

**State of California
Office of Administrative Law**

In re:
Department of Corrections and
Rehabilitation

Regulatory Action:

Title 15, California Code of Regulations

Adopt sections:

Amend sections: 3000, 3078.1, 3078.2,
3078.3, 3078.4

Repeal sections:

**NOTICE OF APPROVAL OF CERTIFICATE OF
COMPLIANCE**

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

OAL Matter Number: 2016-0906-04

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

This certificate of compliance action makes permanent emergency amendments by operational necessity of (1) eligibility requirements of the Alternative Custody Program (ACP) to remove gender-specific regulatory language as a program eligibility criterion; and (2) other ACP exclusionary criteria. (See OAL Matter No. 2016-0317-03.)

OAL approves this regulatory action pursuant to section 11349.6(d) of the Government Code.

Date: October 11, 2016



**Mark Storm
Senior Attorney**

For: Debra M. Cornez
Director

Original: Scott Kernan
Copy: Josh Jugum

NOTICE PUBLICATION/REGULATIONS SUBMISSION

CERT

(See instru is on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-2016-0405-05	REGULATORY ACTION NUMBER 2016-0906-04C	EMERGENCY NUMBER
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For use by Office of Administrative Law (OAL) only

ENDORSED - FILED
in the office of the Secretary of State
of the State of California

OCT 11 2016

1:39 p.m.

2016 SEP -6 P 12:53
OFFICE OF
ADMINISTRATIVE LAW

NOTICE

REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY

California Department of Corrections and Rehabilitation

AGENCY FILE NUMBER (If any)

16-0046

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 Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER 2016.16.2	PUBLICATION DATE 4/15/2016

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Alternative Custody Program	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) 2016-0317-03EON
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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
	AMEND 3000, 3078.1, 3078.2, 3078.3, 3078.4
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 §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)		<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> Other (Specify)	

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)
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6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

<input checked="" type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal
<input type="checkbox"/> Other (Specify)		

7. CONTACT PERSON Joshua Jugum	TELEPHONE NUMBER 916 445-2228	FAX NUMBER (Optional) 916 324-6075	E-MAIL ADDRESS (Optional) joshua.jugum@cdcr.ca.gov
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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 8/26/16
TYPED NAME AND TITLE OF SIGNATORY Ralph M. Diaz, Undersecretary, Operations, Department of Corrections and Rehabilitation	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

OCT 11 2016

Office of Administrative Law

TEXT OF ADOPTED REGULATIONS

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

Title 15. Crime Prevention and Corrections, Division 3. Adult Institutions, Programs and Parole, Chapter 1. Rules and Regulations of Adult Operations and Programs

3000. Definitions

Section 3000 is amended to alphabetically merge the definition below with those already in the regulations.

*

*

~~Alternative Custody Program (ACP) means a voluntary program developed for female inmates whose current commitment offense is neither violent nor serious and whose prior or current commitment offense is not a registerable sex offense pursuant to 1170.05 that allows eligible inmates committed to state prison to serve their sentence in the community in lieu of confinement in state prison. Provisions for ACP are located in Title 15, Division 3, Chapter 1, Article 6.8 commencing with section 3078.~~

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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) *Sassman v. Brown* (E.D. Cal. 2015) 99 F.Supp.3d 1223.

Article 6.8. Alternative Custody Program

3078.1. Alternative Custody Program General Policy.

~~(a) Pursuant to Penal Code section 1170.05, the Secretary of the Department of Corrections and Rehabilitation (department) is authorized to offer a program under which eligible female inmates who are committed to state prison may be allowed to participate in An Alternative Custody Program (ACP) is a voluntary alternative custody program that allows eligible inmates to serve their sentence in the community in lieu of confinement in state prison.~~

(b) An ~~Alternative Custody Program (ACP)~~ Participant's confinement in the community shall consist of restriction to one of the following:

- (1) A ~~Residential Home~~ during the hours designated by the department, or
- (2) A transitional care facility that offers appropriate services during the hours designated by the department, or
- (3) A ~~Residential Drug or Treatment Program~~ during the hours designated by the department.

(c) One day of participation in the ACP shall be in lieu of one day of incarceration in state prison. Participants in the program shall receive any sentence reduction credits that they would have received pursuant to section 3043 had they served their sentence in state prison and shall be subject to denial and loss of credit pursuant to PC section 2932(a).

(d) The ~~Secretary~~ or his or her designee shall have the sole discretion concerning whether to permit program participation as an alternative to custody in state prison.

(e) Each inmate released for placement in the ACP shall be subject to applicable rules and regulations governing inmates pursuant to the California Code of Regulations, Title 15, Division 3.

Note: Authority cited: Sections 5058, 5058.3 and 1170.05, Penal Code. Reference: Sections 1170.05 and 5054, Penal Code-; Sassman v. Brown (E.D. Cal. 2015) 99 F.Supp.3d 1223.

3078.2. Alternative Custody Program Eligibility Criteria.

(a) To be eligible to participate in the Alternative Custody Program (ACP), the inmate must volunteer ~~and be female~~.

(b) The inmate shall have no more than 12 ~~24~~ months and no less than 45 days left to serve at the time of placement into the ACP, and;

(c) The inmate does not meet any of the exclusionary criteria as provided for in section 3078.3.

Note: Authority cited: Sections 5058, 5058.3 and 1170.05, Penal Code. Reference: Sections 1170.05 and 5054, Penal Code-; Sassman v. Brown (E.D. Cal. 2015) 99 F.Supp.3d 1223.

3078.3. Alternative Custody Program Exclusionary Criteria.

(a) Mandatory e~~Exclusionary~~ criteria includes, but is not limited to:

(1) Current conviction of any of the crimes listed as a violent felony in Penal Code (PC) section 667.5(c) including stayed counts and enhancements.

(2) Current conviction of any of the crimes listed as a serious felony in PC sections 1192.7(c) ~~and or~~ 1192.8 including stayed counts and enhancements.

(3) Current or prior conviction for an offense that requires the person to register as a sex offender ~~pursuant to PC section~~ as provided in Chapter 5.5 (commencing with Section 290) of Title 9 of Part 1 of the Penal Code.

- (4) High risk to commit a violent offense as determined by the department using the California Static Risk Assessment tool, as provided in section 3768.1.
 - (5) History of escape within the last 10 years from a facility while under juvenile or adult custody, including, but not limited to any detention facility, camp, jail, or state prison facility or inmates that have been reviewed for escape and have been assessed an administrative determinant of ESC, as provided in subsection 3375.2(b)(9).
 - (6) Active or potential misdemeanor or felony holds, warrants, or detainers.
 - (7) Active or potential United States Immigration and Customs Enforcement holds, warrants, or detainers.
 - (8) Active restraining order.
 - (9) In-custody misconduct equivalent to a Divisions "A-1" through "C" offense, as defined in section 3323, during the last 24 calendar months, except for physical possession of alcohol.
 - (10) Security Housing Unit or Psychiatric Services Unit terms in the last 12 calendar months.
 - (11) Current Close or Max Custody, as defined in section 3377.2.
 - (12) Current or prior conviction for a sexually violent offense, as defined in Welfare and Institutions Code section 6600(b).
 - (13) Validated active or inactive ~~prison gang~~ STG-I members or associates, as defined in subsection 3378.1(c). ~~Does not exclude~~ Validated STG dropouts or street gang/disruptive groups are not excluded from ACP.
 - (14) ~~Current probable/good cause finding by the Board of Parole Hearings (BPH), as defined in section 3000, for a violation of a condition of parole for a serious or violent offense.~~
 - (15) ~~Probable/good cause finding by BPH for absconding parole within the last 24 calendar months.~~
 - (16) ~~Current Parole Violator Return to Custody or pending revocation status.~~
- (b) Additional exclusionary criteria shall be reviewed on a case-by-case basis, including but not limited to:
- (1) ~~Current or prior sexual offense convictions not requiring PC section 290 registration.~~
 - (2) ~~Current psychiatric or medical condition that requires ongoing care.~~
 - (1) The inmate has not satisfactorily complied with rules and regulations while in custody or on parole.
 - (2)(3) Current or prior child abuse arrest(s) or conviction(s), probable/good cause finding by BPH or conviction(s) where the offense was related to abuse or neglect of a child.
 - (3)(4) Current or prior conviction(s) or probable/good cause finding(s) by BPH for a violation of a condition of parole for stalking.
 - (4)(5) Prior ACP participation that resulted in a return to an institution.
 - (5)(6) Upon review of all case factors, no appropriate placement transitional care facility, residential drug or treatment program or residential home is available in the community.
 - (6) Current or prior conviction(s) for arson.
 - (7) Prior conviction of any of the crimes listed as a violent felony in Penal Code (PC) section 667.5(c) or serious felony in PC sections 1192.7(c) or 1192.8 including stayed counts and enhancements.
 - (8) Validated as an STG-II member or associate.

(c) An inmate's existing psychiatric or medical condition that requires ongoing care is not a basis for excluding the inmate from eligibility to participate in ACP.

Note: Authority cited: Sections 5058, 5058.3 and 1170.05, Penal Code. Reference: Sections 290, 667.5(c), 1170.05, 1192.7(c), 1192.8 and 5054, Penal Code. Section 6600(b), Welfare and Institutions Code.

3078.4. Alternative Custody Program Processing.

(a) Screening and Assessment.

(1) Every inmate shall be afforded the opportunity to sign and submit to their assigned Correctional Counselor a CDCR Form 2234 (03/1607/12), Alternative Custody Program (ACP) Application and Voluntary Agreement, which is incorporated by reference.

(2) Upon receipt of a CDCR Form 2234, the Correctional Counselor shall complete a Secretary or his or her designee shall respond to the applicant within two weeks to inform the offender that the Form 2234 was received and to notify the inmate of the eligibility criteria of ACP.

(3) Ppreliminary screening for Alternative Custody Program (ACP) eligibility shall be completed by the Correctional Counselor utilizing the criteria provided in section 3078.2 on a CDCR Form 2235 (03/1609/12), Alternative Custody Program Screening Form, which is incorporated by reference. Upon completion, the CDCR Form 2235 shall be forwarded to Women and Children Services Unit (WCSU) for further screening.

~~(4)~~(3) An assessment of the inmate's predictive factors shall be completed using the California Static Risk Assessment, as provided in section 3768.1. The result of the assessment shall facilitate decisions regarding the placement, supervision and case-management of an offender in a community setting.

(5) WCSU shall review the CDCR Form 2235 and other case factors to determine if the inmate is potentially eligible for ACP. The inmate shall be notified in writing of a determination of potential eligibility.

(b) Individualized Treatment and Rehabilitation Plan.

(1) Within 30 calendar days after a finding that the applicant is potentially eligible for participation in ACP, Based on the assessment completed in (a)(3) above and a review of the inmate's central file, an Individualized Treatment and Rehabilitation Plan (ITRP) shall be prepared developed by designated institution staff in consultation with the inmate based on the assessment completed in (a)(4) above and a review of the inmate's central file. The ITRP shall address a full range of issues including those directly and indirectly related to the specific needs of the potential ACP Participant. The ITRP shall describe specific activities and services needed to achieve identified goals. The ITRP shall address, but is not limited to the following factors:

(A) Housing.

(B) Employment plans.

(C) Transportation.

(D) Substance abuse treatment.

(E) Parenting and life skills.

(F) Anger management and criminal thinking.

(G) Career Technical Education programs and educational needs.

(H) Social services needs, e.g., Veteran's Affairs benefits, general assistance, social security.

(I) Medical, dental, and mental health needs.

(2) Institution staff shall coordinate with the ACP Program Manager, as defined in section 3078, to identify appropriate transitional care facility, residential drug or treatment program or residential home placement consistent with the offender's needs and availability of appropriate program(s). When available and appropriate, the department shall prioritize the use of evidence based programs and services. Other factors to be considered include but are not limited to:

~~(A) Child dependency issues wherein the court and/or a representative of the appropriate county agency has determined that a potential participant's inclusion in the program is not in the best interest of the child.~~

~~(B) Placement resulting in a potential participant residing in close proximity to any person that was the victim of the potential participant's crime.~~

(3) The potential participant shall agree to fill out and sign forms pertaining to any county, state, or federal medical benefit program(s) for which the participant is eligible.

(4) The participant shall sign the CDCR Form 1516-ACP (06/11), Requirements of the Alternative Custody Program, which is incorporated by reference, agreeing to comply with the requirements of participation in ACP.

(c) Classification and Case Records

(1) The ITRP and all other pertinent information will be presented to the Institution Classification Committee (ICC), as provided in subsection 3376(c)(2), for program participation consideration. The ICC will consider the totality of the information along with input from the inmate prior to recommendation for ACP placement.

(2) Upon recommendation of ICC for ACP placement, the case will be referred to a Classification Staff Representative (CSR) for endorsement.

(3) Upon the endorsement of an ACP Participant, Case Records shall be notified to ensure the ACP release process is completed. Victim notification shall be made at least 45 days prior to the participant's release to ACP.

(4) Prior to release to ACP, Case Records shall notify local law enforcement of the jurisdiction in which the ACP Participant will reside, providing the following information:

(A) The participant's name, address, and date of birth.

(B) The current offense committed by the participant.

(C) The estimated duration of time the participant will be in the community under ACP.

(5) Case Records functions of inmates on ACP shall be managed by the location designated by the Director, Division of Adult Institutions.

(6) While in the ACP, the participant's annual classification review, pursuant to subsection 3376(d)(2), shall be suspended.

(d) Except as necessary to comply with any release notification requirements, the inmate shall be released to the program no later than seven business days following notice of acceptance into the program, or if this is not possible in the case of an inmate to be placed in a residential drug or treatment program or in a transitional care facility, the first day a contracted bed becomes available at the requested location.

(e) The inmate may appeal the decision through the procedures detailed in section 3084 et seq. or reapply for participation in the program 30 days after the notice of the denial.

Note: Authority cited: Sections 5058, 5058.3 and 1170.05, Penal Code. Reference: Sections 1170.05 and 5054, Penal Code.

ACP APPLICATION AND VOLUNTARY AGREEMENT

CDCR 2234 (07/12)

The Alternative Custody Program (ACP) is a voluntary program that promotes parenting, family reunification and the development of life skills while addressing treatment needs. The ACP allows inmates to be housed in a personal residence, a transitional care facility or a residential drug or treatment program instead of serving time in prison. I understand placement into the ACP is based upon meeting specific eligibility criteria and the California Department of Corrections and Rehabilitation has the authority for final placement approval based on bed availability and other factors. While participating in the ACP, I will be subject to applicable rules and regulations governing inmates pursuant to the California Code of Regulations (CCR), Title 15, Division 3. I understand I may be removed from the ACP and returned to prison to serve the remainder of my original sentence for any reason, with or without cause.

I. TO BE COMPLETED BY INMATE

I meet the criteria set forth in the CCR Title 15, section 3078.2 including the following: (Check all that apply)

I am a female

(Select one)

I have private medical insurance, OR I agree to apply for any county, state or federal medical coverage for which I may qualify.

I request to reside at the following location:

Private Residence

My private residence is located at:

(include street address, city, county and zip code)

(I understand my residence must have no aggressive animals, no weapons, unobstructed access by law enforcement and will be verified by a Parole Agent.)

The contact person at the above address is:

My relationship to the contact person is:

The contact person's telephone number is:

Residential Drug or Treatment Program or Transitional Care Facility

I understand that my signature on this document indicates my willingness to voluntarily participate in the ACP.

CDC NUMBER	INMATE NAME (PRINTED)	INMATE SIGNATURE	DATE SIGNED	HOUSING UNIT
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II. FOR USE BY INSTITUTION COUNSELING STAFF

Does the participant have a qualifying disability requiring effective communication? Yes No

If yes, cite the source document and/or observation(s):

What type of accommodation/assistance was provided to achieve effective communication to the best of the inmate's ability?

COUNTY OF LAST LEGAL RESIDENCE	COUNTY OF COMMITMENT	INSTITUTION	EPRD
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<input type="checkbox"/> INMATE ELIGIBLE	<input type="checkbox"/> INMATE INELIGIBLE	REASON, IF INELIGIBLE
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CORRECTIONAL COUNSELOR NAME (PRINT)	CORRECTIONAL COUNSELOR SIGNATURE	DATE SIGNED	PHONE NUMBER
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III. FOR USE BY ACP PROGRAM MANAGER

ACP PROGRAM NAME	ACP PROGRAM ADDRESS	PHONE NUMBER	ASSIGNED PAROLE UNIT
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IV. FOR USE BY PAROLE UNIT

DISTRICT/UNIT	RECEIVING AGENT ASSIGNED TO INVESTIGATE	COMMENTS
DATE ASSIGNED	DATE DUL	AGENT'S RECOMMENDATION
		Proposed residence meets criteria <input type="checkbox"/> Yes <input type="checkbox"/> No
PAROLE AGENT NAME (PRINT)	PAROLE AGENT SIGNATURE	DATE SIGNED
UNIT SUPERVISOR APPROVAL	PHONE NUMBER	COMMENTS
Concur with agent's recommendation <input type="checkbox"/> Yes <input type="checkbox"/> No		
UNIT SUPERVISOR NAME (PRINT)	UNIT SUPERVISOR SIGNATURE	DATE SIGNED

UPON COMPLETION OF PRIVATE RESIDENCE VERIFICATION - RETURN THIS FORM TO THE SENDING INSTITUTION C&PR OFFICE

*EPRD means Earliest Possible Release Date

Distribution Original to e-file, copy to inmate

ALTERNATIVE CUSTODY PROGRAM (ACP) APPLICATION AND VOLUNTARY AGREEMENT

CDCR 2234 (Rev. 03/16)

PAGE 1 OF 1

The Alternative Custody Program (ACP) is a voluntary program that promotes parenting, family reunification, and the development of life skills while addressing treatment needs. The ACP allows offenders to be housed in a residential home, a transitional care facility, or a residential drug or treatment program instead of serving time in prison. I understand placement into the ACP is based upon meeting specific eligibility criteria and the California Department of Corrections and Rehabilitation has the authority for final placement approval based on multiple factors. While participating in the ACP, I will be subject to applicable rules and regulations governing inmates pursuant to the California Code of Regulations (CCR), Title 15, Division 3. I understand I may be removed from the ACP and returned to prison to serve the remainder of my original sentence at any time, with or without cause.

I. TO BE COMPLETED BY INMATE				
SELECT ONE:				
<input type="checkbox"/> I have private medical insurance OR <input type="checkbox"/> I agree to apply for any county, state or federal medical coverage for which I may qualify.				
INDICATE CHOICE (e.g., 1 or 2):	I am requesting to reside at one of the following (listed in preference order with my 1 st choice being number 1 and my 2nd choice being number 2):			
	ACP Private Program: <i>Will require a program acceptance letter and residence verification which may increase the application processing timeframe.</i>	NAME OF PROGRAM		
		STREET ADDRESS		
		CITY, ZIP CODE	COUNTY	
		CONTACT NAME	CONTACT PHONE NUMBER	
	ACP Private Residence (home): <i>Will require a residence verification which may increase the application processing timeframe.</i>	(I understand my residence must have no aggressive animals, no weapons, unobstructed access by law enforcement and will be verified by a Parole Agent.)		
		STREET ADDRESS		
		CITY, ZIP CODE	COUNTY	
		CONTACT NAME(S)	CONTACT PHONE NUMBER	
I understand that my signature on this document indicates my willingness to voluntarily participate in the ACP. I am aware that wearing and maintaining an electronic monitoring device is a condition of my placement in the ACP.				
CDCR NUMBER	INMATE NAME (PRINTED)	INMATE SIGNATURE	DATE SIGNED	HOUSING UNIT
II. FOR USE BY INSTITUTION COUNSELING STAFF				
Does the participant have a qualifying disability requiring effective communication? <input type="checkbox"/> Yes <input type="checkbox"/> No				
If yes, cite the source document and/or observation(s): _____				
What type of accommodation/assistance was provided to achieve effective communication to the best of the inmate's ability? _____				
COUNTY OF LAST LEGAL RESIDENCE		COUNTY OF COMMITMENT	INSTITUTION	EARLIEST POSSIBLE RELEASE DATE
ELIGIBILITY	REASON, IF INELIGIBLE			
<input type="checkbox"/> REFER FOR SCREENING	<input type="checkbox"/> INELIGIBLE			
CORRECTIONAL COUNSELOR NAME (PRINT)	CORRECTIONAL COUNSELOR SIGNATURE		DATE SIGNED	PHONE NUMBER
III: FOR USE BY DIVISION OF ADULT PAROLE OPERATIONS STAFF				
REGION	PAROLE UNIT	INVESTIGATING PAROLE AGENT'S NAME	DATE ASSIGNED	
<input type="checkbox"/> NORTHERN <input type="checkbox"/> SOUTHERN				
DUE DATE	PROPOSED RESIDENCE MEETS CRITERIA	COMMENTS		
	<input type="checkbox"/> YES <input type="checkbox"/> NO			
PAROLE AGENT'S PRINTED NAME	PAROLE AGENT'S SIGNATURE		DATE SIGNED	
<input type="checkbox"/> I CONCUR WITH THE PAROLE AGENT'S RECOMMENDATION.				
UNIT SUPERVISOR'S PRINTED NAME	UNIT SUPERVISOR'S SIGNATURE		DATE SIGNED	
UPON COMPLETING THE RESIDENCE VERIFICATION, PLEASE RETURN THIS FORM TO THE SENDING INSTITUTION'S C&PR OFFICE.				

ALTERNATIVE CUSTODY PROGRAM SCREENING FORM

CDCR Number: _____ Name: _____ Release Date: _____

This form shall be completed upon receipt of a CDCR Form 2234, ACP APPLICATION AND VOLUNTARY AGREEMENT form from an inmate.
If applicable, check the appropriate EXCLUSIONARY box(s) below:

I. EXCLUSIONARY CRITERIA:

- Current Violent Felony conviction, including stayed counts or enhancements for offenses pursuant to PC Section 667.5(c). This includes BPH Good Cause Finding/Probable Cause Finding (GCF/PCF).
- Current Serious Felony conviction, including stayed counts or enhancements for offenses pursuant to PC Section 1192.7(c) and 1192.8. This includes BPH GCF/PCF.
- PC Section 290 registration requirement or current or prior conviction for a sexually violent offense as defined in subdivision (b) of Welfare and Institutions Code Section 6600.
- California Static Risk Assessment (CSRA) score of 5 (high violence).
- More than 24 months or less than 45 days left to serve.
- Escape history within last 10 years or mandatory minimum for escape. BPH GCF/PCF for absconding in the last 24 calendar months.
- Active or potential misdemeanor or felony holds, warrants, or detainers. Active or potential ICE holds, warrants, or detainers.
- Active Restraining Order.
- In-Custody misconduct (Division A-C offenses) in last 24 calendar months, except physical possession of alcohol.
- SHU/PSU within the last 12 calendar months.
- Close or MAX Custody.
- Validated active or inactive prison gang or associates pursuant to CCR Subsection 3378(c).
- Parole Violator Return to Custody including Pending revocations (current term/violation)

II. CASE-BY-CASE REVIEW:

- Current or prior sexual conviction not requiring PC Section 290 registration.
- Current psychiatric or medical condition that requires ongoing care.
- Current or prior child abuse arrest(s) or conviction(s) or probable/good cause finding by BPH or conviction(s) where the offense was related to abuse or neglect of a child.
- Current or prior conviction(s) or probable/good cause finding(s) by BPH for stalking.
- Prior ACP participation that resulted in return to an institution

III. ELIGIBILITY DETERMINATION:

- **Eligible** - If there are no boxes marked above, check the "Eligible" box below.
- **Ineligible** - If any box(es) are marked above, check the "Ineligible" box below. The reason for ineligibility shall be noted in the Comment Section.
- **Case-by-Case Review** - If case requires a case-by-case review, check the "Case-by-Case Review" box below. CBC reviews are conducted ONLY when no other exclusions exist. CBC reviews shall be reviewed and evaluated by a Unit Classification Committee prior to recommendation for ACP placement.

Eligible Ineligible Case-by-Case Review Required

Comment Section: _____

Print Name/Title: _____ Signature: _____

Date: _____ Institution/Unit: _____

ACP SCREENING

CDCR Number: _____ Name: _____ Release Date: _____

This form shall be completed after review of a CDCR 2234, ACP APPLICATION AND VOLUNTARY AGREEMENT form from an inmate.
If applicable, check the appropriate EXCLUSIONARY box(es) below:

I. EXCLUSIONARY CRITERIA:

- Current Violent or Serious Felony conviction, including stayed counts or enhancements for offenses pursuant to PC Section 667.5(c), Section 1192.7(c), or 1192.8.
- PC Section 290 et seq. registration requirement or current or prior conviction for a sexually violent offense as defined in subdivision (b) of Welfare and Institutions Code Section 6600.
- California Static Risk Assessment (CSRA) score of 5 (high violence).
- Upon placement into program, cannot have more than 12 months or less than 45 days to serve on EPRD.
- Escape history within last 10 years or mandatory minimum for escape.
- Active or potential misdemeanor or felony holds, warrants, or detainers. Active or potential ICE holds, warrants, or detainers.
- Active Restraining Order.
- In-Custody misconduct (Division A-C offenses) in last 24 calendar months, except physical possession of alcohol.
- SHU/PSU within the last 12 calendar months.
- Close or MAX Custody.
- Active or inactive validated STG-I member or associate pursuant to CCR Section 3378 et seq.

II. CASE-BY-CASE REVIEW:

- Validated as an STG-II member or associate.
- Current or prior child abuse conviction(s) or convictions where the offense was related to abuse or neglect of a child.
- Current or prior conviction(s) for stalking.
- Any prior ACP participation that resulted in a return to an institution.
- Current or prior arson conviction.
- Upon review of all case factors, no appropriate transitional care facility, residential drug or treatment program or residential home is available in the community.
- Prior conviction of any of the crimes listed as a violent felony in Penal Code (PC) section 667.5(c) or serious felony in PC sections 1192.7(c) or 1192.8 including stayed counts and enhancements.

III. DETERMINATION:

- **Forward to WCSU** - If there are no boxes marked in Section I or II, check the "Forward to WCSU" box below for further review to determine potential eligibility. Final eligibility will be determined by the Institutional Classification Committee considering ACP placement.
- **Ineligible** - If any boxes are marked in Section I, check the "Ineligible" box below. The reason for ineligibility shall be noted in the Comment Section.
- **Case-by-Case Review** - If there are no boxes marked in Section I and one or more boxes are marked in Section II, check the "Forward to WCSU" and "Case-by-Case Review" boxes below. CBC reviews are conducted ONLY when no other exclusions exist. The above noted CBC reviews shall be evaluated by the Institutional Classification Committee considering ACP placement.

Ineligible Case-by-Case Review Forward to WCSU

Comments Section: _____

Institution/CCII Name/Date _____ Signature: _____

WCSU/Name/Date: _____ Signature: _____ Potentially eligible Ineligible

Distribution: Original to c-file.

FINAL STATEMENT OF REASONS:

The Initial Statement of Reasons is incorporated by reference.

UPDATE TO THE FISCAL IMPACT STATEMENT AND THE RESULTS OF THE ECONOMIC IMPACT ASSESSMENT STATEMENT

The Fiscal Impact Statement initially noticed to the public stated “\$3.3 million cost in in fiscal year 2015-16 and an additional 2.7 million in fiscal year 2016-17. Total ongoing need is \$6 million.”

The Results of the Economic Impact Assessment initially noticed to the public stated “The Department will create 20 positions in Fiscal Year 2015-16 and an additional 20 in Fiscal Year 2016-17 and ongoing.”

As a result of a funding increase proposed in the Governor’s May Revision to the Governor’s Budget, and approved by the Legislature, beginning in 2016-17, \$7.8 million from the General Fund and 49.5 positions are included in CDCR’s budget to address the increased workload resulting from the expansion of the Alternative Custody Program.

DETERMINATIONS, ASSESSMENTS, MANDATES, AND FISCAL IMPACT:

The Department has determined that no 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, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law, than the action proposed.

The Department has made an initial determination that 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 CDCR’s initial determination.

The Department has determined that this action imposes no mandates on local agencies or school districts, or a mandate which requires reimbursement pursuant to Part 7 (Section 17561) of Division 4 of the Government Code.

The Department has determined that no reasonable alternatives to the regulation have been identified or brought to the attention of the Department that would lesson any adverse impact on affected private persons or small business than the action planned.

The Department, in proposing the adoption of these regulations, has not identified nor has it relied upon any technical, theoretical, or empirical study, report, or similar document. The Department has relied upon the results of the Economic Impact Assessment, which can be found in the Notice of Proposed Regulations and is available for review as part of the rulemaking file.

PUBLIC HEARING COMMENTS:

A public hearing was held on June 10, 2016. There were no attendees and no comments received at the hearing.

SUMMARIES AND RESPONSES TO WRITTEN PUBLIC COMMENTS RECEIVED DURING THE PUBLIC COMMENT PERIOD:

Commenter #1: Commenter states the Alternative Custody Program (ACP) should not be changed from 24 to 12 months (for inmate eligibility) and should be “available to all level of offenders”. Commenter states the prison environment isn’t conducive to positive behavioral change. ACP eligibility should be determined on a case-by-case basis as some non-violent offenders are actually violent and some violent offenders are not. Commenter states that an inmate with a violent conviction is at a greater disadvantage in reentering society. Allowing inmates with a violent conviction to participate in the ACP for 24 months will make it more likely that these offenders will develop good habits.

Accommodation: None

Response: The eligibility criteria reduction of time to serve from 24 to 12 months for ACP participants is due to the significant increase in the number of persons eligible for the ACP and the number of ACP applicants. This change is necessary to allow CDCR to process applications in a timely manner (as required by Penal Code (PC) section 1170.05(j) and section 3078.4(a)(2) of these regulations) and to allow the Department to provide effective supervision of ACP participants in the community.

Offenders currently serving a sentence for a violent or serious felony are prohibited from ACP participation by PC 1170.05(d)(1) and (2). The Department cannot adopt a regulation that violates the Penal Code.

Commenter #2: Commenter is “concerned about the delay in transferring of the inmates back to the community” for “over six months.” Commenter asks “Would this delay of six months...serve as credits in lieu of confinement?” Commenter mentions the ITRP (Individualized Treatment and Rehabilitation Plan) and victim notification periods as additional delays.

Accommodation: None

Response: The substance of the comment regarding the delay is not clear. The *Sassman* order gave CDCR until April 9, 2016 to promulgate regulations. CDCR complied with the court order. CDCR additionally revised its regulations to be consistent with the timelines mandated by the Penal Code. The 30-day ITRP provision was added to establish a timeline for the completion of the ITRP consistent with PC 1170.05(j). Victim notification will be processed consistent with existing regulations (Section 3078.4(c)(3)), which are not being amended by this proposed rulemaking action. The ACP is not a sentence reduction program.

Commenter #3:

Comment #A: Commenter is incarcerated and states that the prison in which she is housed is requiring ACP applicants to get medical/dental/mental health clearance before participating in ACP or CCTRP (Custody to Community Transitional Reentry Program), in violation of the amendment to the regulations which eliminates “current psychiatric or medical condition that requires ongoing care” as an exclusionary criteria.

Accommodation: None

Response: These proposed regulations are specific to ACP. Medical, dental, and mental health conditions requiring ongoing care are no longer exclusionary criteria for the ACP. However, each case is reviewed to ensure the participant’s needs, such as medical, dental, or mental health, are met in the community. ACP applicants who are denied participation in the program may appeal under new section 3078.4(e).

Comment #B: Commenter states the proposed regulations should be amended to state that insulin-dependent diabetic inmates may participate in the ACP/CCTRP.

Accommodation: None

Response: These proposed regulations are specific to ACP. The proposed regulations state in Section 3078.3(c) “An inmate’s existing psychiatric or medical condition that requires ongoing care is not a basis for excluding the inmate from eligibility to participate in ACP.” Medical conditions, including diabetes, requiring ongoing care are no longer exclusionary criteria for the ACP.

Comment #C: Commenter states that an ACP participant should not be returned back to prison “unless they really have violated a serious rule”.

Accommodation: None

Response CCR 3078.6, Alternative Custody Program Return to Institution, governs the circumstances under which an ACP Participant may be returned to custody, in compliance with PC section 1170.05(g)(3), which provides that ACP participants may be retaken into custody “if the participant for any other reason no longer meets the established criteria under this section.” PC section 1170.05(h) provides that “Whenever a peace officer supervising a participant has reasonable suspicion to believe that the participant is not complying with the rules or conditions of the program, or that the electronic monitoring devices are unable to function properly in the designated place of confinement, the peace officer may, under general or specific authorization of the secretary or his or her designee, and without a warrant of arrest, retake the participant into custody to complete the remainder of the original sentence”. PC section 1170.05(n) requires that ACP participants voluntarily agree that they “may be returned to confinement at any time with or without cause.”

Comment #D: Commenter states the proposed regulations aren’t clear on the meaning of “current” as used in subsection 3078.3(a)(2).

Accommodation: None

Response: This language is not being amended in these proposed regulations and therefore this comment does not require a response.

Comment #E: Commenter states that ACP participants should be allowed to take all canteen, commissary, or food items, or other personal property such as appliances and clothes, with them from prison to ACP, or from ACP back to prison should they be returned to prison.

Accommodation: None

Response: ACP Participants who reside in a private residential home are allowed to take all of their canteen items with them when released to ACP. ACP Participants residing in a transitional care facility or residential drug or treatment program have limited storage space, and are permitted to take limited property, including canteen items, into the program. Participants returned to prison for any reason shall not be allowed to bring personal items with them as integrity of the items may have been compromised and/or considered contraband thus creating a risk to the safety and security of the institution, inmates and staff. Consistent with existing regulations, personal property may not be brought into prison as only property purchased through an authorized vendor within prison is allowed.

Commenter #4: Commenter is currently incarcerated for a serious felony and was denied participation in the ACP due to this conviction. “What happened to the Rehabilitation in CDCR?”

Accommodation: None

Response: Offenders with a current conviction for a violent or serious felony are prohibited from ACP participation by PC section 1170.05(d)(1) and (2). The Department cannot adopt a regulation that violates the Penal Code.

Commenter #5: Commenter opposes the proposed amendment to restrict ACP eligibility to inmates with 12 months, rather than the previous 24, remaining on their sentence. This change is “contrary to sound public policy, federal court orders requiring the reduction of the prison population, and legislative intent.” The Senate Bill which established the ACP emphasized the importance of family reunification. “Neither the goal of family reunification nor that of community reintegration will be served by halving the amount of time ACP participants may spend with their families and in their home communities.” CDCR has “offered no rationale for the change, which will result in an increase in State spending of approximately \$60,000 for each eligible prisoner’s additional year of confinement in state prison.” This amendment is “inconsistent with Court orders aimed at reducing overcrowding.”

Accommodation: None

Response: The eligibility criteria reduction of time to serve from 24 to 12 months for ACP participants is due to the significant increase in the number of persons eligible for the ACP and the number of ACP applicants. This change is necessary to allow CDCR to process applications in a timely manner (as required by Penal Code section 1170.05(j) and section 3078.4(a)(2) of these regulations) and to allow the Department to provide effective supervision of ACP participants in the community.

The Department is in compliance with the three-judge panel court ordered population caps.