to the local district attorney for prosecution consideration.

#### **COMMENTS #44**

**Comment 44A:** Commenter states the proposed amendments require visitors to submit to a canine search and invasive strip searches to qualify for a contact visit and refusals for searches could result in multiple denials of contact visits and visiting bans of up to one year, which would have a chilling effect on visitation and family connection. Commenter states existing regulations are sufficient deterrents for visitors.

**Response 44A: See Responses 9A and 36D.**

**Comment 44B:** Commenter states that the high rate of false positives and the subsequent intrusive strip searches will leave CDCR and the State vulnerable to expensive litigation. Commenter urges the CDCR to abandon these amendments and consider other ways to address this issue.

**Response 44B:** CDCR does not believe existing regulations are adequate to detect contraband as is evidenced by the rate that the inmate population tests positive for the presence of illegal narcotics. **Also see the Initial Statement of Reasons and Responses Speaker 1B and Commenters 4C, 9A, 36D, and 36E.**

#### **COMMENTS #45**

**Comment 45A:** Commenter requests the CDCR not use dogs to search visitors, because dogs on leashes respond to signals from the handlers before scents of marijuana, cocaine, and poppy flower substances and frighten some women and children.

**Response 45A: See Response Speaker 1B.**

**Comment 45B:** Commenter states a searching dog that is loose around people who are not accustomed to a dog is cruel and unnecessary when visitors can be searched by a clothed pat-down, if necessary.

**Response 45B:** The Department disagrees with the commenter and contends that these regulations are necessary to stop the flow of illegal substances into our institutions and create a safer and healthier environment for our population and the public. The handlers have their canine on a short leash when conducting air scans and have had extensive training on how to conduct the air scan of a person.

**Comment 45C:** Commenter states large quantities of illegal substances are not entering prisons via visitors.

**Response 45C: See Response 1A.**

**Comment 45D:** Commenter states the taxpayers may be paying for an arbitrary practice on the part of CDCR through wrongful and unnecessary treatment in the visiting rooms. Commenter also states that airport searches of passengers, who become disgruntled, resulted in lawsuits and have largely influenced the discontinuance of the practice.

**Response 45D: See Response 1A.**

#### **COMMENTS #46**

**Comment 46A:** Commenter states these amendments would require visitors to submit to a canine search and potentially expose them to a fully unclothed strip search that will alienate and humiliate visitors, further isolate incarcerated people from their loved ones, and undermine rehabilitation and reentry goals.

**Response 46A:** CDCR strives to continue a positive visiting environment and advance rehabilitative efforts by creating an environment that is free from illegal drugs and contraband. These regulations are designed to provide that environment. A visitor however can refuse a body search after a positive alert but forfeits a contact visit for that day. However, the visitor may be authorized a non-contact visit if space is available.

**Comment 46B:** Commenter states subsection 3173.2(c)(3)(B) means if a canine signals that a visitor may have drugs on his or her person, potentially even just residue, that visitor must remove his or her clothing for a full body search by prison staff. If the visitor refuses, that visitor is unable to have a contact visit.

**Response 46B:** These regulations require consent to perform an unclothed body search as a condition of contact visiting of visitors who are randomly selected for search and that search results in a positive canine alert. Visitors who do not wish to consent to an unclothed body search may be afforded a non-contact visit if space is available.

**Comment 46C:** Commenter states this proposed policy is extremely ill-advised given the unreliability of canine searches and references an article in the Chicago Tribune that reported that three years of police department data on vehicle searches after traffic stops showed that only 44 percent of alerts by dogs led to the discovery of drugs and for Hispanic drivers, 27 percent. Also, in Massachusetts civil rights groups have plans to sue prison officials the using canine on prison visitors and may challenge the use of canines because of the high rate of false alerts and use of strip searches.

**Response 46C: See Response 1B.**

**Comment 46D:** Commenter states CDCR has not shown that a clothed pat-down search conducted by a same gender guard after a positive canine alert is insufficient to keep contraband out of prison and should demonstrate that alternatives are ineffective before imposing strip searches on visitors.

**Response 46D: See responses 25A.**

**Comment 46E:** Commenter referencing subsections 3173.2(c)(3)(G)-(H) states that refusal to submit to a strip search after a positive canine alert, automatically requires unclothed body searches the next two visits and if refused the visitor will be suspended from visiting all facilities for one year, which means,

that one single positive canine alert can result in a visitor being suspended from visiting up to a year if they are uncomfortable with a full body strip search.

**Response 46E:** These regulations are necessary to stop the flow of illegal substances into our institutions and create a safer environment for our inmate population and the general public.

**Comment 46F:** Commenter states it is unconscionable that visitors would be required to remove their clothing and have their bodies invasively searched because a dog alert that has the strong likelihood of being a false positive.

**Response 46F:** CDCR has no knowledge of a strong likelihood of false positives alerts. An unclothed search criterion has been in existence within Departments regulations for many years. See Title 15, Sections 3173.2 and 3176.

#### **COMMENTER #47**

**Comment 47A:** Commenter states searches with dogs is extreme and while canine searches within the dorms and cells are understandable, bringing them around inmates and staff poses intimidation.

**Response 47A:** The Department disagrees. CDCR is not aware of an “extreme” issue with the public being intimidated by the use of canines in Law Enforcement. Furthermore, drug detection canines are used by U.S. Customs and Border Protection, Transportation Security Administration and hundreds of law enforcement agencies throughout the nation with great success.

**Comment 47B:** Commenter states the institutions have a search and escort squad, ISU, cameras, and canines to monitor and manage contraband and it seems to be a hassle to have groups of staff at a time line up and have the canine conduct a passive search.

**Response 47B:** CDCR promulgated these regulations as existing efforts were simply not enough to keep contraband out of the institutions of the Department.

**Comment 47C:** Commenter is concerned about the safety issue to have the dogs around people, staff, and inmates at close proximity. Many people may be allergic to canines, or, if a situation gets out of control and someone is attacked by the canine, the State will face unnecessary lawsuits. Commenter further states random searches conducted today should be deemed good enough and also continue using EDDE.

**Response 47C:** CDCR notes drug detection canines are used by U.S. Customs and Border Protection, Transportation Security Administration, and hundreds of law enforcement agencies throughout the nation with great success. Dogs will not linger around any individual unless they alert to drugs or contraband. These are passive alert dogs that are trained to sit down when giving an alert. **Also see Response 9A and 28A.**

#### **COMMENTER #48**

**Commenter 48** enclosed twelve comments from youths with incarcerated parents who object to the proposed regulations.

**Response 48: See Response 1A.**

## **COMMENTS #49**

**Comment 49A:** Commenter states it is unacceptable that the proposed regulations place an undue burden on women and children who are turned away or subject to unclothed body searches and sniffed by dogs simply because a canine search, shown to be highly unreliable, registers an alarm.

**Response 49A:** CDCR has no knowledge of canine searching being highly unreliable. All persons are subject to the same criteria. Visitors are not subjected to unclothed body searches unless they are randomly selected, the random search results in a positive canine alert, and the visitor provides consent. **Also see Responses Speaker 1B and Commenters 24A and 40D.**

**Comment 49B:** Commenter states the fear of a false positive, possibility of being humiliated, violated, or wrongfully accused will discourage many from visiting. Visiting policies discourage individuals from visiting loved ones and incarcerated people who maintain positive and loving relationships with family on the outside are far less likely to reoffend when released and they are more likely to successfully transition back into society.

**Response 49B:** CDCR strives to continue a positive visiting experience and hopes that these regulations will result in an environment that is safer for staff, visitors, inmates, and all members of the public. The Department recognizes the rehabilitative benefits of safe and healthy visiting. And if the Department is successful in reducing and deterring attempts to smuggle drugs and contraband into prisons, there will be fewer alerts and fewer instances where a body search is necessary.

## **COMMENTS #50**

**Comment 50A:** Commenter urges reconsideration of the proposed changes as any money that could be spent on specially trained dogs to search for the relatively small amount of drugs would be better spent on treatment programs for those dealing with addiction issues and rather than add to a process that already targets friends and loved ones who come to visit, it is more logical to deal with the conditions that lead to addiction and the employment of real alternatives to curb this, again, small amount of drug related activity.

**Response 50A:** CDCR does not agree the cost of training drug detection canines and handlers is inefficient and cost prohibitive. CDCR affirms that the security of its institutions is paramount and this training was conducted within budgetary constraints. The costs of not addressing drug use in prisons are also high: 1) loss of life due to overdose, 2) violence stemming from an in-prison economy of drug trafficking, and 3) lost opportunity for inmate education and work assignments due to disciplinary actions for drug possession and use.

## **COMMENTS #51**

**Comment 51A:** Commenter states visitors are subject to unclothed searches, including minors, that subject them to an invasive procedure that may trigger trauma and undue distress while employees are only subject to pat-down. Commenter suggests the use of canines may be more appropriate after the visit is concluded, before the inmate is returned to their assigned housing unit.

**Response 51A:** Current regulations for the searching of inmates and minors remain intact. CDCR believes that the addition of multiple drug interdiction strategies will result in a safer environment free from illegal substances.

**Comment 51B:** Commenter states if canine are used during visitor screening, those flagged as the result of a canine alert should allow the visitor the option of a pat down to be cleared for a contact visit and if they refuse, they should be offered a non-contact visit and if they refuse a pat-down, they should be denied access to the institution.

**Response 51B:** The regulations relay the Department's position regarding searches of visitors as well as the results of a positive canine alert. The visitor in that case will be required to consent to an unclothed body search as a condition of contact visiting. Refusal will result in a non-contact visit, if space is available.

**Comment 51C:** Commenter does not believe the regulations should subject visitors, including minors, to unclothed searches and recommends the proposed regulations exclude visitors and minor children from unclothed searches. Commenter suggests pat-down searches should be the consequence for a positive canine alert involving minors and adult visitors.

**Response 51C:** CDCR does not believe pat down searches are sufficient for maintaining security and an environment free from illegal drugs. Unfortunately, adult visitors have been known to utilize children and infants in their attempts to smuggle illegal drugs into prison. **Also see Responses 30A and 40D.**

#### **COMMENTER #52 (Also Speaker)**

**Comment 52A:** Commenter states the proposed regulations would allow canine searches and the use of ION Scanner devices to be used on persons entering institutional grounds to stem an increase in the introduction of drugs and contraband into the institutions. However, this will not solve these problems. Canines are unreliable and prone to false alerts, and are more susceptible to human influence such as pointing, nodding, turning their head or gazing, than scent that may lead to false positive alert. Commenter states a positive alert on its own does not indicate a visitor is guilty and false positive alerts will lead to visitors being punished unnecessarily by a mandated strip search or have non-contact visits for next two visits space permitted.

**Response 52A:** The Department disagrees. CDCR will continue to follow current law contained in both Title 15 as well as the California Penal Code as it pertains to the searching of staff, visitors, employees of other government agencies, contractors, and their employees, and volunteers. **Also see Responses Speaker 1B and Commenters 28B, 32B, 41A, 43G, and 49A.**

**Comment 52B:** Commenter states ION scanners frequently identify false positives due to being oversensitive and can trigger false positives if the person has touched common substances such as lawfully prescribed medications, perfume, lotion, poppy seeds, and chlorine baby wipes; are limited in their ability to reliably detect cocaine, powdered or liquid forms of drugs; and may falsely identify visitors not carrying drugs and fail to identify others with drugs.

**Response 52B: See Response 28B.**

**Comment 52C:** Commenter states canine and ION scanners are an inefficient use of resources and the erroneous scanning techniques may result in some individuals who have done nothing wrong losing visiting privileges or be subject to unclothed body search and suspended from visiting all CDCR institutions for one year.

**Response 52C:** CDCR has no evidence to indicate that the use of drug detection canines is an inefficient use of resources. If individuals "have done nothing wrong" as evidenced by no canine alert or a body search following an alert that is negative, visiting will not be impacted. **Also see Response 41B.**

**Comment 52D:** Commenter references Penal Code and General Visiting Guidelines and states the proposed regulations dissuade visiting because of false positive alerts, which can result in invasive, inaccurate searches or loss of visiting privileges. Also, the expense of visiting for low income families, and the fear of dogs will likely result in decreased visits and have a negative impact on institutional violence and may harm prisoners chances of successful reentry and rehabilitation.

**Response 52D:** CDCR is dedicated to the continued positive visiting experience and believes that the addition of drug interdiction efforts will create a better atmosphere for visitors, inmates, staff, and the public. **Also see Responses Speaker 1B and Commenter 50A.**

**Comment 52E:** Commenter states that with the possibility of suspension due to three positive alerts, strip searches after each alert, or suspension from visiting for up to a year, even when no contraband was found, the regulations do not specify how these suspensions apply to legal visitors who represent visitors.

**Accommodation 52E: See Response 41G.**

**Comment 52F:** Commenter states that CDCR should approach drug and alcohol use and/or misuse with additional resources for treatment programs instead of faulty detection equipment and unreliable canines.

**Response 52F:** CDCR has implemented multiple drug interdiction efforts which include a large scale rehabilitation portion that is not the subject of these regulations. **Also see Responses 28B, 36A, and 50A.**

**Comment 52G:** Commenter states the regulations are vague, unclear, and give too much discretion to correctional officers and allows them the option to use canine scans on all visitors or a random selection. Commenter states this discretion leaves room for potential abuse and may be conducted in a way to unfairly single out certain individuals and often leads to people of color being searched at disproportionate rates.

**Response 52G:** CDCR uses identical criteria for the random selection of staff and visitors for search. **Also see Responses 6B and 9D.**

**Comment 52H:** Commenter states the regulations do not provide instructions on which visitors or staff should be searched with ION scanners, nor outlines procedures for how ION scanners, or EDDE devises, should be used. Commenter states without a process there's no guarantee they won't be used inappropriately or in a punitive manner.

**Response 52H:** The Department has mandated that only trained and certified staff will be authorized to operate any EDDE. **Also see Response 41B.**

**Comment 52I:** Commenter states the regulations do not specify an alternative for visitors who cannot undergo an ION scan for reasons such as medical concerns and without alternatives may discourage some from visiting.

**Response 52I:** The Department is unaware of any medical condition which may preclude an individual from going through the ION Scanner process. CDCR will continue to comply with Title 15 and the ADA.

**COMMENTS #53**

**Comment 53A:** Commenter states the proposed regulations can't ensure the reason for their adoption, deterring and detecting drug trafficking, are met because they allow random canine searches and the randomness won't guarantee results since traffickers may not be selected for screening.

**Response 53A:** Short of screening all people entering prisons, a random search methodology is the best and most defensible way to select individuals for searches. Random selection insures that all individuals have an equal chance of being selected and that selection is not based on bias or profiling. CDCR intends to monitor the success of the Department's drug interdiction efforts continually in an effort to improve the conditions of confinement and achieve an environment free from narcotics.

**Comment 53B:** Commenter states canine searches are unreliable and subject to the handler's influence/biases and would likely lead to a disparate impact on persons of certain ethnic or religious groups. The commenter states a disparate and discriminatory program would likely lead to false positives the likelihood of civil right complaints against the CDCR.

**Response 53B:** CDCR does not have any evidence that canine searches are unreliable. Canines are color blind and have no ingrained bias towards certain ethnic groups that the Department is aware of. **Also see Responses Speaker 1B and Commenter 9A.**

**Comment 53C:** Commenter states canine searches are unnecessary, citing data available including the ISOR, commenter states the current methods are over-effective at detecting those trafficking drugs.

**Response 53C:** CDCR does not believe current methods are sufficient to achieve an environment free of narcotics. The baseline testing data cited in the Initial Statement of Reasons indicated that more than one in five inmates tested positive for illegal drugs under the Department's current search and drug interdiction methods. The Department must do more. CDCR believes and data shows that current methods used for searching visitors, staff, and others are not sufficient to slow the tide of illegal substances entering our institutions and developed these regulations to apply to all persons and not just visitors. CDCR strives to continually improve methods used for searching visitors, staff, and inmates and impede illegal substances entering institutions. CDCR seeks to protect the inmate population and the public from the harm that illegal drugs pose.

**Comment 53D:** Commenter states there is a reasonable, effective, less-burdensome, more cost-effective alternative to a strip search, which is the pat down search employees will be subject to.

**Response 53D:** CDCR does not believe that a clothed body search is sufficient security in all cases and has promulgated regulations that call for the unclothed search of visitors as a condition of contact visiting after a positive canine alert. **Also see Response 9E.**

**Comment 53E:** Commenter states American Muslims would be unable to subject themselves to a strip search resulting from a possible false positive as it violates their religious beliefs and they would have to choose between visiting or observing their religion since there are no exceptions that accommodate religious beliefs.

**Response 53E:** The regulations governing the unclothed search of persons have been in place for many years. These regulations did not create new parameters for an unclothed body search. These regulations do add the random searching of persons utilizing a drug detection canine. If a positive canine alert occurs, the visitor would be subject to a request for an unclothed body search as a condition of contact visiting. A visitor may refuse such a search and a non-contact visit may be authorized if space is available.

## COMMENT #54

**Comment 54A:** Commenter states forty-six days are not a sufficient period for parties to respond to the proposed regulations and requests a longer comment period.

**Response 54A:** Pursuant to Government Code (GC) section 11346.4, at least 45 days prior to the hearing and close of the public comment period on the regulations, the notice was filed with, approved by OAL, and mailed to all interested parties. Additionally, the Notice was published in the California Regulatory Notice Register in compliance with GC section 11346.4(a)(5). The public notices for these regulations were mailed on or before October 31, 2014, and the public comment period closed on December 16, 2014. The Administrative Procedure Act was adhered to.

**Comment 54B:** Commenter is concerned that if the proposed regulations apply to court appointed and retained counsel they will not be able to carry out their obligations to their clients and duties to the appointing court if they are subject to strip searches.

**Response 54B:** These regulations apply to attorneys and do not prohibit them from carrying out their duties. The regulations do subject them to searching if randomly selected for search, however, provides options. The Department has not proposed any language that would deny or limit access to the assistance of legal counsel, but rather ensured that all persons are subjected to the same criteria to effectively eliminate accusations that those that are not searched are solely responsible for the introduction of contraband and drugs.

**Accommodation: See Response 41G.**

**Comment 54C:** Commenter states the proposed regulations lack clarity and are vague in how they will be applied to civil service employees and if they will be considered visitors or other government agencies and the regulation must recognize the difference between legal visitors and other visitors.

**Accommodation: See Response 41G.**

**Comment 54D:** Commenter states the regulations lack clarity and are vague as to how the searches will be carried out and how close the leashed dog will be to the visitors during an air scan. Commenter references *Estes v. Rowland* which require dogs searching visitor's vehicles must be at least 20 feet away from visitors.

**Response 54D:** CDCR has reviewed the *Estes* decision and finds no violation of that decision. As commenter notes, *Estes* applies to searches of visitor's vehicle. CDCR does not believe the regulations are vague.

**Comment 54E:** Commenter states the regulations are also vague and unclear as to how CDCR intends to carry out those searches and do not specify who may authorize a strip search. Commenter is concerned if court-appointed and retained counsel test positive during intrusive canine sniff that will lead to unclothed body searches it will interfere and infringe on the attorney-client relationship and inmates' constitutional rights.

**Response 54E:** CDCR will carry out searches in the same manner we do today pursuant to Title 15, Section 3173.2 and Penal Code section 6402. Visitors to our institutions must consent to search as a result of a positive canine alert. Visitors may refuse to give that consent and will then not be searched. They will also be denied entry based upon the positive canine alert for the presence of illegal narcotics. CDCR

does not observe any violation of the attorney-client relationship. The Department recognizes the importance of visiting and does not intend to turn visitors away that test positive. Language has been included to address options for non-contact visiting for those who test positive and do not want to submit to an unclothed body search.

**Accommodation: See Response 41G.**

**Comment 54F:** Commenter believes the proposed regulations are unnecessary because alternatives to attorneys are already in place in some institutions and references how it is done at San Quentin. Because CDCR has no substantial evidence that court appointed and retained attorneys are responsible for drugs, cell phones, or other contraband being smuggled into the prison system, the proposed regulations requiring enhanced screening of counsel are not necessary.

**Response 54F:** CDCR does not believe that the proposed regulations are unnecessary. **Also see Response 9A.**

**Comment 54G:** Commenter states canine searches violate the Fourth Amendment rights against unreasonable searches and seizures, are overly intrusive as well as unreliable to justify strip searches of court appointed and retained counsel. Canine searches can provoke fear and humiliation. Canines are trained to detect certain odors that may also come from over-the-counter and prescription medications such as body lotions, perfumes, poppy seed muffins, pickles, which can yield a positive result consistent with contraband drugs and also violate the Fourth Amendment rights of court appointed counsel.

**Response 54G:** CDCR has no information that these searches will be unreliable. Canines are not trained to alert to over the counter prescription medications. CDCR does not believe the regulations violate the Fourth Amendment. **Also see Response 26A.**

**Accommodation 54G: See Response 41G.**

**Comment 54H:** Commenter states the level of sensitivity to a substance a dog has been trained to alert to will impact the number of false positives and asks if a dog will alert if an individual uses their cell phone or handles a pack of cigarettes; or inadvertently contact with trace amounts of illegal drugs by handling money with drug residue, or contact with other dogs even though the individual has never possessed contraband, which will require attorneys to submit to an invasive body search or be denied the opportunity to have contact visits with a client.

**Response 54H:** Canines used for the searching of people are not trained to alert to cellphones or tobacco. Canines used for the searching of people are only trained to alert to illegal narcotics. A positive canine alert is defined in the regulations. CDCR does not outright deny entry but require all persons seeking entry to abide by these regulations. **Also see Responses 7A, 24E, and 54B.**

**Accommodation 54G: See Response 41G.**

**Comment 54I:** Commenter states there may be some false positive alerts when handlers intentionally or subconsciously cueing their canine.

**Response 54I: See Responses Speaker 1B and Commenter 53B.**

**Comment 54J:** Commenter states forcing attorneys to intrusive canine sniff and unclothed search will undoubtedly add additional delays and costs to the defense delivery system and suggest the regulations

should be amended for staff to utilize a less intrusive search such as pat-downs.

**Response 54J:** CDCR has accounted for processing times as they relate to the random searches of persons. The Department recognizes the importance of visiting and does not intend to turn visitors away that test positive. Language has been included to address options for non-contact visiting for those who test positive and do not want to submit to an unclothed body search. CDCR maintains the ability and resources to perform searches and inspections as necessary to maintain the safety and security of Department institutions. Illegal substances constitute an ongoing threat to the safety and security of institution staff, inmates and the public. The Department must step up its drug interdiction efforts. **Also see Responses 13G and 54B.**

**Comment 54K:** Commenter states the regulations do not define the parameters of a unclothed body search and asks if staff will do anything beyond inspecting the individual, will be visitor be required to move in various ways and if so, what ways? Nor do the regulations distinguish the difference between strips search and body cavity search that are so intrusive, the manner they are implemented must be in the regulations.

**Response 54K:** CDCR will accomplish all unclothed body searches in continued compliance with the Title 15, subsection 3173.2(c) and Penal Code section 6402.

**Comment 54L:** Commenter states the regulations do not describe baseline standards canine teams must meet prior to conducting air scans in close proximity to visitors.

**Response 54L:** All canine Handlers must pass the course mentioned in previous responses. **See Responses Speaker 1B and Commenter 7A.**

**Comment 54M:** Commenter states there is no indication visitors who are required to reveal medical history will be entitled to privacy, that CDCR will keep the information confidential, or employees involved in obtaining and maintaining the information are subject to established rules of conduct and other applicable laws.

**Response 54M:** CDCR does not intend to keep copies of any medical information and does not demand visitors reveal any such information. All employees of the Department are charged with obeying rules of conduct and State and federal law.

**Comment 54N:** Commenter references subsection 3173.2(c)(4)(C) and states the regulations fail to specify what factors the Visiting Lt. will use to authorize a regular visit if the visitor provided information that prescribed medication is the source of a positive scan.

**Response 54N:** The Visiting Lieutenant will be tasked with reviewing the information relating to the prescribed medication, such as the verification of the prescription and determining if that medication could result in the positive canine alert. This will be conducted in concert with the canine handler to determine if the canine is trained to alert to the prescribed medication.

**Comment 54O:** Commenter references *Estes v. Rowland* and states the regulations may violate existing law regarding the time and manner visitors receive notice of canine searches.

**Response 54O:** See Response 54D.

**Comment 54P:** Commenter states clarification is needed as to why "Positive Canine Alert" is defined

that they are trained to alert when they detect drugs, tobacco, or cell phones on a person or within specific articles of property, and proposed subsections 3173(c)(1) and 3173(c)(2)(A) refer only to drug detection.

**Response 54P:** Canines used for the searching of people are not trained to alert to cellphones or tobacco. Canines used for the searching of people are only trained to alert to illegal narcotics. A positive canine alert is defined in the regulations.

**Comment 54Q:** Commenter references the Economic Impact Assessment and states that CDCR has failed to take into account and describe potential costs of the proposed regulations if civil service employees are subjected to intrusive searches of their persons.

**Response 54Q:** CDCR has taken into account any resources and/or costs involved, if any, in the searching of all persons at random who request entry into our institutions.

**Comment 54R:** Commenter referencing the ISOR states that CDCR is implementing passive canine searches to the extent allowed with existing resources and states clarification is needed as to CDCR's ability to implement the extensive expansion of the program.

**Response 54R:** See Response 36B and the Economic Impact Assessment in the Initial Statement of Reasons.

**Comment 54S:** Commenter states CDCR has incorrectly concluded the regulations will not have an adverse impact directly affecting small businesses and comments suggests that either the court or private business will borne the expenses of an attorney who visits a client at an institution and refuses to submit to intrusive canine or unclothed strip search after a canine screening that yields a false positive alert and is denied access to their client. Commenter requests the regulations be modified to exclude attorneys.

**Response:** See Response 43C.

**Accommodation:** See Responses 41G

#### **COMMENTS #55**

**Comment 55A:** Commenter suggests that because the process can be intimidating for visitors, especially children, canine searches should be performed on the inmate following a visit and prior to returning to an assigned housing unit as an alternative to canine searches and possible unclothed searches, and replacing unclothed searches with pat downs of visitors when there is an indication of smuggling would be less intrusive and have a similar result as an unclothed search.

**Response 55A:** The process for searching inmates prior to and after visiting remains intact; however, CDCR believes more is required to achieve an environment free from illegal substances. **Also see Responses 9E, 9L, 35A, 37A, and 54S.**

#### **COMMENTS #56**

**Comment 56A:** Commenter is concerned inmates and visitors could be charged with possession and punished when the charges could be the result of a false positive or trace amounts of some substance that they accidentally picked up on their clothing from the environment and states there should be additional corroborating evidence before severe or extended punishment occurs.

**Response 56A:** CDCR cannot refer acts for prosecution that do not meet the threshold contained in the California Penal Code. CDCR is not aware of any case of false positives resulting in prosecution when no other evidence of illegal drugs is obtained.

**Comment 56B:** Commenter states a canine search should only be the first step in the investigation and there should be additional corroborating evidence before severe or extended punishment occurs. Commenter would hate to see innocent visitors lose their visitation privileges over a mistake.

**Response 56B: See Response 36H.**

#### **COMMENTER # 57**

**Comment 57A:** Commenter states these searches are unwarranted, ineffective, and most important, too expensive given the limited benefit. This money would better be spent on rehabilitation.

**Response 57A: See Responses 1A and 24A. Also see Economic Impact Assessment in the ISOR.**

**Comment 57B:** Commenter states the proposed regulations around canine searches remain targeted towards visitors and those incarcerated as opposed to staff or contractors. Staff and contractors have the most direct and least fettered access to prisoners yet, in the event of a "positive canine alert," they would only be subject to a pat-down, whereas visitors would be subject to strip-searches and if they decline, lose their visit and possibly their next two visits. Also, any visitor who refuses a strip-search following a "positive canine alert" and/or "positive Electronic Drug Detection Equipment alert" three times within a twelve-month period may be suspended from visiting all CDCR facilities for a year. Those incarcerated, similarly, cannot refuse a strip-search without being subject to disciplinary action and unspecified further searches, and urine testing.

**Response 57B:** Inmates may appeal any CDCR decision, action, condition, policy, or regulation that has a material adverse effect upon their welfare and for which there is no other prescribed method of departmental review/remedy available. **Also see Responses 29A and 38A.**

**Comment 57C:** Commenter states no emergency exists to justify the emergency regulations approved by the OAL in October or current proposed regulations. Commenter quoted the ISOR and states that of the 4000 documented drug related incidents in California prisons, there were about 2.98 for each 100 people in custody and the CDCR already conducts pat-downs and other searches if they believe a person has contraband.

**Response 57C:** California Penal Code section 5058.2 gives the Department statutory authority to adopt, amend, or repeal regulations as an emergency if the operational needs of the Department so require. Also, the baseline inmate urine testing data cited in the ISOR clearly establish that illegal drug use in California prisons is a problem. The Department must do more to interdict illegal drugs entering prisons.

**Comment 57D:** Commenter states electronic drug detectors and dogs are unreliable.

**Response 57D: See Responses 9A and 28B.**

**Comment 57E:** Commenter asks what it means when CDCR says that the money to enforce these new regulations will come from existing resources. Scanners cost in the tens of thousands. According to the Glendale Police Department the initial cost to purchase and train a dog alone can cost \$20,000. How is it

that CDCR can find money or resources to implement the new search regulations, without being able to use existing resources dedicated for rehabilitation funding? Commenter states the CDCR should cancel these searches.

**Response 57E: See Response 1A. Also see Economic Impact Assessment in the Initial Statement of Reasons.**

## **SUMMARIES AND RESPONSES TO COMMENTS RECEIVED DURING READOPTION**

### **READOPT COMMENTER #1:**

**Readopt Comment 1A:** Commenter opposes the emergency adoption of these regulations because the Department has not finalized the language and responded to all comments submitted through the regular process, which sends a signal to the public that the regulations will be implemented no matter what concerns are expressed.

**Readopt Response 1A:** CDCR has made changes to the original text in response to public comments. **Also see Response 36E.**

**Readopt Comment 1B:** Commenter states there is great latitude for abuse, unnecessary searches, and humiliation of visitors. Commenter has heard of incidents of trauma caused by strip searches as a result of false positives on ION Scanners and a quick search of the history of dog searches/alerts shows the same problems and potential for errors in dog search that result in false alerts and if these searches are refused, result in the loss of contact visiting and a possibility of 3 refused searches with alerts leading to loss of visiting for a year.

**Readopt Response 1B: See Responses Speaker 1B and Commenters 9A, 28B, and 52A.**

**Readopt Comment 1C:** Commenter is confused by the language in subsection 3173.2(c)(3)(F) because it is unclear and seems to contradict itself.

**Accommodation:** The language in subsection 3173.2(c)(3)(F) was amended to clarify that only a positive canine alert or if drug paraphernalia is discovered will a unclothed body search be required for a contact visit.

## **SUMMARIES AND RESPONSES TO COMMENTS RECEIVED DURING 15-DAY RENOTICE**

**Public comment period was April 20, 2015 through May 11, 2015.**

### **COMMENTER #1R**

**Comment A:** Commenter states searches should not be permitted in visiting rooms during attorney visits as a canine search while an attorney and client are meeting would violate their right to meet confidentially. Commenter recommends the text clarify that canine searches may not be conducted during attorney visits.

**Response A:** Section 3178 adequately protects the confidentiality of attorney visits with inmates. Section 3178(b) requires an attorney visit with an inmate to be conducted in a confidential area. Section 3178(m) bars CDCR personnel from listening in on any conversation between an inmate and an attorney during the visit. As such, CDCR personnel are not permitted to be in the room while the attorney

is consulting with an inmate. Because a departmental canine must be accompanied by its handler and the handler cannot be in the room during the confidential consultation, a canine search cannot be conducted while an attorney is confidentially consulting with an inmate.

**Comment B:** Commenter states subsection 3410.2(d)(1) as amended is vague and overbroad because it does not limit the scope of the search to contraband and provide protections for attorney's confidential legal material. Commenter recommends the text specify that any search of materials brought in by attorneys or a legal organization be for contraband only and the documents not be read and the search should be conducted in the presence of the person to whom the materials belong.

**Response B:** Section 3178(n) adequately limits the scope of any search of materials brought in by an attorney and protects the confidentiality of the materials. The purpose of such searches is to ensure the contents pose no threat to the security or safety of the institution/facility, including the introduction of unauthorized drugs, controlled substances, and contraband as defined in section 3006, pursuant to section 3178(n)(2). CDCR staff is barred from reading any materials without the express consent of the attorney or the inmate, pursuant to section 3178(n)(1).

**Comment C:** Commenter states that attorneys cannot be permanently excluded from CDCR facilities and recommends the bold double underlined text in subsection 3410.2(d)(4) be removed.

**Accommodation: See Response 41G.**

#### **COMMENTS #2R**

**Comment A:** Commenter is not only terrified of dogs, but also allergic to dogs and feels CDCR is trying to keep individuals from visiting their loved ones. Commenter states some visitors do bring in drugs, but the majority do not and CDCR already has ION machines and several other means of detouring visitor from bringing in drugs and asks why CDCR doesn't focus on where the majority of drugs are actually brought in, staff.

**Response A: See Response to Comment 1A.**

#### **COMMENTS #3R**

**Comment A:** Commenter states that it doesn't appear Recommendations #2 and #3 made during the 45-Day comment period were incorporated into the revision and asks if they were considered or rejected.

**Response A:** Recommendations were considered and addressed in the FSOR. No untrained staff will be conducting unclothed body searches.

#### **COMMENTS #4R**

**Comment A:** Commenter states the text in subsection 3410.2(d)(4) regarding attorneys who refuse to submit to a search following a positive canine alert be permanently excluded from all CDCR institutions, violates inmates constitutional right to counsel.

**Response A:** Visitors to our institutions must consent to search as a result of a positive canine alert. Visitors may refuse to give that consent and will then not be searched. They will also be denied entry based upon the positive canine alert for the presence of illegal narcotics. The Department recognizes the

importance of visiting and does not intend to turn visitors away that test positive. Language has been included to address options for non-contact visiting for attorneys who test positive and do not want to submit to a clothed body search.

**Accommodation: See Response 41G.**

**Comment B:** Commenter is concerned subsection 3410.2(c)(1) appears to allow canine searches in visiting rooms while an attorney is meeting with their client and this violates the attorney's constitutional right to meet and confer confidentially and must be amended to clarify that canine searches may not be conducted during visits.

**Response B:** See Commenter 1R, Response A.

**Comment C:** Commenter is concerned the additional text in subsection 3410.2(d)(1) is vague and overbroad and provides for a thorough search of items brought in by an attorney or member of a legal organization if there is a canine alert during an air scan.

**Response C:** See Commenter 1R, Response B.

**Comment D:** Commenter states CDCR has failed to take into account and describe the potential costs of the new text because the Office of the State Public Defender is a general fund department with civil service employees and they may be unwilling to forgo their privacy rights and therefore would be unable to do their assigned work.

**Response D:** The Department is unable to take into account all potential situations where cost may arise. See Commenter 4R, Response A above.

## **SUMMARIES AND RESPONSES TO COMMENTS RECEIVED DURING 2<sup>ND</sup> 15-DAY RENOTICE**

**Public comment period was from May 20, 2015, through June 5, 2015.**

### **COMMENTS #1RR**

**Comment A:** Commenter does not see where tobacco is in the same category as illegal drugs and asks that if someone has smoked in their car or elsewhere prior to visiting, how would a canine, trained to sniff air, be able to distinguish if the visitor had been smoking or the smell of tobacco was on their clothing and would the visitor be safe from being marked through a positive canine alert?

**Response A: See Response to Comment 1A.**

**Comment B:** Commenter asks how reliable are the ION scanners and canine search in terms of false positives and what protection would they have against being falsely cited?

**Response B See Response to Comment 1A.**

**Comment C:** Commenter states that strip searches of women is beyond humiliating and asks is there no other way to conduct a search?

**Response C: See Response to Comment 1A.**

**Comment D:** Commenter asks if these searches only for visitors to general population or also SHU visitors?

**Response See Response to Comment 1A.**

**Comment E:** Commenter states these regulations fly in the face of CDCR's stated mission to promote family bonds and these searches only catalyze fear in family members and discourage them from visiting.

**Response E: See Response to Comment 1A.**

**Comment F:** Commenter states that to refuse a strip search should be an inalienable right and refutes statement (B) that the visitor has the right to refuse the search and it is unconscionable that a visitor would lose visits for up to a year for refusing a strip search three times.

**Response F: See Response to Comment 1A.**

#### **COMMENTER #2RR**

**Comment A:** Commenter opposes the use of ION Scanners, canine air scan searches, strip searches, and denying contact visits for refusing strip searches because a swab that is scanned for a variety of drugs are notoriously prone to false positives.

**Response A: See Response to Comment 1A.**

**Comment B:** Commenter states if a visitor is found to be positive, they must leave, accept a non-contact visit, submit to a fully naked strip search, which is grotesque, degrading, and a traumatizing experience that when performed on captured populations in war zones is considered by many experts to be a war crime.

**Response B: See Response to Comment 1A.**

**Comment C:** Commenter states these searches are intrusive and degrading to family members and loved ones mostly marginalized poor women of color, and because many small children are terrified of police dogs, using dogs to sniff visitor will be a severe deterrent to their visiting and alienates family members. Cutting off contact visits tortures people inside and their loved ones inside.

**Response C: See Response to Comment 1A.**

**Comment D:** Commenter states the original intent was to keep drugs and cell phones from being smuggled into prisons, but this contraband is most often brought in by guards for sale to prisoners and if they test positive are only subject to an airport type pat-down search, while visitors have to submit to a strip search, which is fundamentally wrong, unfair, and outrageous.

**Response D: See Response to Comment 1A.**

#### **COMMENTER #3RR**

**Comment A:** Commenter strongly oppose the use of canine air scan searches for tobacco and denying visitors the right to refuse strip searches on a constitutional and moral level and asks CDCR to not implement these rules, but to focus on screening guards for tobacco and other contraband before targeting

and humiliating family members who have made the long, arduous journey to connect with their loved ones behind bars.

**Response A: See Response to Comment 1A.**

#### **COMMENTS #4RR**

**Comment A:** Commenter is deeply concerned about the new regulations as the 2<sup>nd</sup> Renotice adds an expanded definition of what dogs will be searching for in Title 15, Section 3000 and if dogs are trained to detect tobacco among other substances, you are putting a large number of people in jeopardy, not because they have done anything wrong, but because the dog detects tobacco, which will trigger strip searches, loss of contact visits, and possible arrests.

**Response A: See Response to Comment 1A.**

**Comment B:** Commenter urges CDCR to remove tobacco from the list of substances dogs are trained to detect as both ION Scanners and canines are highly unreliable for providing relevant information. Commenter states positive hits can come from fingering dollar bills in one's pocket and now from smoking or being around someone who smokes.

**Response B: See Response to Comment 1A.**

#### **COMMENTS #5RR**

**Comment A:** Commenter opposes the new drug interdiction program and the use of notoriously unreliable ION Scanner, canine air scan searches and now adding the search for tobacco, strip searches of any visitor singled out by ION Scanning or dogs, and denying contact visits for up to one year if a strip search is refused 3 times in one year.

**Response A: See Response to Comment 1A.**

**Comment B:** Commenter states a swab provided by visitors to be scanned for traces of drugs are notoriously prone to false positives and are like contaminated by prohibited substances.

**Response B: See Response to Comment 1A.**

**Comment C:** Commenter states that if a visitor is found to be positive, they must leave, accept a non-contact, behind the glass visit and for a contact visitor submit to a fully naked strip search which is a grotesque, degrading, traumatizing, dehumanizing experience, which many experts consider a war crime when performed on captured population in war zones.

**Response C: See Response to Comment 1A.**

**Comment D:** Commenter states these searches are intrusive and degrading to family members and loved ones attempting to visit, mostly marginalized poor women of color. Commenter further states that because many small children are terrified of dogs, using dogs to sniff visitor will be a severe deterrent to their visiting and will alienate family member and loved ones from visiting and contact with family and friends is essential for the well-being of inmates and cutting off contact visits tortures people inside and loved ones outside.

**Response D: See Response to Comment 1A.**

**Comment E:** Commenter states the original intent was to keep drugs and cell phones from being smuggled into prisons, but this contraband is brought in by guards for sale to prisoners and only visitors have to submit to a strip search to visit. Employees, contractors, and volunteers who test positive are only subject to an airport type pat-down search, which is fundamentally wrong, unfair and outrageous. Commenter states prisons must treat drug problems, not enforce a punitive system that denies contact visits by family. Prisons are public institutions and the public must have a say in how they are run.

**Response E: See Response to Comment 1A.**

**COMMENTS #6RR**

**Comment A:** Commenter believes there is no reason to submit a person visiting an incarcerated loved one in an already highly controlled and secure environment to the gross invasion of an unclothed search under all but the direst circumstances. Commenter referencing a study conducted at the University of California, Davis, states the danger for CDCR using drug sniffing dogs is that dogs may give alerts based upon perceptions of the handlers, and referencing an article in the Sydney Morning Herald, commenter states that a false alert on a highly unreliable drug sniffing dog requires a person to a strip search which is dehumanizing and degrading.

**Response A: See Response to Comment 1A.**

**Comment B:** Commenter states that strip searches based on unreliable, false alerts could make CDCR legally liable to the people they search.

**Response B: See Response to Comment 1A.**

**Comment C:** People will not want to visit CDCR facilities if they know there is a high possibility of being subjected to a strip search and no visitors could mean high recidivism.

**Response C: See Response to Comment 1A.**

**Comment D:** Commenter states people smuggling contraband are jail and prison staff and to combat drug use in prison, increased searches on staff would have a stronger effect.

**Response D: See Response to Comment 1A.**

**Comment E:** Commenter states CDCR should not adopt failing policies that have been challenged in other correctional facilities and instead conduct itself as a leader in smart, sensible policies to encourage visitation as it is beneficial toward rehabilitation.

**Response E: See Response to Comment 1A.**

**Comment F:** Commenter states current search regulations are extensive enough and the use of drug sniffing dogs and possible no-clothing search is excessive.

**Response F: See Response to Comment 1A.**

**Comment G:** Commenter, referencing a letter issued by the New York Civil Liberties Union, states that ION Scanners are not a reliable method of detecting contraband and subjecting visitors to a method of search that is unreliable creates stress for visitors and does not help in detecting illegal substances.

**Response G: See Response to Comment 1A.**

**Comment H:** Commenter recommends CDCR completely revoke these proposed regulation and demand they be deleted from proposed regulations entirely and if CDCR insists on using dogs and scanners to justify and invasion of privacy and violation of human rights, the following be added and strictly enforced: Only pat-down searches for visitors; decommissioning any canine, canine handler, or scanner with over three false positives; and individual subjected to body searches have the right, be informed of the right to bring a witness to guard against false accusations, sexual, or any other misconduct by officers.

**Response H: See Response to Comment 1A.**

**CRIME / INCIDENT REPORT**

**PART A - COVER SHEET**

CDCR 837-A (Rev. 07/05)

	PAGE 1 OF _____	INCIDENT LOG NUMBER	INCIDENT DATE	INCIDENT TIME			
INSTITUTION	FACILITY	FACILITY LEVEL <input type="checkbox"/> I <input type="checkbox"/> II <input type="checkbox"/> III <input type="checkbox"/> IV	INCIDENT SITE	LOCATION	<input type="checkbox"/> ASU <input type="checkbox"/> SHU <input type="checkbox"/> PSU <input type="checkbox"/> SNY <input type="checkbox"/> PHU <input type="checkbox"/> CTC <input type="checkbox"/> GP <input type="checkbox"/> RC	SEG. YARD: <input type="checkbox"/> CC <input type="checkbox"/> WA <input type="checkbox"/> RM	USE OF FORCE <input type="checkbox"/> YES <input type="checkbox"/> NO

SPECIFIC CRIME / INCIDENT \_\_\_\_\_

CCR    PC    N/A  
NUMBER/SUBSECTION: \_\_\_\_\_

D. A. REFERRAL ELIGIBLE <input type="checkbox"/> YES <input type="checkbox"/> NO	CRISIS RESPONSE TEAM ACTIVATED <input type="checkbox"/> YES <input type="checkbox"/> NO	MUTUAL AID REQUESTED <input type="checkbox"/> YES <input type="checkbox"/> NO	PIO/AA NOTIFIED <input type="checkbox"/> YES <input type="checkbox"/> NO
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**RELATED INFORMATION (CHECK ALL THAT APPLY OR N/A)**

DEATH	CAUSE OF DEATH	ASSAULT / BATTERY	TYPE OF ASSAULT / BATTERY
<input type="checkbox"/> INMATE <input type="checkbox"/> STAFF <input type="checkbox"/> VISITOR <input type="checkbox"/> OTHER: _____ <input type="checkbox"/> N/A	<input type="checkbox"/> ACCIDENTAL <input type="checkbox"/> NATURAL <input type="checkbox"/> EXECUTION <input type="checkbox"/> UNKNOWN <input type="checkbox"/> HOMICIDE <input type="checkbox"/> SUICIDE <input type="checkbox"/> OVERDOSE <input type="checkbox"/> N/A	<input type="checkbox"/> ON INMATE <input type="checkbox"/> ON STAFF <input type="checkbox"/> ON VISITOR <input type="checkbox"/> OTHER: _____ <input type="checkbox"/> N/A	<input type="checkbox"/> BEATING <input type="checkbox"/> SPEARING <input type="checkbox"/> GASSING <input type="checkbox"/> STABBING <input type="checkbox"/> POISONING <input type="checkbox"/> STRANGLING <input type="checkbox"/> SEXUAL <input type="checkbox"/> OTHER: _____ <input type="checkbox"/> SHOOTING <input type="checkbox"/> SLASHING <input type="checkbox"/> N/A

SERIOUS INJURY	INMATE WEAPONS	TYPE OF WEAPON / SHOTS FIRED / FORCE
<input type="checkbox"/> INMATE <input type="checkbox"/> STAFF <input type="checkbox"/> VISITOR <input type="checkbox"/> OTHER: _____ <input type="checkbox"/> N/A	<input type="checkbox"/> CHEMICAL SUBSTANCE <input type="checkbox"/> CLUB / BLUDGEON <input type="checkbox"/> EXPLOSIVE <input type="checkbox"/> FIREARM <input type="checkbox"/> HANDS / FEET <input type="checkbox"/> KNIFE <input type="checkbox"/> SAP/SLUNG SHOT <input type="checkbox"/> PROJECTILE <input type="checkbox"/> SPEAR <input type="checkbox"/> SLASHING INSTRUMENT: (TYPE) _____ <input type="checkbox"/> STABBING INSTRUMENT: (TYPE) _____ <input type="checkbox"/> OTHER: _____ <input type="checkbox"/> BODILY FLUID <input type="checkbox"/> OTHER FLUID: _____ <input type="checkbox"/> UNKNOWN LIQUID <input type="checkbox"/> N/A	<b>WEAPON:</b> <input type="checkbox"/> MINI 14 <input type="checkbox"/> 38 CAL. <input type="checkbox"/> 9MM <input type="checkbox"/> SHOTGUN <b>LAUNCHER:</b> <input type="checkbox"/> 37MM <input type="checkbox"/> L8 <input type="checkbox"/> 40MM <input type="checkbox"/> 40MM MULTI <input type="checkbox"/> HFWRs <b>FORCE:</b> <input type="checkbox"/> EXPANDABLE BATON <input type="checkbox"/> PHYSICAL FORCE <input type="checkbox"/> X10 <input type="checkbox"/> OTHER: _____
	<b>TYPE:</b> <input type="checkbox"/> COMMERCIAL WEAPON <input type="checkbox"/> INMATE MANUFACTURED WEAPON	<b>WARNING #</b> _____ <b>EFFECT #</b> _____ <b>BATON ROUND:</b> <b>TYPE / NO:</b> WOOD _____ RUBBER _____ FOAM _____ <b>STINGER:</b> .32 (A) _____ .60 (B) _____ <b>EXACT IMPACT</b> CTS 4557 _____ XM 1006 _____ <b>CHEMICAL:</b> <input type="checkbox"/> OC _____ <input type="checkbox"/> CN _____ <input type="checkbox"/> CS _____ <input type="checkbox"/> N/A

CONTROLLED SUBSTANCE	WEIGHT	PROGRAM STATUS	EXCEPTIONAL ACTIVITY
<input type="checkbox"/> POSITIVE UA <input type="checkbox"/> CONTROLLED MEDS  <input type="checkbox"/> AMPHETAMINE <input type="checkbox"/> BARBITURATES <input type="checkbox"/> COCAINE <input type="checkbox"/> CODEINE <input type="checkbox"/> HEROIN <input type="checkbox"/> MARIJUANA/THC <input type="checkbox"/> METHAMPHETAMINE <input type="checkbox"/> MORPHINE <input type="checkbox"/> OTHER: _____ <input type="checkbox"/> N/A	<input type="checkbox"/> WITH PACKAGING <input type="checkbox"/> WITHOUT PACKAGING PRELIMINARY   LAB _____ _____ _____ _____ _____	<input type="checkbox"/> MODIFIED PROGRAM <input type="checkbox"/> LOCKDOWN <input type="checkbox"/> STATE OF EMERGENCY  IF YES, LIST AFFECTED PROGRAMS:  <input type="checkbox"/> N/A	<input type="checkbox"/> EMPLOYEE JOB ACTION <input type="checkbox"/> ENVIRONMENTAL HAZARD <input type="checkbox"/> EXPLOSION <input type="checkbox"/> FIRE <input type="checkbox"/> GANG/DISRUPTIVE GROUP <input type="checkbox"/> HOSTAGE <input type="checkbox"/> INMATE STRIKE <input type="checkbox"/> MAJOR DISTURBANCE <input type="checkbox"/> MAJOR POWER OUTAGE <input type="checkbox"/> NATURAL DISASTER <input type="checkbox"/> PUBLIC DEMONSTRATION <input type="checkbox"/> SPECIAL INTEREST I/M  <input type="checkbox"/> WEATHER <input type="checkbox"/> SEARCH WARRANT <input type="checkbox"/> ARREST <input type="checkbox"/> OTHER: _____  EXTRACTION: <input type="checkbox"/> CALCULATED <input type="checkbox"/> EMERGENCY  <input type="checkbox"/> N/A

BRIEF DESCRIPTION OF INCIDENT (ONE OR TWO SENTENCES):

COMPLETE SYNOPSIS / SUMMARY ON PART A1

NAME OF REPORTING STAFF (PRINT/TYPE)	TITLE	ID #	BADGE #
SIGNATURE OF REPORTING STAFF		PHONE EXT. (INCIDENT SITE)	DATE
NAME OF WARDEN / AOD (PRINT/SIGN)		TITLE	DATE

**NOTICE OF VISITOR  
WARNING/TERMINATION/SUSPENSION/DENIAL/REVOCAATION**

**DISTRIBUTION:**  
ORIGINAL - Visiting File  
CANARY - Inmate  
PINK - Visitor

TO: (Inmate's Name)	CDC NUMBER	INSTITUTION	UNIT
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REGARDING: (Name of Visitor)

**VISITING VIOLATION**

**ACTION TAKEN (Check the box(es) that apply):**

- |  |  |
|--|--|
| <input type="checkbox"/> Verbal Warning _____<br>DATE  | <input type="checkbox"/> Termination For The Day _____<br>DATE |
| <input type="checkbox"/> Written Warning _____<br>DATE | <input type="checkbox"/> Other: _____<br>DATE                  |

DESCRIPTION OF VISITING VIOLATION INCIDENT:

REASON FOR ACTION TAKEN:

Action taken by \_\_\_\_\_ on \_\_\_\_\_  
PRINT NAME OF OFFICIAL DATE

\_\_\_\_\_  
SIGNATURE OF OFFICIAL

**FINAL ACTION TAKEN (If applicable):**

- |  |   |
|--|---|
| <input type="checkbox"/> One (1) Month Suspension          | <input type="checkbox"/> Six (6) Month Suspension     |
| <input type="checkbox"/> Three (3) Month Suspension        | <input type="checkbox"/> Twelve (12) Month Suspension |
| <input type="checkbox"/> Twenty-four (24) Month Suspension |   |

REASON FOR FINAL ACTION TAKEN:

\_\_\_\_\_  
SIGNATURE OF DIRECTOR / WARDEN / DESIGNEE

\_\_\_\_\_  
(DATE)

The Termination/Suspension/Denial will expire:

- on (DATE) \_\_\_\_\_ after which time you may continue to visit, provided you adhere to all rules and regulations related to visiting within the facility.
- on (DATE) \_\_\_\_\_ after which time you may write a letter to the Warden requesting to have your visiting privileges reinstated. You must also submit a CDC Form 106, Visiting Questionnaire.

Visitors may appeal any action taken above by following the established appeal process outlined in the California Code of Regulations, Title 15, Division 3, Section 3179, Appeals Relating to Visiting.

**NOTICE OF REQUEST FOR SEARCH**  
**CDCT 888 (Rev. 06/37)**

VISITOR NAME	NAME OF INMATE VISITED	CDC NUMBER
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Institution staff has cause to suspect that you might be carrying some form of contraband. Consistent with the posted notice at the entrance of this facility, we request your voluntary submission to an unclothed/clothed search of your person and any minor(s)\* accompanying you. The search may include your personal possessions and/or your vehicle.

This search will be conducted in private by staff members of the same sex as the adult or minor visitor. If a minor is searched, the parent or legal guardian may be present during the search. A separate form is required for each minor.

<input type="checkbox"/> I VOLUNTARILY AGREE to be searched.	Signature of Visitor
<input type="checkbox"/> I VOLUNTARILY AUTHORIZE the search of: NAME OF MINOR _____ Age _____	*Signature of Visitor (Parent or Legal Guardian) Relationship to Minor:
<input type="checkbox"/> I REFUSE to be searched.	Signature of Visitor
<input type="checkbox"/> I REFUSE TO AUTHORIZE the search of: NAME OF MINOR _____ Age _____	*Signature of Visitor (Parent or Legal Guardian) Relationship to Minor:

**ADVANCED PERMISSION FOR THIS SEARCH WAS SECURED FROM:**

NAME	DATE PERMISSION GRANTED
POSITION	TIME PERMISSION GRANTED
STAFF COMMENTS	

WATCH COMMANDER/VISITING LIEUTENANT SIGNATURE	SIGNATURE DATE	
Staff Member Conducting Search	NAME	POSITION
Staff Member Witnessing Search	NAME	POSITION

**SEARCH RESULTS:**       **POSITIVE**       **NEGATIVE**

DESCRIPTION OF CONTRABAND

**VISITOR IS:**       **PERMITTED** to visit inmate.       **NOT PERMITTED** to visit inmate.

\* Only the parent or legal guardian of a minor may authorize an unclothed/clothed body search. Absent positive proof of relationship (i.e., birth certificate, court order, notarized authorization by parent or legal guardian), a search of a minor will **not** be conducted and visiting will not be allowed.

**DISTRIBUTION:** ORIGINAL - C-File (Visiting)  
CANARY - Institution Head  
PINK - Investigator's File  
GOLD - Visitor