



Department of Corrections and Rehabilitation

**NOTICE OF CHANGE TO
REGULATIONS**

**Title 15
Sections: 3000, 3078.1, 3078.2, 3078.3, and
3078.4**

Number:

16-06

Publication Date:

April 15, 2016

Effective Date:

March 29, 2016

INSTITUTION POSTING AND CERTIFICATION REQUIRED

This Notice announces the amendment of Sections 3000, 3078.1, 3078.2, 3078.3, and 3078.4 of the California Code of Regulations (CCR), Title 15, Crime Prevention and Corrections, to amend provisions concerning the Alternative Custody Program.

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 10, 2016, at 5:00 p.m.**

PUBLIC HEARING INFORMATION

A public hearing regarding these proposed regulations will be held Friday, June 10, 2016, from 10:00 a.m. to 11:00 a.m. in the Kern / Colorado Room, located at 1515 S Street, 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. Certification of Posting, CDCR Form 621-A, shall be returned to 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 at (916) 445-2269 or e-mail at RPMB@cdcr.ca.gov. In the event the contact person is unavailable, inquiries should be directed to Joshua Jugum, RPMB, at (916) 445-2228.

Original Signed By:

KATHLEEN ALLISON
Director, Division of Adult Institutions
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) proposes to amend Sections 3000, 3078.1, 3078.2, 3078.3, and 3078.4 of the California Code of Regulations, Title 15, concerning the Alternative Custody Program, 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 and 5058.3.

PUBLIC HEARING:

Date and Time: **June 10, 2016 - 10:00 a.m. to 11:00 a.m.**
Place: Kern / Colorado Room
1515 S Street
Sacramento, CA 95814
Purpose: To receive comments about this action.

PUBLIC COMMENT PERIOD:

The public comment period will close **June 10, 2016, at 5:00 p.m.** 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 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:

**Joshua Jugum
Regulation and Policy Management Branch
Telephone (916) 445-2228**

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

**Kelly Medina
Division of Adult Institutions
Telephone (916) 323-2812**

AUTHORITY AND REFERENCE:

Penal Code (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:

The Alternative Custody Program (ACP) is authorized by Penal Code (PC) Section 1170.05. The ACP was originally designed for female offenders who met the eligibility criteria for placement. In *Sassman v. Brown*, CDCR was ordered to amend its regulations to remove gender-specific language from the ACP eligibility criteria, to allow eligible male offender participation.

The ACP is a voluntary program developed for non-violent, non-serious and non-registerable sex offense offenders that allows them to serve their sentences in the community in lieu of confinement in state prison as prescribed by their individual case plans. Pursuant to PC section 1170.05, admission to ACP is solely at the discretion of the Secretary or designee.

In 2015, Senate Bill 219 (SB 219) was signed into law amending PC 1170.05 to prohibit CDCR from excluding a person from participating in ACP solely on the basis that the inmate has an existing medical or psychiatric condition that requires ongoing care. SB 219 also established certain time frames for processing ACP applications, which have been incorporated into the revised regulation.

This action will:

- Amend eligibility requirements of the Alternative Custody Program (ACP) to allow male offenders to participate in the program, in accordance with the *Sassman v. Brown* judgment.
- Amend exclusionary criteria of the ACP to allow inmates with existing psychiatric or medical conditions that require ongoing care to participate in the program, if they meet other eligibility requirements.
- Amend eligibility requirements of the ACP to reduce the amount of time an offender has remaining to serve on his/her sentence from 24 to 12 months to be eligible to participate in the ACP.
- Add ACP exclusionary criteria to be applied on a case-by-case basis, such as a current or prior conviction for arson, a prior conviction for a serious or violent felony, or a history of non-compliance with rules and regulations while in custody or on parole.
- Remove references to probable/good cause findings by the Board of Parole Hearings from ACP exclusionary criteria, as BPH no longer conducts these hearings.

FORMS INCORPORATED BY REFERENCE:

CDCR Form 2234 (Rev. 03/16) Alternative Custody Program (ACP) Application and Voluntary Agreement.

SPECIFIC BENEFITS ANTICIPATED BY THE PROPOSED REGULATIONS

The proposed regulatory action will benefit inmates by establishing that both male offenders, and offenders with existing psychiatric or medical conditions that require ongoing care, will be eligible to participate in the ACP. This program allows participating inmates to serve their sentences in a community setting rather than a state prison and offers rehabilitative programming. This program may help to reduce overcrowding in state prisons.

EVALUATION OF CONSISTENCY / COMPATIBILITY WITH EXISTING LAWS AND REGULATIONS

Pursuant to Government Code 11346.5(a)(3)(D), the Department has determined the proposed regulations are not inconsistent or incompatible with existing regulations. After conducting a review, the Department has concluded these are the only regulations that concern the Alternative Custody Program within the California Code of 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 or savings to any state agency: \$3.3 million cost in fiscal year 2015-16 and an additional 2.7 million in fiscal year 2016-17. Total ongoing need is \$6 million.
- Cost to any local agency or school district that is required to be reimbursed: *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.

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.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT ON BUSINESS:

The Department has made an initial determination that the proposed regulations will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states, because the proposed regulations relate strictly to internal management of state prisons.

EFFECT ON SMALL BUSINESSES:

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

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT:

CDCR has determined the proposed regulation will have an impact on the creation or elimination of existing jobs within California as the CDCR proposes to create positions in order to review and approve eligible offenders into the ACP, conduct case management, provide supervision via electronic device monitoring (ankle monitors), and for general program oversight. The Department will create 20 positions in Fiscal Year 2015-16 and an additional 20 in Fiscal Year 2016-17 and ongoing. The proposed regulations will not effect the expansion of businesses currently doing business in California or the creation of new, or elimination of existing, businesses within the state.

The Department has determined that the proposed regulations will have no effect on worker safety or the state's environment because they relate strictly to the management of inmates under the jurisdiction of the Department.

The proposed regulations may benefit the health and welfare of California residents by allowing male offenders, and other previously ineligible offenders, to participate in the ACP. This program allows participating inmates to serve their sentences in a community setting rather than a state prison and offers rehabilitative programming, which may help to reduce overcrowding in 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 regulatory action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law. Interested persons are 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 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, and Notice of Proposed Action will also be made available on the Department's website: www.cdcr.ca.gov.

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, amends or repeals 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 at least 15 days after the date on which they are made available.

TEXT OF PROPOSED 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.

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~~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)

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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 <input type="checkbox"/> YES <input type="checkbox"/> NO	COMMENTS		
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.

INITIAL STATEMENT OF REASONS:

The California Department of Corrections and Rehabilitation (CDCR) proposes to amend the California Code of Regulations (CCR), Title 15, Division 3, sections 3000, 3078.1, 3078.2, 3078.3, and 3078.4.

The Alternative Custody Program (ACP) is authorized by California Penal Code (PC) Section 1170.05. The ACP was originally designed for female offenders who met the eligibility criteria for placement. In *Sassman v. Brown*, CDCR was ordered to amend its regulations to remove gender-specific language from the ACP eligibility criteria, to allow eligible male offender participation.

The ACP is a voluntary program developed for non-violent, non-serious and non-registerable sex offense offenders that allows them to serve their sentences in the community in lieu of confinement in state prison as prescribed by their individual case plans. Pursuant to PC section 1170.05, admission to ACP is solely at the discretion of the Secretary or designee.

On October 10, 2015, Senate Bill 219 (SB 219) was signed into law amending PC 1170.05 to prohibit CDCR from excluding a person from participating in ACP if the inmate has an existing medical or psychiatric condition that requires ongoing care. This change requires a modification of the exclusionary criteria. CDCR will not exclude a person from ACP because of an existing medical or psychiatric condition. SB 219 also established certain time frames for processing ACP applications, which have been incorporated into the revised regulation.

Further, the current regulation does not establish prior serious or violent offenses as potential exclusionary criteria. The proposed regulation allows CDCR to consider excluding persons with prior violent or serious convictions on a case-by-case basis, in the interest of public safety. Persons currently serving a sentence for serious or violent convictions remain ineligible for ACP.

Finally, the length of time an ACP participant may have left to serve to be considered for the program has been modified from 24 months to 12 months. Following the *Sassman* order, the number of persons eligible for ACP and the number of applications to ACP has significantly increased. This regulatory change will allow CDCR to process applications in a timely manner and allows CDCR to effectively supervise ACP participants in the community.

Consideration of Alternatives:

CDCR must determine that no reasonable alternatives considered, or that have otherwise been identified and brought to the attention of CDCR, 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.

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

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

Economic Impact Assessment

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

CDCR has determined the proposed regulation will have an impact on the creation or elimination of existing jobs within California as the CDCR proposes to create positions in order to review and approve eligible offenders into the ACP, conduct case management, provide supervision via electronic device monitoring (ankle monitors), and for general program oversight. The Department will create 20 positions in Fiscal Year 15-16 and an additional 20 in Fiscal Year 16-17 and ongoing.

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

The Department has determined the proposed regulations will have no impact on the health and welfare of California residents, worker safety, and the state's environment, as the proposed regulations affect the internal management of CDCR prisons only.

Significant Adverse Economic Impact on Business

The Department has made an initial determination the proposed regulation 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 CDCR only, and place no requirements or restrictions on businesses.

Benefits of the Regulations

The proposed regulatory action will benefit inmates by establishing that both male offenders, and offenders with existing psychiatric or medical conditions that require ongoing care, will be eligible to participate in the ACP. This program allows participating inmates to serve their sentences in a community setting rather than a state prison and offers rehabilitative programming. This program may help to reduce overcrowding in state prisons.

Documents Relied Upon

CDCR, in proposing amendments to these regulations, has not identified nor has it relied upon any technical, theoretical, or empirical study, report, or similar document.

Specific Purpose and Rationale for Each Section, Per Government Code section 11346.2(b)(1):

NOTE: In some subsections language has been taken directly from authorizing Penal Code statutes and adopted into the regulation text. While this is not standard practice, the Department believes that it is necessary in these specific subsections in order to provide clarity to inmates who may be eligible for this program. While inmates have access to the Penal Code through their institution law libraries, they have constant, ready access to the CCR, Title 15 because all inmates are given a copy of Title 15 regulations annually.

Section 3000. Definitions

This Section is amended to remove the word “female” from the definition of the eligibility criteria for the ACP; thereby expanding eligibility to include male offenders as ordered by the court in *Sassman v. Brown*. Further, qualification criteria have been removed from this section as it is described in detail by section 3378.3. The reference citations are amended to include the case of *Sassman v. Brown*.

Section 3078.1. Alternative Custody Program General Policy

Subsection 3078.1(a) is amended to delete text which provides an overview of the ACP. The ACP is defined in detail in Sections 3078.2 and 3078.3, therefore this explanation has been modified to provide clarity and remove redundancies.

Subsection 3078.1(b) is amended to correct minor typographical errors. Further, minor corrections to capitalization were made in subsections (1) and (3).

Subsection 3078.1(d) is amended to capitalize “Secretary”.

Section 3078.2. Alternative Custody Program Eligibility Criteria

Subsection 3078.2(a) is amended to reflect the removal of the word “female”, thereby enabling eligible male offender participation as ordered by the court in *Sassman v. Brown*.

Subsection 3078.2(b) is amended to change the length of time to serve on ACP from 24 months to 12 months. Following the *Sassman* order, the number of persons eligible for ACP and the number of applications to ACP has significantly increased. This regulatory change will allow CDCR to process applications in a timely manner and allows CDCR to effectively supervise ACP participants in the community. Additionally “and” has been added to the sentence to make clear that an inmate must meet all the criteria in subsections (a) to (c).

Section 3078.3(a) is amended to clarify that the exclusionary criteria listed in subsection 3078.3(a) are mandatory.

Subsection 3078.3(a)(2) is amended to fix a typographical error.

Subsection 3078.3(a)(3) is amended to reflect the statutory language in Penal Code section 1170.05(d)(3) and to ensure that all persons required to register as a sex offender under Penal Code section 290 et seq. are covered by this criteria.

Subsection 3078.3(a)(13) is amended to reflect the terminology now used in Section 3378 et seq. as well as for clarity. What were formerly “prison gangs” are now referred to as “STG-I.” The reference to “street gangs and disruptive groups” (now referred to in regulations as STG-II) has been deleted as STG-II members are now subject to case-by-case review in new subsection 3078.3(b)(8).

Subsections 3078.3(a)(14)-(16) are deleted. The Board of Parole Hearings (BPH) no longer conducts probable/good cause findings. Further, newly adopted subdivision (b)(1) allows CDCR to consider any parole violations before placing an inmate in ACP, pursuant to PC section 1170.05(i).

Existing Subsection 3078.3(b)(1) is repealed as “sex offenses” are registrable sex offenses listed in California Penal Code section 290 et seq. Therefore, subsection (b)(1) is unnecessary because it is referenced in (a)(3). CDCR will continue to consider an offender’s entire arrest and conviction

record and other factors to ensure that the offender's placement or housing is appropriate for his or her criminogenic needs and public safety.

Existing Subsection 3078.3(b)(2) is repealed in compliance with Senate Bill 219 (2015), which amended PC section 1170.05 to remove language that allowed consideration of an offender's psychiatric or medical condition as a reason for excluding an inmate from ACP eligibility.

New Subsection 3078.3(b)(1) is adopted to establish that an inmate who has not satisfactorily complied with reasonable rules and regulations while in custody or previously on parole may be excluded from participation in an ACP. This language is taken from PC section 1170.05(i). CDCR has added "or on parole" to the language in order to establish that disqualifying behavior or actions that occur while an inmate is on parole may be used to exclude the offender from participation in an ACP. This is necessary because past performance on parole can indicate whether or not an inmate will be able to succeed in a community setting.

Existing Subsections 3078.3(b)(3) through (b)(6) are renumbered to 3078.3(b)(2) through (b)(5) as a result of the repeal of existing subsections 3078.3(b)(1) and (b)(2).

Subsection 3078.3(b)(2) (formerly (b)(3)) is amended to delete the word "arrest" and reference to BPH good cause hearings. While CDCR may consider arrests to determine the appropriateness of housing or placement to ensure an applicant's criminogenic needs are met and protect public safety, CDCR will not reject an inmate from ACP based solely on arrests without convictions. Further, BPH no longer conducts probable/cause hearings; however, newly adopted subsection (b)(1) allows CDCR to consider all parole violations before allowing an inmate to participate in ACP.

Subsection 3078.3(b)(3) (formerly (b)(4)) is amended to remove reference to good cause hearings. BPH no longer conducts probable/cause hearings; however, newly adopted subsection (b)(1) allows CDCR to consider all parole violations before allowing an inmate to participate in ACP.

Subsection 3078.3(b)(5) (formerly subdivision (b)(6)) is amended to add the words "transitional care facility residential drug or treatment program or residential home" and striking "placement." Under subsection 3078.1(b), an ACP participant's confinement in the community may be in a treatment program, such as a for drug abuse, a transitional care facility, or in a residential home. This change clarifies that if an inmate proposed to live in a residence or attend a program that is inconsistent with the inmate's Individualized Treatment and Rehabilitation Plan (ITRP), CDCR may exclude him or her from ACP.

New Subsection 3078.3(b)(6) is adopted to exclude inmates with an arson conviction on a case-by-case basis. This addition allows CDCR to protect public safety. Many of the housing options are made of combustible materials and/or allow multiple participants making ACP an unsuitable option for those who may pose a high risk due to arson conviction. Disallowing high risk, convicted arson on a case-by-case basis will allow CDCR to protect public safety.

New Subsection 3078.3(b)(7) is adopted to allow consideration to exclude an inmate who has been previously convicted of a serious or violent offense from ACP on a case-by-case basis. This allows CDCR to consider whether an inmate with a previous serious and violent offense that may not be reflected by the current commitment offense is suitable for ACP participation.

New Subsection 3078.3(b)(8) is adopted to allow CDCR to consider an inmate's STG-II status, which includes membership in street gangs or other disruptive groups, on a case-by-case basis to determine if the inmate is suitable for ACP.

New Subsection 3078.3(c) is adopted to prohibit exclusion from ACP based on “[a]n inmate’s existing psychiatric or medical condition that requires ongoing care” as required by Senate Bill 219 (2015), which amended PC section 1170.05.

Section 3078.4. Alternative Custody Program Processing

Subsection 3078.4(a)(1) is amended to reflect the new revision date of CDCR Form 2234, which is incorporated by reference. The revisions to this form remove the requirement for the applicant to be female, add an acknowledgment that the participant may have to wear and maintain an electronic monitoring device, and make non-substantive clarifications.

The provisions in existing subsection 3078.4(a)(2) have been split between amended subsection 3078.4(a)(2) and new subsection 3078.4(a)(3). See below.

Subsection 3078.4(a)(2) is amended to reflect the requirement of PC section 1170.05(j) that CDCR shall respond to an applicant within two weeks of the inmate’s application to inform the inmate that the application was received, and to notify the inmate of the eligibility criteria of the program.

New Subsection 3078.4(a)(3) is adopted to reflect the new revision date of CDCR Form 2235, which is incorporated by reference. The revisions to this form remove the exclusionary criteria that have been removed in Section 3078.3 by this rulemaking action, such as being in Parole Violator Return to Custody status or having more than 12 months remaining on the offender’s sentence. The revisions also add case-by-case exclusionary criteria, such as an arson conviction or prior conviction of a serious or violent felony. Additionally, this section now clarifies that the CDCR Form 2235 should be forwarded to Women and Children Services Unit (WCSU) upon completion as required by new Subsection 3078.4(a)(5).

Existing Subsection 3078.4(a)(3) is renumbered to 3078.4(a)(4) as a result of the adoption of new subsection 3078.4(a)(3).

New Subsection 3078.4(a)(5) is adopted to establish the process to determine whether an inmate is potentially eligible for ACP and notify the inmate of the result.

Subsection 3078.4(b)(1) is amended to reflect the requirement of PC section 1170.05(j) that the Individualized Treatment and Rehabilitation Plan (ITRP) be developed in consultation with the inmate within 30 days of the offender being found potentially eligible for ACP.

Subsection 3078.4(b)(2) is amended to add the words “transitional care facility residential drug or treatment program or residential home” and striking “placement.” Under subsection 3078.1(b), an ACP participant’s confinement in the community may be in a treatment program, such as a for drug abuse, a transitional care facility, or in a residential home. This change clarifies that if an inmate proposed to live in a residence or attend a program that is inconsistent with the inmate’s) ITRP, CDCR may exclude him or her from ACP.

Subsection 3078.4(b)(2)(A) is repealed. This subdivision was created when ACP required the inmate to have dependent children. In 2012, SB 1021 deleted this requirement from the Penal Code, so this section no longer applies.

Existing subsection 3078.4(b)(2)(B) is incorporated into subdivision (b)(2) as with the deletion of (b)(2)(A) there is no longer a list of factors, only one.

Subsection 3078.4(b)(3) is amended to add the word “potential” before “participant” to make clear that the inmate must agree to sign the medical benefit forms before being accepted into ACP.

New Subsection 3078.4(d) is adopted to reflect the requirement of PC section 1170.05(j) that “[e]xcept 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.”

New Subsection 3078.4(e) is adopted to reflect the requirement of PC section 1170.05(j) that “[t]he secretary or his or her designee shall maintain a record of the application and notice of denials for participation. The inmate may appeal the decision through normal grievance procedures or reapply for participation in the program 30 days after the notice of the denial.” Section 3084 et seq. details the normal CDCR appeals process.