



Department of Corrections and Rehabilitation

**NOTICE OF CHANGE TO
REGULATIONS**

Section(s): 3315 and 3375.2

Number:

16-05

Publication Date:

April 15, 2016

Effective Date:

March 29, 2016

INSTITUTION POSTING AND CERTIFICATION REQUIRED

This Notice announces the proposed amendments to Section(s) 3315 and 3375.2 of the California Code of Regulations (CCR), Title 15, Crime Prevention and Corrections, to incorporate into the CCR, provisions concerning Substance Abuse Treatment referrals and Administrative Determinants.

IMPLEMENTATION: Immediately.

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, 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 8th, 2016, at 5:00pm.

PUBLIC HEARING INFORMATION

A public hearing regarding these proposed regulations will be held June 8th, 2016 from 10:00am to 11:00am in the Kern Conference Room, located at 1515 S Street North Building, 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 Kelly Medina, Associate Warden, Division of Adult Institutions, (916) 323-2812.

Original signed by

KENNETH J. POGUE

Undersecretary, Administration 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 Section 12838.5 and Penal Code (PC) Section 5055, and the rulemaking authority granted by PC Section 5058, proposes to amend sections 3315 and 3375.2 of the California Code of Regulations (CCR), Title 15, Division 3, concerning Serious Rules Violations in regards to Substance Abuse Treatment (SAT) programs and Administrative Determinants.

PUBLIC HEARING

Date and Time: June 8th, 2016 from 10:00am to 11:00am
Place: Department of Corrections and Rehabilitation
Kern Room
1515 S Street – North Building
Sacramento, CA 95811
Purpose: To receive comments about this action.

PUBLIC COMMENT PERIOD

The public comment period will close **June 8th, 2016 at 5:00pm**. Any person may submit public comments in writing (by mail, by fax, or by e-mail) regarding the proposed changes. To be considered by the Department, comments must be submitted to the CDCR, Regulation and Policy Management Branch, P.O. Box 942883, Sacramento, CA 94283-0001; by fax at (916) 324-6075; or by e-mail at RPMB@cdcr.ca.gov before the close of the comment period.

CONTACT PERSON

Please direct any inquiries regarding this action to:

**Timothy M. Lockwood, Chief
Regulation and Policy Management Branch
Department of Corrections and Rehabilitation
P.O. Box 942883, Sacramento, CA 94283-0001
Telephone (916) 445-2269**

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

**Jon Struckmann
Regulation and Policy Management Branch
Telephone (916) 445-2276**

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

**Kelly Medina
Division of Adult Institutions
Department of Corrections and Rehabilitation
(916) 323-2812**

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.

PC Section 5054 provides that commencing July 1, 2005, the supervision, management, and control of the state prisons, and the responsibility for the care, custody, treatment, training, discipline, and employment of persons confined therein are vested in the Secretary of the CDCR.

PC Section 5058 authorizes the Director to prescribe and amend regulations for the administration of prisons.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Current laws and regulations provide guidelines on what to do with inmates who violate drug abuse rules and when these inmates should be referred to Substance Abuse Treatment (SAT) programs. As the regulations stand in Title 15, an inmate must meet the rehabilitation program criteria in addition to receiving two or more Rules Violation Reports (RVR), therefore restricting the inmate's ability to attend the programs and get the help they need.

This action:

- Amends section 3315 to remove language that limits inmates from participating in SAT programs.
- Amends subsection 3375.2(b)(22) to add a new Administrative Determinant code that allows inmates more access to SAT programs regardless of their placement score.

SPECIFIC BENEFITS ANTICIPATED BY THE PROPOSED REGULATIONS

The Department has determined that the proposed regulatory action will help to reduce recidivism and, eventually, to reduce overcrowding in California prisons by having the ability to rehabilitate a greater number of inmates than before. The Department has realized the value of evidence-based substance abuse treatment programs in preparing inmates for transition back into communities. The treatment the inmates will receive will aid them in making better decisions and improving their lives after release from prison.

EVALUATION OF CONSISTENCY / COMPATIBILITY WITH EXISTING REGULATIONS

The Department has researched existing regulations and determined that these proposed regulations are consistent and compatible with existing state laws and regulations.

LOCAL MANDATES

This action imposes no mandates on local agencies or school districts, or a mandate which requires reimbursement of costs or savings pursuant to Government Code 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*

EFFECT ON HOUSING COSTS

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

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT ON BUSINESS

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

RESULTS OF ECONOMIC IMPACT ASSESSMENT

The Department has determined that the proposed 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. Also, the Department has determined that the proposed regulations will have no effect on the health and welfare of California residents, worker safety, or the state's environment and none of these are affected by the internal management of CDCR institutions. As described above, the benefits to the health and welfare of California residents includes increased safety to inmates and staff.

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.

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.

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 statutory policy or other provision of law. Interested persons are accordingly invited to present statements or arguments with respect to any alternatives to the changes proposed at the scheduled hearing or during the written comment period.

AVAILABILITY OF PROPOSED TEXT AND INITIAL STATEMENT OF REASONS

The Department has prepared, and will make available, the text, Initial Statement of Reasons (ISOR), and any Reports Relied on for 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 a request directed to the Department's contact person. The proposed text, ISOR, and the Notice of Proposed Regulations will also be made available on the Department's website:

http://www.cdcr.ca.gov/Regulations/Adult_Operations/index.html.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Following its preparation, a copy of the Final Statement of Reasons may be obtained from the Department's contact person.

AVAILABILITY OF CHANGES TO PROPOSED TEXT

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

TEXT OF PROPOSED REGULATIONS

In the following text, ~~strikethrough~~ indicates deleted text; underlining indicates added or amended text.

3315. Serious Rule Violations.

Subsections 3315(a) through 3315(f)(5)(J)1 are unchanged.

(J) Violation of subsections 3016(a), 3016(c), and 3290(d) shall result in:

1. For the first offense, the inmate shall be required to attend Alcoholic Anonymous or Narcotic Anonymous meetings or assigned to a substance abuse education and/or treatment programs to the extent such programs are available in the institution/facility and loss of pay for 90 days from a paid work assignment.

Subsections 3315(f)(5)(J)2 and (f)(5)(J)3 are amended to read:

2. For the second offense, the inmate shall be referred for endorsement to a substance abuse treatment program, ~~provided that program eligibility criteria is met~~ and loss of pay for 180 days from a paid work assignment.

3. For the third offense, the inmate shall be referred for endorsement to a substance abuse treatment program, ~~provided that program eligibility criteria is met~~, and mandatory treatment shall be a condition of parole. Additionally, the inmate shall be referred for removal from paid work assignment for one year for the third offense.

Subsections 3315 3315(f)(5)(K) through 3315(f)(5)(M)1 are unchanged.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 295-300.3, 314, 530, 532, 646.9, 647, 653m, 2931, 2932, 2933, 4501.1, 4573.6, 4576, 5054, 5068 and 12020, Penal Code.

3375.2. Administrative Determinants.

Subsections 3375.2(a) through 3375.2(b)(21) are unchanged.

(b) The following three-letter codes are used to indicate those administrative or irregular placement conditions known as administrative determinants, which may be imposed by Departmental officials to override the placement of an inmate at a facility according to his/her placement score.

Subsection 3375.2(b)(22) through 3375.2(b)(32) are adopted, renumbered, and amended to read:

(22) REH. Inmate requires retention in or transfer to a substance abuse treatment program, other than one in a Reentry Hub, in order to receive treatment for an identified rehabilitative program need.

~~(22)~~(23) REN. Inmate is currently endorsed to or requires transfer to a Reentry Hub program and a Reentry Hub program is not available at a facility with a security level which is consistent with the inmate's placement score.

~~(23)~~(24) SCH. Inmate is involved in an academic program which is not available at a facility with a security level that is consistent with his/her placement score.

~~(24)~~(25) SEC. Shall be used only by a CSR to indicate that the inmate has been designated as a Security Concern by an ICC and requires Close B Custody.

~~(25)~~(26) SEX. Inmate has a prior incidence of rape, oral copulation, sodomy, or a lewd and lascivious act which requires restricted custody or placement.

~~(26)~~(27) SOR. Inmate's bisexual or homosexual orientation may require special placement.

~~(27)~~(28) STG. Documentation establishes that the inmate's STG designation may require special attention or placement consideration.

~~(28)~~(29) TIM. Inmate's time to serve is long, requiring placement at a facility with a security level higher than that which is consistent with his/her placement score.

~~(29)~~(30) VIO. Inmate has a current or prior conviction for a violent felony, or a sustained juvenile adjudication including, but not limited to, those listed under Penal Code section 667.5(c), which, as determined by the CSR, requires placement in a facility with a higher security level than that indicated by his/her placement score.

(A) For the purposes of this subdivision, a "sustained juvenile adjudication" means a guilty determination or ruling rendered in a juvenile judicial proceeding.

(B) The following administrative determinations regarding allegations of violent acts, including but not limited to those offenses described in Penal Code Section 667.5(c), shall have the same force and effect as a current or prior conviction for a violent felony or a sustained juvenile adjudication:

1. Board of Parole Hearings or Parole Hearings Division good cause finding or probable cause finding, or;

2. California Youth Authority/Division of Juvenile Justice/Youth Offender Parole Board sustained allegation.

(C) A probation or Post-Release Community Supervision violation finding in a court of law involving, but not limited to those offenses described in Penal Code Section 667.5(c), shall have the same force and effect as a current or prior conviction in a court of law for a violent felony.

~~(30)~~(31) VOC. Inmate is involved in a Career Technical Education program, also referred to as a vocational program, which is not available at a facility with a security level which is consistent with the inmate's placement score.

~~(31)~~(32) WOR. Inmate has a work skill in a critical trade which warrants special placement consideration.

Note: Authority cited: Sections 5058 and 5058.3, Penal Code. Reference: Sections 3450, 5054 and 5068, Penal Code; *Sandin v. Connor* (1995) 515 U.S. 472; *Madrid v. Gomez* (N.D. Cal. 1995) 889 F.Supp. 1146; *Wright v. Enomoto* (N.D. Cal. 1976) 462 F. Supp. 397; and *Stoneham v. Rushen* (1984) 156 Cal. App. 3d 302.

INITIAL STATEMENT OF REASONS:

The California Department of Corrections and Rehabilitation (CDCR) proposes to amend sections 3315 and 3375.2 of the California Code of Regulations (CCR), Title 15, Division 3, governing Serious Rule Violation Dispositions and Administrative Determinants.

CDCR has recognized institutions have a long-standing problem in the areas of drug use and trafficking. In a continuing effort to combat these problems, CDCR has undertaken a comprehensive, multi-layered approach by establishing single and multi level Substance Abuse Treatment (SAT) programs in many of its institutions.

In 2014, the department implemented ten SAT programs. These evidence-based programs promote positive, pro-social behavior and prepare offenders for release by developing the knowledge and skills necessary to avoid substance abuse relapse. The four Multi-level SAT programs and six Single-level SAT programs are currently operating at institutions without reentry hubs as defined in Title 15, Section 3000. These SAT locations provide services to offenders who do not qualify to participate in the reentry hub programs, but show a criminogenic need for SAT or have a history of substance abuse.

Identifying offenders with drug abuse problems is a necessary step towards creating a drug-free environment within the institutions. Currently, the Department is able to pinpoint offenders who are in need of substance use disorder treatment utilizing the results of random mandatory urinalysis tests, cell searches, and Rules Violation Reports (RVR) for drug related offenses.

The ability to refer offenders to the Single or Multi-level SAT programs includes those who have received more than one CDCR Rules Violation Report (RVR) for a drug related offense. Offenders found guilty of two or more drug related offenses clearly demonstrate the need for participation in a SAT rehabilitative program. Current language in Title 15, Subsection 3315(f)(5)(J), mandates offenders receive SAT upon a guilty finding of two or more drug related offenses only if additional criteria are met. This language is confusing as it appears an offender must meet additional criteria for placement in a SAT in addition to the RVR referrals. Therefore, the department is proposing to delete the limiting language “provided the program eligibility criteria is met”, thus assuring the offender’s participation in a SAT program based solely on the RVR guilty findings.

Additionally, an offender’s placement score / security level must align with the housing mandates of the facility where the SAT program is available. Many offenders currently participating in a SAT program experience changes to their placement score, thus requiring transfer to an institution which may not have a SAT program resulting in non-completion of the program. The department is proposing action to solve this issue by adopting a new Administrative Determinant Code in Title 15, Section 3375.2, which will allow offenders to be housed at facilities where their needed rehabilitative programs are located despite the fact the security level of the facility may not be consistent with the offender’s placement score in accordance with Title 15, Section 3375.1.

The successful treatment of offenders with a substance use disorder promotes positive programming resulting in a decrease of offender violence thus increasing the safety of the institution, staff, offenders and the public.

It has been, and shall continue to be, a priority of the department to place appropriate offenders in SAT programming as part of the on-going rehabilitative efforts to assist offenders with successful reintegration back into the community, thereby reducing recidivism.

Anticipated Benefits

The Department anticipates that these regulations will help to reduce recidivism and, eventually, to reduce overcrowding in California prisons. The Department has realized the value of evidence-based rehabilitative programs in preparing inmates for transition back into communities.

Consideration of Alternatives

The Department must determine that no reasonable alternative considered, or that has otherwise been identified and brought to the attention of the Department, would be more effective in carrying out the purpose for which this action is proposed, would be as effective and less burdensome to affected private persons than the action proposed, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

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

Determinations of Impact on Business and Small Business

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

The Department has made an initial determination the action will not have a significant adverse economic impact on business. Additionally, there has been no testimony or other evidence provided that would alter the Department's initial determination. The proposed regulations affect the internal management of prisons only, and place no requirements or restrictions on businesses.

Economic Impact Assessment

The Department 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.

The Department 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 on businesses. The Department 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.

The Department has determined the proposed regulations may benefit the health and welfare of California residents by reducing recidivism and prison overcrowding. The Department 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.

Reports Relied Upon

The Department has not identified or relied upon any reports for the development of these proposed regulation.

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

Subsections 3315(a) through 3315(f)(5)(J)1 are unchanged

Subsections 3315(f)(5)(J)2 and (f)(5)(J)3 are amended to mandate an offender be referred for endorsement to a SAT program upon two or more rule violations of Title 15, Sections 3016(a), 3016(c), and 3290(d), regardless of meeting the eligibility criteria for placement into the program. This is necessary to provide clarity to all institution staff that eligibility requirements for the SAT program do not need to be met when an offender is found guilty of the above listed offense two or more times. In order for CDCR to assist an offender in the rehabilitative efforts of substance use disorder, the Department must have the ability to refer the offender to a program based on the fact the offender has repeat violations related to substance abuse. The capability to place the offenders in the SAT programs will allow CDCR to provide needed rehabilitative treatment to the offenders prior to release which in turn can increase the offender's chance of successful reintegration into society and ultimately reduce recidivism.

Subsections 3315 3315(f)(5)(K) through 3315(f)(5)(M)1 are unchanged.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 295-300.3, 314, 530, 532, 646.9, 647, 653m, 2931, 2932, 2933, 4501.1, 4573.6, 4576, 5054, 5068 and 12020, Penal Code.

3375.2. Administrative Determinants.

Subsections 3375.2(a) through 3375.2(a)(31) are unchanged.

Subsection 3375.2(b) is unchanged but is provided for reference:

(b) An inmate meeting one or more of the following administrative or irregular placement conditions, known as administrative determinants, may be housed in a facility with a security level which is not consistent with the inmate's placement score:

New Subsection 3375.2(b)(22) is adopted to include new administrative determinant REH. REH shall allow an offender to be retained or transferred to a substance abuse treatment program, other than a Reentry Hub, in order to receive treatment for an identified rehabilitative program need. The creation of Administrative Determinant REH is necessary to give CDCR the ability to provide greater access for placement into SAT programs, other than Reentry Hubs. When an offender's placement score is not consistent with the facility security level where the program is located, or if the offender's score changes midway through a program's curriculum, this new code will permit the Department to either retain or transfer the offender in accordance with his or her rehabilitative needs. This will allow CDCR to provide needed rehabilitative treatment to the offenders prior to release which, in turn, can increase the offender's chance of successful reintegration into society and ultimately reduce recidivism.

New Subsection 3375.2(b)(23) through 3375.2(b)(32) are adopted and amended to insert a new administrative determinant REH in subsection 3375.2(b)(22), and re-alphabetize and renumber the other administrative determinates accordingly.

Note: Authority cited: Sections 5058 and 5058.3, Penal Code. Reference: Sections 3450, 5054 and 5068, Penal Code; *Sandin v. Connor* (1995) 515 U.S. 472; *Madrid v. Gomez* (N.D. Cal. 1995) 889 F.Supp. 1146; *Wright v. Enomoto* (N.D. Cal. 1976) 462 F. Supp. 397; and *Stoneham v. Rushen* (1984) 156 Cal. App. 3d 302.