



Department of Corrections and Rehabilitation

**NOTICE OF CHANGE TO
REGULATIONS**

Section(s): 3000, 3006, 3323

Number:

16-04

Publication Date:

April 15, 2016

Effective Date:

To Be Announced

INSTITUTION POSTING REQUIRED

This Notice announces the proposed amendments to Section(s) 3000, 3006, and 3323 of the California Code of Regulations (CCR), Title 15, Crime Prevention and Corrections, to incorporate into CCR, provisions concerning Cellular Telephone Accessories and Inmate Discipline.

IMPLEMENTATION: To be announced

PUBLIC COMMENT PERIOD

Any person may submit written comments about the proposed regulations to the California Department of Corrections and Rehabilitation, Regulation and Policy Management Branch (RPMB), P.O. Box 942883, Sacramento, CA 94283-0001, or by fax to (916) 324-6075, or by e-mail to RPMB@cdcr.ca.gov. All written comments must be received by the close of the public comment period June 3, 2016 at 5:00 p.m.

PUBLIC HEARING INFORMATION

A public hearing regarding these proposed regulations will be held June 3, 2016 from 10:00 a.m. to 11:00 a.m. in the Kern Room, located at 1515 S St. Sacramento, CA 95811. The purpose of the hearing is to receive oral comments about this action. It is not a forum to debate the proposed regulations. No decision regarding the permanent adoption of these regulations will be rendered at this hearing. Written or facsimile comments submitted during the prescribed comment period are given the same significance and weight as oral comments presented at the hearing. This hearing site is accessible to the mobility impaired.

POSTING

This Notice shall be posted immediately upon receipt at locations accessible to inmates, parolees, and employees in each Department facility and field office not later than five calendar days after receipt. Also, facilities shall make this Notice available for review by inmates in segregated housing who do not have access to the posted copies, and shall distribute it to inmate law libraries and advisory councils. CDCR Form 621-A (Rev. 09/14), Certification of Posting, shall be returned to the RPMB electronically, by fax, or by mail. See Department Operations Manual Sections 12010.12.1 and 12010.12.2 for posting and certification of posting procedures.

CONTACT PERSON

Inquiries regarding this Notice should be directed to Timothy M. Lockwood, Chief, RPMB, California Department of Corrections and Rehabilitation, P.O. Box 942883, Sacramento, CA 94283-0001, by telephone (916) 445-2269 or e-mail RPMB@cdcr.ca.gov. Inquiries regarding the subject matter of these regulations may be directed to Brent Burkhart, Division of Adult Institutions at (916) 327-5305.

/ Original signed by /

KENNETH J. POGUE

Undersecretary, Administrative and Offender Services
California Department of Corrections and Rehabilitation

Attachments

NOTICE OF PROPOSED REGULATIONS
California Code of Regulations
Title 15, Crime Prevention and Corrections
Department of Corrections and Rehabilitation

NOTICE IS HEREBY GIVEN that the Secretary of the California Department of Corrections and Rehabilitation (CDCR), pursuant to the authority granted by Government Code (GC) Section 12838.5 and Penal Code (PC) Section 5055, and the rulemaking authority granted by PC Section 5058 and 5058.3, in order to implement, interpret and make specific PC section 5054, proposes to amend Sections 3000, 3006, and 3323, of the California Code of Regulations (CCR), Title 15, Division 3, concerning cellular cellphone accessories and/or components and Inmate Discipline.

PUBLIC HEARING:

Date and Time: June 3, 2016 from 10:00 a.m. to 11:00 a.m.
Place: Department of Corrections and Rehabilitation
Kern Room
1515 S Street – North Building
Sacramento, CA 95811

Purpose: To receive comments about this action.

AUTHORITY AND REFERENCE

PC Section 5000 provides that commencing July 1, 2005, any reference to the Department of Corrections in this or any code, refers to the CDCR, Division of Adult Operations. PC Section 5050 provides that commencing July 1, 2005, any reference to the Director of Corrections, in this or any other code, refers to the Secretary of the CDCR. As of that date, the office of the Director of Corrections is abolished.

INFORMATIVE DIGEST

The California Department of Corrections and Rehabilitation (CDCR) proposes to adopt revisions to the California Code of Regulations (CCR), Title 15, Division 3, Sections 3000 Definitions, 3006 Contraband, and 3323 Disciplinary Credit Forfeiture Schedule, to clarify regulations pertaining to the classification and level of penalties for the possession of any cellular telephone or wireless communication device accessories and/or components.

The current regulations governing cellular telephone or wireless communication device accessories and components were adopted on December 9, 2011, in accordance with Senate Bill (SB) 26, which added Section 4576 to the Penal Code (PC), and Executive Order B-11-11.

A petition challenging the validity of disciplinary proceedings resulting from the regulations was filed with the Superior Court of California, County of Sacramento. On July 7, 2014, the court requested an informal response from CDCR to determine if a contradiction between the Penal Code and the specific regulations existed. CDCR determined that the original legislative intent was not strong enough to support the inclusion of “components” and “accessories” of wireless communication devices as a misdemeanor offense, which could result in a Division “D” Serious Rules Violation Report with forfeiture of up to 90 days loss of non-restorable credits.

In an effort to conform CDCR's regulations with PC 4576 and taking the court's recommendation into consideration, CDCR proposes to make changes to the applicable sections of the CCR, Title 15, Division 3.

The changes will reduce the penalty for possession of accessories and/or components of any cellular telephone or wireless communication device including, but not limited to, a subscriber identity module (SIM) card, memory storage device, cellular phone battery, wired or wireless headset, and cellular phone charger. The offense for possession of these components and accessories will be reclassified as a Division "F" offense resulting in up to 30 days forfeiture of restorable credits, as opposed to the current forfeiture of up to 90 days as a Division "D" offense.

POLICY STATEMENT OVERVIEW

The anticipated benefits of the proposed regulations will bring CDCR in line with PC 4576. The changes will reclassify any cellular telephone or wireless communication device accessories and/or components, as contraband rather than dangerous contraband, and the offense for possession of these components and accessories will be reclassified as a Division "F" offense resulting in up to 30 days forfeiture of restorable credits, as opposed to the current forfeiture of up to 90 days as a Division "D" offense. Eligible inmates will be able to petition for restoration of credits that were forfeited in excess of the 30 days maximum allowed for a Division "F" offense.

Also, the Department's intent of this proposal is to continue the prevention of inmates possessing cell phones or wireless communication devices that could impact institutional security, lead to prison escape, and deter criminal activity such as harm to staff, inmates and visitors. Thus, the regulatory action will continue to benefit the protection of public health and safety and worker safety.

EVALUATION OF INCONSISTENCY/INCOMPATIBILITY WITH EXISTING STATE REGULATIONS

Pursuant to Government Code 11346.5(a)(3)(D), the Department must evaluate whether the proposed regulations are inconsistent or incompatible with existing State regulations. Pursuant to this evaluation, the Department has reviewed existing regulations and determined that these proposed regulations are not inconsistent or incompatible.

LOCAL MANDATES:

The Department has determined that these regulations do not impose a mandate on local agencies or school districts, or a mandate which requires reimbursement of costs or savings pursuant to Government Code Sections 17500 - 17630.

FISCAL IMPACT STATEMENT

- Cost to any local agency or school district that is required to be reimbursed: none
- Cost or savings to any state agency: none
- Other nondiscretionary cost or savings imposed on local agencies: none
- Cost or savings in federal funding to the State: none

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT AFFECTING BUSINESSES:

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

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

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

RESULTS OF ECONOMIC IMPACT ASSESSMENT:

These regulations are directed at the internal management of State prisons and do not impose any obligations, duties, fees, costs, responsibilities, reporting requirements, etc. on California businesses, large or small. No economic impacts have been brought to the attention of the Department. The Department has therefore concluded that these regulations will have no impact on the creation of new, or the elimination of existing jobs or businesses within California, or affect the expansion of businesses currently doing business in California. Regarding benefits, these regulations will protect the health and safety of California residents, worker safety, and the State’s environment by providing a safe environment that will encourage visitation for families, which will have a positive impact on inmates, and increase worker safety.

EFFECT ON SMALL BUSINESSES

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

EFFECT ON HOUSING COSTS

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

CONSIDERATION OF ALTERNATIVES

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

CONTACT PERSON:

Please direct any inquiries regarding this action to:
Timothy M. Lockwood, Chief
Regulation and Policy Management Branch
Department of Corrections and Rehabilitation
P.O. Box 942883, Sacramento, CA 94283-0001
Telephone (916) 445-2269

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

Anthony Carter
Regulation and Policy Management Branch
Telephone (916) 445-2220

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

Brent Burkhart
Standardized Procedures Unit
California Department of Corrections and Rehabilitation
(916) 327-5305

WRITTEN COMMENT PERIOD:

The public comment period will close June 3, 2016 at 5:00 p.m. Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action (by

mail, by fax, or by e-mail) to CDCR, Regulation and Policy Management Branch, P.O. Box 942883, Sacramento, CA 94283-0001; by fax at (916) 324-6075; or by e-mail at RPMB@cdcr.ca.gov before the close of the comment period.

AVAILABILITY OF PROPOSED TEXT AND INITIAL STATEMENT OF REASONS:

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

AVAILABILITY OF CHANGES TO PROPOSED TEXT

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

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Following its preparation, a copy of the Final Statement of Reasons will be available on the Department's website at <http://www.cdcr.ca.gov>, and may also be obtained from the Department's contact person.

TEXT OF PROPOSED REGULATIONS

In the following, underline indicates added text and ~~strikethrough~~ indicates deleted text.

California Code of Regulations, Title 15. Crime Prevention and Corrections Division 3. Rules and Regulations of Adult Institutions, Programs, and Parole

Chapter 1.

Article 1.

3000 Definitions.

Section 3000 is amended to read:

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Dangerous contraband means materials or substances that could be used to facilitate a crime or could be used to aid an escape or that have been altered from their original manufactured state or purpose and which could be fashioned into a weapon. Examples would include, but not be limited to, metal, plastic, wood, or wire. Also included are: sharpened objects such as scissors or other tools not authorized to be in the inmate's possession, as well as poison, caustic substances, flame producing devices (i.e., matches or lighters) or cellular telephones or wireless communication devices capable of making or receiving wireless communications ~~or any components thereof, including, but not limited to, a subscriber identity module (SIM card), memory storage device, cellular phone charger.~~

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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).

3006. Contraband.

Subsection 3006(a) is amended to read:

Inmates may possess only the personal property, materials, supplies, items, commodities and substances, up to the maximum amount, received or obtained from authorized sources, as permitted in these regulations. Possession of contraband as defined in section 3000 may result in disciplinary action and confiscation of the contraband.

(a) Dangerous Property. Inmates may not possess or have under their control or constructive possession any weapons, explosives, explosive making material, poisons or any destructive devices, nor shall they possess or assist in circulating any writing or voice recording which describes the making of any weapons, explosives, poisons, destructive devices, or cellular telephones or wireless communication devices ~~or any component thereof including, but not limited to, a subscriber identity module (SIM card) or memory storage devices and cellular phone chargers~~ capable of making or receiving wireless communications.

Section 3006(b) through 3006(c)(19) remains unchanged.

Subsection 3006(c)(20) is adopted to read:

(c) Except as authorized by the institution head, inmates shall not possess or have under their control any matter which contains or concerns any of the following:

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(20) Any cellular telephone or wireless communication device accessory and/or component including, but not limited to, a subscriber identity module (SIM card), memory storage device, cellular phone battery, wired or wireless headset, and cellular phone charger.

Subsection 3006(d) remains unchanged.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 2600, 2601, 2772, 2790, 4574, 4576, 5030.1, 5054 and 5057, Penal Code.

Subchapter 4.

Article 5. Inmate Discipline

3323. Disciplinary Credit Forfeiture Schedule

Subsections 3323(a) through 3323(f)(14) remain unchanged.

Subsection 3323(f)(15) is amended to read:

(f) Division "D" offenses; credit forfeiture of 61-90 days.

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(15) Possession and/or constructive possession of a cellular telephone or wireless communication device ~~or any component thereof including, but not limited to, a subscriber identity module (SIM card), memory storage devices or cellular telephone chargers~~capable of making or receiving wireless communications.

Subsections 3323(f)(16) through 3323(h)(6) remain unchanged.

Subsection 3323(h)(7) is amended to read:

(h) Division “F” offenses; credit forfeiture of 0-30 days.

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(7) Possession of dangerous contraband as identified in section 3000 excluding cell phones or wireless communication devices ~~or any component or accessory thereof~~capable of making or receiving wireless communications.

Subsections 3323(h)(8) through 3323(h)(13) remain unchanged.

Subsection 3323(h)(14) is adopted to read:

(14) Possession and/or constructive possession of a cellular telephone or wireless communication device accessory and/or component including, but not limited to, a subscriber identity module (SIM card), memory storage device, cellular phone battery, wired or wireless headsets, and cellular phone chargers.

Subsection 3323(i) through 3323(k)(4) remain unchanged.

Note: Authority cited: Sections 5058, 5058.3 and 1170.05, Penal Code. Reference: Sections 148, 241, 243, 295-300.3, 314, 647, 1170.05, 2932, 2933, 4500, 4501, 4501.1, 4573.6, 4576, 4600, 5054 and 12020, Penal Code.

INITIAL STATEMENT OF REASONS

The California Department of Corrections and Rehabilitation (CDCR) proposes to adopt revisions to the California Code of Regulations (CCR), Title 15, Division 3, Sections 3000 Definitions, 3006 Contraband, and 3323 Disciplinary Credit Forfeiture Schedule, to clarify regulations pertaining to the classification and level of penalties for the possession of any cellular telephone or wireless communication device accessories and/or components, including, but not limited to, a subscriber identity module (SIM card), memory storage device, cellular phone battery, wired or wireless headset, and cellular phone charger.

The current regulations governing cellular telephone or wireless communication device and their accessories and components were adopted on December 9, 2011, in accordance with Senate Bill (SB) 26, that added Section 4576 to the California Penal Code (PC), and Executive Order B-11-11. Senator Alex Padilla, the author of SB 26, stated at the time, “[m]y intent is that the CDCR create regulations that deter possession of illegal cell phones by inmates through a permanent loss of earned, good time credit.”

The regulations added cell phones and wireless communication devices and “any components thereof” to the definition of dangerous contraband, which subsequently resulted in increased consequences that included credit loss for possession of these devices and their components and accessories as non-restorable under existing regulations in Title 15, Section 3327(a)(4). The regulatory intent was that such devices, their components and supporting accessories not only endanger institutional security, its staff, inmates and visitors, but facilitated outside criminal activity and allowed victims to be intimidated and re-victimized by incarcerated inmates possessing cell phones.

A petition challenging the validity of disciplinary proceedings resulting from the regulations was filed with the Superior Court of California, County of Sacramento. On July 7, 2014, the court requested an informal response from CDCR to determine if a contradiction between the Penal Code and the specific regulations existed. Specifically, the court asked CDCR to demonstrate legislative intent in SB 26 for including components and accessories of cellphones and wireless devices under the non-restorable credit loss adopted in its regulation. CDCR determined that the legislative intent was not strong enough to support the inclusion of “components” and “accessories” of wireless communication devices as a misdemeanor offense, which could result in a Division “D” Serious Rules Violation Report with forfeiture of up to 90 days loss of non-restorable credits.

In an effort to conform CDCR’s regulations to PC 4576 and taking the court’s recommendation into consideration, CDCR proposes to make changes to the applicable sections of the CCR, Title 15, Division 3.

The changes will reduce the penalty for possession of accessories and/or components of any cellular telephone or wireless communication device including, but not limited to, a subscriber identity module (SIM) card, memory storage device, cellular phone battery, wired or wireless headset, and cellular phone charger. The offense for possession of these components and accessories will be reclassified as a Division “F” offense resulting in up to 30 days forfeiture of restorable credits, as opposed to the current forfeiture of up to 90 days as a Division “D” offense.

ECONOMIC IMPACT ASSESSMENT:

CDCR has determined the proposed regulations will have no impact on the creation or elimination of jobs within the state. The proposed regulations affect the internal management of prisons only.

CDCR has determined the proposed regulations will have no impact on the creation of new businesses or the elimination of existing businesses within California. The proposed regulations affect the internal management of prisons only, and place no requirements or restrictions upon businesses.

CDCR has determined the proposed regulations will have no impact on the expansion of businesses currently doing business in California. The proposed regulations affect the internal management of prisons only, and place no requirements or restrictions on businesses.

CDCR has determined the proposed regulations will have no impact on worker safety or the state's environment as they affect the internal management of prisons only.

BENEFITS OF THE REGULATIONS:

The purpose of this change is to bring CDCR in line with PC 4576. The changes will reclassify any cellular telephone or wireless communication device accessories and/or components, as contraband rather than dangerous contraband.

Currently the penalty for possession of cellular telephone or wireless communication device accessories and/or components is classified as a Division "D" Serious Rules Violation. A Division "D" offense can result in 61-90 days of non restorable forfeiture of credits earned. Upon implementation of this change, the violation will be reclassified as a Division "F" Serious Rules Violation. A Division "F" offense can result in 0-30 days of restorable forfeiture of credits earned. Eligible inmates will be able to petition for restoration of credits that were forfeited in excess of the 30 days maximum allowed for a Division "F" offense. This change will bring CDCR in compliance with SB 26, Executive Order B-11-11, and PC 4576.

DETERMINATIONS:

CDCR has determined that the proposed changes will bring the department in line with SB 26, Executive Order B-11-11, and the California Penal Code.

SPECIFIC PURPOSE AND RATIONALE FOR EACH SECTION, PER GOVERNMENT CODE 11346.2(B)(1):

Subsection 3000 is amended to change the definition of dangerous contraband, clarifying cellular and wireless communication devices, and eliminating cellular or wireless communication device components. Cellular or wireless communication device components will no longer be classified as dangerous contraband but simply contraband, thus reducing the penalty for possession of these items.

Subsection 3006(a) is amended to clarify cellular and wireless communication devices and eliminate cellular or wireless communication device components as dangerous property.

Subsection 3006(c)(20) is adopted to properly classify possession and/or constructive possession of cellular telephone or wireless communication device accessories and/or components as contraband.

Subsection 3323(f)(15) is amended to clarify cellular and wireless communication devices, and remove cellular or wireless communication device components as a Division “D” offense. Possession of accessories and/or components will be properly classified as a Division “F” offense.

Subsection 3323(h)(7) is amended to clarify cellular and wireless communication devices, and remove cellular or wireless communication device components as a Division D offense.

Subsection 3323(h)(14) is adopted to properly classify possession and/or constructive possession of cellular telephone or wireless communication device accessories and/or components, including, but not limited to, a SIM card, memory storage device, cellular phone battery, wired or wireless headsets, and cellular phone chargers, as a Division “F” offense.