State of California

California Code of Regulations

Title 15. Crime Prevention and Corrections

Division 3

Rules and Regulations of

Adult Institutions, Programs, and Parole

Department of Corrections and Rehabilitation

Updated through January 1, 2017

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Information and updates available online at:
http://www.cdcr.ca.gov/regulations/adult_operations
CDCR Intranet: http://intranet/adm/dss/rpmb

DIVISION 3. ADULT INSTITUTIONS, PROGRAMS AND PAROLE

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DIVISION 3. ADULT INSTITUTIONS, PROGRAMS AND PAROLE

CHAPTER 1. RULES AND REGULATIONS OF ADULT OPERATIONS AND PROGRAMS

HISTORY:

1. Change without regulatory effect repealing preface filed 10-29-90 pursuant to section 100, title 1, California Code of Regulations (Register 91, No. 6).

Article 1. Behavior

3000. Definitions.

The following are definitions of terms as used in these regulations:

Accessory means a person who, after a felony has been committed, harbors, conceals or aids a principal in such felony, with the intent that the principal may avoid punishment, and has knowledge that said principal committed the felony.

Administrative Officer of the Day (AOD) means an administrative staff member possessing managerial or supervisory experience and authority to make decisions in the absence of an Institution Head or Region Parole Administrator.

Adverse Witness means a person who has given or will give information against a prisoner or parolee. For the purpose of conducting parole revocation hearings, adverse witness means a person whose expected testimony supports the violation charged.

Affiliate means individual offenders validated as members, associates, or monitored status who are connected or interact with a certified or recognized Security Threat Group.

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

Alternative Custody Program (ACP) means a voluntary program that allows eligible inmates committed to state prison to serve their sentence in the community in lieu of confinement in state prison.

Alternative Custody Program Participant means any offender who is approved for and placed in the Alternative Custody Program as defined in this section.

Appeal means a formal request for, or the act of requesting, an official change of a decision, action, or policy.

Architectural and Engineering Services means those services procured outside of the State's Civil Service procedures and which are rendered by an architect or engineer, but may include ancillary services logically or justifiably performed in connection therewith.

Arrest means the taking of a person into custody, in a case and in a manner authorized by law.

Asylum State means the state other than California in which a parolee-at-large is in custody.

Attempted Escape means an unsuccessful effort to breach a secured perimeter or the use of force against a person to attempt access into an unauthorized area. Some progress toward implementing an escape must be made to implement a plan. This includes, but is not limited to the following overt acts: acquiring unauthorized clothing or identification, preparing a hiding place in an unauthorized area, lying in wait for a potential hostage, attempting access to a perimeter that was unsupervised, unlawfully obtaining tools to aid in an escape, manufacturing a likeness of a person in order to substitute for the inmate's presence, or receiving assistance from other conspirators who acted upon an escape plan, e.g. a plan to escape uncovered from verbal, telephone or mail communication.

Automated Needs Assessment Tool means a systematic process which consists of a series of questions and a review of the inmate's criminal data in order to establish a baseline for the offender's criminogenic needs to assist in determining appropriate placement in a rehabilitative program.

Behavior Management Unit is alternate general population housing and programming which is designed to reduce inmate's continuing involvement in disruptive behavior, violence, or noncompliance with CDCR rules and regulations, allowing non-disruptive inmates in the general population the opportunity to program without continual interruption due to the behavior of a smaller, more disruptive segment of the inmate population.

Board of Parole Hearings (Board) means the state agency which is responsible for the administration of parole for those persons committed to the department under Penal Code section 1168 and those committed under Penal Code section 1170 who also meet the criteria found in Penal Code section 2962.

California Agency Parolee means a person released from department facility to parole supervision in a California community who subsequently is within the custody of any California agency, or subdivision thereof, except the department.

California Agency Prisoner means a prisoner who has been transferred from the custody of the department to the custody of any other California agency or subdivision thereof.

California Concurrent Parolee means a person on parole for a California sentence and a sentence of another jurisdiction who is being supervised in a California community pursuant to the Uniform Act for Out-of-State Parole Supervision (Penal Code sections 11175–11179).

California Law Enforcement Telecommunications System (CLETS) means a statewide telecommunications system for the use of law enforcement agencies maintained by the California Department of Justice.

California Out-of-State Correctional Facility (COCF). The COCF is a program through which male CDCR inmates are transferred to out-of-state correctional facilities that have contracted with the CDCR to provide housing, security, health care and rehabilitative programming services to CDCR inmates.

CalParole means a centralized statewide parolee information data system.

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

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

Case Conference means a documented communication between the parole agent and the parole unit supervisor concerning a parolee (i.e., placing a parole hold).

Case Conference Review means a documented review of the progress made in the Case Plan and the effectiveness of the current plan to determine necessary modifications. It will also include a review to determine if the parole supervision/case management expectations have been met.

Case records file means the file which contains the information concerning an inmate which is compiled by the department pursuant to Penal Code Section 2081.5 and includes such components as the central file, education file, visiting file and parole field file.

Central File (C-File) means a master file maintained by the department containing records regarding each person committed to its jurisdiction.

Central Office Calendar means the calendar which is composed of administrative hearing officers as designated by the deputy director, parole hearings division. They are authorized to make decisions regarding matters reported to the parole hearings division, including the decision to order a hearing scheduled.

Central Office Hearing Coordinator means the parole hearings division employee at headquarters who is responsible for hearing schedules, attorney appointments, and other hearing-related services.

Certification means that a business concern has obtained verification that it meets the definition of disabled veteran business enterprise pursuant to Military and Veterans Code section 999(g) from an agency that has been authorized by law to issue such certification.

Chaplain is a staff member, including a Native American Spiritual Leader, who provides religious/spiritual care and counseling to inmates, affords inmates reasonable opportunities to practice the religious/spiritual beliefs of their choice, and organizes, coordinates, and manages various religious/spiritual group activities.

Child means a person under the age of 18 years.

Chronological History means a CDC Form 112 (Rev. 9/83), Chronological History, prepared for each inmate, upon which significant dates and commitment information affecting the inmate are logged.

Classification and Parole Representative (C&PR) means the department employee designated at each institution to be that institution's liaison with releasing boards and parole staff.

Classification Staff Representative (CSR) means a departmental employee designated to represent the Director in the classification process during the review, approval, or deferral of actions by institution classification committees, including but not limited to inmate transfers, inmate special housing program placements/retention, and custody designations.

Clean Conduct Credit means a combination of months, followed by days which represent credits that shall be applied to the maximum determinate SHU term, as long as the inmate remains free of any subsequent serious misconduct through the MERD. Clean conduct credit is calculated as one-half or 50% of the assessed SHU term.

Cognitive Behavioral Treatment is evidence based treatment which helps inmates understand the thoughts and feelings which influence behaviors. Treatment is generally short-term and focused on helping inmates deal with a specific problem. During the course of treatment, inmates learn how to identify and change destructive or disturbing thought patterns which have a negative influence on behavior.

Collateral Contact means any communication between a Division of Adult Parole Operations staff and another person concerning a parolee.

Concurrent Parolee means a person on parole for a California sentence and a sentence of another jurisdiction who is being supervised in a state other than California pursuant to the Uniform Act for Out-of-State Parole Supervision (Penal Code sections 11175–11179).

Conditions of Parole mean the specific conditions under which a prisoner is released to parole supervision.

Confinement to Quarters (CTQ) means an authorized disciplinary hearing action whereby an inmate is restricted to their assigned quarters for a period not to exceed five days for administrative rule violations and ten days for serious rule violations.

Confirmed Security Threat Group (STG) Behavior means behavior with a nexus to an STG which is discovered and confirmed to have occurred. Confirmation can be obtained through either a guilty finding in a STG related Rules Violations Report and/or any document that clearly describes the STG behavior/activities incorporated within the validation or continued STG behavior package which is affirmed by an STG Unit Classification Committee.

Contraband means anything which is not permitted, in excess of the maximum quantity permitted, or received or obtained from an unauthorized source.

Control Service means the middle supervision category of a person on parole.

Controlled Substance means any substance, drug, narcotic, opiate, hallucinogen, depressant, or stimulant as defined by California Health and Safety Code section 11007. Also included are prescribed medications containing any of the substances identified in the H&SC section above.

Cooperative Parolee means a person on parole for a California sentence who is under parole supervision in a state other than California pursuant to the Uniform Act for Out-of-State Parole Supervision (Penal Code sections 11175–11179).

Course of conduct means two or more acts over a period of time, however short, evidencing a continuity of purpose.

Court Order means a custody determination decree, judgment, or order issued by a court of competent jurisdiction, whether permanent or temporary, initial or modified, that affects the custody or visitation of a child, when issued in the context of a custody proceeding. An order, once made, shall continue in effect until it expires, is modified, is rescinded, or terminates by operation of law.

Criminal Identification and Investigation (CI&I) Report means the report defined by Penal Code section 11105, commonly referred to as "Rap Sheet".

Criminogenic Need means an attribute of the inmate that is directly linked to criminal behavior.

Cumulative Case Summary means the cumulative summary of specific portions of the record maintained by the department regarding each prisoner from reception to discharge.

Custody of the department means the inmate is in the physical custody of the department. The inmate would be considered out of the custody of the department when; out to court and housed in a County or Federal facility, escaped and not returned to departmental custody, in a non-departmental mental health facility, and in a medical facility under non-departmental supervision.

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

Deadly weapon means any weapon identified in Penal Code section 4502. Any item or substance not readily identified as a weapon becomes a deadly weapon when used in a manner that could reasonably result in serious bodily injury or death.

Debriefing is the formal process by which a Security Threat Group (STG) coordinator/investigator determines whether an offender has abandoned STG affiliation and dropped out of a STG.

A subject shall only be debriefed upon their request, although staff may ask if he or she wants to debrief.

Department means the California Department of Corrections and Rehabilitation.

Deputy Regional Parole Administrator means the department's administrator within a Division of Adult Parole Operations region.

Detainer means a written document received from an official representing a district attorney office, court, or correctional or law enforcement agent which indicates that an inmate is wanted by that office and the basis for the detainer.

Determinate Sentencing Law (DSL) Prisoner means a person sentenced to prison under Penal Code section 1170 for a crime committed on or after July 1, 1977.

Direct and Constant Supervision means an inmate shall be monitored and observed by CDCR staff, either custody staff or work supervisor as indicated in these regulations, sufficiently to account for the specific whereabouts of the inmate at all times.

Direct Link means any connection between a subject and any person who has been validated as an STG affiliate. This connection does not need to be independently indicative of STG association beyond the requirements for validation source items listed in Title 15, Section 3378.

Disabled Veteran Business Enterprise means a business concern as defined in Military and Veterans Code section 999(g).

Disabled Veteran Business Enterprise focus paper means a publication that meets all of the following criteria: (1) has an orientation relating to the disabled veteran business enterprise; (2) is known and utilized by members of the disabled veteran business enterprise community; (3) primarily offers articles, editorials (if any), and advertisements of business opportunities aimed at disabled veteran business enterprises; and (4) is readily available within the geographical area for which the advertisement is placed and for which the services are to be performed.

Disabled Veteran Business Enterprise focus paper and trade paper means a publication that meets all of the criteria of a disabled veteran business enterprise focus paper and all of the criteria of a trade paper.

Disciplinary Detention means a temporary housing status which confines inmates so assigned to designated rooms or cells for prescribed periods of time as punishment for serious rule violations.

Disciplinary Free means without any finding of guilt of a disciplinary infraction filed on a Rules Violation Report, classified as either administrative or serious.

Disciplinary Free Period means the period that commences immediately following the date and time an inmate is identified (date of discovery of information leading to the charge) as committing a rules violation classified as serious.

Disruptive Behavior means behavior which might disrupt orderly operations within the institutions, which could lead to violence or disorder, or otherwise endangers facility, outside community or another person as defined in sections 3004(b), 3005(a) and 3023(a).

Disruptive Group 1—means any gang, other than a prison gang.

Distribution means the sale or unlawful dispersing, by an inmate or parolee, of any controlled substance; or the solicitation of or conspiring with others in arranging for, the introduction of controlled substances into any institution, camp, contract health facility, or community correctional facility for the purpose of sales or distribution.

District Administrator means the department's administrator of a Division of Adult Parole Operations unit, district, or geographical area.

Dropout means a validated affiliate who has cooperated in and successfully completed Phase One and Two of the debriefing process.

Drug paraphernalia means any device, contrivance, instrument, or paraphernalia intended to be used for unlawfully injecting or consuming into the human body a controlled substance as identified in Health and Safety Code section 11007.

Drugs means substances intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease, and as defined in Health and Safety Code section 11014.

Effective communication means providing the inmate, to the extent possible, the means to understand and participate in the disciplinary process to the best of their ability. This may be accomplished through reasonable accommodation or assignment of a staff assistant. If the inmate's Test of Adult Basic Education (TABE) score is 4.0 or lower, employees are required to query the inmate to determine whether or not assistance is needed to achieve effective communication. The employee is required to document on appropriate CDCR forms his/her determination of whether the inmate appeared to understand, the basis for that determination and how it was made. For contacts involving due process, employees shall give priority to the inmate's primary means of communication, which may include but is not limited to; auxiliary communication aids, sign language interpreter, and bilingual interpreter.

Electronic Records Management Systems (ERMS) is a document management system operating alongside the Strategic Offender Management System (SOMS) that provides a digitally scanned and uploaded central records repository.

Escape History refers to any reliable information or inmate self-admission in the central file to an escape, attempted escape, walkaway, or plan to escape. The available information describing the circumstances of the escape or attempted escape shall be evaluated in determining the level of risk to correctional safety and security posed by the inmate.

Examinee means a person who voluntarily takes a polygraph examination.

Exceptional Circumstances means circumstances beyond the control of the department or the inmate that prevent the inmate or requested witnesses from participating in the disciplinary hearing within established time limitations. Examples of this as applied to an inmate would include a serious temporary mental or physical impairment verified in writing by a licensed clinical social worker, licensed psychologist, psychiatrist, or physician. Some examples of exceptional circumstances preventing staff witnesses, to include the reporting employee, from attending the disciplinary hearing would be extended sick leave, bereavement leave, personal emergency, or extended military duty. Exceptional circumstances, as described above, would allow for suspension of time limitations pending resolution of the instances.

Ex-Offender means a person previously convicted of a felony in California or any other state, or convicted of an offense in another state which would have been a felony if committed in California.

Face-to-Face Contact means an in-person contact with a parolee, or an Alternative Custody Program Participant, by a CDCR parole agent.

Facility means any institution; community-access facility or community correctional facility; or any camp or other subfacility of an institution under the jurisdiction of the department.

Facility Security Perimeter is any combination of living unit, work area and recreation area perimeters that is set aside to routinely restrict inmate movement based on custody level. This perimeter will contract and expand depending upon the weather, lighting conditions and hours of operation.

Federal Consecutive Prisoner means a California prisoner who is also under sentence of the United States and is confined in a federal correctional facility, and whose California term shall commence upon completion of the United States' sentence.

Felony means a crime which is punishable with death or by imprisonment in the state prison. Every other crime or public offense is a misdemeanor except those offenses that are classified as infractions.

Field Contact means face-to-face contact by Division of Adult Parole Operations staff with a parolee away from the parole office or office parking area.

Firm means any individual, firm, partnership, corporation, association, joint venture or other legal entity permitted by law to practice the professions of architecture, landscape architecture, engineering, environmental services, land surveying or construction project management.

Force, as applied to escape or attempted escape refers to physical contact or threat of physical harm against a person to enable or attempt the escape.

Frequent and Direct Supervision means that staff supervision of an inmate shall be sufficient to ensure that the inmate is present within the area permitted.

Friendly Witness means any witness who is not an adverse witness.

Gang means any ongoing formal or informal organization, association or group of three or more persons which has a common name or identifying sign or symbol whose members and/or associates, individually or collectively, engage or have engaged, on behalf of that organization, association or group, in two or more acts which include, planning, organizing, threatening, financing, soliciting, or committing unlawful acts, or acts of misconduct outside of the California Department of Corrections and Rehabilitation jurisdiction.

General Chrono means a CDC Form 128-B (Rev. 4-74) which is used to document information about inmates and inmate behavior. Such information may include, but is not limited to, documentation of enemies, records of disciplinary or classification matters, pay reductions or inability to satisfactorily perform a job, refusal to comply with grooming standards, removal from a program, records of parole or social service matters.

General Conditions of Parole mean general rules regarding behavior required or prohibited during parole for all parolees.

Goal means a numerically expressed disabled veteran business enterprise objective as set out in Public Contract Code section 10115(c), that awarding departments and contractors are required to make efforts to achieve.

Good Cause means a finding based upon a preponderance of the evidence that there is a factual basis and good reason for the decision made.

Good Faith Effort means a concerted effort on the part of a potential contractor to seek out and consider disabled veteran-owned and operated business enterprises as potential contractors, and/or subcontractors in order to meet the program participation goals.

Great bodily injury (GBI) means any bodily injury that creates a substantial risk of death.

Grievance means a complaint about a decision, action, or policy which an inmate, parolee or staff wish to have changed.

Harassment means a willful course of conduct directed at a specific person, group, or entity which seriously alarms, annoys, or terrorizes that person, group, or entity and which serves no legitimate purpose.

Hearing Committee means a panel of three certified Senior Hearing Officers comprised of: one Correctional Lieutenant or Correctional Counselor II, one Facility/Correctional Captain or Correctional Counselor III, and one staff member at the level of Associate Warden or above, or any combination thereof.

High Control means the highest supervision category of a person on parole.

Hold means to retain an inmate or parolee, who is under the Secretary's jurisdiction, in custody at an institution or a local detention facility in response to the legal request of a law enforcement or correctional agency representative.

Immediate Family Members means legal spouse; registered domestic partner, natural parents; adoptive parents, if the adoption occurred and a family relationship existed prior to the inmate's incarceration; step-parents or foster parents; grandparents; natural, step, or foster brothers or sisters; the inmate's natural and adoptive children; grandchildren; and legal stepchildren of the inmate. Aunts, uncles and cousins are not immediate family members unless a verified foster relationship exists.

Inactive-Monitored Status Affiliate means a validated affiliate who was released from the Security Housing Unit concurrent with the implementation of the Step Down Program through a Departmental Review Board hearing.

Inactive Status Affiliate means a validated affiliate who was released from Security Housing Unit (SHU) prior to implementation of the Step Down Program. This inmate was not previously identified as having been involved in gang-related behavior for a period of six years, was reviewed by a Departmental Review Board, and released from the SHU.

Incarcerating Jurisdiction means the jurisdiction where an Interstate or Western Interstate Corrections Compact, federal contract, federal concurrent, or concurrent prisoner is incarcerated.

Indecent Exposure means every person who willfully and lewdly, either: exposes his or her person, or the private parts thereof, in any public place, or in any place where there are present other persons to be offended or annoyed thereby; or, procures, counsels, or assists any person so to expose him or her self or take part in any model artist exhibition, or to make any other exhibition of him or her self to public view, or the view of any number of persons, such as is offensive to decency, or is adapted to excite to vicious or lewd thoughts or acts.

Indeterminate Sentence Law (ISL) means a person sentenced to prison for a crime committed on or before June 30, 1977, who would have been sentenced under Penal Code section 1170 if he/she had committed the crime on or after July 1, 1977.

Indigent Inmate means an inmate who is wholly without funds at the time they were eligible for withdrawal of funds for canteen purchases.

Inmate means a person under the jurisdiction of the Secretary and not paroled. Inmate and prisoner are synonymous terms.

Inmate Match means a one-on-one match of a citizen volunteer and an inmate who receives few or no visits to establish a relationship which encourages positive inmate behavior and programming.

Institution means a large facility or complex of subfacilities with a secure (fenced or walled) perimeter headed by a warden.

Institution Head means a warden, regional parole administrator, or designated manager of a facility housing inmates.

Intake Control Unit (ICU) means a unit that schedules and coordinates weekly movement of CDCR new commitment inmates from the counties to the CDCR Reception Centers. The ICU is also a liaison between the counties and CDCR in the event that CDCR is unable to accept delivery of its new commitment inmates and payments are due to the counties.

Interstate Unit means the Division of Adult Parole Operations which coordinates the supervision of California cooperative parolee and the return of parolees-at-large from asylum states. The unit is responsible for Interstate and Western Interstate Corrections Compacts, federal contrast, federal concurrent, and consecutive prisoners and multijurisdiction parolees incarcerated in the prison of another jurisdiction.

Intoxicant not identified as a controlled substance means toluene or any bi-product i.e. paint thinners, paint, fingernail polish, lacquers, gasoline, kerosene, adhesives or other substance that markedly diminishes physical and/or mental control.

Joint Venture Employer (JVE) means any public entity, nonprofit or for profit entity, organization, or business which contracts with the director for the purpose of employing inmate labor.

Joint Venture Program (JVP) means a contract entered into between the director and any public entity, nonprofit or for profit entity, organization, or business for the purpose of employing inmate labor.

Laboratory means any toxicological or forensic laboratory which has been recognized by the state, other certifying agency, or which is accepted by any local, county, or state prosecuting authority to provide evidence as to the presence of controlled substances in human body fluids or confirm that a substance is or contains any controlled substance.

Legal process means a writ, summons, warrant or mandate issued by a court.

Legal Status Sheet (LSS) means a CDC Form 188, Legal Status Summary, containing the commitment and release status of an inmate.

Life Prisoner means a prisoner whose sentence includes a term of life.

Lockdown means the restriction of all inmates to their cells/dormitory beds encompassing no less than a Facility. True lockdowns are rare occasions, generally following very serious threats to institutional security and the safety of staff and inmates. The movement of any inmate to an assignment or resumption of any program would change the lockdown status of the program, returning the institution/facility to a diminished level of modified program or to normal program.

Lockout means any refusal by an employer to permit any group of five or more employees to work as a result of a dispute with such employees affecting wages, hours or other terms or conditions of employment of such employees.

Long Term Offender Program means a voluntary program that provides Cognitive Behavioral Treatment and other rehabilitative programs to inmates who are subject to parole suitability hearings conducted by the Board of Parole Hearings.

Manuscript means any written, typed or printed articles of fiction and nonfiction; poems; essays; gags; plays; skits; paintings; sketches; drawings; or musical compositions created by an inmate.

Material Evidence means evidence which has a substantial bearing on matters in dispute and legitimate and effective influence on the decision of a case.

Medical Parolee means a person released from confinement pursuant to Penal Code section 3550.

Minimum Eligible Parole Date (MEPD) means the earliest date on which an Indeterminate Sentence Law or life prisoner may legally be released on parole.

Minimum Eligible Release Date (MERD) means a combination of months, followed by days which represent the minimum amount of time that must pass before a determinate SHU term expires. The MERD initially represents 50% or one-half of the maximum SHU term, as it incorporates 50% or one-half clean conduct credit, for eligible inmates. The MERD may be adjusted based upon subsequent serious misconduct.

Modified Program means the suspension or restriction of less than all inmate program activities and/or movement. A Modified Program may either occur independently in response to an incident or unusual occurrence or may occur as a facility transitions from a lockdown to regular programming. Imposed restrictions may fluctuate as circumstances dictate with the goal of resuming regular programming as soon as it is practical. Modified programming will last no longer than necessary to restore institutional safety and security or to investigate the triggering event, and shall not target a specific racial or ethnic group. For those inmates whose movement has been restricted, movement may be authorized on a case-by-case basis for essential or emergency services such as medical, dental, mental health or law library visits. The routine and/or temporary restrictions on inmate movement or yard activities, which do not last longer than 24 hours, are not considered a program modification.

Monitored Status Affiliate means any offender who has successfully completed Steps 1–4 in the Step Down Program and has been released from a Security Housing Unit.

Multijurisdiction Parolee means any concurrent, California concurrent, California agency, or cooperative parolee.

Multijurisdiction Prisoner means any federal contract, federal concurrent, federal consecutive, concurrent, consecutive, California agency, Interstate or Western Interstate Corrections Compact prisoner.

Native American Sweat Lodge Grounds are an outside area at an institution designated to be used for approved Native American religious/spiritual group activities.

Non-Revocable Parole is a form of unsupervised community release pursuant to the provisions of Penal Code section 3000.03, wherein the parolee is not subject to placement of a parole hold, revocation, or referral to the Board of Parole Hearings for violation of any condition of parole.

Non-secure Facility means any of the following Departmental facilities: Minimum Support Facilities, Camps and Community Correctional Centers (i.e. Community Correctional Reentry Centers, Restitution Centers, Community Correctional Facilities, Drug Treatment Furlough, halfway back facilities, etc.); and comparable facilities in another law enforcement jurisdiction (i.e. county road camps, county detoxification center, etc.).

Offender means any inmate, ward, parolee, or other person currently under the jurisdiction of the CDCR.

Our Hold Only (OHO) means a parolee is in custody under a Penal Code section 3056 parole hold and has no other charges or detainers pending.

Out-to-Court means an inmate is temporarily removed from a facility to be brought before a court to be tried for an offense, to be examined by a grand jury or magistrate, or for any other court proceedings.

Outdoor Religious/Spiritual Grounds are an outside area at an institution designated to be used for any approved religious/spiritual group activities. Outdoor Religious/Spiritual Grounds does not include Native American Sweat Lodge Grounds, as defined in this section.

Parole Administrator means the Department's administrator of a Division of Adult Parole Operations headquarters unit, district, program or geographic location.

Parole Agent means an employee and his/her supervisors in the department who are assigned to supervise those persons released from incarceration to the supervision of the Division of Adult Parole Operations.

Parolee Field File means a file maintained by a parole unit office containing information about a parolee and his or her current parole.

Parole Hearings Division means the division of the department which is responsible for the department's administration of paroles for those persons committed to the department under Penal Code section 1170, except those who also meet the criteria of Penal Code section 2962.

Parole Hold means authorization by a departmental employee to hold a parolee in custody pursuant to section 3056 of the Penal Code.

Parole Violation means conduct by a parolee which violates the conditions of parole or otherwise provides good cause for the modification or revocation of parole.

Parole Violation Disposition Tracking System (PVDTS) means an electronic database utilized by Division of Adult Parole Operations field staff to track all remedial sanctions, warrant requests, and petitions to the local court for revocation of parole.

Parole Violation Extension means an extension of return-to-custody time for a parolee in revoked status.

Parole Violator means a parolee who is found to have violated parole and who may be returned to custody pursuant to Penal Code section 3057.

Parolee means an offender placed on supervised or non-revocable parole by the department.

Parolee-at-Large means an absconder from parole supervision, who is declared a fugitive by releasing authority action suspending parole.

Polygraph Examination means the procedure by which a polygraph examiner renders an opinion as to the veracity of statements made by an examinee.

Polygraph Examiner means a person who purports to be able to determine the truthfulness of statements through the use of a polygraph instrument.

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

Possession is defined as either actual possession or constructive possession of an object. Actual possession exists when a person has physical custody or control of an object. Constructive Possession exists where a person has knowledge of an object and control of the object or the right to control the object, even if the person has no physical contact with it.

Postrelease Community Supervision is a form of supervision provided after a period of incarceration wherein the inmate is released to the jurisdiction of a county agency pursuant to the Postrelease Community Supervision Act of 2011.

Preprison Credit means credit for time in custody as certified by the court and provided for in Penal Code section 2900.5.

Principal means any person involved in the commission of a crime, felony or misdemeanor, whether they directly commit the act constituting the offense, or aid and abet in its commission, or not being present, have advised and encouraged its commission, or who, by threats, menaces, command or coercion, compel another to commit any crime.

Prison Gang means any gang which originated and has its roots within the department or any other prison system. Credit earning for validated prison gang members and associates housed in Administrative Segregation Units (ASU), Security Housing Units (SHU), Psychiatric Services Units (PSU), or Behavior Management Units (BMU) as referenced in Penal Code Section 2933.6 shall apply to inmates validated as STG-I members or associates who are housed in ASU, SHU, PSU, or BMU.

Prisoner means a person in custody of the Secretary and not paroled. Prisoner and inmate are synonymous terms.

Probation Officer's Report means a CDC Form 174 (Rev. 3/87), Probation Officer's Report, prepared by the probation officer in the county where the offense was committed.

Program failure means any inmate who generates a significant disciplinary history within the last 180 days from the current date. A guilty finding for two serious Rules Violation Reports or one serious and two administrative Rules Violation Reports within that 180 day time period is reasonable evidence of a significant disciplinary history and may be considered a program failure.

Project, as used in sections 3475 through 3478, means a proposal of something to be done for which a contract has not yet been awarded.

Public Interest Case describes an inmate whose crime/criminal history, public recognition, family ties, career or behavior in custody has resulted in extensive media coverage beyond the closest large city and its surrounding areas.

Public official means any person identified in Penal Code Section 76. CDCR staff are considered the staff of an exempt appointee of the Governor.

Received Date means the date an inmate is initially received into a facility of the department.

Receiving State means the state which supervises a cooperative parolee or a concurrent parolee.

Reentry Hubs are designated facilities within an institution which provide enhanced rehabilitative programs to inmates who meet Reentry Hub placement criteria.

Regional Parole Administrator means the department's administrator of a Division of Adult Parole Operations region.

Released on Parole means released from custody to a term of parole supervision and includes: initial releases from custody; parolees released after having served a period of parole revocation; parole violators with a new term; parolees released from any other jurisdiction, for example, federal custody; and offenders ordered directly to parole by a sentencing court, also referred to as "court walkovers."

Relevant Evidence means evidence which tends to prove or disprove an issue or fact in dispute.

Religious Item means any bag, cross, medallion, totem, pipe, or other item in which the possessor places religious or spiritual significance.

Religious Review Committee (RRC) means a committee formed and maintained at each institution that reviews and reaches a decision regarding requests for reasonable accommodation and/or access to religious services.

Residence means one or more addresses at which a person regularly resides, regardless of the number of days or nights spent there, such as a shelter or structure that can be located by a street address, including, but not limited to, houses, apartment buildings, motels, hotels, homeless shelters, and recreational and other vehicles.

Residential Facility means a property that is operated for the purpose of providing lodging and services for two or more persons. Residential facilities include sober living facilities and transitional housing facilities that provide services such as money management, substance abuse prevention, relationship and self-esteem workshops, skills for employment stability, job training, and referrals to local community, social, and health services.

Responsible Bidder means, in addition to other State contracting requirements, a bidder who has either met the disabled veteran business enterprise goal or who has demonstrated that a good faith effort was made to meet the goal.

Restricted or controlled inmate movement means that the affected inmates are not permitted normal release schedules and that all or specified movement may require a greater degree of supervision than normal. Such restriction may include, but is not limited

to controlled feeding, a section at a time, rather than the entire unit or sub-facility being released. Such restrictions do not constitute a State of Emergency as determined in Section 3383.

Room and Board means all that the department provides for the inmate's care, housing and retention.

Same and Similar Behavior means comparable serious misconduct warranting SHU term assessment, contained in section 3341.9(e), that may be used to aggravate and/or mitigate a SHU term. Specifically, acts of homicide, violence against persons, threats to kill or assault persons, as listed in subsection 3341.9(e)(1), (2) & (3), or any homicide, violence against persons or threats to kill or assault persons in conjunction with any other offense listed in 3341.9(e), are all considered same/similar to one another regardless of victim. Any possession of a weapon, as listed in 3341.9(e)(4), or any possession of a weapon in conjunction with any other offense listed in 3341.9(e), are all considered same/similar. Any distribution of a controlled substance, as listed in 3341.9(e)(5) is same/similar only to itself (possession of a controlled substance is not same/similar). Escapes, as listed in subsection 3341.9(e)(6), are same/similar only to themselves. Disturbances, riots or strikes as listed in subsection 3341.9(e)(7), are same/similar only to themselves. Harassment, as listed in subsection 3341.9(e)(8) is same/similar only to itself. Any theft or destruction of state property offenses, as listed in 3341.9(e)(9) or any theft or destruction of state property in conjunction with any other offense listed in 3341.9(e), are all considered same/similar. Any extortion or bribery offenses listed in subsection 3341.9(e)(10) are same/similar to one another. Sexual misconduct offenses listed in 3341.9(e)(11) are same/similar only to themselves.

Screening means evaluation by staff to ascertain that specified requirements or criteria are met.

Secretary means the secretary of the Department of Corrections and Rehabilitation, who serves as the Chief Executive Officer.

Secure Perimeter means the largest Security Perimeter that physically retains inmates in custody on facility property.

Security Concern means the inmate does not otherwise meet the Close Custody case factor criteria established in section 3377.2(b); however, based upon an Institution Classification Committee (ICC) review of all available case factors and disciplinary history, the inmate demonstrates an ongoing heightened security risk that potentially threatens institution safety and security and thereby warrants the direct and constant supervision provided by a Close Custody designation.

Security Module means any department-approved security desk or security table used to facilitate educational, recreational and/or therapeutic activities for maximum custody inmates and are designed for use with State-issued restraint gear.

Security Perimeter means any unbroken physical barrier or combination of physical barriers that restricts inmate movement to a contained area without being processed through a door, gate, or sallyport.

Security Threat Group (STG) means any ongoing formal or informal organization, association, or group of three or more persons which has a common name or identifying sign or symbol whose members and/or associates, individually or collectively, engage or have engaged, on behalf of that organization, association or group, in two or more acts which include, planning, organizing, threatening, financing, soliciting or committing unlawful acts, or acts of misconduct.

Security Threat Group I (STG-I) is a term used to identify and prioritize the level of threat the group presents that affects the safety and security of the institution and public safety. STG-I designation will be reserved for STGs that pose the greatest of these threats. STG-I designation will include, but may not be limited to, traditional prison gangs or similar disruptive groups or gangs that the department has certified to have a history and propensity for violence and/or influence over subservient STGs.

Security Threat Group II (STG-II) is a term used to identify and prioritize the level of threat the group presents that affects the safety and the security of the institution and public safety. The STG-II designation may include, but is not limited to, traditional disruptive groups/street gangs.

Security Threat Group Administrative Directive is an administrative order, approved by the Secretary (or designee) of the CDCR, certifying a group's threat to the safety of staff, offenders, and the security of the institution based on a documented history of and future propensity for violence.

Security Threat Group (STG) Associate means any offender or any person who, based on documented evidence, is involved periodically or regularly with the members of a STG. STG Associates will be identified through the validation process.

Security Threat Group (STG) Behavior is any documented behavior that promotes, furthers, or assists a STG. This includes, but is not limited to conduct of any person that leads to and includes the commission of an unlawful act and/or violation of policy demonstrating a nexus to a STG.

Security Threat Group (STG) Member means any offender or any person who, based on documented evidence, has been accepted into membership by a STG. STG Members will be identified through the validation process.

Security Threat Group (STG) Suspect means any offender or any person who, based on documented evidence, is involved periodically or regularly with the members or associates of a STG. The STG suspect is tracked by STG investigative staff pending validation. Suspects have attained more than one but less than ten points of validation as described in Section 3378.2(b).

Security Threat Group (STG) Unit Classification Committee is a unit classification committee responsible for making the determination of an inmate's validation status, reviewing Dropout status affiliate's new disciplinary behavior to determine nexus to STG, and reviewing information/intelligence regarding inmate-involved incidents occurring outside CDCR jurisdiction to ensure disciplinary processes and/or formal documentation were applied.

Senate Bill (SB) 618 Participant means an adult inmate who is deemed eligible and agrees to participate in a SB 618 Program, as defined in section 3000, which includes that prior to reception by the California Department of Corrections and Rehabilitation, the inmate will be assessed and classified at the county in which he or she is adjudged to have committed his or her crime.

Senate Bill (SB) 618 Program means a program developed for nonviolent felony offenders pursuant to SB 618 (2005/2006 session), which added Penal Code section 1203.8, which provides in part that programs shall be available for inmates, including Career Technical Education programs and educational programs that are designed to prepare nonviolent felony offenders for successful reintegration back into the community.

Serious bodily injury (SBI) means a serious impairment of physical condition, including, but not limited to the following: loss of consciousness; concussion; bone fracture; protracted loss or impairment of function of any bodily member or organ; a wound requiring extensive suturing; and serious disfigurement.

Serious Offense, for the purpose of conducting parole revocation hearings, refers to any felony listed in section 1192.7(c) of the Penal Code.

Sexual Activity means any behavior of a sexual nature between an inmate and a visitor including, but not limited to:

(1) Sexual intercourse, oral copulation, or masturbation.

(2) The rubbing or touching of breast(s), buttock(s) or sexual organ(s) for the purpose of arousing, appealing to, or gratifying lust, passions, or sexual desires.

(3) Exposure of breast(s), buttocks or sexual organ(s) for the purpose of arousing, appealing to, or gratifying lust, passions, or sexual desires.

Sexual Disorderly Conduct means every person who touches, without exposing, his or her genitals, buttocks or breasts in a manner that demonstrates it is for the purpose of sexual arousal, gratification, annoyance, or offense, and that any reasonable person would consider this conduct offensive.

Single Family Dwelling means a real property improvement, such as a house, apartment, or mobile home that is used or is intended for use as a dwelling for one family.

Small Business Firm means a business in which the principal office is located in California and the officers of such business are domiciled in California which is independently owned and operated and which is not dominant in its field of operation. The maximum dollar volume that a small business may generate shall vary from industry to industry to the extent necessary to reflect differing characteristics of such industries.

Special Assignment means a departmentally-approved special program, temporary or short-term assignment for departmental convenience, or medical or psychiatric treatment category with exceptional credit-earning provisions.

Special Conditions of Parole means conditions of parole placed by the Board of Parole Hearings or Division of Adult Parole Operations and restricted to the individual.

Statewide Religious Review Committee (SRRC) is a committee established to ensure that a framework for religious/spiritual program policy exists, and that program continuity from institution to institution is maintained. The SRRC also provides an avenue for addressing statewide inmate religious/spiritual issues and offers recommendations to the Director of the Division of Adult Institutions (DAI) for consideration of policy development and/or enactment. The SRRC is comprised of the following: Associate Director, DAI (General Population—Males); one Warden from each mission within DAI; Headquarters Community Resources Manager (HCRM), Religious Programs; one CRM from each mission within DAI; a Captain; a designee from the Office of Legal Affairs; the departmental Food Administrator; and other stakeholders as required.

Step Down Program (SDP) is a five-step program that provides inmates placed in a Security Housing Unit (SHU) due to STG validation and/or documented STG behaviors with a program expectation of discontinuing participation in STG related activities and includes increased incentives to promote positive behavior with the ultimate goal of release from the SHU.

Step Down Program, Step 1 and 2 SHU means the first two of five steps in the step down process—designated for housing of STG affiliates determined to pose the greatest threat to the safety of staff, inmates, and the public, in addition to the security of the prison based upon intelligence and/or confirmed STG behaviors. Steps 1 and 2 are designed to be completed in 12 months each, but may be accelerated at the 180-day review.

Step Down Program, Step 3 and 4 SHU are steps in the five-step program intended to begin reintegration of the STG affiliates by offering program and privilege incentives within a controlled setting and monitoring of program progress for housing of STG affiliates who have completed steps 1 and 2 and continue to pose a threat to the safety of staff, inmates, and the public.

Step Down Program, Step 5. Upon successful completion of all four SHU steps, as determined by Institutional Classification Committee (ICC) and based on individual inmate behavior, the inmate will be endorsed to General Population or similar specialized housing for a 12-month observation period known as Step 5.

Strategic Offender Management System (SOMS) is an electronic automated offender management system that consolidates existing databases and records to a fully automated system and replaces certain manual paper processes. SOMS is a cumulative data collection process that will autopopulate specific information on all documentation, such as an inmate's name and number, current date, county of last residence, institution/facility housing, etc.

Street gang refers to a gang as defined herein except that it is not a prison gang.

Strike means any concerted act of more than 50 percent of the bargaining unit employees in a lawful refusal of such employees under applicable state or federal law to perform work or services for an employer, other than work stoppages based on conflicting union jurisdictions or work stoppages unauthorized by the proper union governing body.

Subcontractor means any person or entity that enters into a subcontract with a prime contractor for work, materials, supplies and/or labor.

Terminal illness means an incurable disease process with progression unresponsive to medical intervention where a medical doctor estimates that death will occur within a six-month period.

Time Computation means the department's uniform method for calculating an inmate's term and minimum and maximum release dates as governed by law.

Time Served means that time an inmate is imprisoned with the department between their received date and a given date.

Trade Paper means a publication that meets all of the following criteria: (1) has a business orientation relating to the trade or industry for which the advertisement is being placed; (2) is known and utilized by members of that trade or industry; (3) primarily offers articles, editorials (if any), and advertisements of business opportunities aimed at that trade or industry; and (4) is readily available within the geographical area for which the advertisement is placed and for which the services are to be performed.

Transient Sex Offender means a parolee who has a statutory requirement to register as a sex offender and who has no residence.

Transitional Housing Unit is a general population program designated for the observation phase of the Debriefing process. This program houses those inmates that are in the second phase of the debriefing process.

Transitions Programs are employment training classes to assist inmates with job readiness and job seeking skills to overcome barriers to obtaining employment upon release from an institution.

Under the influence of alcohol, any drug, controlled substance, toluene or any combination thereof means being in a condition that he/she is unable to exercise care for his/her safety or the safety of others pursuant to Penal Code 647(f) and confirmed by a positive test from a departmentally approved testing method, to include field sobriety testing.

Unit Supervisor means a supervisor of case-carrying parole agents in the Division of Adult Parole Operations.

Urinalysis Testing (previously referred to as Anti-Narcotic Testing) is a process to detect the presence of prohibited substances used by parolees.

Validation means the formal and objective process for identifying and documenting STG affiliates.

Vexatious Litigant means a person who does any of the following: (1) in the immediately preceding seven-year period has commenced, prosecuted, or maintained in propria persona at least five litigations other than in a small claims court that have been (a) finally determined adversely to the person or; (b) unjustifiably permitted to remain pending at least two years without having been

brought to trial or hearing; (2) after a litigation has been finally determined against the person, repeatedly relitigates or attempts to relitigate in propria persona either; (a) the validity of the determination against the same defendant or defendants as to whom the litigation was finally determined or; (b) the cause of action, claim, controversy, or any of the issues of fact or law, determined or concluded by the final determination against the same defendant or defendants as to whom the litigation was finally determined; (3) in any litigation while acting in propria persona, repeatedly files unmeritorious motions, pleadings, or other papers, conducts unnecessary discovery, or engages in other tactics that are frivolous or solely intended to cause unnecessary delay; (4) has previously been declared to be a vexatious litigant by any state or federal court of record in any actions or proceeding based upon the same or substantially similar facts, transaction, or occurrence. Pursuant to *In re Bittaker*, Writs of Habeas Corpus are not included under vexatious litigation.

Violent Offense, for the purpose of conducting parole revocation hearings, refers to any felony listed in section 667.5(c) of the Penal Code.

Work Change Area means a portal controlled by staff and/or locking gates that is used to control access and includes the area where staff search inmates prior to permitting inmates in or out of adjacent areas such as Prison Industry Authority yards.

Worktime Credit means credit towards a prisoner's sentence for satisfactory performance in work, training or education programs.

Writ means a court order in writing, requiring the performance of a specified act, or giving authority to have it done.

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; *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; *Mitchell* v. *Cate*, USDC ED 2:08-CV-01196-TLN-EFB; and *In re Garcia* (2012) 202 Cal.App.4th 892.

HISTORY:

1. Amendment of subsection (a)(19) filed 12-1-78 as an emergency; designated effective 1-1-79 (Register 78, No. 48). For prior history, see Register 77, No. 40.
2. Certificate of Compliance filed 2-22-79 (Register 79, No. 8).
3. Amendment filed 11-20-79 as an emergency; designated effective 1-1-80 (Register 79, No. 47). A Certificate of Compliance must be filed within 120 days or emergency language will be repealed on 3-20-80.
4. Certificate of Compliance filed 2-15-80 (Register 80, No. 7).
5. Amendment filed 3-2-83: effective thirtieth day thereafter (Register 83, No. 12).
6. Change without regulatory effect repealing and adopting new section filed 10-29-90 pursuant to section 100, title 1, California Code of Regulations (Register 91, No. 6).
7. Amendment filed 11-28-90 as an emergency; operative 11-28-90 (Register 91, No. 6). A Certificate of Compliance must be transmitted to OAL by 3-28-91 or emergency language will be repealed by operation of law on the following day.
8. Amendment adding definitions of "disruptive group," "gang," and "prison gang" filed 5-20-91; operative 6-19-91 (Register 91, No. 26).
9. Amendment adding definition for "Media representative" filed 12-19-91 as an emergency; operative 12-19-91 (Register 92, No. 4).
10. Amendment adding definitions for "Disciplinary Free," "Inmate Match," and "Special Assignment" and amending Note filed 12-20-91 as an emergency; operative 12-20-91 (Register 92, No. 4). A Certificate of Compliance must be transmitted to OAL 4-20-92 or emergency language will be repealed by operation of law on the following day.
11. Amendment adding definition for "Case records file" and amendment of Note filed 12-20-91 as an emergency; operative 12-20-91 (Register 92, No. 4). A Certificate of Compliance must be transmitted to OAL 4-20-92 or emergency language will be repealed by operation of law on the following day.
12. Amendment adding definition for "Detainer" and amendment of Note filed 12-19-91 as an emergency; operative 12-19-91 (Register 92, No. 4). A Certificate of Compliance must be transmitted to OAL 4-17-92 or emergency language will be repealed by operation of law on the following day.
13. Amendment adding definitions for "Received Date," "Time Computation," and "Time Served" filed 12-20-91 as an emergency; operative 12-20-91 (Register 92, No. 4). A Certificate of Compliance must be transmitted to OAL 4-20-92 or emergency language will be repealed by operation of law on the following day.
14. Editorial correction of "Firm" and "Grievance" filed 12-20-91; operative 12-20-91 (Register 92, No. 4).
15. Amendment adding definition for "Terminal illness" filed 5-20-92; operative 5-20-92 (Register 92, No. 21). A Certificate of Compliance must be transmitted to OAL 9-17-92 or emergency language will be repealed by operation of law on the following day.
16. Editorial correction of printing error restoring inadvertently deleted definitions originally filed 12-20-91 (Register 92, No. 24).
17. Certificate of Compliance as to 12-20-91 order adding definition for "case records file" transmitted to OAL 4-15-92 and filed 5-27-92 (Register 92, No. 24).
18. Certificate of Compliance as to 12-29-91 order adding definitions for "Disciplinary Free," "Inmate Match," and "Special Assignment" transmitted to OAL 4-20-92 and filed 5-28-92 (Register 92, No. 24).
19. Certificate of Compliance as to 12-19-91 order adding definition of "Detainer" transmitted to OAL 4-20-92 and filed 5-28-92 (Register 92, No. 24).
20. Certificate of Compliance as to 12-19-91 order transmitted to OAL 4-17-92 and filed 6-1-92 (Register 92, No. 24).
21. Certificate of Compliance as to 12-20-91 order transmitted to OAL 4-20-92 and filed 6-2-92 (Register 92, No. 24).
22. Certificate of Compliance as to 5-20-92 order transmitted to OAL 9-9-92; disapproved by OAL and order of repeal of 5-20-92 order filed on 10-22-92 (Register 92, No. 43).
23. Amendment adding definition for "Terminal illness" refiled 10-23-92 as an emergency; operative 10-22-92 pursuant to Government Code section 11346.1(h) (Register 92, No. 43). A Certificate of Compliance must be transmitted to OAL 2-23-93 or emergency language will be repealed by operation of law on the following day.
24. Amendment adding "Cumulative case summary," "Chronological history," "Legal status sheet," "Probation officer's report" and "Criminal identification and investigation report" and amendment of Note filed 11-5-92; operative 12-7-92 (Register 92, No. 45).
25. Change without regulatory effect amending "Immediate Family Members" filed 1-26-93 pursuant to section 100, title 1, California Code of Regulations (Register 93, No. 5).
26. Certificate of Compliance as to 10-23-92 order transmitted to OAL 12-18-92 and filed 2-3-93 (Register 93, No. 6).
27. Amendment adding "Harassment" and amendment of Note filed 7-29-93 as an emergency; operative 7-29-93 (Register 93, No. 31). A Certificate of Compliance must be transmitted to OAL 11-26-93 or emergency language will be repealed by operation of law on the following day.
28. Amendment filed 9-3-93; operative 9-3-93 pursuant to Government Code section 11346.2(d) (Register 93, No. 36).

29. Amendment of "Good Faith Effort," "Minority Business Enterprise," "Responsible Bidder" and "Women Business Enterprise" and Note and new definitions "Disabled Veteran Business Enterprise," "Goal," "Minority and/or Women and/or Disabled Veteran Business Enterprise focus paper," "Minority and/or Women and/or Disabled Veteran Business Enterprise focus paper and trade paper," "Project," "Subcontractor," and "Trade Paper" filed 10-18-93 as an emergency; operative 10-18-93 (Register 93, No. 43). A Certificate of Compliance must be transmitted to OAL by 2-15-94 or emergency language will be repealed by operation of law on the following day.
30. Definitions added for "Chaplain," "Religious Artifact," and "Sweat Lodge" and amendment of Note filed 11-1-93; operative 12-13-93 (Register 93, No. 45).
31. Amendment adding "Ex-Offender" filed 11-30-93; operative 12-30-93 (Register 93, No. 49).
32. Certificate of Compliance as to 7-29-93 order transmitted to OAL 11-18-93 and filed 12-31-93 (Register 94, No. 1).
33. Certificate of Compliance as to 10-18-93 order transmitted to OAL 2-15-94 and filed 3-16-94 (Register 94, No. 11).
34. Amendment of "Inmate", new definition "Serious injury", and amendment of Note filed 5-5-95; operative 6-5-95 (Register 95, No. 18).
35. Amendment of "Institution Head" filed 9-13-96 as an emergency; operative 9-13-96. A Certificate of Compliance must be transmitted to OAL by 2-24-97 or emergency language will be repealed by operation of law on the following day.
36. Amendment adding definition of "Certification" filed 11-22-96 as an emergency; operative 11-22-96 (Register 96, No. 47). A Certificate of Compliance must be transmitted to OAL by 5-1-97 pursuant to Penal Code section 5058(e) or emergency language will be repealed by operation of law on the following day.
37. Certificate of Compliance as to 9-13-96 order transmitted to OAL 11-22-96 and filed 1-6-97 (Register 97, No. 2).
38. Certificate of Compliance as to 11-22-96 order, including amendment of definition of "Certification," transmitted to OAL 3-20-97 and filed 5-1-97 (Register 97, No. 18).
39. Amendment adding definitions of "Lockdown" and "Restricted or controlled inmate movement" filed 10-16-97; operative 11-15-97 (Register 97, No. 42).
40. Amendment adding definition of "Program failure" filed 10-16-97 as an emergency; operative 10-16-97 (Register 97, No. 42). Pursuant to Penal Code section 5058(e), a Certificate of Compliance must be transmitted to OAL by 3-25-98 or emergency language will be repealed by operation of law on the following day.
41. Amendment adding definition of "Vexatious Litigant" and amending Note filed 11-12-97 as an emergency; operative 11-12-97 (Register 97, No. 46). A Certificate of Compliance must be transmitted to OAL by 3-13-98 or emergency language will be repealed by operation of law on the following day.
42. Editorial correction of definition of "Vexatious Litigant" and Histories 40 and 41 (Register 98, No. 18).
43. Amendment adding definition of "Vexatious Litigant" and amending Note refiled 4-29-98 as an emergency; operative 4-29-98 (Register 98, No. 18). A Certificate of Compliance must be transmitted to OAL by 10-6-98 or emergency language will be repealed by operation of law on the following day.
44. Certificate of Compliance as to 10-16-97 order, including removal of definition of "Program failure" to section 3062(n), transmitted to OAL 3-23-98 and filed 5-4-98 (Register 98, No. 19).
45. Certificate of Compliance as to 4-29-98 order, including further amendment of definition of "Vexatious Litigant" and Note, transmitted to OAL 6-12-98 and filed 7-21-98 (Register 98, No. 30).
46. Amendment adding new definitions of "Controlled Medication," "Controlled Substance," "Distribution" and "Laboratory" and amendment of Note filed 8-27-98 as an emergency; operative 8-27-98 (Register 98, No. 35). A Certificate of Compliance must be transmitted to OAL by 2-3-99 or emergency language will be repealed by operation of law on the following day.
47. Amendment filed 11-13-98 as an emergency; operative 11-13-98 (Register 98, No. 46). A Certificate of Compliance must be transmitted to OAL by 3-15-99 or emergency language will be repealed by operation of law on the following day.
48. Amendment adding new definitions of "Controlled Medication," "Controlled Substance," "Distribution" and "Laboratory" and amendment of Note refiled 2-3-99 as an emergency; operative 2-3-99 (Register 99, No. 6). Pursuant to Penal Code section 5058(e), a Certificate of Compliance must be transmitted to OAL by 7-13-99 or emergency language will be repealed by operation of law on the following day.
49. Certificate of Compliance as to 11-13-98 order transmitted to OAL 2-10-99 and filed 3-8-99 (Register 99, No. 11).
50. Certificate of Compliance as to 2-3-99 order transmitted to OAL 5-12-99 and filed 6-24-99 (Register 99, No. 26).
51. Amendment filed 3-27-2000 as an emergency; operative 3-27-2000 (Register 2000, No. 13). Pursuant to Penal Code section 5058(e), a Certificate of Compliance must be transmitted to OAL by 9-5-2000 or emergency language will be repealed by operation of law on the following day.
52. Amendment of definition of "Chronological History" filed 8-28-2000; operative 9-27-2000 (Register 2000, No. 35).
53. Certificate of Compliance as to 3-27-2000 order transmitted to OAL 9-5-2000; disapproval and order of repeal and deletion reinstating section as it existed prior to emergency amendment by operation of Government Code 11346.1(f) filed 10-18-2000 (Register 2000, No. 42).
54. Amendment filed 10-19-2000 deemed an emergency pursuant to Penal Code section 5058(e); operative 10-19-2000 (Register 2000, No. 42). Pursuant to Penal Code section 5058(e), a Certificate of Compliance must be transmitted to OAL by 3-27-2001 or emergency language will be repealed by operation of law on the following day.
55. Amendment adding definition of "General Chrono" filed 11-16-2000; operative 12-16-2000 (Register 2000, No. 46).
56. Certificate of Compliance as to 10-19-2000 order, including further amendment of definitions of "Execution Type Murder," "High Notoriety" and "Public Interest Case," transmitted to OAL 3-27-2001 and filed 5-3-2001 (Register 2001, No. 18).
57. Amendment of definitions of "Firm" and "Small Business Firm" and amendment of Note filed 7-12-2002; operative 8-11-2002 (Register 2002, No. 28).
58. Amendment adding definition of "Street gang" and amendment of Note filed 8-27-2002 as an emergency; operative 8-27-2002 (Register 2002, No. 35). Pursuant to Penal Code section 5058.3 a Certificate of Compliance must be transmitted to OAL by 2-4-2003 or emergency language will be repealed by operation of law on the following day.
59. Certificate of Compliance as to 8-27-2002 order transmitted to OAL 1-21-2003 and filed 3-6-2003 (Register 2003, No. 10).
60. Amendment adding definitions of "Program failure" and "Significant work related disciplinary history" filed 1-9-2004 as an emergency; operative 1-9-2004 (Register 2004, No. 2). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 6-17-2004 or emergency language will be repealed by operation of law on the following day.
61. Amendment adding definitions of "Program failure" and "Significant work related disciplinary history" refiled 6-17-2004 as an emergency; operative 6-17-2004 (Register 2004, No. 25). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 11-24-2004 or emergency language will be repealed by operation of law on the following day.
62. Certificate of Compliance as to 6-17-2004 order transmitted to OAL 11-16-2004 and filed 12-29-2004 (Register 2004, No. 53).
63. New definition of "Religious Review Committee (RRC)" filed 1-17-2006 as an emergency; operative 1-17-2006 (Register 2006, No. 3). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 6-26-2006 or emergency language will be repealed by operation of law on the following day.
64. Amendment of definition of "Program failure" filed 6-9-2006; operative 7-9-2006 (Register 2006, No. 23).
65. Certificate of Compliance as to 1-17-2006 order transmitted to OAL 6-22-2006 and filed 7-27-2006 (Register 2006, No. 30).

66. Change without regulatory effect amending division heading and chapter heading filed 12-4-2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 49).
67. New definitions of "Indecent Exposure" and "Sexual Disorderly Conduct" and amendment of Note filed 2-23-2007 as an emergency; operative 2-23-2007 (Register 2007, No. 8). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 8-2-2007 or emergency language will be repealed by operation of law on the following day.
68. Certificate of Compliance as to 2-23-2007 order transmitted to OAL 7-27-2007 and filed 9-5-2007 (Register 2007, No. 36).
69. New definitions of "Non-serious offender" and "Non-violent offender" filed 10-1-2007 as an emergency; operative 10-1-2007 (Register 2007, No. 40). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 3-10-2008 or emergency language will be repealed by operation of law on the following day.
70. Amendment of definition of "Immediate Family Members" and amendment of Note filed 10-16-2007; operative 11-15-2007 (Register 2007, No. 42).
71. New definitions of "Non-serious offender" and "Non-violent offender" refiled 2-25-2008 as an emergency; operative 2-25-2008 (Register 2008, No. 9). A Certificate of Compliance must be transmitted to OAL by 5-26-2008 or emergency language will be repealed by operation of law on the following day.
72. Reinstatement of section as it existed prior to 10-1-2007 emergency amendment by operation of Government Code section 11346.1(f) (Register 2008, No. 22).
73. New definitions of "Behavior Management Unit" and "Disruptive Behavior" filed 7-8-2008 as an emergency; operative 7-8-2008 (Register 2008, No. 28). Pursuant to Penal Code section 5058.3(a)(1), a Certificate of Compliance must be transmitted to OAL by 12-15-2008 or emergency language will be repealed by operation of law on the following day.
74. Amendment filed 8-4-2008; operative 8-4-2008 pursuant to Government Code section 11343.4 (Register 2008, No. 32).
75. Repealer of definition of "Media representative" filed 8-29-2008; operative 9-28-2008 (Register 2008, No. 35).
76. New definition of "California Out-of-State Correctional Facility" and amendment of Note filed 10-30-2008 as an emergency; operative 10-30-2008 (Register 2008, No. 44). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 4-8-2009 or emergency language will be repealed by operation of law on the following day.
77. Amendment filed 12-9-2008; operative 1-8-2009 (Register 2008, No. 50).
78. New definitions of "Behavior Management Unit" and "Disruptive Behavior" refiled 12-15-2008 as an emergency; operative 12-15-2008 (Register 2008, No. 51). Pursuant to Penal Code section 5058.3(a)(1), a Certificate of Compliance must be transmitted to OAL by 3-16-2009 or emergency language will be repealed by operation of law on the following day.
79. New definitions of "Senate Bill (SB) 618 Participant" and "Senate Bill (SB) 618 Program" and amendment of Note filed 2-5-2009 as an emergency; operative 2-5-2009 (Register 2009, No. 6). This filing contains a certification that the operational needs of the Department required filing of these regulations on an emergency basis and were deemed an emergency pursuant to Penal Code section 5058.3. A Certificate of Compliance must be transmitted to OAL by 7-15-2009 or emergency language will be repealed by operation of law on the following day.
80. Certificate of Compliance as to 12-15-2008 order transmitted to OAL 2-23-2009 and filed 4-2-2009 (Register 2009, No. 14).
81. Certificate of Compliance as to 10-30-2008 order transmitted to OAL 4-1-2009 and filed 5-12-2009 (Register 2009, No. 20).
82. Certificate of Compliance as to 2-5-2009 order transmitted to OAL 6-25-2009 and filed 7-28-2009 (Register 2009, No. 31).
83. New definition of "Sexual Activity" filed 10-6-2009; operative 10-6-2009 pursuant to Government Code section 11343.4 (Register 2009, No. 41).
84. New definition of "Transitional Housing Unit" filed 12-29-2009; operative 1-28-2010 (Register 2010, No. 1).
85. New definition of "Non-Revocable Parole," amendment of definition of "Parolee" and amendment of Note filed 1-25-2010 as an emergency pursuant to Penal Code section 5058.3(a)(2); operative 1-25-2010 (Register 2010, No. 5). Pursuant to Penal Code section 5058.3(c), a Certificate of Compliance must be transmitted to OAL by 7-6-2010 or emergency language will be repealed by operation of law on the following day.
86. Certificate of Compliance as to 1-25-2010 order transmitted to OAL 6-17-2010 and filed 7-13-2010 (Register 2010, No. 29).
87. New definitions of "Administrative Officer of the Day," "Facility," "Great Bodily Harm" and "Institution" and amendment of definition of "Serious Bodily Injury" and Note filed 8-19-2010; operative 8-19-2010 pursuant to Government Code section 11343.4 (Register 2010, No. 34).
88. Repealer of definition of "Appeal Form" filed 12-13-2010 as an emergency; operative 1-28-2011 (Register 2010, No. 51). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 7-7-2011 or emergency language will be repealed by operation of law on the following day.
89. New definition of "Medical Parolee" and amendment of Note filed 4-29-2011 as an emergency pursuant to Penal Code section 5058.3(a)(2); operative 4-29-2011 (Register 2011, No. 17). Pursuant to Penal Code section 5058.3(a)(1), a Certificate of Compliance must be transmitted to OAL by 10-6-2011 or emergency language will be repealed by operation of law on the following day.
90. Repealer and new definition of "Lockdown" and new definition of "Modified Program" filed 6-14-2011; operative 7-14-2011 (Register 2011, No. 24).
91. New definitions of "Released on Parole," "Residential Facility," "Single Family Dwelling" and "Transient Sex Offender" and amendment of Note filed 6-15-2011 as an emergency; operative 6-15-2011 (Register 2011, No. 24). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 11-22-2011 or emergency language will be repealed by operation of law on the following day.
92. Certificate of Compliance as to 12-13-2010 order transmitted to OAL 6-15-2011 and filed 7-28-2011 (Register 2011, No. 30).
93. Change without regulatory effect amending definition of "Modified Program" filed 8-3-2011 pursuant to section 100, title 1, California Code of Regulations (Register 2011, No. 31).
94. New definitions of "Alternative Custody Program" and "Alternative Custody Program Participant" and amendment of definitions of "Case Conference Review" and "Face-to-Face Contact" and Note filed 9-27-2011 as an emergency; operative 9-27-2011 (Register 2011, No. 39). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 3-5-2012 or emergency language will be repealed by operation of law on the following day.
95. Certificate of Compliance as to 4-29-2011 order transmitted to OAL 10-5-2011 and filed 11-10-2011 (Register 2011, No. 45).
96. Reinstatement of section as it existed prior to 6-15-2011 emergency amendment by operation of Government Code section 11346.1(f) (Register 2011, No. 48).
97. New definitions of "Released on Parole," "Residential Facility," "Single Family Dwelling" and "Transient Sex Offender" and amendment of Note refiled 12-1-2011 as an emergency; operative 12-1-2011 (Register 2011, No. 48). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 2-29-2012 or emergency language will be repealed by operation of law on the following day.
98. Amendment of definition of "Dangerous Contraband," new definition of "Possession" and amendment of Note filed 12-9-2011 as an emergency; operative 12-9-2011 (Register 2011, No. 49). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 5-17-2012 or emergency language will be repealed by operation of law on the following day.
99. Certificate of Compliance as to 9-27-2011 order transmitted to OAL 2-3-2012; Certificate of Compliance withdrawn 3-19-2012 (Register 2012, No. 12).
100. New definitions of "Alternative Custody Program" and "Alternative Custody Program Participant" and amendment of definitions of "Case Conference Review" and "Face-to-Face Contact" and

Note refiled 3-19-2012 as an emergency; operative 3-19-2012 (Register 2012, No. 12). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 6-18-2012 or emergency language will be repealed by operation of law on the following day.

101. Certificate of Compliance as to 12-1-2011 order transmitted to OAL 2-27-2012 and filed 4-2-2012 (Register 2012, No. 14).

102. New definitions of "Automated Needs Assessment Tool" and "Crimogenic Need" and amendment of Note filed 5-10-2012 as an emergency; operative 5-10-2012 (Register 2012, No. 19). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 10-17-2012 or emergency language will be repealed by operation of law on the following day.

103. Certificate of Compliance as to 12-9-2011 order, including further amendment of definition of "Possession," transmitted to OAL 5-3-2012 and filed 6-6-2012 (Register 2012, No. 23).

104. New definition of "Postrelease Community Supervision" filed 6-26-2012 as an emergency; operative 6-26-2012 (Register 2012, No. 26). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 12-3-2012 or emergency language will be repealed by operation of law on the following day.

105. Repealer of definitions of "Designated Level II Housing," "Execution Type Murder," "High Notoriety," "Management Concern," "Multiple Murders" and "Unusual Violence," amendment of definitions of "Force," "Life Prisoner" and "Public Interest Case" and new definitions of "Non-secure Facility" and "Security Concern" filed 6-26-2012 as an emergency; operative 7-1-2012 (Register 2012, No. 26). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 12-10-2012 or emergency language will be repealed by operation of law on the following day.

106. Reinstatement of section as it existed prior to 3-19-2012 emergency amendment by operation of Government Code section 11346.1(f) (Register 2012, No. 28).

107. New definitions of "Alternative Custody Program (ACP)" and "Alternative Custody Program Participant," amendment changing definition of "Case Conference" to "Case Conference Review" (with further revisions), amendment of definition of "Face-to-Face Contact" and amendment of Note filed 9-13-2012 as an emergency; operative 9-13-2012 (Register 2012, No. 37). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 2-20-2013 or emergency language will be repealed by operation of law on the following day.

108. New definitions of "Automated Needs Assessment Tool" and "Crimogenic Need" and amendment of Note refiled 10-17-2012 as an emergency; operative 10-17-2012 (Register 2012, No. 42). A Certificate of Compliance must be transmitted to OAL by 1-15-2013 or emergency language will be repealed by operation of law on the following day.

109. Editorial correction of History 108 providing corrected Certificate of Compliance date (Register 2012, No. 44).

110. Certificate of Compliance as to 6-26-2012 order referenced in History 104 transmitted to OAL 11-5-2012 and filed 12-20-2012 (Register 2012, No. 51).

111. Editorial correction of History 110 (Register 2013, No. 3).

112. Certificate of Compliance as to 6-26-2012 order referenced in History 105 transmitted to OAL 12-5-2012 and filed 1-17-2013 (Register 2013, No. 3).

113. Amendment replacing and revising former definition of "Religious Artifact" with new definition of "Religious Item" filed 2-21-2013 as an emergency; operative 2-21-2013 (Register 2013, No. 8). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 7-31-2013 or emergency language will be repealed by operation of law on the following day.

114. Certificate of Compliance as to 10-17-2012 order transmitted to OAL 1-15-2013 and filed 2-25-2013 (Register 2013, No. 9).

115. Certificate of Compliance as to 9-13-2012 order transmitted to OAL 1-11-2013 and filed 2-25-2013 (Register 2013, No. 9).

116. Change without regulatory effect adding definition of "Secretary" and amending Note filed 3-11-2013 pursuant to section 100, title 1, California Code of Regulations (Register 2013, No. 11).

117. Amendment replacing and revising former definition of "Religious Artifact" with new definition of "Religious Item" refiled 7-29-2013 as an emergency; operative 7-29-2013 (Register 2013, No. 31). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 10-28-2013 or emergency language will be repealed by operation of law on the following day.

118. New definitions of "Cognitive Behavioral Therapy," "Reentry Hubs" and "Transitions Programs" and amendment of definition of "Senate Bill 618 Program" filed 10-29-2013 as an emergency; operative 10-29-2013 (Register 2013, No. 44). A Certificate of Compliance must be transmitted to OAL by 4-7-2014 or emergency language will be repealed by operation of law on the following day.

119. Certificate of Compliance as to 7-29-2013 order transmitted to OAL 10-24-2013 and filed 12-9-2013 (Register 2013, No. 50).

120. Change without regulatory effect amending definitions of "Direct and Constant Supervision" and "Interstate Unit" filed 1-8-2014 pursuant to section 100, title 1, California Code of Regulations (Register 2014, No. 2).

121. New definition of "Intake Control Unit (ICU)" filed 1-23-2014; operative 1-23-2014 pursuant to Government Code section 11343.4(b)(3) (Register 2014, No. 4).

122. Amendment of definition of "Administrative Officer of the Day" and new definitions of "California Law Enforcement Telecommunications System," "CalParole," "Case Conference," "Parole Administrator" and "Parole Violation Disposition Tracking System" filed 2-6-2014 as an emergency; operative 2-6-2014 (Register 2014, No. 6). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 7-16-2014 or emergency language will be repealed by operation of law on the following day.

123. Certificate of Compliance as to 10-29-2013 order, including repealer of definition of "Cognitive Behavioral Therapy" and new definition of "Cognitive Behavioral Treatment," transmitted to OAL 4-4-2014 and filed 5-14-2014; amendments effective 5-14-2014 pursuant to Government Code section 11343.4(b)(3) (Register 2014, No. 20).

124. New definition of "Strategic Offender Management System" filed 6-2-2014; operative 6-2-2014 pursuant to Government Code section 11343.4(b)(3) (Register 2014, No. 23).

125. New definition of "Urinalysis Testing" filed 7-17-2014 as an emergency; operative 7-17-2014 (Register 2014, No. 29). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 12-24-2014 or emergency language will be repealed by operation of law on the following day.

126. Certificate of Compliance as to 2-6-2014 order transmitted to OAL 7-16-2014 and filed 8-27-2014 (Register 2014, No. 35).

127. New definitions of "Air Scan Search," "Canine," "Canine Handler" and "Positive Canine Alert" filed 10-8-2014 as an emergency; operative 10-8-2014 (Register 2014, No. 41). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 3-17-2015 or emergency language will be repealed by operation of law on the following day.

128. Amendment filed 10-17-2014; operative 10-17-2014 pursuant to Government Code section 11343.4(b)(3) (Register 2014, No. 42).

129. Certificate of Compliance as to 7-17-2014 order transmitted to OAL 11-7-2014 and filed 12-22-2014 (Register 2014, No. 52).

130. New definitions of "Air Scan Search," "Canine," "Canine Handler" and "Positive Canine Alert" refiled 3-17-2015 as an emergency; operative 3-17-2015 (Register 2015, No. 12). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 6-15-2015 or emergency language will be repealed by operation of law on the following day.

131. New definitions of "Classification Staff Representative (CSR)," "Clean Conduct Credit," "Minimum Eligible Release Date (MERD)" and "Same and Similar Behavior" filed 6-1-2015 as an emergency; operative 6-1-2015 (Register 2015, No. 23). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 11-9-2015 or emergency language will be repealed by operation of law on the following day.

132. Amendment of definition of "Serious bodily injury (SBI)" and amendment of Note filed 6-17-2015 as an emergency; operative

6-17-2015 (Register 2015, No. 25). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 11-24-2015 or emergency language will be repealed by operation of law on the following day.

133. Certificate of Compliance as to 3-17-2015 order, including further amendment of definition of "Canine" and Note, transmitted to OAL 6-15-2015 and filed 7-27-2015; amendments effective 7-27-2015 pursuant to Government Code section 11343.4(b)(3) (Register 2015, No. 31).
134. Certificate of Compliance as to 6-1-2015 order transmitted to OAL 10-19-2015 and filed 12-3-2015 (Register 2015, No. 49).
135. Certificate of Compliance as to 6-17-2015 order transmitted to OAL 11-17-2015 and filed 12-30-2015 (Register 2016, No. 1).
136. New definition of "Long Term Offender Program" filed 2-18-2016 as an emergency; operative 2-18-2016 (Register 2016, No. 8). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 7-27-2016 or emergency language will be repealed by operation of law on the following day.
137. New definition of "Security Module" filed 3-10-2016; operative 3-10-2016 pursuant to Government Code section 11343.4(b)(3) (Register 2016, No. 11).
138. Amendment of definition of "Alternative Custody Program (ACP)" and amendment of Note filed 3-29-2016 as an emergency; operative 3-29-2016 (Register 2016, No. 14). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 9-6-2016 or emergency language will be repealed by operation of law on the following day.
139. Amendment of definition of "Modified Program" and amendment of Note filed 4-28-2016; operative 4-28-2016 pursuant to Government Code section 11343.4(b)(3) (Register 2016, No. 18).
140. New definitions of "Outdoor Religious/Spiritual Grounds" and "Statewide Religious Review Committee (SRRC)" and renaming and amendment of former definition of "Sweat Lodge" as "Native American Sweat Lodge Grounds" filed 5-11-2016; operative 7-1-2016 (Register 2016, No. 20).
141. Amendment of definition of "Disciplinary Free" and new definition of "Electronic Records Management Systems" filed 6-2-2016 as an emergency; operative 6-2-2016 (Register 2016, No. 23). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 11-9-2016 or emergency language will be repealed by operation of law on the following day.
142. Amendment of definition of "Chaplain" and amendment of Note filed 6-29-2016 as an emergency; operative 6-29-2016 (Register 2016, No. 27). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 12-6-2016 or emergency language will be repealed by operation of law on the following day.
143. Amendment of definition of "Dangerous Contraband" filed 8-17-2016; operative 8-17-2016 pursuant to Government Code section 11343.4(b)(3) (Register 2016, No. 34).
144. Certificate of Compliance as to 2-18-2016 order transmitted to OAL 7-26-2016 and filed 9-6-2016 (Register 2016, No. 37).
145. Certificate of Compliance as to 3-29-2016 order transmitted to OAL 9-6-2016 and filed 10-11-2016 (Register 2016, No. 42).
146. Certificate of Compliance as to 6-2-2016 order, including amendment of definitions of "Electronic Records Management System" and "Strategic Offender Management System," transmitted to OAL 11-7-2016 and filed 12-22-2016; amendments effective 12-22-2016 pursuant to Government Code section 11343.4(b)(3) (Register 2016, No. 52).

3000.5. Rules of Construction.

The following rules of construction apply to these regulations, except where otherwise noted:

(a) The enumeration of some criteria for the making of discretionary decisions does not prohibit the application of other criteria reasonably related to the decision being made.

(b) The order in which criteria are listed does not indicate their relative weight or importance.

(c) "Shall" is mandatory, "should" is advisory, and "may" is permissive.

(d) The past, present, or future tense includes the others.

(e) The masculine gender includes the feminine gender; the singular includes the plural.

(f) The time limits specified in these regulations do not create a right to have the specified action taken within the time limits. The time limits are directory, and the failure to meet them does not preclude taking the specified action beyond the time limits.

NOTE: Authority cited: section 5058 and Stats. 1992, ch. 695, sec. 45. Reference: Sections 3000 and 5054, Penal Code.

HISTORY:

1. New section filed 9-3-93; operative 9-3-93 pursuant to Government Code section 11346.2(d) (Register 93, No. 36).

3001. Subject to Regulations.

Regardless of commitment circumstances, every person confined or residing in facilities of the department is subject to the rules and regulations of the Secretary, and to the procedures established by the warden, superintendent, or regional parole administrator responsible for the operation of that facility. Persons on parole status are subject to such Secretary's rules, regulations and parole region procedures as may be applicable to such persons.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 5054 and 5068, Penal Code.

HISTORY:

1. Amendment of section and new Note filed 12-9-2008; operative 1-8-2009 (Register 2008, No. 50).
2. Change without regulatory effect amending section filed 4-22-2015 pursuant to section 100, title 1, California Code of Regulations (Register 2015, No. 17).

3001.5. Assignment to Caseworker.

Upon reception at a facility, each inmate shall be assigned a caseworker.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 5054 and 5068, Penal Code.

HISTORY:

1. New section filed 10-15-92; operative 11-16-92 (Register 92, No. 42).

3002. Notice of Program, Behavioral, and Participation Expectations.

(a) Within 14 days of reception by the Department of Corrections and Rehabilitation or upon return to confinement in a departmental institution or facility, every inmate or parolee shall be issued a copy of the Rules and Regulations of the Secretary of Corrections and Rehabilitation and copies of all rule changes that have occurred since the last complete reprinting and reissue of the rules and regulations. Each inmate and parolee shall sign a receipt for the rules. The receipt shall be filed as a permanent record in the inmate's central file. In addition:

(1) Spanish language copies of the rules and regulations of the Secretary shall be maintained at each reception center, institution and facility where inmates are confined. Notice shall be given in Spanish that a Spanish version of the rules is available for inspection. These rules shall be made available for review by Spanish speaking inmates who cannot read English.

(2) Within 14 days of transfer to another departmental institution or facility, the new arrival shall be given a written summary of local procedures governing the conduct and activities of inmates confined at that location and a summary of the range of work and training programs offered by and available at that institution or facility. The summary or summaries shall also include: procedures governing mail and visiting, the inmate's right to appeal and appeal procedures, the facility's basic daily schedule, and where and how

additional procedural information of interest may be obtained. New arrivals shall also be given verbal staff instructions regarding the procedures.

Staff instructions shall also be given to newly received inmates regarding the possibility of receiving a one-third reduction of their sentence or minimum eligible parole date for refraining from acts or activities of misbehavior and by participating in assigned work and program activities.

(b) During regularly scheduled institution and reception center inmate orientation sessions each inmate or parolee shall be advised of the following:

(1) The ability to earn credits by participating in assigned work and program activities; and,

(2) The availability of work and program activities; and,

(3) The possible loss of credits resulting from acts or activities of misbehavior; and,

(4) The availability of and procedures for access to health care including daily sick call procedures.

(5) Reception centers shall incorporate the inmate's acknowledgement of the receipt of the summary of reception center work and program activities in the same form used as a receipt for issue of the rules and regulations to the inmate.

(6) When inmates are placed in specialized housing with specialized or limited program options and opportunities to participate, the initial classification committee shall explain the options and opportunities available to the inmate within that specialized unit. A copy of the committee's chrono reflecting the discussion shall be given to the inmate and a copy placed in the inmate's central file.

(7) The facility location where Board of Parole Hearings' Rules may be reviewed by the inmate.

(8) Available institution social services.

(c) The issuance of rules and regulations and program information, summaries, and the inmate's receipt for same is required in order to comply with Sections 2080 and 2930 of the Penal Code. An inmate's refusal to sign a receipt for the issue of rules and regulations, work and program summaries, or work and program agreements or understandings, shall be noted by staff, and the receipt shall be filed in the inmate's central file. Refusal or failure to acknowledge the receipt of information shall not relieve the inmate from any responsibility to behave and participate as expected nor from the consequence for misbehavior or refusal or failure to participate.

(d) Each institution and reception center shall provide a means of advising inmates who cannot read English of the expectations contained in this section. The provisions shall include communication of the expectations to those inmates who also have impaired hearing.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 2080, 2930, 2931 and 5054, Penal Code.

HISTORY:

1. Amendment filed 2-24-77; effective thirtieth day thereafter (Register 77, No. 9).
2. Amendment filed 5-13-77; effective thirtieth day thereafter (Register 77, No. 20).
3. Amendment filed 5-4-83; designated effective 6-1-83 pursuant to Government Code section 11346.2(d) (Register 83, No. 19).
4. Amendment of subsections (a), (b) and new subsection (d) filed 2-8-88; operative 3-9-88 (Register 88, No. 7).
5. Editorial correction of printing errors in subsections (a)(1) and (b)(3) (Register 92, No. 5).
6. New subsections (b)(7)–(8) filed 10-15-92; operative 11-16-92 (Register 92, No. 42).
7. Change without regulatory effect amending subsections (a), (a)(1) and (b)(7) filed 3-11-2013 pursuant to section 100, title 1, California Code of Regulations (Register 2013, No. 11).

3003. Threats Against Public Officials.

Any inmate away from a secure perimeter facility or parolee who makes a written or verbal threat against the life of any official specified in Penal Code section 76 with the intent and apparent ability to carry out the threat shall immediately be placed in custody at a jail or secure perimeter facility pending disposition of the charges.

NOTE: Authority cited: section 5058, Penal Code. Reference: Sections 76, 3056, 5054, and 6253, Penal Code.

HISTORY:

1. New section filed 10-18-93; operative 11-17-93 (Register 93, No. 43). For prior history, see Register 89, No. 41.

3004. Rights and Respect of Others.

(a) Inmates and parolees have the right to be treated respectfully, impartially, and fairly by all employees. Inmates and parolees have the responsibility to treat others in the same manner. Employees and inmates may use first names in conversation with each other when it is mutually acceptable to both parties.

(b) Inmates, parolees and employees will not openly display disrespect or contempt for others in any manner intended to or reasonably likely to disrupt orderly operations within the institutions or to incite or provoke violence.

(c) Inmates, parolees and employees will not subject other persons to any form of discrimination because of race, religion, nationality, sex, political belief, age, or physical or mental handicap.

HISTORY:

1. Amendment filed 2-24-77; effective thirtieth day thereafter (Register 77, No. 9).
2. Amendment of subsection (a) filed 9-30-77; effective thirtieth day thereafter (Register 77, No. 40).
3. New subsection (c) filed 4-18-80; effective thirtieth day thereafter (Register 80, No. 16).

3005. Conduct.

(a) Inmates and parolees shall obey all laws, regulations, and local procedures, and refrain from behavior which might lead to violence or disorder, or otherwise endangers facility, outside community or another person.

(b) Obeying Orders. Inmates and parolees must promptly and courteously obey written and verbal orders and instructions from department staff, and from employees of other agencies with authorized responsibility for the custody and supervision of inmates and parolees.

(c) Refusing to Accept Assigned Housing. Inmates shall not refuse to accept a housing assignment such as but not limited to, an integrated housing assignment or a double cell assignment, when case factors do not preclude such.

(d) Force or Violence.

(1) Inmates shall not willfully commit or assist another person in the commission of an assault or battery to any person or persons, nor attempt or threaten the use of force or violence upon another person.

(2) Inmates shall not, with the intent to cause a riot, willfully engage in conduct that urges a riot, or urges others to commit acts of force or violence at a time and place under circumstances that produce a clear and present and immediate danger of acts of force or violence or the burning or destroying of property.

(3) Inmates shall not participate in a riot, rout, or unlawful assembly.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 242, 295–300.3, 404–409, 2931 and 5054, Penal Code.

HISTORY:

1. Repealer and new section (b) filed 2-24-77; effective thirtieth day thereafter (Register 77, No. 9).

2. New subsection (c) filed 5-13-77; effective thirtieth day thereafter (Register 77, No. 20).
3. Amendment of subsection (c) filed 6-30-77 as an emergency; effective upon filing (Register 77, No. 27).
4. Amendment of subsection (c) filed 9-29-77 as an emergency; effective upon filing. Certificate of Compliance included (Register 77, No. 40).
5. Amendment filed 3-2-83; effective thirtieth day thereafter (Register 83, No. 12).
6. Change without regulatory effect amending subsection (a) filed 6-5-91 pursuant to section 100, title 1, California Code of Regulations (Register 91, No. 31).
7. Amendment of subsection (c) filed 5-5-95; operative 6-5-95 (Register 95, No. 18).
8. Amendment of Note filed 9-20-99 as an emergency; operative 9-20-99 (Register 99, No. 39). Pursuant to Penal Code section 5058(e) a Certificate of Compliance must be transmitted to OAL by 2-28-2000 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 9-20-99 order transmitted to OAL 1-14-2000 and filed 2-22-2000 (Register 2000, No. 8).
10. Amendment of subsection (c) and amendment of Note filed 1-9-2004 as an emergency; operative 1-9-2004 (Register 2004, No. 2). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 6-17-2004 or emergency language will be repealed by operation of law on the following day.
11. Amendment of subsection (c) and amendment of Note refiled 6-17-2004 as an emergency; operative 6-17-2004 (Register 2004, No. 25). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 11-24-2004 or emergency language will be repealed by operation of law on the following day.
12. Certificate of Compliance as to 6-17-2004 order transmitted to OAL 11-16-2004 and filed 12-29-2004 (Register 2004, No. 53).
13. New subsection (c) and subsection relettering filed 12-28-2007; operative 12-28-2007 pursuant to Government Code section 11343.4 (Register 2007, No. 52).
14. Amendment of subsection (d), new subsections (d)(1)–(3) and amendment of Note filed 8-4-2008; operative 8-4-2008 pursuant to Government Code section 11343.4 (Register 2008, No. 32).

3006. Contraband.

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

(a) Dangerous Property. Inmates may not possess or have under their control or constructive possession any weapons, explosives, explosive making material, poisons or any destructive devices, nor shall they possess or assist in circulating any writing or voice recording which describes the making of any weapons, explosives, poisons, destructive devices, or cellular telephones or wireless communication devices capable of making or receiving wireless communications.

(b) Money. Inmates may not possess money. If an inmate finds money and voluntarily surrenders it, and the rightful owner does not claim it within 30 days, it will be credited to the inmate's trust account.

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

(1) Any matter of a character tending to incite murder; arson; riot; or any form of violence or physical harm to any person, or any ethnic, gender, racial, religious, or other group.

(2) Blackmail or extortion.

(3) Contraband, or sending or receiving contraband.

(4) Plans to escape or assist in an escape.

(5) Plans to disrupt the order, or breach the security, of any facility.

(6) Plans for activities which violate the law, these regulations, or local procedures.

(7) Coded messages.

(8) A description of the making of any weapon, explosive, poison or destructive device.

(9) Illustrations, explanations, and/or descriptions of how to sabotage or disrupt computers, communications, or electronics.

(10) Diskettes.

(11) Catalogs, advertisements, brochures, and other commercial material which are obscene in nature as described in subsection (15) below.

(12) Maps depicting any area within a ten mile radius of a facility.

(13) Gambling or a lottery.

(14) Markings on the envelope which are obscene in nature as described in subsection (15) below.

(15) Obscene material and mail containing information concerning where, how, or from whom obscene material may be obtained.

(A) Obscene material means material taken as a whole, which to the average person, applying contemporary statewide standards, appeals to the prurient interest; and is material which taken as a whole, depicts sexual conduct; and which, taken as a whole, lacks serious literary, artistic, political, or scientific value.

(B) When it appears from the nature of the matter or the circumstances of its dissemination, distribution, or exhibition that it appeals to deviant sexual groups.

(C) Material subject to the tests in paragraphs (A) or (B) includes, but is not limited to pictures or images that depict:

(1) Penetration of the vagina or anus, or contact between the mouth and the genitals.

(2) Bestiality, sadomasochism, or an excretory function including urination, defecation, or semen.

(3) Nudity of a minor, or person who appears to be under 18 years old.

(4) Conduct which appears to be non-consensual behavior.

(5) Conduct which is or appears to be forceful, threatening, or violent.

(6) Conduct where one of the participants is a minor, or appears to be under 18 years old.

(D) Text-only material shall not be considered obscene unless designated by the Division of Adult Institutions (DAI). DAI shall then place the designated text-only material on the Centralized List of Disapproved Publications, subject to subsection 3134.1(e).

(16) Material that is reasonably deemed to be a threat to legitimate penalogical interests.

(17) Sexually explicit images that depict frontal nudity in the form of personal photographs, drawings, magazines, or other pictorial format.

(A) Sexually explicit material shall be defined as material that shows the frontal nudity of either gender, including the fully exposed female breast(s) and/or the genitalia of either gender.

(B) The following sexually explicit material shall be allowed:

1. Departmentally purchased or acquired educational, medical/scientific, or artistic materials, such as books or guides purchased by the department for inclusion in institution libraries and/or educational areas; or

2. Educational, medical/scientific, or artistic materials, including, but not limited to, anatomy medical reference books, general practitioner reference books and/or guides, National Geographic, or artistic reference material depicting historical, modern, and/or

post modern era art, purchased or possessed by inmates and approved by the institution head or their designee on a case-by-case basis.

(18) Any tobacco product, or tobacco cessation product, that contains nicotine.

(19) Written materials or photographs that indicate an association with validated STG members or associates, as described in subsections 3378.2(b)(5)–(6).

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

(d) Anything in the possession of an inmate which is not contraband but will, if retained in possession of the inmate, present a serious threat to facility security or the safety of inmates and staff, shall be controlled by staff to the degree necessary to eliminate the threat.

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

HISTORY:

1. Amendment of subsection (a) filed 3-2-83; effective thirtieth day thereafter (Register 83, No. 12).
2. Change without regulatory effect amending section filed 10-29-90 pursuant to section 100, title 1, California Code of Regulations (Register 91, No. 6).
3. Editorial correction of printing error in subsection (a) (Register 92, No. 5).
4. New subsection (c) and subsection relettering, renumbering and amendment of former subsections 3136 (a)–(h) to subsections 3006(c)(1)–(8), new subsections 3006(c)(9)–(15), and amendment of newly designated subsection (d) and Note filed 1-3-95 as an emergency; operative 1-3-95 (Register 95, No. 1). A Certificate of Compliance must be transmitted to OAL 6-12-95 or emergency language will be repealed by operation of law on the following day.
5. New subsection (c) and subsection relettering, renumbering and amendment of former subsections 3136(a)–(h) to subsections 3006(c)(1)–(8), new subsections 3006(c)(9)–(15), and amendment of newly designated subsection (d) and Note refiled 6-13-95 as an emergency; operative 6-13-95 (Register 95, No. 24). A Certificate of Compliance must be transmitted to OAL by 11-20-95 or emergency language will be repealed by operation of law on the following day.
6. Reinstatement of section as it existed prior to emergency amendment filed 12-27-95 by operation of Government Code section 11346.1(f). Certificate of Compliance as to 6-13-95 order transmitted to OAL 11-9-95; disapproved by OAL and order of repeal as to 6-13-95 order filed on 12-27-95 (Register 95, No. 52).
7. Amendment of section and Note filed 12-27-95 as an emergency pursuant to Government Code section 11346.1; operative 12-27-95 (Register 95, No. 52). A Certificate of Compliance must be transmitted to OAL by 4-25-96 or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 12-27-95 order including amendment of subsections (c), (c)(3), and (c)(9), new subsection (c)(10) and subsection renumbering, amendment of newly designated subsections (c)(11), (c)(14) and (c)(15), new subsections (c)(15)(A)–(c)(15)(C), amendment of newly designated subsections (c)(15)(C)(1) and subsection renumbering, amendment of subsection (d) and Note transmitted to OAL 4-25-96 and filed 6-6-96 (Register 96, No. 23).
9. New subsections (c)(17)–(c)(17)(B)2 filed 9-30-2002 as an emergency pursuant to Penal Code section 5058.3; operative 9-30-2002 (Register 2002, No. 40). A Certificate of Compliance must be transmitted to OAL by 3-10-2003 pursuant to Penal Code section 5058.3 or emergency language will be repealed by operation of law on the following day.
10. Certificate of Compliance as to 9-30-2002 order transmitted to OAL 2-3-2003 and filed 3-18-2003 (Register 2003, No. 12).
11. Amendment of first paragraph filed 5-27-2004 as an emergency; operative 5-27-2004 (Register 2004, No. 22). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 11-3-2004 or emergency language will be repealed by operation of law on the following day.
12. Certificate of Compliance as to 5-27-2004 order transmitted to OAL 10-28-2004 and filed 12-14-2004 (Register 2004, No. 51).
13. New subsection (c)(18) and amendment of Note filed 7-7-2005 as an emergency; operative 7-7-2005 (Register 2005, No. 27). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 12-14-2005 or emergency language will be repealed by operation of law on the following day.
14. Certificate of Compliance as to 7-7-2005 order transmitted to OAL 12-13-2005 and filed 1-26-2005 (Register 2006, No. 4).
15. New subsection (c)(19) filed 8-4-2008; operative 8-4-2008 pursuant to Government Code section 11343.4 (Register 2008, No. 32).
16. Amendment of subsection (a), repealer of subsection (c)(19) and amendment of Note filed 12-9-2011 as an emergency; operative 12-9-2011 (Register 2011, No. 49). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 5-17-2012 or emergency language will be repealed by operation of law on the following day.
17. Certificate of Compliance as to 12-9-2011 order transmitted to OAL 5-3-2012 and filed 6-6-2012 (Register 2012, No. 23).
18. Change without regulatory effect amending subsection (a) filed 1-8-2014 pursuant to section 100, title 1, California Code of Regulations (Register 2014, No. 2).
19. Amendment of subsections (c)(11), (c)(15)(A) and (c)(15)(C)–(c)(15)(C)(6), new subsection (c)(15)(D), amendment of subsection (c)(17)(A) and new subsection (c)(19) filed 4-30-2015; operative 4-30-2015 pursuant to Government Code section 11343.4(b)(3) (Register 2015, No. 18).
20. Amendment of subsection (a) and new subsection (c)(20) filed 8-17-2016; operative 8-17-2016 pursuant to Government Code section 11343.4(b)(3) (Register 2016, No. 34).

3007. Sexual Behavior.

Inmates may not participate in illegal sexual acts. Inmates are specifically excluded in laws, which remove legal restraints from acts between consenting adults. Inmates must avoid deliberately placing themselves in situations and behaving in a manner, which is designed to encourage illegal sexual acts.

Comment: Former DR-1105, sexual behavior.

3008. Obscenity.

Inmates shall not openly or publicly display photographs, pictures, drawings, or other pictorial representations of persons engaged in sexual acts, actual or simulated, masturbation, excretory functions or lewd exhibitions of the genitals which are obscene as defined in Section 311 of the Penal Code.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.

HISTORY:

1. Amendment filed 3-2-83; effective thirtieth day thereafter (Register 83, No. 12).
2. Certificate of Compliance as to 12-27-95 order including amendment of section and Note transmitted to OAL 4-25-96 and filed 6-6-96 (Register 96, No. 23).
3. Amendment filed 8-4-2008; operative 8-4-2008 pursuant to Government Code section 11343.4 (Register 2008, No. 32).

3009. Gambling.

Inmates shall not participate in any form of gambling or bookmaking. Comment: Former DR-1107, gambling and bookmaking.

HISTORY:
1. Amendment filed 8-4-2008; operative 8-4-2008 pursuant to Government Code section 11343.4 (Register 2008, No. 32).

3010. Gifts and Gratuities.

Inmates may not ask for or accept any gift of money, property, material or substance from institution visitors, employees or other persons, and may not give any person a gift or promise of one, except as provided for by law, approved institution procedures, or as specifically authorized by the warden or superintendent. Institution procedures established under this section should be directed toward control of property, safety of persons and institution security.

HISTORY:
1. Amendment filed 2-24-77; effective thirtieth day thereafter (Register 77, No. 9).

3011. Property.

Inmates shall not intentionally destroy, damage, or deface, state property or another person's property. To do so shall be cause for disciplinary action and the inmate may be charged for the cost of repair or replacement, including materials. Intentional destruction of property may result in a credit loss as specified in Section 3323(c)(3), 3323(d)(6), or 3323(g)(1) of these regulations. Intentional damage to property valued at four hundred dollars or more may result in criminal prosecution and an additional term of imprisonment in addition to any credit loss resulting from the disciplinary action. Intentional damage to property valued at less than four hundred dollars may result in a misdemeanor conviction in addition to any credit loss resulting from the disciplinary action.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 594(a), 2932, 4600 and 5054, Penal Code.

HISTORY:
1. Amendment filed 2-24-77; effective thirtieth day thereafter (Register 77, No. 9).
2. Amendment filed 12-1-78 as an emergency; designated effective 1-1-79 (Register 78, No. 48).
3. Certificate of Compliance filed 2-22-79 (Register 79, No. 8).
4. Order of Repeal filed 6-3-85 by OAL pursuant to Government Code Section 11349.7; effective thirtieth day thereafter (Register 85, No. 26).
5. OAL Notice of Erroneous Filing filed 7-29-85; purported Order of Repeal of Section 3011(a) filed in error on 6-3-85 is null and void and text of subsection (a) as filed with Secretary of State on 12-1-78 remains in effect uninterrupted (Register 85, No. 31).
6. Amendment filed 12-16-88; operative 1-15-89 (Register 88, No. 53).
7. Change without regulatory effect amending section filed 11-19-97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 47).
8. Amendment of section and Note filed 9-25-2000; operative 10-25-2000 (Register 2000, No. 39).
9. Amendment of section and Note filed 8-4-2008; operative 8-4-2008 pursuant to Government Code section 11343.4 (Register 2008, No. 32).

3012. Theft.

Inmates shall not obtain anything by theft, fraud or dishonesty. Comment: Former DR-1110, stealing and dealing.

HISTORY:
1. Amendment filed 8-4-2008; operative 8-4-2008 pursuant to Government Code section 11343.4 (Register 2008, No. 32).

3013. Unlawful Influence.

Inmates shall not attempt to gain special consideration or favor from other inmates, employees, institution visitors or any other person by the use of bribery, threat or other unlawful means. Comment: Former DR-1111, improper influence.

HISTORY:
1. Amendment filed 8-4-2008; operative 8-4-2008 pursuant to Government Code section 11343.4 (Register 2008, No. 32).

3014. Calls and Passes.

Inmates must respond promptly to notices given in writing, announced over the public address system, or by any other authorized means.

Comment: Former DR-1113, answering calls and passes.

HISTORY:
1. Repealer of section 3014 and renumbering of section 3015 to section 3014 filed 9-30-77; effective thirtieth day thereafter (Register 77, No. 40). For former section 3014, see Register 77, No. 9.

3015. Unauthorized Areas and Facility Boundaries.

(a) Every area of a facility which is out of bounds to inmates or which is only out of bounds at specified times shall be clearly designated. Inmates shall not enter such areas unless specifically authorized to do so by staff.

(b) Inmates assigned to a work detail or project off their facility's property shall not go beyond the geographical limits established by their staff escort.

(c) Except as provided in sections 3080 through 3083, Title 15, California Code of Regulations, inmates shall not travel past the boundaries of a facility unless escorted by authorized staff. Inmates shall not be escorted from a facility except in an emergency or when authorized for the purpose of a work or project assignment, transfer to another facility, or temporary community leave or removal.

(d) Inmates shall not escape, attempt to escape or conspire with others to escape from the custody of the department. Inmates shall not solicit or coerce others to aid or assist in an escape.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.

HISTORY:
1. Renumbering of Section 3016 to Section 3015 filed 9-30-77; effective thirtieth day thereafter (Register 77, No. 40).
2. Amendment of section heading and newly designated subsection (a), new subsection (b), renumbering and amendment of former section 3444 to new subsection (c), and new Note filed 10-27-93; operative 11-26-93 (Register 93, No. 44).
3. New subsection (d) filed 8-4-2008; operative 8-4-2008 pursuant to Government Code section 11343.4 (Register 2008, No. 32).

3016. Controlled Substances, Drug Paraphernalia, and Distribution.

(a) Inmates shall not inhale, ingest, inject, or otherwise introduce into their body; use, possess, manufacture, or have under their control any controlled substance, medication, or alcohol, except as specifically authorized by the institution's/facility's health care staff.

(b) Inmates shall not possess, exchange, manufacture, or have under their control any paraphernalia as defined by Health and Safety Code section 11014.5, or device related to the use, injection, or manufacture of any controlled substance, except as specifically authorized by the institution's/facility's health care staff.

(c) Inmates shall not distribute, as defined in section 3000, any controlled substance.

(d) Inmates shall not possess medication in quantities exceeding the dosage specifically authorized by the institution's/facility's health care staff, nor may an inmate possess medication prescribed to another inmate.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 2931, 4573, 4573.6 and 5054, Penal Code; and Sections 11014.5, 11350–11383, Health and Safety Code.

HISTORY:

1. Renumbering of Section 3017 to Section 3016 filed 9-30-77; effective thirtieth day thereafter (Register 77, No. 40).
2. Amendment filed 3-2-83; effective thirtieth day thereafter (Register 83, No. 12).
3. Amendment filed 2-17-95 as an emergency; operative 3-1-95 (Register 95, No. 9). This regulatory action was deemed an emergency pursuant to section 5058(e) of the Penal Code and remains in effect for 160 days. A Certificate of Compliance must be transmitted to OAL by 8-8-95 or emergency language will be repealed by operation of law on the following day.
4. Amendment refiled 8-7-95 as an emergency; operative 8-7-95 (Register 95, No. 32). This regulatory action was deemed an emergency pursuant to section 5058(e) of the Penal Code and remains in effect for 160 days. A Certificate of Compliance must be transmitted to OAL by 1-16-96 or emergency language will be repealed by operation of law on the following day.
5. Reinstatement of section as it existed prior to emergency amendment filed 2-17-95 by operation of Government Code section 11346.1(f) (Register 96, No. 8).
6. Amendment filed 2-21-96 as an emergency; operative 2-21-96 (Register 96, No. 8). A Certificate of Compliance must be transmitted to OAL by 6-20-96 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 2-21-96 order including amendment of section heading and section transmitted to OAL 6-18-96 and filed 7-9-96 (Register 96, No. 28).
8. Amendment of section heading, section and Note filed 8-27-98 as an emergency; operative 8-27-98 (Register 98, No. 35). A Certificate of Compliance must be transmitted to OAL by 2-3-99 or emergency language will be repealed by operation of law on the following day.
9. Amendment of section heading, section and Note refiled 2-3-99 as an emergency; operative 2-3-99 (Register 99, No. 6). Pursuant to Penal Code section 5058(e), a Certificate of Compliance must be transmitted to OAL by 7-13-99 or emergency language will be repealed by operation of law on the following day.
10. Certificate of Compliance as to 2-3-99 order transmitted to OAL 5-12-99 and filed 6-24-99 (Register 99, No. 26).
11. Amendment filed 8-4-2008; operative 8-4-2008 pursuant to Government Code section 11343.4 (Register 2008, No. 32).

3017. Responsibility for Counts.

Inmates must be present at designated times and places for counts, and must present themselves for count in the manner set forth in institution procedures.

Comment: Former DR-1116, responsibility for count.

HISTORY:

1. Renumbering of section 3018 to section 3017 filed 9-30-77; effective thirtieth day thereafter (Register 77, No. 40).

3018. Telephones.

Inmates may not use institution telephones or public coin operated telephones located on institution property except as specifically authorized and as described in section 3282. An inmate must identify himself or herself as an inmate when answering or making an interinstitution telephone call.

Comment: Former DR-1117, use of telephones.

HISTORY:

1. Renumbering of section 3019 to section 3018 filed 9-30-77; effective thirtieth day thereafter (Register 77, No. 40).

3019. Identification.

Inmates must carry on their person any identification card issued for identification purposes, in accordance with institution procedures. Inmates must not mutilate or destroy such cards nor possess the card of another inmate. An inmate must surrender his or her identification card or cards at the request of any employee. Unless a card is being officially recalled, the card(s) will be promptly returned to the inmate when staff's use of the card has been accomplished. An inmate may be charged for replacement of a deliberately mutilated, lost or destroyed card in accordance with section 3011. An inmate may also be charged for replacement of a card if a physical change in the inmate's appearance is a matter of his or her own choice and the change occurs within six months of the issue of a new or replacement card. An inmate will not be charged for replacement of a card because of a physical change in the inmate's appearance over which the inmate has no control.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.

HISTORY:

1. Amendment filed 5-13-77; effective thirtieth day thereafter (Register 77, No. 20).
2. Renumbering of Section 3020 to Section 3019 filed 9-30-77; effective thirtieth day thereafter (Register 77, No. 40).
3. Amendment of section and new Note filed 10-22-2012; operative 11-21-2012 (Register 2012, No. 43).

3020. Inmate Activity Groups.

(a) Inmates may not establish or participate in the establishment or activities of any inmate club, inmate activity group, or any association or organization of inmates within the institution except as specifically approved by the warden or superintendent, as provided in Sections 3233–3235.

(b) Inmate participation in an approved activity group will not be cause to deny or restrict regular correspondence and visitation rights with persons who are approved to attend and participate in such inside inmate group activities.

Comment: Former DR-1119, unauthorized organizations.

NOTE: Authority cited: section 5058, Penal Code. Reference: Sections 2079 and 5054, Penal Code.

HISTORY:

1. Amendment of subsection (a) filed 2-24-77; effective thirtieth day thereafter (Register 77, No. 9).
2. Renumbering of section 3021 to section 3020 filed 9-30-77; effective thirtieth day thereafter (Register 77, No. 40).
3. Amendment of subsection (a) filed 2-22-79; effective thirtieth day thereafter (Register 79, No. 8).
4. Amendment of subsection (b) filed 3-2-83; effective thirtieth day thereafter (Register 83, No. 12).

3021. Falsification of Records or Documents.

Inmates and parolees must not intentionally enter or introduce false information into or upon any record or document maintained by the Department of Corrections and Rehabilitation. Inmates and parolees must not destroy, delete, remove or otherwise intentionally cause any record or document maintained by the Department of Corrections and Rehabilitation to be a false or incomplete record or document by reason of such action.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.

HISTORY:

1. New section filed 2-24-77; effective thirtieth day thereafter (Register 77, No. 9).
2. Renumbering of Section 3022 to Section 3021 filed 9-30-77; effective thirtieth day thereafter (Register 77, No. 40).
3. Change without regulatory effect amending section filed 3-11-2013 pursuant to section 100, title 1, California Code of Regulations (Register 2013, No. 11).

3022. Equality of Inmates.

No inmate or group of inmates will be given or be permitted to assume control over other inmates. This does not preclude the use of inmates as aides or lead persons on work and training

assignments when the activity is directed and supervised by responsible employees.

NOTE: Authority cited: section 5058, Penal Code. Reference: section 5054, Penal Code.

HISTORY:
1. New section filed 4-18-80; effective thirtieth day thereafter (Register 80, No. 16).

3023. Security Threat Group (STG) Activity.

(a) Security Threat Groups (STG) jeopardize public safety, as they promote violence, drug trafficking, extortion, and create substantial risks in prisons, jails and local communities. STG management within prisons requires a comprehensive management strategy that includes prevention, interdiction and rehabilitation. It is the policy of the California Department of Corrections and Rehabilitation (CDCR) to ensure that its employees and inmates are able to work and live without threat of intimidation, injury, and/or death.

(b) CDCR has zero tolerance for any STG activity or behavior within its institutions. The STG Identification, Prevention, and Management Policy, as referenced in section 3378, recognizes that STG groups and STG group-like activity pose a significant risk to the safety, security, and orderly operation of its institutions.

(c) Inmates and parolees shall not knowingly promote, further or assist any STG as defined in section 3000.

(d) For the purpose of specific STG participant identification, the department categorizes STGs into the levels STG-I or STG-II as defined in section 3000. Participation levels within an STG are further categorized in status as Members, Associates, Suspects, and Dropouts as defined in section 3000.

(e) Inmates shall not conspire, attempt, or participate in behavior or activities specifically identified in Section 3314(a)(3)(L) and 3314(a)(3)(M), Administrative Rules Violations, STG Contraband and Behavior, or Section 3315(a)(3)(Z) and 3314(a)(3)(AA), Serious Rules Violations, STG Violent, Disruptive, or Controlling Behavior.

(f) Condemned inmates are subject to Security Threat Group identification, prevention, and management sections 3378.4(a), 3378.5, and 3378.6. All other provisions for the identification and management of Security Threat Group affiliates within the condemned population are governed by Penal Code section 3600(b)(1) and by local operating procedures.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 186.22 and 5054, Penal Code.

HISTORY:
1. New section filed 5-20-91; operative 6-19-91 (Register 91, No. 26).
2. New subsection (b) and subsection relettering filed 1-21-99 as an emergency; operative 1-21-99 (Register 99, No. 4). Pursuant to Penal Code section 5058(e), a Certificate of Compliance must be transmitted to OAL by 6-30-99 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 1-21-99 order transmitted to OAL 6-30-99 and filed 8-12-99 (Register 99, No. 33).
4. Amendment filed 10-17-2014; operative 10-17-2014 pursuant to Government Code section 11343.4(b)(3) (Register 2014, No. 42).

3024. Business Dealings by Inmates.

(a) Inmates shall not engage actively in a business or profession except as authorized by the institution head or as provided in Section 3104. For the purpose of this section, a business is defined as any revenue generating or profit making activity. An inmate who is engaged in a business or profession prior to commitment to the department shall assign authority for the operation of such business or profession to a person in the community.

(b) Inmate mail may be rejected by an institution head or designee for reasons, which include, but are not limited to, the mail relates the direction of an inmate's business or profession. This does not, however, prohibit mail necessary to enable an inmate to protect property and funds that were legitimately the inmate's at the time of commitment.

NOTE: Authority cited: section 5058, Penal Code. Reference: Sections 2600 and 5054, Penal Code; *Turner* v. *Safley* 482 US 78 (1987).

HISTORY:
1. New section filed 1-3-95 as an emergency; operative 1-3-95 (Register 95, No. 1). A Certificate of Compliance must be transmitted to OAL 6-12-95 or emergency language will be repealed by operation of law on the following day.
2. Repealed by operation of Government Code section 11346.1(g) (Register 95, No. 30).
3. New section filed 7-25-95 as an emergency; operative 7-25-95 (Register 95, No. 30). A Certificate of Compliance must be transmitted to OAL by 11-22-95 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-25-95 order including amendment of section transmitted to OAL 11-17-95 and filed 1-3-96 (Register 96, No. 1).

Article 1.5. DNA and Forensic Identification

3025. Department of Justice DNA and Forensic Identification Database and Data Bank Program.

(a) All inmates and parolees, including juveniles, committed to the custody of the department after having been convicted of, found guilty of, having pled guilty or no contest to, or having been found not guilty by reason of insanity for, any offense listed in Penal Code (PC) section 296(a), or whose records indicate a prior conviction for such an offense, shall provide all of the following required specimens, to be forwarded to the Department of Justice (DOJ) as soon as administratively practicable:

(1) Buccal Swab Samples.

(2) Right Thumbprint Impressions.

(3) Full Right and Left Palm Print Impressions.

(4) Writer's Palm Print Impression.

(5) Any Blood Specimens or other Biological Samples required.

(b) The listed specimens shall be provided under the following circumstances, unless the inmate's central file or other records indicate that all required specimens have already been obtained:

(1) Whether or not the offense predated the enactment of the DNA and Forensic Identification Database and Data Bank Act of 1998, or any amendments to it; including the DNA, Fingerprint, Unresolved Crime and Innocence Protection Act.

(2) Whether or not the court advised the convicted person of this requirement;

(3) If the inmate or parolee was convicted of a state or federal offense in another state which would constitute an offense as listed in PC section 296(a);

(4) If notification is received from the DOJ that an inmate's or parolee's specimens already taken for any purpose are not usable for any reason.

(c) DOJ DNA laboratory may obtain blood specimens from qualifying persons as defined in PC section 296(a) when it is determined that such specimens are necessary in a particular case or would aid the DOJ in obtaining an accurate forensic DNA profile for identification purposes. Cases requiring blood specimens include, but are not limited to, buccal swab samples that cannot be properly identified or analyzed by DOJ, or if the inmate refuses to submit to DNA buccal swab collection, and/or print impressions.

(d) Newly committed inmates and persons returned to custody based upon a violation of parole, furlough or any other type of

release, who meet the criteria established in PC section 296(a), shall, provide the required specimens, samples and print impressions during the reception center process or reasonably promptly after their transfer to an institution/facility.

(e) Parolees identified as meeting the criteria established in PC section 269(a) for present and past qualifying offenses, shall provide the required specimens, samples and print impressions within five days of notification by the court, or by parole unit staff at a collection location designated in accordance with PC section 296.1(a)(3)(B).

(f) Only medical staff trained and certified to do so shall draw blood for collection of specimens; in accordance with standard medical practices. The specimens, samples, and print impressions collected pursuant to Penal Code, Part 1, Title 9, Chapter 6, Articles 1 through 7 (sections 295 et seq.), shall be forwarded promptly to the DOJ. The collection kit, including all blood specimen vials, buccal swab collectors, mailing tubes, labels and instructions for the collection shall be provided by the DOJ. A right thumbprint, a full palm print impression of each hand, and the writers palm print impression shall be taken on forms prescribed by the DOJ. The palm print forms shall be forwarded to and maintained by the Bureau of Criminal Identification and Information of the DOJ. If a blood specimen is necessary pursuant to subsection (c), right thumbprints shall be taken at the time of the collection of samples and specimens, and shall be placed on the samples and specimen containers and forms as directed by DOJ. The samples, specimens and forms shall be forwarded to and maintained by the DNA Laboratory of the DOJ.

(g) Only trained, designated medical, custody, parole staff and/or local law enforcement shall handle forms or specimens after their collection.

(h) If a person has been convicted of a state or federal offense which would constitute an offense as listed in PC section 296(a) and is transferred or paroled from another state into California, an agreement to provide these specimens shall be made a condition of acceptance for supervision in this state.

(i) Any inmate or parolee who refuses to provide any or all of the following; blood specimens, buccal swab samples, or thumb or palm print impressions as required by Penal Code, Part 1, Title 9, Chapter 6, Articles 1 through 7 (sections 295 et seq.), after he or she has received written notice that he or she is required to provide specimens, samples, and print impressions is guilty of a misdemeanor. An inmate who refuses shall also be subject to progressive discipline pursuant to California Code of Regulations, Title 15, Division 3, Chapter 1, Subchapter 4, Article 5 (section 3310 et seq.).

(j) The use of reasonable force, as defined in section 3268(a)(1), shall not be authorized without the prior written authorization at the level of Facility/Correctional Captain or higher, or the administrative officer on duty. The authorization shall include information that reflects the fact that the offender was asked to provide the requisite specimen, sample, or impressions as required by law, and that he or she refused to do so.

(k) The use of reasonable force, as defined in section 3268(a)(1), shall be preceded by efforts to secure voluntary compliance.

(*l*) If the use of reasonable force to obtain DNA includes a cell extraction, the extraction shall be videotaped. The videotaping shall depict all correctional personnel directly involved and the advisement to the inmate that the requisite specimen, sample or impressions is required. All incidents that required the use of reasonable force to obtain DNA samples shall be tracked and maintained by the institutional DNA coordinator and forwarded to the Assistant Secretary, Office of Correctional Safety.

(m) Any person described in section 3025(a), pursuant to PC section 298.2, who engages or attempts to engage in any of the following acts is guilty of a felony:

(1) Knowingly aids in the wrongful collection of a required specimen, sample, or print impression, with the intent to deceive as to the origin of a DNA profile.

(2) Knowingly tampers with any specimen, sample, print impressions, or the collection container, with the intent to deceive as to the identification of the person.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 295-300.3 and 5054, Penal Code.

HISTORY:

1. New article 1.5 (section 3025) and section filed 9-20-99 as an emergency; operative 9-20-99 (Register 99, No. 39). Pursuant to Penal Code section 5058(e) a Certificate of Compliance must be transmitted to OAL by 2-28-2000 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 9-20-99 order transmitted to OAL 1-14-2000 and filed 2-22-2000 (Register 2000, No. 8).
3. Amendment filed 10-4-2002 as an emergency pursuant to a certificate of operational necessity under Penal Code section 5058.3; operative 10-4-2002 (Register 2002, No. 40). Pursuant to Penal Code section 5058.3, this filing is deemed an emergency and a Certificate of Compliance must be transmitted to OAL by 3-13-2003 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 10-4-2002 order, including further amendment of subsections (e) and (i), transmitted to OAL 3-12-2003 and filed 4-8-2003 (Register 2003, No. 15).
5. Amendment filed 8-23-2005; operative 8-23-2005. Submitted to OAL for printing only pursuant to Penal Code section 295(h)(2) (Register 2005, No. 34).
6. Amendment of subsection (*l*) filed 5-26-2011; operative 6-25-2011 (Register 2011, No. 21).

Article 2. State-Issued Inmate Clothing and Linen

3030. Issuance and Possession of State Clothing and Linen.

(a) Each inmate shall be provided state clothing and linen pursuant to this section. Each item issued shall remain state property for which the inmate shall be accountable. State items shall be recalled and exchanged as directed by the institution head.

(b) Inmates shall possess only those items of state clothing and linen issued to them. Below are the standard inmate issues:

(1) Each inmate shall be issued:

(A) Work shoes, one pair.

(B) Sheets, two.

(C) Pillow case, one.

(D) Towels, two.

(E) Blankets, two.

(F) The distinctive, protective and/or extra clothing required by the climate and/or the inmate's job assignment.

(2) In addition to the items in (1) above, each male inmate shall be issued:

(A) Jeans, blue denim, three pair.

(B) Shirts, blue chambray, three.

(C) Undershirts, white, four.

(D) Socks, six pair.

(E) Undershorts, white, four pair.

(F) Jacket, blue denim, one.

(G) Belt, web, one.

(3) In addition to the items in (1) above, each female inmate shall be issued:

(A) Blouses/T-shirts, three.

(B) Slacks, three pair.

(C) Bras, three each six months.

(D) Dress, muumuu, robe or duster; one.

(E) Coat, one.

(F) Panties, five pair each six months.

(G) Nightgown, one.

(H) Socks, six pair.

(I) Pregnant inmates shall be issued one additional, larger pair of shoes.

(c) Inmates shall possess only those items of personal clothing specifically authorized by the institution head and acquired pursuant to these regulations.

(d) During interdepartmental transportation, male inmates shall wear a red, one-piece outer garment and female inmates shall wear an orange, two-piece outer garment; and all shall wear state-issued shoes, socks, and underclothes; and may possess one handkerchief.

(e) Inmates transported for appearance in court shall wear clean state-issued clothing, unless otherwise ordered by the court.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 2084 and 5054, Penal Code.

HISTORY:

1. Amendment of article heading, section heading, and newly designated subsection (a), renumbering and amendment of former subsection 3032(a) to 3030(b), renumbering and amendment of former subsection 3032(b) to 3030(c), and new subsections (d) and (e) and Note filed 7-9-92; operative 8-10-92 (Register 92, No. 28).
2. Amendment of subsections (b)(3)(C)–(D) and new subsection (b)(3)(I) filed 3-6-2008; operative 4-5-2008 (Register 2008, No. 10).

3031. Neatness and Laundry Exchange.

Inmates shall be appropriately clothed at all times, consistent with the specific unit, work or program activities and as directed by staff. Inmate clothing shall be worn in the manner in which it was manufactured to be worn.

(b) Each inmate shall maintain issued clothing and linen as neat and clean as conditions permit. Weekly laundry exchange shall be provided on a one-for-one basis limited as follows:

(1) Shirts or blouses, two.

(2) Jeans or slacks, two pair.

(3) Undershirts, three.

(4) Undershorts, or panties, three pair.

(5) Sheets, two.

(6) Pillow case, one.

(7) Socks, three pair.

(8) Towels, two.

NOTE: Authority cited: section 5058, Penal Code. Reference: section 5054, Penal Code.

HISTORY:

1. Amendment of section heading, section and new Note filed 7-9-92; operative 8-10-92 (Register 92, No. 28).

3032. Alteration of Clothing.

(a) Inmates shall not alter or dispose of damaged or worn out personal or state-issued clothing or linen in any manner without specific authority to do so. If the regular issue of clothing or linen does not meet an inmate's special physical/health needs, the chief medical officer may authorize a special issue to that inmate based upon a medical necessity as defined in section 3350(b)(1). Upon staff verification, a state-issued item, which is lost or damaged through no fault of the inmate, shall be replaced without charge to the inmate.

(b) An inmate shall not alter personally owned clothing in any manner that would change its characteristics or style from that originally approved by the institution head.

NOTE: Authority cited: section 5058, Penal Code. Reference: section 5054, Penal Code.

HISTORY:

1. Renumbering and amendment of former subsection 3032(a) to 3030(b), and former 3032(b) to 3030(c), and renumbering and amendment of former section 3033 to 3032 filed 7-9-92; operative 8-10-92 (Register 92, No. 28).
2. Amendment of subsection (a) filed 2-17-95 as an emergency; operative 3-1-95 (Register 95, No. 9). This regulatory action was deemed an emergency pursuant to section 5058(e) of the Penal Code and remains in effect for 160 days. A Certificate of Compliance must be transmitted to OAL by 8-8-95 or emergency language will be repealed by operation of law on the following day.
3. Amendment of subsection (a) refiled 8-7-95 as an emergency; operative 8-7-95 (Register 95, No. 32). This regulatory action was deemed an emergency pursuant to section 5058(e) of the Penal Code and remains in effect for 160 days. A Certificate of Compliance must be transmitted to OAL by 1-16-96 or emergency language will be repealed by operation of law on the following day.
4. Reinstatement of section as it existed prior to emergency amendment filed 2-17-95 by operation of Government Code section 11346.1(f) (Register 96, No. 8).
5. Amendment of subsection (a) filed 2-21-96 as an emergency; operative 2-21-96 (Register 96, No. 8). A Certificate of Compliance must be transmitted to OAL by 6-20-96 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 2-21-96 order including amendment of subsection (a) transmitted to OAL 6-18-96 and filed 7-9-96 (Register 96, No. 28).

3033. Alteration.

NOTE: Authority cited: section 5058, Penal Code. Reference: section 5054, Penal Code.

HISTORY:

1. Editorial correction of printing error (Register 92, No. 5).
2. Renumbering of former section 3033 to 3032 filed 7-9-92; operative 8-10-92 (Register 92, No. 28).

Article 3. Work and Education

3040. Participation.

(a) Every able-bodied person committed to the custody of the Secretary of the Department of Corrections and Rehabilitation is obligated to work as assigned by department staff and by personnel of other agencies to whom the inmate's custody and supervision may be delegated. Assignment may be up to a full day of work, education, other programs, or a combination of work, education, or other programs.

(b) Inmates assigned to a physical fitness program as part of a work incentive program shall be held to the same obligations/participation requirements governing other Career Technical Education programs, educational, work assignments, or other programs.

(c) Except as provided in section 3040(e), a classification committee shall assign each inmate to an appropriate work, education, vocation, therapeutic or other institution program, taking into account the:

(1) Inmate's expressed desires and needs.

(2) Inmate's eligibility for and availability of the desired work or program activity.

(3) Institution's security and operational needs.

(4) Safekeeping of the inmate.

(5) Safety of persons and the general public.

(d) Despite an inmate's assignment to a program mutually agreed upon in a classification committee hearing, or pending such a hearing, or pending assignment to a designated program, or during any period when the designated program is temporarily suspended, or in the absence of the inmate's agreement to participate in any programs, any able-bodied inmate may be assigned to perform any work deemed necessary to maintain and operate the institution and

its services in a clean, safe and efficient manner. Operational needs may always override a program assignment.

(e) Inmates assigned to clerical duties and office work positions, requiring an extensive amount of staff/inmate interaction, such as clerks and teachers' aides, shall be rotated at regular intervals to other positions within the institution even though that may result in lower pay, or no pay at all, to the inmate being rotated out of the position. The institution head shall determine the rotation schedule based upon security needs of the institution. Assignments to such positions shall not exceed a two-year period. Routine rotation shall not affect the inmates' work/training group designation, although it may divest the inmate of a paid position.

(f) Any staff request for removal of an inmate from a program shall be submitted to the inmate's correctional counselor on a CDC General Chrono Form. The counselor shall refer the request to a classification committee for consideration and action. If a request is for cause, defined as behavior that would result in loss of participation credit pursuant to section 3043.2(a), the inmate may be temporarily relieved of the position and denied pay (if a paid position), pending classification committee action.

(g) Work assignments, in lieu of enrollment and participation in education, Career Technical Education programs, Cognitive Behavioral Treatment and Transitions programs, or other therapeutic or institution program assignments, may be made with or without the inmate's consent by a classification committee, a staff member designated as an inmate assignment lieutenant, or by any staff member responsible for the supervision of an unassigned inmate.

(h) Inmates who have a history of computer fraud or abuse, including documented institutional disciplinary action involving computer fraud or abuse, shall not be placed in any work assignment that provides access to a computer, or rehabilitative program which provides access to the internet.

(i) A job description shall be developed for each inmate work/training position, establishing the minimum standards of acceptable participation and performance and the possible consequences of failure or refusal to meet the standards. The inmate shall sign a copy of the job description, indicating acceptance of the conditions of employment, and shall receive a copy.

(j) The allocation of paid inmate work/training assignments on an institution-specific basis shall be made by the institution's inmate pay committee. Each institution shall administer an inmate pay program consistent with the budget allotted for such assignments. As directed and in accordance with section 3380, Department and institutional inmate pay committees shall administer inmate rate and wage matters subject to these regulations.

(k) An inmate's assignment to a paid position is a privilege dependent on available funding, job performance, seniority and conduct. These factors shall be criteria considered in determining an inmate's eligibility for pay earning status and rate of pay.

(*l*) The following inmate assignments shall not be considered paid work/training assignments.

(1) Inmate advisory council members (except the chairperson and secretary).

(2) Career Technical Education program student assignments (however, exceptions may be made where the inmate is enrolled in a bona fide apprenticeship program or performs work that provides a benefit to the institution and/or public).

(3) Academic student assignments.

(4) Substance abuse treatment, Cognitive Behavioral Treatment, Transitions programs or other program assignments.

(5) Any other specific work/training assignment deemed "non-pay" by the inmate pay committee of the institution/facility.

NOTE: Authority cited: Sections 2700 and 5058, Penal Code. Reference: Section 1182, Labor Code; and Sections 502, 2079, 2702, 2933, 5054 and 5068, Penal Code.

HISTORY:

1. Amendment filed 5-13-77; effective thirtieth day thereafter (Register 77, No. 20).
2. Amendment filed 5-4-83; designated effective 6-1-83 pursuant to Government Code Section 11346.2(d) (Register 83, No. 19).
3. New subsection (e) filed 8-7-87 as an emergency; operative 8-7-87 (Register 87, No. 34). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 12-7-87.
4. Certificate of Compliance as to 8-7-87 order transmitted to OAL 12-4-87; disapproved by OAL (Register 88, No. 16).
5. New subsection (e) filed 1-4-88 as an emergency; operative 1-4-88 (Register 88, No. 16). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 5-3-88.
6. Certificate of Compliance as to 1-4-88 order transmitted to OAL 5-3-88; disapproved by OAL (Register 88, No. 24).
7. New subsection (e) filed 6-2-88 as an emergency; operative 6-2-88 (Register 88, No. 24). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 9-30-88.
8. Editorial correction of HISTORY 7 only changing Register 88, No. 16 to Register 88, No. 24 (Register 88, No. 34).
9. Certificate of Compliance as to 6-2-88 order transmitted to OAL 9-26-88 and filed 10-26-88 (Register 88, No. 50).
10. Amendment of subsection (b), new subsection (d) and subsection renumbering filed 12-20-91 as an emergency; operative 12-20-91 (Register 92, No. 4). A Certificate of Compliance must be transmitted to OAL by 4-20-92 or emergency language will be repealed by operation of law on the following day.
11. Certificate of Compliance as to 12-20-91 order transmitted to OAL 4-20-92 and filed 5-28-92 (Register 92, No. 24).
12. Renumbering and amendment of former section 3220.2 to subsection 3040(b) and subsection redesignation filed 6-30-95 as an emergency; operative 7-1-95 (Register 95, No. 26). A Certificate of Compliance must be transmitted to OAL by 12-7-95 or emergency language will be repealed by operation of law on the following day.
13. Certificate of Compliance as to 6-30-95 order transmitted to OAL 11-22-95 and filed 1-8-96 (Register 96, No. 2).
14. New subsection (g), subsection relettering, and amendment of Note filed 3-24-99; operative 4-23-99 (Register 99, No. 13).
15. New subsection (e) and subsection relettering filed 2-13-2001; operative 3-15-2001 (Register 2001, No. 7).
16. Amendment of subsections (a)–(c), (d)–(f) and (i), new subsections (j)–(*l*)(5) and amendment of Note filed 5-3-2004; operative 6-2-2004 (Register 2004, No. 19).
17. Amendment of subsections (a), (c) and (e) filed 6-9-2006; operative 7-9-2006 (Register 2006, No. 23).
18. Amendment of subsections (a), (c), (d) and (g) filed 1-25-2010 as an emergency; operative 1-25-2010 (Register 2010, No. 5). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 7-6-2010 or emergency language will be repealed by operation of law on the following day.
19. Certificate of Compliance as to 1-25-2010 order transmitted to OAL 6-23-2010 and filed 8-4-2010 (Register 2010, No. 32).
20. Amendment of subsections (a), (b), (g), (h), (*l*)(2) and (*l*)(4) filed 10-29-2013 as an emergency; operative 10-29-2013 (Register 2013, No. 44). A Certificate of Compliance must be transmitted to OAL by 4-7-2014 or emergency language will be repealed by operation of law on the following day.
21. Certificate of Compliance as to 10-29-2013 order, including amendment of subsections (g) and (*l*)(4), transmitted to OAL 4-4-2014 and filed 5-14-2014; amendments effective 5-14-2014 pursuant to Government Code section 11343.4(b)(3) (Register 2014, No. 20).

3040.1. Cognitive Behavioral Treatment and Substance Abuse Treatment Criteria.

(a) Prisons may establish Cognitive Behavioral Treatment (CBT) programs to provide evidence-based treatment services to inmates. Priority placement into CBT programs shall be for inmates who have a criminogenic need for the specific CBT program as identified by a validated automated risk and needs assessment tool. For placement into a CBT program, the inmate's remaining time to serve shall be within the prescribed length of participation required for the CBT program, with the exception of placement into a Long Term Offender Program as outlined in Section 3040.2. CBT programs include but are not limited to Substance Abuse Treatment (SAT), Criminal Thinking, Anger Management and Family Relationships.

(b) Substance Abuse Treatment Program Eligibility Criteria. Inmates must meet the criteria established in Section 3040.1(a).

(c) Substance Abuse Treatment Program Ineligibility Criteria:

(1) Active or potential Immigration and Customs Enforcement (ICE) holds. Active or Potential ICE holds for non-deportable countries are non-exclusionary.

(2) Active or potential felony holds which may result in additional incarceration. Misdemeanor and time server holds are non-exclusionary.

(3) Division A, B and C disciplinary offenses, as described in Section 3323, within the last 12 months. Division C disciplinary offenses for inmate manufactured alcohol or possession of controlled substances are non-exclusionary.

(4) If an inmate has served a Security Housing Unit (SHU) term, the inmate is ineligible for assignment to the SAT program until 12 months after the Minimum Eligible Release Date as defined in Section 3341.5. If the SHU term is suspended, the inmate is ineligible for assignment to the SAT program until 12 months after the date of suspension.

(d) Inmates enrolled in the Enhanced Outpatient Program (EOP) who have a co-occurring dual diagnosis of substance abuse may be considered for assignment to a SAT program where it is a component of the mental health program.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.

HISTORY:

1. New section filed 8-28-98 as an emergency; operative 8-28-98 (Register 98, No. 35). Pursuant to Penal Code section 5058(e), a Certificate of Compliance must be transmitted to OAL by 2-4-99 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 8-28-98 order, including amendment of section, transmitted to OAL 2-2-99 and filed 3-18-99 (Register 99, No. 12).
3. Amendment of subsection (c)(3) filed 5-25-2006; operative 5-25-2006 pursuant to Government Code section 11343.4 (Register 2006, No. 21).
4. Amendment of subsections (a) and (b) filed 1-25-2010 as an emergency; operative 1-25-2010 (Register 2010, No. 5). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 7-6-2010 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1-25-2010 order transmitted to OAL 6-23-2010 and filed 8-4-2010 (Register 2010, No. 32).
6. Amendment of subsection (a), new subsections (a)(1)–(2) and amendment of subsection (c)(6) filed 12-20-2011; operative 1-19-2012 (Register 2011, No. 51).
7. Repealer and new section heading and section filed 10-29-2013 as an emergency; operative 10-29-2013 (Register 2013, No. 44). A Certificate of Compliance must be transmitted to OAL by 4-7-2014 or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 10-29-2013 order, including amendment of section heading and subsection (a), transmitted to OAL 4-4-2014 and filed 5-14-2014; amendments effective 5-14-2014 pursuant to Government Code section 11343.4(b)(3) (Register 2014, No. 20).
9. Amendment of subsection (a) filed 2-18-2016 as an emergency; operative 2-18-2016 (Register 2016, No. 8). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 7-27-2016 or emergency language will be repealed by operation of law on the following day.
10. Certificate of Compliance as to 2-18-2016 order transmitted to OAL 7-26-2016 and filed 9-6-2016 (Register 2016, No. 37).

3040.2. Long Term Offender Program.

(a) The Long Term Offender Program (LTOP) is a voluntary program that provides Cognitive Behavioral Treatment (CBT) and other rehabilitative programs to inmates who are subject to a Board of Parole Hearings parole suitability hearing as described in CCR Title 15, Division 2, Section 2280, Parole Consideration Criteria and Guidelines for Life Prisoners. All LTOP participants shall be provided Victim Impact and Denial Management programs. Prisons may establish an LTOP to provide evidence-based treatment services for inmates who meet the eligibility criteria specified in subsections 3040.2(c)-3040.2(c)(3).

(b) Inmates assigned to an LTOP are subject to the program participation requirements of section 3040 and the performance requirements of section 3041. The LTOP shall operate as a voluntary program, and inmates who are enrolled in LTOP are not subject to disciplinary action pursuant to subsections 3314(a)(3)(F) and 3315(a)(3)(J) or placement into Work Group C or Privilege Group C pursuant to subsections 3044(b)(5)(A) and 3044(f)(1)(A), solely for refusing to participate, but may be removed from LTOP.

(c) Inmates who meet the following criteria may be considered for placement into LTOP:

(1) Reside within the General Population and does not have case factors that would preclude placement at an institution operating an LTOP.

(2) Must have a criminogenic need identified by an automated needs assessment tool, as described in section 3000.

(3) Is serving an indeterminate sentence with the possibility of parole or a long term determinate sentence and be within one to five years from a parole suitability hearing. Inmates housed at an institution operating an LTOP who have less than one year remaining to their parole suitability hearing may be considered on a case-by-case basis.

(d) Inmates who are enrolled in the Mental Health Services Delivery System (MHSDS) at the Correctional Clinical Case Management System (CCCMS) or Enhanced Outpatient (EOP) Level of Care may be considered for participation in an LTOP if they meet the listed eligibility criteria. However, due to their higher need for psychiatric services, EOP inmates shall only be approved on a case-by-case basis, if they can benefit from the program as determined by an Interdisciplinary Treatment Team.

(e) Long Term Offender Program Exclusionary Criteria:

(1) The inmate has been found guilty of a Division A, B or C disciplinary offense, as described in section 3323, within the last 12 months. Division C disciplinary offenses for inmate manufactured alcohol or possession of controlled substances are non-exclusionary, and inmates may still be considered for the LTOP.

(2) The inmate has served a Security Housing Unit (SHU) term and less than 12 months have passed since the Minimum Eligible Release Date, as defined in section 3000, or if the SHU term was suspended and less than 12 months have passed since the date of the suspension action.

(f) Assignments and transfers.

(1) Placement into and removal from an LTOP assignment shall be by classification committee action pursuant to subsection 3375(c).

(2) Priority for assignment into LTOP is based on the following:

(A) First, inmates who are closest to their next subsequent parole suitability hearing as described in CCR Title 15, Division 2, Section 2306, Subsequent Parole Hearing.

(B) Second, inmates who are closest to their initial parole suitability hearing as described in CCR Title 15, Division 2, Section 2304, Initial Parole Hearing.

(3) Inmates assigned to an LTOP may be assigned in combination with other institutional assignments.

(4) Upon completion of the LTOP assignment, if the inmate requests placement back into a similar work assignment held prior to placement in LTOP, they shall receive priority placement over all other inmates with the exception of those offenders who have also participated in LTOP. In these situations, first priority for assignment will be given by the oldest LTOP completion date. The assignment process provided in this subsection does not guarantee placement back into the exact position and/or pay rate held prior to assignment into LTOP. Furthermore, for purposes of this section, priority means that an inmate will be placed at the top of the institution's waiting list for reassignment. It does not mean that the inmate can replace another inmate from his or her current assignment.

(5) Inmates may receive temporary transfers to an institution operating an LTOP. Inmates who receive temporary transfer shall normally be returned back to the sending institution upon completion of the LTOP assignment unless case factors preclude the transfer.

NOTE: Authority cited: Sections 5058, Penal Code. Reference: Section 5054, Penal Code.

HISTORY:

1. New section filed 2-18-2016 as an emergency; operative 2-18-2016 (Register 2016, No. 8). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 7-27-2016 or emergency language will be repealed by operation of law on the following day. For prior history, see Register 2010, No. 32.
2. Certificate of Compliance as to 2-18-2016 order transmitted to OAL 7-26-2016 and filed 9-6-2016 (Register 2016, No. 37).

3041. Performance.

(a) Inmates must perform assigned tasks diligently and conscientiously. Inmates must not pretend illness, or otherwise evade attendance or avoid performance in assigned work, education and programs, or encourage others to do so.

(b) Inmates must report to their place of assignment at the time designated by the institution's schedule of activities and as instructed by their assignment supervisor. Inmates may not leave an assignment without permission to do so.

(1) Time and payroll credits for paid inmate workers shall be documented on timekeeping logs maintained by work supervisors in accordance with section 3045.

(2) The duration of an unauthorized absence from a compensated assignment shall be documented and under no circumstances shall an inmate be paid under the authority of section 3041.2 for time not worked.

(c) Inmates must perform their work and program assignments in a safe manner, using safety equipment as instructed by their assignment supervisor.

(d) Inmates assigned to educational, Career Technical Education, Reentry Hub assignments, Long Term Offender Program (LTOP) assignments, substance abuse treatment, or other training programs must cooperate with the instructor or the person in charge, and must comply with instructions, and all requirements for participation in the assigned activity. LTOP participants will be removed from the program per subsection 3040.2(b).

(e) Inmates in assignments where they will type, file, or otherwise handle any nonconfidential information pertaining to another inmate shall comply with all state Information Practices Act (Civil Code Sections 1798, et seq.) requirements.

(1) For purposes of this section inmates in such assignments are designated "special agents" of the Department of Corrections and Rehabilitation as defined in Civil Code Section 2297, for the limited purposes of typing, filing, and handling information under the supervision of employees of the Department, and for no other purpose.

(2) Pursuant to Civil Code Section 2318 inmate "special agents" are specifically deprived of the authority to disobey instructions as described in Civil Code Section 2320.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code; and Sections 2297, 2318, 2320 and 1798 et seq., Civil Code.

HISTORY:

1. Amendment filed 5-13-77; effective thirtieth day thereafter (Register 77, No. 20).
2. New subsections (e)–(e)(2) and Note filed 2-22-95; operative 3-24-95 (Register 95, No. 8).
3. Amendment of subsection (a) and new subsections (b)(1)–(2) filed 5-3-2004; operative 6-2-2004 (Register 2004, No. 19).
4. Amendment of subsection (b)(1) filed 6-9-2006; operative 7-9-2006 (Register 2006, No. 23).
5. Amendment of subsection (a) filed 1-25-2010 as an emergency; operative 1-25-2010 (Register 2010, No. 5). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 7-6-2010 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 1-25-2010 order transmitted to OAL 6-23-2010 and filed 8-4-2010 (Register 2010, No. 32).
7. Change without regulatory effect amending subsection (e)(1) filed 3-11-2013 pursuant to section 100, title 1, California Code of Regulations (Register 2013, No. 11).
8. Amendment of subsection (d) filed 10-29-2013 as an emergency; operative 10-29-2013 (Register 2013, No. 44). A Certificate of Compliance must be transmitted to OAL by 4-7-2014 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 10-29-2013 order transmitted to OAL 4-4-2014 and filed 5-14-2014 (Register 2014, No. 20).
10. Amendment of subsection (d) filed 2-18-2016 as an emergency; operative 2-18-2016 (Register 2016, No. 8). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 7-27-2016 or emergency language will be repealed by operation of law on the following day.
11. Certificate of Compliance as to 2-18-2016 order transmitted to OAL 7-26-2016 and filed 9-6-2016 (Register 2016, No. 37).

3041.1. Paid Inmate Work/Training Assignment Criteria.

(a) Inmate work/training supervisors, in accordance with section 3040(d), shall fill vacant paid inmate assignments based on the following criteria:

(1) Skill level evidenced by the inmate's technical expertise, ability, and knowledge.

(2) Behavior and relationships with others evidenced by the inmate's ability to deal with staff and other authority figures, work/training supervisors, and other inmates.

(3) Attitude and adaptability evidenced by the inmate's willingness to learn and to take directions.

(4) Work/training habits evidenced by the inmate's punctuality, dependability, care of equipment, and safety practices.

(5) Formal education and training evidenced by the inmate's preparation for the assignment and ability to read, write, and speak effectively.

(6) Mission and physical plant of the institution/facility.

(7) Ethnic balance. Ethnic balance is achieved by having the facility's White, Black, Hispanic, American Indian, and other identified ethnicities in the inmate population proportionately represented in the number of paid assignments at the facility.

(b) Each institution/facility shall establish an application process for selection of skilled workers to fill paid positions.

(c) Inmates assigned to paid positions will be paid from the fund or allotment of the institution's/facility's support budget.

(d) All paid work/training assignments shall be ranked in sequential order of technical skill required. The United States Department of Labor Dictionary of Occupational Titles (DOT) shall be used to maintain consistency throughout the Department when determining skill levels.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.

HISTORY:

1. New section filed 2-28-95; operative 3-30-95 (Register 95, No. 9).
2. Amendment filed 5-3-2004; operative 6-2-2004 (Register 2004, No. 19).

3041.2. Inmate Pay Rates, Schedule and Exceptions.

(a) Pay rates at each facility for paid inmate assignments shall be commensurate with the level of skill and productivity required and shall be set with the assistance of the Institutional Inmate Pay Committee. Pay rates shall be in accord with the following general pay schedule adopted and revised by the Secretary pursuant to the Administrative Procedures Act.

(1) Pay Schedule

Skill Level	*Minimum/Maximum Hourly*	*Minimum/Maximum Monthly*
Level 1		DOT Skill Level 9
Lead Person	$0.32–$0.37	$48–$56
Level 2		DOT Skill Levels 7–8
Special Skill	$0.19–$0.32	$29–$48
Level 3		DOT Skill Levels 5–6
Technician	$0.15–$0.24	$23–$36
Level 4		DOT Skill Levels 3–4
Semi-Skilled	$0.11–$0.18	$17–$27
Level 5		DOT Skill Levels 1–2
Laborer	$0.08–$0.13	$12–$20

(2) Monthly rates shall apply to full time employment in the job classifications and shall be paid from the support budget or inmate welfare funds. Hourly rates shall apply to half time and partial full time paid employment.

(b) Exceptions to the above schedule may be made in extraordinary circumstances. A wage comparable to that paid to inmates in the Prison Industry Authority inmate pay program may be paid for special projects or assignments that require a high degree of skill or expertise. Other exceptions may also be made in order to fill positions when recruitment or retention of inmate workers is a problem. Any exceptions based upon this subsection shall require approval, review and justification on an annual basis by the institution head or designee.

(c) Pay increases shall not be automatic or based on the inmate's longevity in an assignment. Increases or reductions in the pay rate shall be based on the work/training supervisor's recommendation, the inmate's work/training performance reports, subject to review and approval of the inmate assignment authority.

(d) Inmates may receive a pay increase only on a quarterly basis and only until the maximum pay rate for that assignment is obtained.

(e) Inmate performance rating and total hours in job categories shall be reviewed when changes in job classifications are being considered. Inmates approved for advancement to a higher skill classification shall enter the new classification at a pay grade equal or greater to their previous pay grade in the lower skill, unless the new assignment is to a non-paid position.

(f) The reason for any reduction in an inmate's pay rate, including either removing the pay status or decreasing the pay level from an assigned position or reassigning the inmate to a non-paid or lower paid position, shall be documented in the inmate's central file as follows:

(1) When the reason for a pay reduction is misconduct, including the inmate's willful refusal or failure to work as directed, the matter shall be reported in accordance with Sections 3314 and 3315 as appropriate.

(2) When the reason for a pay reduction is not the fault of the inmate, including their inability to satisfactorily perform the required duties after a reasonable effort to do so, the matter shall be documented on a CDC General Chrono.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 2079, 2811 and 5054, Penal Code.

HISTORY:

1. New section filed 2-28-95; operative 3-30-95 (Register 95, No. 9).
2. Amendment of section heading, section and Note filed 5-3-2004; operative 6-2-2004 (Register 2004, No. 19).
3. Change without regulatory effect amending subsection (e) filed 12-4-2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 49).
4. Amendment filed 1-25-2010 as an emergency; operative 1-25-2010 (Register 2010, No. 5). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 7-6-2010 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1-25-2010 order transmitted to OAL 6-23-2010 and filed 8-4-2010 (Register 2010, No. 32).
6. Editorial correction of subsection (a) (Register 2013, No. 11).
7. Change without regulatory effect amending subsection (a) filed 3-11-2013 pursuant to section 100, title 1, California Code of Regulations (Register 2013, No. 11).

3041.3. Inmate/Parolee Access to Computers.

(a) Inmates shall not access any computer outside of their authorized work, Career Technical Education program, educational assignment, Reentry Hub, Long Term Offender Program or substance abuse treatment assignment, or as needed for legal research on the Law Library Electronic Delivery System, except as authorized by the department's Information Security Officer (ISO).

(b) Inmates shall not access any computer connected to a local area network (LAN), or which has any type of direct, outside communication capability, except as approved by the ISO or provided in section 3370(c).

(c) Only those computer programs developed by inmates that are written in a programming language approved by the ISO shall be authorized for use.

(1) The use of inmates as programmers and system experts shall be prohibited where there is a risk to the information assets of the department or the public, as determined by the institution head or the ISO. Inmates shall not be used as programmers or system experts for departmental business applications, systems, and data.

(2) Inmates assigned to one computer for work, Career Technical Education program, education, Reentry Hub, Long Term Offender Program or substance abuse treatment shall not be assigned to, or permitted to use, any other computer, except as approved by the ISO.

(d) Areas where inmates are authorized to work on computers shall be posted as such. Each computer in a facility shall be labeled to indicate whether or not inmates are authorized access to that computer.

(e) Inmates shall not access any computer that contains or is capable of accessing sensitive or confidential information or is connected to, other computers containing sensitive or confidential information, except as provided in section 3370(b).

(f) Inmates shall not use or be informed of any computer password, except when issued by the supervising staff. The supervising staff and not the inmate must always retain the ability to change the password.

(g) Inmates shall not have access to diskettes or any other electronic storage media, except within an area approved by the institution head.

(h) Inmates shall not possess a computer as part of their personal property.

(i) Inmates shall not access or use any computer-based tool or program that is capable of destroying or corrupting stored data, except as provided in sections 3041.3(m) and 3370(c).

(j) Inmates who have a record of computer fraud or abuse shall not be placed in any work assignment which provides access to a computer and shall be restricted from computer based rehabilitative programs which provide Internet access.

(k) No external communication capabilities; e.g., telephone lines with connectivity outside the inmate facility, data lines, data punch panels, or telephone access punch panels, shall be permitted in any area where inmates are allowed to access computers, except as approved in writing by the ISO. The local Information Security Coordinator must keep a copy of the written exception on file for post audit.

(*l*) Inmates shall not directly access or alter any computer's operating system, except as provided in sections 3041.3(m) and 3370(b), or authorized by the ISO.

(m) Inmate refurbishing of computers shall be permitted only as part of a program that has been approved, and subject to all requirements established, by the institution head and ISO. An unclothed body search shall be conducted on each inmate prior to their exiting any area where a computer refurbishing program exists.

(n) Each parole office shall ensure the security of computers, LANs, and modems or other communication devices used in that office from unauthorized access by parolees. The unit supervisor of each parole office shall be responsible for enforcement of this subsection.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 502, 502.7 and 2702, Penal Code.

HISTORY:

1. New section filed 3-24-99; operative 4-23-99 (Register 99, No. 13).
2. Amendment of section heading and new subsection (n) filed 1-31-2002; operative 3-2-2002 (Register 2002, No. 5).
3. Change without regulatory effect amending subsection (b) filed 5-6-2003 pursuant to section 100, title 1, California Code of Regulations (Register 2003, No. 19).
4. Amendment of subsection (n) filed 12-9-2008; operative 1-8-2009 (Register 2008, No. 50).
5. Amendment of subsections (a), (d)–(f) and (k) filed 11-24-2009; operative 12-24-2009 (Register 2009, No. 48).
6. Amendment of subsections (a) and (c)(2) filed 10-29-2013 as an emergency; operative 10-29-2013 (Register 2013, No. 44). A Certificate of Compliance must be transmitted to OAL by 4-7-2014 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 10-29-2013 order, including amendment of subsections (b) and (j), transmitted to OAL 4-4-2014 and filed 5-14-2014; amendments effective 5-14-2014 pursuant to Government Code section 11343.4(b)(3) (Register 2014, No. 20).
8. Amendment of subsections (a) and (c)(2) filed 2-18-2016 as an emergency; operative 2-18-2016 (Register 2016, No. 8). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 7-27-2016 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 2-18-2016 order transmitted to OAL 7-26-2016 and filed 9-6-2016 (Register 2016, No. 37).

Article 3.5. Credits

3042. Penal Code 2933 Credits.

(a) Except where otherwise prohibited by law, effective *January 25, 2010*, for every six months of continuous incarceration from the date of sentencing to the Department of Corrections and Rehabilitation, an eligible inmate shall be awarded six months reduction in term of imprisonment. A lesser amount of credit based on this ratio shall be awarded for any lesser period of continuous imprisonment. Under no circumstances shall any inmate receive more than six-months credit reduction for any six-month period under this section.

(1) Inmates who have waived their right to credits under Penal Code section 2931, as provided in Penal Code section 2934, may, pursuant to PC section 2933, be eligible for a reduction in their term of imprisonment from the date of reception by the department on the effective date of the waiver.

(2) PC 2933 Credits awarded may be denied or forfeited due to disciplinary action.

(b) Credits for interstate transfer inmates. The Western Interstate Corrections Compact and the Interstate Corrections Compact Agreement enable the Department to transfer and exchange prisoners with other states.

(1) Inmates who agree to serve their term in another state or a federal institution, or who are serving a concurrent term in another jurisdiction, shall be eligible to earn credits as authorized under the provisions of Penal Code sections 2933 and 2933.05.

(2) Before such credit can be awarded, the inmate's credits must be verified by a delegated official of the host institution and reported to the department.

(c) Life-term inmates.

(1) Pursuant to PC section 2933, credits shall be applied to reduce the minimum terms of life inmates sentenced only under PC sections 191.5(d), 217.1(b), 667.7(a)(1) and PC 667.75.

(2) Inmates sentenced to life terms with determinate sentence law (DSL) enhancements or with a consecutive DSL term shall, except where otherwise prohibited by law, be eligible to receive credits on such terms pursuant to PC section 2933.

(d) Case records staff shall process and calculate inmate credits and release dates based upon information provided by the courts and program staff.

(1) Any classification or inmate appeal action affecting an inmate's release date, including a change in work group status or credit forfeitures and restorations, shall be forwarded to case records staff. Inmates shall be provided a copy of any change in their release dates.

(2) Case records staff shall compute credits. The resultant new legal status summary (LSS) shall be forwarded to the inmate.

NOTE: Authority cited: Sections 2700 and 5058, Penal Code. Reference: Sections 2931, 2933, 2933.05, 2935, 5054, 6260, 11189 and 11190, Penal Code; *In re Monigold*, 205 Cal. App. 3d 1224; and *People* v. *Jones*, 44 Cal. Rptr. 2d 164 (Cal. 1995).

HISTORY:

1. New section filed 1-25-2010 as an emergency; operative 1-25-2010 (Register 2010, No. 5). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 7-6-2010 or emergency language will be repealed by operation of law on the following day. For prior history, see Register 88, No. 38.
2. Certificate of Compliance as to 1-25-2010 order transmitted to OAL 6-23-2010 and filed 8-4-2010 (Register 2010, No. 32).

3. Change without regulatory effect repealing subsections (a)(2)–(4), renumbering subsections and amending Note filed 4-22-2015 pursuant to section 100, title 1, California Code of Regulations (Register 2015, No. 17).

3043. Credit Earning.

Presentence. Credit for time served on a term prior to sentencing shall be awarded by the sentencing court pursuant to sections 2900.1, 2900.5 and 4019 of the Penal Code.

(a) Behavior. All inmates serving a determinate term of imprisonment for a crime committed before January 1, 1983, who have not waived the time credit provisions of Penal Code section 2931, shall be credited with a one-fourth reduction on their term of imprisonment, unless all or part of such good behavior credit is denied or forfeited as the result of disciplinary action in the amounts listed in section 3323. Such credit shall be calculated from July 1, 1977 or the date of reception by the department, whichever is later.

(1) Except where otherwise prohibited by law, inmates sentenced under Penal Code section 190 to an indeterminate term of 15 years-to-life or 25 years-to-life and received by the department on or after May 27, 1987 shall be credited with a one-fourth reduction on their minimum eligible parole date, unless all or part of such good behavior credit is denied or forfeited as the result of disciplinary action in the amounts listed in section 3323.

(b) Participation. All inmates described in subsection (a) shall be credited with a one-twelfth reduction on their term unless all or part of such participation credit has been denied or forfeited as the result of disciplinary action for failure or refusal to participate and perform work and/or program assignments as ordered or directed.

(c) Milestone completion credits.

(1) Milestone means the achievement of a distinct objective of a rehabilitative program as established by CDCR in the Milestone Completion Credit Schedule (see 3043(c)(5)). If an inmate is eligible for program credits pursuant to PC section 2933.05, reaching a milestone allows for awarding of such credits.

(A) Milestone completion credits for GED academic achievements shall not be awarded to inmates already possessing a GED, high school equivalency/diploma or college degree.

(B) All inmates must sign the CDCR Form 2233 (Rev. 06/11), Inmate Declaration Of General Education Development (GED) Eligibility, which is hereby incorporated by reference, prior to taking any portion of the GED exam.

(2) In addition to any credit awarded pursuant to section 3042, credit reductions to reduce an eligible inmate's term of confinement may be awarded in increments of not less than one week, but no more than six weeks in a twelve-month period for achievement of specific program performance milestones concluding with the successful completion of in-prison or Alternative Custody Program (ACP), pursuant to Chapter 1, Article 6.8, section 3078, rehabilitative programs approved and listed by CDCR on the Milestone Completion Credit Schedule (see 3043(c)(5)). One week is equivalent to 7 calendar days.

(3) For the purposes of this section, in-prison or ACP rehabilitative programs shall include, but are not limited to academic programs, Career Technical Education programs, Cognitive Behavioral Treatment programs, substance abuse treatment, social life skills, and Enhanced Outpatient Program (EOP) group module treatment.

(4) Each program milestone shall identify the applicable credit reduction, and shall specify the performance measurement necessary for attainment. Performance measurements include the mastery/understanding of course curriculum demonstrated by completion of assignments, instructor evaluation and standardized testing. For EOP group module completions, in lieu of standardized testing, inmates must participate and successfully complete a minimum of 80 percent of all required group module treatment sessions in accordance with their mental health treatment plan within a 6-month period.

(5) Specific milestone completions and credits awarded are established by the Division of Rehabilitative Programs on the Milestone Completion Credit Schedule (Rev. 04/15), which is incorporated by reference. All changes to the Milestone Completion Credit Schedule shall be adopted in accordance with rulemaking requirements of the Administrative Procedures Act (Government Code sections 11340 through 11364).

(6) Program milestones earned in excess of six weeks within a twelve-month period shall be applied at the beginning of the next twelve-month period of continuous incarceration.

(A) For the purposes of this section, the 12-month period shall begin on the date when the first milestone completion credits are completed and verified by the Inmate Assignment Lieutenant. For ACP Participants, the 12-month period shall begin on the date when the first milestone completion credits are completed and verified by the ACP Program Manager or designee.

(B) Within 3 business days of completion of an approved performance milestone, the approved program instructor will certify completion of a milestone via a CDC Form 128-B (Rev. 4/74), General Chrono and forward the document to the Inmate Assignment Office. ACP Participants shall notify the ACP Case Manager or designee of completion of an approved performance milestone in writing and provide documentation of completion. The ACP Case Manager or designee will verify completion of the performance milestone and, upon verification, notify the ACP Program Manager of completion of a performance milestone within 3 business days via a CDCR Form 1502 Activity Report (Rev. 10/06).

(C) Upon receipt of General Chrono, within 3 business days, the inmate assignment lieutenant or custody staff member not less than the rank of lieutenant, or the ACP Program Manager or designee, will verify the inmate's eligibility for milestone completion credits and complete a CDC Form 128-G (Rev. 10/89), Classification Chrono and forward to Case Records.

(7) No milestone completion credits shall be awarded for incomplete performance milestones under any circumstances.

(8) Milestone completion credits awarded may be denied or forfeited due to disciplinary action.

(9) Inmates shall not be eligible for program milestone completion credits that result in an inmate being overdue for release.

(10) Upon parole or discharge, any program milestone completion credits unapplied shall be voided.

(d) Inmates assigned to the Western Interstate Corrections Compact or the Interstate Corrections Compact Agreement are eligible to earn Milestone Completion Credits in accordance with section 3042(b).

(e) Jail confinement. A reentry inmate who is confined in a local jail pending an investigation or disciplinary action, shall be classified and placed in an appropriate work group pursuant to section 3045.1.

(f) Return from work furlough. An inmate returned to an institution due to disciplinary action or refusal to participate in assigned work, education or vocational assignment shall be placed in work group A-2, or to workgroup C (non-credit earning) by a re-entry classification committee.

(g) Heroic acts and exceptional assistance. Up to 12 months reduction of sentence may be awarded for the following acts:

(1) Acts preventing loss of life or injury to the public, staff, or other inmates.

(2) Acts preventing significant loss or destruction of property.

(3) Providing sworn testimony in judicial proceedings involving prosecution of a felony offense which occurred within the prison.

(h) Case records staff shall process and calculate inmate Milestone Completion Credits in accordance with subsection 3042(d).

(i) Reentry Hub inmates removed from the program adversely shall be classified and placed in an appropriate work group as described in Section 3044.

NOTE: Authority cited: Sections 2700, 5058, 5058.3 and 1170.05, Penal Code. Reference: Sections 1170.05, 2931, 2933, 2933.05, 2935, 5054, 6260, 11189 and 11190, Penal Code; *In re Monigold*, 205 Cal. App. 3d 1224, and *People* v. *Jones*, 44 Cal.Rptr.2d 164 (Cal. 1995).

HISTORY:

1. Change without regulatory effect amending subsections (a), (c)(1) and NOTE pursuant to section 100, title 1, California Code of Regulations filed 12-28-89 (Register 90, No. 1). For prior history, see Register 88, No. 50.
2. Amendment of subsection (c) and redesignated subsection (e), new subsection (d) and subsection renumbering filed 12-20-91 as an emergency; operative 12-20-91 (Register 92, No. 4). A Certificate of Compliance must be transmitted to OAL 4-20-92 or emergency language will be repealed by operation of law on the following day.
3. Editorial correction of printing errors (Register 92, No. 4).
4. Certificate of Compliance as to 12-20-91 order including amendment of subsection (d)(2) transmitted to OAL 4-20-92 and filed 5-28-92 (Register 92, No. 24).
5. Editorial correction of subsection (c)(2)(A) (Register 95, No. 42).
6. New subsections (c)(1)–(3) and subsection renumbering, and amendment of Note filed 2-20-96 as an emergency; operative 2-20-96 (Register 96, No. 8). A Certificate of Compliance must be transmitted to OAL by 7-29-96 pursuant to Penal Code Section 5058(e) or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 2-20-96 order transmitted to OAL 6-17-96 and filed 7-23-96 (Register 96, No. 30).
8. Amendment of subsections (a)(1), (c)(4), (c)(5), (c)(5)(B), (d)(1), (g) and (g)(1) filed 6-9-2006; operative 7-9-2006 (Register 2006, No. 23).
9. Amendment filed 1-25-2010 as an emergency; operative 1-25-2010 (Register 2010, No. 5). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 7-6-2010 or emergency language will be repealed by operation of law on the following day.
10. Certificate of Compliance as to 1-25-2010 order transmitted to OAL 6-23-2010 and filed 8-4-2010 (Register 2010, No. 32).
11. Amendment of subsections (c)(2), (c)(4) and (c)(7)(A)–(C) and amendment of Note filed 9-27-2011 as an emergency; operative 9-27-2011 (Register 2011, No. 39). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 3-5-2012 or emergency language will be repealed by operation of law on the following day.
12. New subsections (c)(1)(A)–(B) and amendment of subsection (c)(6) filed 12-20-2011; operative 1-19-2012 (Register 2011, No. 51).
13. Certificate of Compliance as to 9-27-2011 order transmitted to OAL 2-3-2012; Certificate of Compliance withdrawn 3-19-2012 (Register 2012, No. 12).
14. Amendment of subsections (c)(2), (c)(4) and (c)(7)(A)–(C) and amendment of Note refiled 3-19-2012 as an emergency; operative 3-19-2012 (Register 2012, No. 12). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 6-18-2012 or emergency language will be repealed by operation of law on the following day.
15. Reinstatement of section as it existed prior to 3-19-2012 emergency amendment by operation of Government Code section 11346.1(f) (Register 2012, No. 28).
16. Amendment of subsections (c)(2), (c)(4) and (c)(7)(A)–(C) and amendment of Note filed 9-13-2012 as an emergency; operative 9-13-2012 (Register 2012, No. 37). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 2-20-2012 or emergency language will be repealed by operation of law on the following day.
17. Certificate of Compliance as to 9-13-2012 order transmitted to OAL 1-11-2013 and filed 2-25-2013 (Register 2013, No. 9).
18. Amendment of subsections (c)(4) and (c)(6) and new subsection (i) filed 10-29-2013 as an emergency; operative 10-29-2013 (Register 2013, No. 44). A Certificate of Compliance must be transmitted to OAL by 4-7-2014 or emergency language will be repealed by operation of law on the following day.
19. Amendment of subsections (c)(4)–(6) filed 5-12-2014 as an emergency; operative 5-12-2014 (Register 2014, No. 20). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 10-20-2014 or emergency language will be repealed by operation of law on the following day.
20. Certificate of Compliance as to 10-29-2013 order, including amendment of subsection (c)(4), transmitted to OAL 4-4-2014 and filed 5-14-2014; amendments effective 5-14-2014 pursuant to Government Code section 11343.4(b)(3) (Register 2014, No. 20).
21. Certificate of Compliance as to 5-12-2014 order transmitted to OAL 8-21-2014 and filed 9-17-2014 (Register 2014, No. 38).
22. Change without regulatory effect amending subsections (c)(1) and (c)(2), repealing subsection (c)(3), renumbering subsections and amending Note filed 4-22-2015 pursuant to section 100, title 1, California Code of Regulations (Register 2015, No. 17).
23. Amendment of subsection (c)(5) filed 7-31-2015; operative 7-31-2015 pursuant to Government Code section 11343.4(b)(3) (Register 2015, No. 31).

3043.1. Waiver.

(a) Inmates serving a determinate term of imprisonment may waive the right to receive credit and thereafter be eligible to earn milestone completion credits in the amounts provided for in section 3043 (c).

(1) Inmates serving an indeterminate term of imprisonment of 15 years-to-life, or 25 years-to-life shall not be entitled to waive their right to behavior and participation credits to earn Penal Code section 2933 worktime credits to reduce their minimum eligible parole dates.

(2) Inmates sentenced under Penal Code section 190 to an indeterminate term of imprisonment of 15 years-to-life or 25 years-to-life received by the department prior to May 27, 1987, who waived their right to behavior and participation credits shall not be entitled to earn Penal Code section 2933 worktime credits after February 15, 1989 to reduce their minimum eligible parole date.

(b) All credit attributable to the portion of the inmate's sentence served prior to the effective date of the waiver shall be retained by the inmate unless such credit has been forfeited for a disciplinary offense. This credit includes all pre-sentence custody and good behavior credit; credit granted under Penal Code Section 4019; post-sentence credit; actual days in custody from date of reception and behavior and participation credit attributable to that actual custody.

(c) Eligible inmates wishing to receive credits pursuant to PC sections 2933 and 2933.05 shall present a signed, CDCR Form 916 (Rev. 09/09), Time Credit Waiver, which is hereby incorporated by reference, to their caseworker who shall:

(1) Verify the qualifying program.

(2) Enter the effective date of the waiver upon the credit waiver form.

(3) Forward the form to the facility's records office for placement into the inmate's central file.

(d) The credit waiver shall be effective on January l, 1983 if signed on or prior to that date. If signed at a later date, such waiver shall be effective on the date the inmate's assignment to a credit qualifying program is verified. In instances where any inmate serving a sentence prior to January 1, 1983 was not provided with an opportunity to sign a credit waiver, the waiver shall be effective on the date the inmate would otherwise have been eligible because of a qualifying work/training assignment. Accepted waivers shall be irrevocable.

(e) A waiver shall not be accepted from an inmate within 30 days of their release date or if the waiver is retroactive and recomputation of sentence credits would make the inmate overdue for release, or if granting the credit waiver will prevent notification to local law enforcement officials of the release of inmates described in section 3327(c)(2) in the 45-day time frame required by law.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 273a, 273ab, 273d, 667.5, 832.5, 2933, 2933.05, 2933.6, 2934, 3058.6, 3058.9 and 5054, Penal Code.

HISTORY:

1. Certificate of Compliance including amendments transmitted to OAL, 3-22-83 and filed 4-27-83 (Register 83, No. 18).
2. Amendment of subsection (c) and new subsection (d) filed 8-7-87 as an emergency; operative 8-7-87 (Register 87, No. 34). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed 12-7-87.
3. Certificate of Compliance as to 8-7-87 order transmitted to OAL 12-4-87; disapproved by OAL (Register 83, No. 16).
4. Amendment of subsection (c) and new subsection (d) filed 1-4-88 as an emergency; operative 1-4-88 (Register 88, No. 16). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 5-3-88.
5. Certificate of Compliance as to 1-4-88 order transmitted to OAL 5-3-88; disapproved by OAL (Register 88, No. 24).
6. Amendment of subsection (c) and new subsection (d) filed 6-2-88 as an emergency; operative 6-2-88 (Register 88, No. 24). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 9-30-88.
7. Certificate of Compliance including amendment transmitted to OAL 9-26-88 and filed 10-26-88 (Register 88, No. 50).
8. Change without regulatory effect of subsection (a) pursuant to section 100, title 1, California Code of Regulations filed 12-28-89 (Register 90, No. 1).
9. New subsection (c), amendment of redesignated (d) and subsection renumbering filed 12-20-91 as an emergency; operative 12-20-91 (Register 92, No. 4). A Certificate of Compliance must be transmitted to OAL 4-20-92 or emergency language will be repealed by operation of law on the following day.
10. Editorial correction of printing errors (Register 92, No. 4).
11. Certificate of Compliance as to 12-20-91 order transmitted to OAL 4-20-92 and filed 5-28-92 (Register 92, No. 24).
12. Amendment of subsection (e) and Note filed 5-22-2006; operative 5-22-2006 pursuant to Government Code section 11343.4 (Register 2006, No. 21).
13. Amendment of subsections (a), (c) and (e) and Note filed 1-25-2010 as an emergency; operative 1-25-2010 (Register 2010, No. 5). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 7-6-2010 or emergency language will be repealed by operation of law on the following day.
14. Certificate of Compliance as to 1-25-2010 order transmitted to OAL 6-23-2010 and filed 8-4-2010 (Register 2010, No. 32).

3043.2. Loss of Participation Credit.

(a) Any inmate who accumulates participation credit as described in Section 3043(b) may be denied or may forfeit such credit for failure or refusal to perform assigned, ordered, or directed work or program activities, as described in section 3040. Any serious disciplinary offense committed while participating in such prison work or program activities shall be deemed a failure to participate.

(b) Not more than 30 days of participation credit may be denied or forfeited for any single failure or refusal to participate, which occurred on or after January 1, 1983.

(c) Failure to work or participate in program activities for reasons, which are beyond the inmate's control, shall not be cause for denial or forfeiture of participation credit. Such circumstances may include but are not limited to:

(1) The inmate has not been given instructions or an order or an assignment to perform or participate in work or program activities.

(2) The inmate's work or program assignment has been temporarily suspended or permanently terminated, and no other work or program assignment has been ordered.

(3) The inmate is medically excluded or restricted from work or program activities, either on a temporary basis because of illness or injury, or on a permanent basis because of medically diagnosed physical or mental inability to participate.

(4) The inmate has failed to perform or participate after demonstrating a reasonable effort in the specified activity.

(5) The inmate is restricted from reporting to or participating in an assigned work or program activity by an order or action of institution staff.

NOTE: Authority cited: Sections 2931 and 5058, Penal Code. Reference: Sections 2931 and 5054, Penal Code.

HISTORY:

1. Certificate of Compliance including amendments transmitted to OAL 3-22-83 and filed 4-27-83 (Register 83, No. 18).

3043.3. Loss of Behavior, PC 2933, or PC 2933.05 Credit.

(a) As used in these regulations, forfeiture of credits means loss of credits previously earned or to be earned. Behavior, PC 2933 or PC 2933.05 credit may be denied or forfeited for the commission of any felony or misdemeanor, whether prosecuted or not, serious rule violation committed after January 1, 1983, or court judgment pursuant to Penal Code sections 2932.5 and 2933(c).

(1) Not more than 360 days of credit shall be denied or forfeited for any act specified as a division A-1 offense in section 3323(c), of these regulations.

(2) Not more than 180 days shall be denied or forfeited for any act specified as a division A-2 offense in section 3323(d) of these regulations or for any other felony not cited in subsection (a) (1).

(3) Not more than 90 days shall be denied or forfeited for commission of any misdemeanor.

(4) Not more than 30 days shall be denied or forfeited for any single act described as a serious rule violation in these regulations, unless such act is a misdemeanor or felony offense.

(5) An inmate found by a court to be a vexatious litigant as defined in section 3000 shall be denied or lose 30 days of credit.

(b) No behavior credit attributable to any portion of a sentence served prior to January 1, 1983 shall be forfeited for any criminal or disciplinary offense occurring on or after January 1, 1983.

(c) Credit loss shall be assessed in accordance with the schedule provided in section 3323. The inmate shall be notified of the change in his or her anticipated release date due to the denial or forfeiture of credits.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 2932, 2932.5 and 5054, Penal Code.

HISTORY:

1. Certificate of Compliance including amendments transmitted to OAL 3-22-83 and filed 4-27-83 (Register 83, No. 18).
2. Amendment of subsection (a) filed 8-7-87 as an emergency; operative 8-7-87 (Register 87, No. 34). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 12-7-87.
3. Certificate of Compliance as to 8-7-87 order transmitted to OAL 12-4-87; disapproved by OAL (Register 88, No. 16).
4. Amendment of subsection (a) filed 1-4-88 as an emergency; operative 1-4-88 (Register 88, No. 16). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 5-3-88.
5. Certificate of Compliance as to 1-4-88 order transmitted to OAL 5-3-88; disapproved by OAL (Register 88, No. 24).
6. Amendment of subsection (a) filed 6-2-88 as an emergency; operative 6-2-88 (Register 88, No. 24). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 9-30-88.

7. Certificate of Compliance transmitted to OAL 9-26-88 and filed 10-26-88 (Register 88, No. 50).
8. Editorial correction of printing error in History 1 (Register 92, No. 5).
9. Amendment of subsection (a), new subsection (a)(5) and amendment of Note filed 11-12-97 as an emergency; operative 11-12-97 (Register 97, No. 46). A Certificate of Compliance must be transmitted to OAL by 3-13-98 or emergency language will be repealed by operation of law on the following day.
10. Editorial correction of History 9 (Register 98, No. 18).
11. Amendment of subsection (a), new subsection (a)(5) and amendment of Note refiled 4-29-98 as an emergency; operative 4-29-98 (Register 98, No. 18). A Certificate of Compliance must be transmitted to OAL by 10-6-98 or emergency language will be repealed by operation of law on the following day.
12. Certificate of Compliance as to 4-29-98 order transmitted to OAL 6-12-98 and filed 7-21-98 (Register 98, No. 30).
13. Amendment of subsection (a)(4) filed 6-9-2006; operative 7-9-2006 (Register 2006, No. 23).
14. Amendment of section heading and subsections (a) and (a)(5) filed 1-25-2010 as an emergency; operative 1-25-2010 (Register 2010, No. 5). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 7-6-2010 or emergency language will be repealed by operation of law on the following day.
15. Certificate of Compliance as to 1-25-2010 order transmitted to OAL 6-23-2010 and filed 8-4-2010 (Register 2010, No. 32).

3043.4. Non-Credit Earning.

An inmate eligible to earn credit who refuses a full-time qualifying assignment, or is placed on non-credit earning status (Work Group C) by a classification committee for frequent work/training violations due to serious disciplinary infractions, shall not receive earned credit.

(a) Inmates placed in SHU, PSU, BMU, or ASU for misconduct due to a serious disciplinary infraction are ineligible to earn credits for a period not to exceed the number of disciplinary credits forfeited.

(b) An inmate who is placed in SHU, PSU, or ASU for misconduct described in subsection (c) or upon validation as a STG-I member or associate is ineligible to earn credits pursuant to Penal Code section 2933 or 2933.05 during the time he or she is in the SHU, PSU, or ASU for that misconduct.

(c) The following offenses shall exclude an inmate from earning credit:

(1) Murder, attempted murder, and solicitation of murder. For purposes of this paragraph, solicitation for murder shall be proven by the testimony of two witnesses, or of one witness and corroborating circumstances.

(2) Manslaughter.

(3) Assault or battery causing serious bodily injury.

(4) Assault or battery on a peace officer or other non-prisoner which results in physical injury.

(5) Assault with a deadly weapon or caustic substance.

(6) Rape, attempted rape, sodomy, attempted sodomy, oral copulation, or attempted oral copulation accomplished against the victim's will.

(7) Taking a hostage.

(8) Escape or attempted escape with force or violence.

(9) Escape from any departmental prison or institution other than a camp or reentry facility.

(10) Possession or manufacture of a deadly weapon or explosive device.

(11) Arson involving damage to a structure.

(12) Possession of flammable, explosive material with intent to burn any structure of property.

(13) Solicitation of assault with a deadly weapon or assault by means of force likely to produce great bodily injury, arson, or a forcible sex act.

(14) Intentional destruction of state property in excess of four hundred dollars ($400) during a riot or disturbance.

(d) If a Rules Violation Report (RVR) finding of the misconduct is not guilty or dismissed, or if the inmate is criminally prosecuted for the misconduct and is found not guilty, the inmate may remain eligible for credit earning.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 2931, 2932, 2933, 2933.05, 2933.6, 5054 and 5068, Penal Code.

HISTORY:

1. Certificate of Compliance including amendments transmitted to OAL 3-22-83 and filed 4-27-83 (Register 83, No. 18).
2. Amendment filed 8-7-87 as an emergency; operative 8-7-87 (Register 87, No. 34). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 12-7-87.
3. Certificate of Compliance as to 8-7-87 order transmitted to OAL 12-4-87; disapproved by OAL (Register 88, No. 16).
4. Amendment filed 1-4-88 as an emergency; operative 1-4-88 (Register 88, No. 16). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 5-3-88.
5. Certificate of Compliance as to 1-4-88 order transmitted to OAL 5-3-88; disapproved by OAL (Register 88, No 24).
6. Amendment filed 6-2-88 as an emergency; operative 6-2-88 (Register 88, No. 24). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 9-30-88.
7. Certificate of Compliance transmitted to OAL 9-26-88; operative 10-26-88 (Register 88, No. 50).
8. Amendment filed 6-9-2006; operative 7-9-2006 (Register 2006, No. 23).
9. Amendment of section and Note filed 1-25-2010 as an emergency; operative 1-25-2010 (Register 2010, No. 5). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 7-6-2010 or emergency language will be repealed by operation of law on the following day.
10. Certificate of Compliance as to 1-25-2010 order transmitted to OAL 6-23-2010 and filed 8-4-2010 (Register 2010, No. 32).
11. Amendment of subsection (b) filed 10-17-2014; operative 10-17-2014 pursuant to Government Code section 11343.4(b)(3) (Register 2014, No. 42).

3043.5. Special Assignments.

(a) Special assignments include:

(1) Inmate advisory council. The positions of chairperson and secretary of an institution's inmate advisory council may be full-time positions in Work Group A-1.

(2) Prerelease program. Assignment to an approved full time pre-release program shall qualify as full time assignment in Work Group A-1.

(3) Any Reentry Hub program assignment shall qualify as a full time assignment in Work Group A-1.

(b) Medical/psychiatric inpatient hospitalization (29 calendar days or less). Inmates determined by medical/psychiatric staff to need short-term inpatient care shall retain their existing credit earning category. Inmates requiring longer periods of inpatient care shall be referred by the attending physician/psychiatrist to a classification committee. The classification committee shall confirm the inmate's unassigned inpatient category and change the inmate's work/training group status as follows:

(1) General population inmates shall be placed in Work Group A-2, effective the thirtieth day of unassignment.

(2) Segregation inmates who are in Work Group A-1 or B shall be placed in Work Group D-1, effective the first day of placement into Administrative Segregation.

(3) Segregation inmates in Work Group D-1 or D-2 shall retain their Work Group status.

(c) Long term medical/psychiatric unassigned status. In cases where the health condition necessitates that the inmate becomes medically unassigned for 30 calendar days or more, the physician shall specify an anticipated date the inmate may return to work. The classification committee shall review the inmate's medical or psychiatric unassigned status and change the inmate's Work Group status as follows:

(1) An inmate in the general population shall be changed to Work Group A-2, involuntary unassigned, to be effective the thirtieth day of unassignment.

(2) An inmate in a lockup unit who is in Work Group A-1 or B shall be changed to Work Group D-1 to be effective the first day of placement into Administrative Segregation.

(3) An inmate in a lockup unit who is in Work group D-1 or D-2 shall be retained in their respective Work Group.

(d) Medical/psychiatric health care status determination:

(1) When an inmate has a disability that limits his/her ability to participate in a work, academic, Career Technical Education program or other such program, medical/psychiatric staff shall document the nature, severity, and expected duration of the inmate's limitations on a CDC Form 128-C (Rev. 1/96), Chrono-Medical, Psychiatric, Dental. The medical/psychiatric staff shall not make program assignment recommendations or decisions on the form. The CDC Form 128-C shall then be forwarded to the inmate's assigned correctional counselor who will schedule the inmate for a classification committee review. The classification committee shall have the sole responsibility for making program assignment and work group status decisions. Based on the information of the CDC Form 128-C and working in conjunction with staff from the affected work area, academic/Career Technical Education program, and the Inmate Assignment Lieutenant, the classification committee shall evaluate the inmate's ability to participate in work, academic, Career Technical Education program, or other programs and make a determination of the inmate's program assignment and work group status.

(2) Only when the inmate's documented limitations are such that the inmate, even with reasonable accommodation, is unable to perform the essential functions of any work, academic, Career Technical Education or other such program, will the inmate be placed in one of the two following categories by a classification committee:

(A) Temporary medical/psychiatric unassignment. Except as provided in section 3043.5(e)(2)(A), when a disabled inmate is unable to participate in any work, academic, Career Technical Education program or other program, even with reasonable accommodation, because of a medically determinable physical or mental impairment that is expected to last for less than six months, the classification committee shall place the inmate on temporary medical/psychiatric unassignment. Inmates on temporary medical/psychiatric unassignment status shall be scheduled for classification review any time there is a change in his/her physical/mental impairment or no less than every six months for reevaluation. The credit earning status of an inmate on temporary medical/psychiatric unassignment for less than six months shall be in accordance with section 3044(b)(3), Work Group A-2. If the inmate's condition lasts six months and the classification committee still cannot assign the inmate due to his/her impairment, the credit earning status shall be changed to be in accordance with section 3044(b)(2), Work Group A-1 and appropriate privilege group retroactive to the first day of the temporary medical/psychiatric unassignment.

(B) Medically disabled. When an inmate is unable to participate in any assigned work, academic, Career Technical Education program, or other such program activity, even with reasonable accommodation, because of a medically determinable physical or mental impairment that is expected to result in death or last six months or more, the classification committee shall place the inmate on medically disabled status. The inmate credit earning status shall be in accordance with section 3044(b)(2), Work Group A-1 and Privilege Group A.

(e) Medical/psychiatric special assignments:

(1) Light duty: Inmates determined to have long-term medical or psychiatric work limitations shall be processed in the following manner:

(A) A medical or psychiatric evaluation of the inmate shall be made to determine the extent of disability and to delineate capacity to perform work and training programs for either a full or partial workday. If the inmate is deemed capable of only a partial work program, full credit shall be awarded for participation in such a program.

(B) A classification committee shall review the evaluation and determine the inmate's assignment.

1. A committee concurring with an evaluation's light duty recommendation shall refer the matter to the facility's assignment office which shall attempt to provide an assignment within the inmate's capabilities. Inmates assigned to such light duty shall be scheduled for semi-annual review.

2. A committee disagreeing with an evaluation's light duty recommendation shall refer the matter back to the medical department, describing the difference of opinion or rationale for requesting a second medical evaluation. If the committee disagrees with the second medical evaluation it shall refer the matter to the institution classification committee for final determination.

(2) Short-term medical/psychiatric lay-in or unassignment. Inmates who are ill or otherwise require a medical/psychiatric lay-in or unassignment for 29 days or less shall be processed in the following manner:

(A) Only designated medical/psychiatric staff are authorized to approve such lay-ins and unassignments. Reasons for the approval and the expected date of return to their regular assignment shall be documented by the medical/psychiatric staff making the decision.

(B) Inmates shall notify their work or training supervisor of their lay-in or unassignment status. The work or training supervisor shall record each day of the inmate's approved absence as an "E".

(C) Medical/psychiatric staff determining an inmate should continue on lay-in or unassigned status for more than 29 days shall refer the case to a classification committee.

(D) The inmate shall continue to use ETO time while on short-term medical/psychiatric lay-in or unassigned status.

(f) On-the-job injuries. The chief medical officer shall document inmate injuries occurring on the job. With the exception of inmates assigned to Work Group F, such injured inmates shall retain their existing work group status until medically approved to return to their work assignment. Inmates assigned to Work Group F shall revert to Work Group A-1 effective on the date the chief medical officer determines the on-the-job injury excludes the inmate from conservation camp placement providing the chief medical officer's exclusion determination is within 29 days following the date of the inmate's removal from the conservation camp assignment. If the chief medical officer's exclusion determination is not within 29 days following the date of the inmate's removal from the conservation camp assignment, the inmate shall revert to Work Group A-1 effective the 30th day following the date of the inmate's removal from the conservation camp assignment.

(g) Medical or psychiatric treatment categories "H", "I", and "N". An inmate assigned to category "H", "I", or "N" is not capable of performing a work or training assignment and shall, except where otherwise prohibited by law, be placed in Work Group A-1.

(h) Department of Mental Health (DMH) Penal Code (PC) sections 1364, 2684 and 2690 placements. An inmate transferred to DMH pursuant to PC sections 1364, 2684 or 2690 shall be placed in a work group as provided in section 3043.6(b).

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 2933, 2933.05, 2933.3, 2933.6, 5054 and 5068, Penal Code.

HISTORY:

1. New section filed 8-7-87 as an emergency; operative 8-7-87 (Register 87, No. 34). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 12-7-87.
2. Certificate of Compliance as to 8-7-87 order transmitted to OAL 12-4-87; disapproved by OAL (Register 88, No. 16).
3. New section filed 1-4-88 as an emergency; operative 1-4-88 (Register 88, No. 16). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 5-3-88.
4. Certificate of Compliance as to 1-4-88 order transmitted to OAL 5-3-88; disapproved by OAL (Register 88, No. 24).
5. New section filed 6-2-88 as an emergency; operative 6-2-88 (Register 88, No. 24). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 9-30-88.
6. Certificate of Compliance transmitted to OAL 9-26-88 and filed 10-26-88 (Register 88, No. 50).
7. Amendment of subsection (b), repealer of subsection (c)(4), and new subsections (d)–(g) filed 12-20-91 as an emergency; operative 12-20-91 (Register 92, No. 4). A Certificate of Compliance must be transmitted to OAL 4-20-92 or emergency language will be repealed by operation of law on the following day.
8. Editorial correction of subsection (a)(2) (Register 92, No. 4).
9. Certificate of Compliance as to 12-20-91 order including amendment of subsection (f) transmitted to OAL 4-20-92 and filed 5-28-92 (Register 92, No. 24).
10. Amendment of subsection (c) filed 2-17-95 as an emergency; operative 3-1-95 (Register 95, No. 9). This regulatory action was deemed an emergency pursuant to section 5058(e) of the Penal Code and remains in effect for 160 days. A Certificate of Compliance must be transmitted to OAL by 8-8-95 or emergency language will be repealed by operation of law on the following day.
11. Amendment of subsection (c) refiled 8-7-95 as an emergency; operative 8-7-95 (Register 95, No. 32). This regulatory action was deemed an emergency pursuant to section 5058(e) of the Penal Code and remains in effect for 160 days. A Certificate of Compliance must be transmitted to OAL by 1-16-96 or emergency language will be repealed by operation of law on the following day.
12. Reinstatement of section as it existed prior to emergency amendment filed 2-17-95 by operation of Government Code section 11346.1(f) (Register 96, No. 8).
13. Amendment of subsection (c) filed 2-21-96 as an emergency; operative 2-21-96 (Register 96, No. 8). A Certificate of Compliance must be transmitted to OAL by 6-20-96 or emergency language will be repealed by operation of law on the following day.
14. Certificate of Compliance as to 2-21-96 order transmitted to OAL 6-18-96 and filed 7-9-96 (Register 96, No. 28).
15. Amendment of subsection (e) and amendment of Note filed 10-23-2003 as an emergency; operative 10-23-2003 (Register 2003, No. 43). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 4-1-2004 or emergency language will be repealed by operation of law on the following day.
16. Certificate of Compliance as to 10-23-2003 order transmitted to OAL 3-19-2004 and filed 5-3-2004 (Register 2004, No. 19).
17. Amendment of subsection (a)(1) filed 5-3-2004; operative 6-2-2004 (Register 2004, No. 19).
18. Amendment filed 6-9-2006; operative 7-9-2006 (Register 2006, No. 23).
19. Amendment of section heading, repealer of subsection (a)(3) and amendment of subsection (d)(1) and Note filed 1-25-2010 as an emergency; operative 1-25-2010 (Register 2010, No. 5). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 7-6-2010 or emergency language will be repealed by operation of law on the following day.
20. Certificate of Compliance as to 1-25-2010 order transmitted to OAL 6-23-2010 and filed 8-4-2010 (Register 2010, No. 32).
21. New subsection (a)(3) and amendment of subsections (d)(1)–(d)(2)(B) filed 10-29-2013 as an emergency; operative 10-29-2013 (Register 2013, No. 44). A Certificate of Compliance must be transmitted to OAL by 4-7-2014 or emergency language will be repealed by operation of law on the following day.
22. Certificate of Compliance as to 10-29-2013 order transmitted to OAL 4-4-2014 and filed 5-14-2014 (Register 2014, No. 20).

3043.6. Impact of Transfer on Credit Earning.

(a) Non-adverse transfers.

(1) A non-adverse transfer is movement of an inmate to a less restrictive institution or program where the security level is the same or lower, movement to a secure perimeter from a non-secure camp or Level 1 (Minimum Support Facility) setting by order of the prison administration for non-adverse reasons or transfers from reception centers.

(2) With the exception of inmates assigned to Work Group F, an inmate transferred for non-adverse reasons shall retain their work and privilege group status. Inmates assigned to Work Group F shall revert to Work Group A-1 effective the date removed from camp or institution fire fighter assignment.

(3) With the exception of inmates assigned pursuant to subsections 3040.2(f)(2) and 3040.2(f)(4), an inmate in a work assignment at the sending institution shall be placed on an existing waiting list at the receiving institution. If eligible, inmates on waiting lists at sending institutions shall be merged into the receiving institution's waiting list based on credit earning status, release date, and the length of time they have spent on the sending institution's waiting list. Inmates who are day-for-day eligible per Penal Code section 2933 shall be given priority for assignment with the exception of Senate Bill (SB) 618 Participants who, as defined in section 3000, pursuant to the provisions of subsection 3077.3(b)(1), and subject to the provisions of 3077.3(f), shall be placed at the top of an institution's waiting list and given priority for assignment. Inmates shall be merged into the receiving institution's waiting list in the following manner:

(A) First, SB 618 Participants. Those SB 618 Participants having the earliest release date shall be given first priority.

(B) Second, those inmates who are day-for-day credit eligible, approved for the program and are not assigned, Work Group A-2. Inmates eligible to earn credits per Penal Code section 2933 shall be given second priority for placement on waiting lists and the inmate with the earliest release date shall be given priority.

(C) Third, inmates who are day-for-day credit eligible and are already designated Work Group A-1. Inmates eligible to earn credits per Penal Code section 2933 shall be given next priority for placement on waiting lists and the inmate with the earliest release date shall be given priority.

(D) Fourth, those inmates who are not Penal Code section 2933 day-for-day credit eligible and are already designated Work Group A-1. Inmates will be placed on waiting lists based upon the work group effective date.

(E) Fifth, those inmates who are not Penal Code section 2933 day-for-day credit eligible and are not assigned, Work Group A-2. Inmates will be placed on waiting lists based upon the work group effective date.

(4) An inmate in an OCE approved academic, Career Technical Education program, or substance abuse treatment, Cognitive Behavioral Treatment program or Transitions program at the sending institution shall be placed on the waiting list for the same or similar program, at the receiving institution if available. If the receiving institution's program is unavailable, the inmate shall be placed on

an existing waiting list at the receiving institution. The inmate's projected release date and the California Static Risk Assessment (CSRA) as described in Section 3768.1 shall be the primary determinants for priority placement. Inmates with a CSRA of moderate or high shall take priority over those with a low risk assessment. Inmates shall be merged into the receiving institution's waiting list based on their CSRA and in accordance with subsection (3) above.

(b) Transfers to Department of Mental Health (DMH).

(1) Penal Code (PC) sections 2684 and 2690 transfers. An inmate transferred to the DMH pursuant to PC sections 2684 and 2690 is not capable of performing a work or training assignment. Such an inmate shall be classified by the sending facility before the transfer and placed in Work Group A-1.

(2) Penal Code section 1364 transfers. An inmate transferred to DMH to participate in the voluntary experimental treatment program pursuant to Penal Code section 1364 shall participate in a full-time credit qualifying work/training assignment in order to earn full worktime credit.

(c) Adverse transfers.

(1) Adverse transfers are defined as a transfer resulting from any in-custody documented misbehavior or disciplinary that may or may not have resulted in an inmate's removal from current program.

(2) If an inmate is removed from a program for adverse reasons and is subsequently exonerated of the charges, the credit earning status shall be designated as though the inmate had not been removed from the assignment.

(3) Effective on the date of transfer an inmate in Work Group A-1 or F who receives an adverse transfer shall be reclassified to Work Group A-2 by the sending institution. The inmate shall remain in Work Group A-2 until reclassified by the receiving institution.

(4) An inmate in Work Group A-2, C or D at the time of transfer shall be retained in that group status until reclassified at the receiving institution.

(d) Reception center or layover status.

(1) Inmates being processed in reception centers, who are ineligible to earn day-for-day credits per Penal Code section 2933, can be assigned to half-time assignments. Inmates on layover (en route) status in any institution shall only be assigned to half-time assignments. Exception to this policy requires approval from the director, division of adult institutions.

(2) An inmate's participation in a full or half-time assignment while undergoing reception center processing shall be recorded on timekeeping logs. The inmate's timekeeping log shall be completed by the work supervisor on a daily basis. A copy shall be issued to the inmate upon written request.

(e) Special housing unit transfers.

(1) Inmates found guilty of a credit loss offense which could result in a security housing unit (SHU) determinate term shall be evaluated for SHU assignment by a classification committee.

(2) Inmates placed in a SHU, PSU, or in ASU for reasons specified in section 3043.4 shall be placed in workgroup D-2. All other inmates in SHU, PSU, or ASU shall be placed in Work *Group D-1*. BMU inmates shall be placed in the appropriate workgroup, as designated by committee. The effective date of both workgroups shall be the first day of placement into SHU, PSU, BMU or ASU.

(f) Community Correctional Center (CCC) transfers. Transfers of inmates approved for a CCC program are considered non-adverse. With the exception of inmates assigned to Work Group F, inmates shall retain their current work group status while en route to a program. Inmates assigned to Work Group F shall revert to Work Group A-1 effective the date removed from the camp or institution fire fighter assignment.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 1203.8, 1364, 2684, 2690, 2933, 2933.05, 2933.3, 2933.6, 5054 and 5068, Penal Code.

HISTORY:

1. New section filed 8-7-87 as an emergency; operative 8-7-87 (Register 87, No. 34). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 12-7-87.
2. Certificate of Compliance as to 8-7-87 order transmitted to OAL 12-4-87; disapproved by OAL (Register 88, No. 16).
3. New section filed 1-4-88 as an emergency; operative 1-4-88 (Register 88, No. 16). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 5-3-88.
4. Certificate of Compliance as to 1-4-88 order transmitted to OAL 5-3-88; disapproved by OAL (Register 88, No. 24).
5. New section filed 6-2-88 as an emergency; operative 6-2-88 (Register 88, No. 24). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 9-30-88.
6. Certificate of Compliance including amendment transmitted to OAL 9-26-88 and filed 10-26-88 (Register 88, No. 50).
7. New subsection (a)(4), amendment of subsection (b)(1) and new subsections (e)–(f) filed 12-20-91 as an emergency; operative 12-20-91 (Register 92, No. 4). A Certificate of Compliance must be transmitted to OAL 4-20-92 or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 12-20-91 order including amendment of subsection (b)(1) transmitted to OAL 4-20-92 and filed 5-28-92 (Register 92, No. 24).
9. Change without regulatory effect amending subsection (c)(1) filed 2-5-97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 6).
10. Amendment of section and Note filed 10-23-2003 as an emergency; operative 10-23-2003 (Register 2003, No. 43). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 4-1-2004 or emergency language will be repealed by operation of law on the following day.
11. Certificate of Compliance as to 10-23-2003 order transmitted to OAL 3-19-2004 and filed 5-3-2004 (Register 2004, No. 19).
12. Amendment filed 6-9-2006; operative 7-9-2006 (Register 2006, No. 23).
13. Amendment of subsection (a)(3), new subsection (a)(3)(A), subsection relettering, amendment of newly designated subsections (a)(3)(C)–(E) and amendment of Note filed 2-5-2009 as an emergency; operative 2-5-2009 (Register 2009, No. 6). This filing contains a certification that the operational needs of the Department required filing of these regulations on an emergency basis and were deemed an emergency pursuant to Penal Code section 5058.3. A Certificate of Compliance must be transmitted to OAL by 7-15-2009 or emergency language will be repealed by operation of law on the following day.
14. Certificate of Compliance as to 2-5-2009 order transmitted to OAL 6-25-2009 and filed 7-28-2009 (Register 2009, No. 31).
15. Amendment of section and Note filed 1-25-2010 as an emergency; operative 1-25-2010 (Register 2010, No. 5). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 7-6-2010 or emergency language will be repealed by operation of law on the following day.
16. Certificate of Compliance as to 1-25-2010 order transmitted to OAL 6-23-2010 and filed 8-4-2010 (Register 2010, No. 32).
17. Amendment of subsection (a)(3) and new subsection (a)(4) filed 12-20-2011; operative 1-19-2012 (Register 2011, No. 51).
18. Amendment of subsection (a)(4) filed 10-29-2013 as an emergency; operative 10-29-2013 (Register 2013, No. 44). A Certificate of Compliance must be transmitted to OAL by 4-7-2014 or emergency language will be repealed by operation of law on the following day.
19. Certificate of Compliance as to 10-29-2013 order, including amendment of subsection (a)(4), transmitted to OAL 4-4-2014 and filed 5-14-2014; amendments effective 5-14-2014 pursuant to Government Code section 11343.4(b)(3) (Register 2014, No. 20).

20. Amendment of subsection (a)(3) filed 2-18-2016 as an emergency; operative 2-18-2016 (Register 2016, No. 8). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 7-27-2016 or emergency language will be repealed by operation of law on the following day.
21. Certificate of Compliance as to 2-18-2016 order transmitted to OAL 7-26-2016 and filed 9-6-2016 (Register 2016, No. 37).

3043.7. Impact of 45-Day Notification on Credit Earnings.

Inmates shall not be placed in a greater credit earning category if it prevents notification to local law enforcement officials of the release of inmates described in Section 3327(c)(2) in the 45-day time frame, as required by Penal Code Sections 3058.6 and 3058.9.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 3058.6, 3058.9 and 5054, Penal Code.

HISTORY:

1. New section filed 5-22-2006; operative 5-22-2006 pursuant to Government Code section 11343.4 (Register 2006, No. 21).

3044. Inmate Work Groups.

(a) Full-time and half-time defined.

(1) Full-time work/training assignments normally mean eight (8) hours per day on a five day per week basis, exclusive of meals.

(2) Half-time work/training assignments normally mean four (4) hours per day on a five day per week basis, exclusive of meals.

(b) Consistent with the provisions of section 3375 of these regulations, all assignments or reassignments of an inmate to a work group shall be by a classification committee action in accordance with this section.

(1) Work Group F: Full-time conservation camp worker, or correctional institution inmate firefighter who has completed training for an assignment to a conservation camp or correctional institution inmate firefighter. Inmates eligible to earn day-for-day credits under Penal Code section 2933 shall be awarded two days credit for each day of qualifying performance. An inmate's ability to earn two-for-one credit shall not begin until he/she has completed conservation camp training or is assigned as an institutional firefighter. Pursuant to Penal Code section 2933.3, effective July 1, 2009, inmates eligible and assigned as institutional firefighters shall receive two-for-one credit. Conservation camp and correctional institution firefighter inmates eligible for two-for-one credit, as defined in this section, may be eligible for Work Group F credit during temporary removals from the conservation camp or correctional institution inmate firefighter setting. Inmates who become ineligible for continued conservation camp placement or as a correctional institution inmate firefighter for any reason shall be removed from Work Group F and assigned to an appropriate Work Group consistent with the remaining provisions of this section.

(2) Work Group A-1: Full-time assignment. Inmates eligible to earn Penal Code section 2933 credits shall be awarded one day credit for each day assigned to this work group. The work day shall not be less than 6.5 hours of work participation and the work week no less than 32 hours of work participation, as designated by assignment. Those programs requiring an inmate to participate during other than the normal schedule of eight-hours-per-day, five-days-per-week (e.g., 10-hours-per-day, four-days-per-week) or programs that are scheduled for seven-days-per-week, requiring inmate attendance in shifts (e.g., three days of 10 hours and one day of five hours) shall be designated as "special assignments" and require departmental approval prior to implementation. "Special assignment" shall be entered on the inmate's timekeeping log by the staff supervisor.

(A) Any inmate assigned to a Rehabilitative Program, to include but not be limited to: Substance Abuse Treatment, Cognitive Behavioral Treatment, Transitions, Education, Career Technical Education or any combination thereof, shall be designated Work Group A-1.

(B) Any combination of half-time work assignment, and any rehabilitative program as described in subsection (A) above, shall be designated Work Group A-1.

(C) A full-time college program may be combined with a half-time work or Career Technical Education program equating to a full-time assignment. The college program shall consist of 12 units in credit courses only leading to an associate degree in two years or a bachelor's degree in four years.

(D) An inmate diagnosed by a physician and/or psychiatrist as totally disabled and therefore incapable of performing an assignment, shall remain in Work Group A-1 throughout the duration of their total disability.

(E) An inmate when diagnosed by a physician and/or psychiatrist as partially disabled shall be assigned to an assignment within the physical and/or mental capability of the inmate as determined by the physician and/or psychiatrist, unless changed by disciplinary action.

(3) Work Group A-2: Involuntarily unassigned.

An inmate willing but unable to perform in an assignment shall be placed in Work Group A-2. Inmates eligible to earn Penal Code section 2933 credits shall be awarded one day credit for each day assigned to this work group, in the following status:

(A) The inmate is placed on a waiting list pending availability of an assignment.

(B) An unassigned inmate awaiting adverse transfer to another institution.

(4) Work Group B: Half-time assignment. Half-time programs shall normally consist of an assignment of four hours per workday, excluding meals, five-days-per-week, or full-time enrollment in college consisting of 12 units in credit courses leading to an associate or bachelor's degree. Inmates eligible to earn Penal Code section 2933 credits shall be awarded one day credit for each day assigned to this work group. The work day shall be no less than three hours and the work week no less than 15 hours.

(5) Work Group C: Disciplinary unassigned. Zero credit.

(A) Any inmate who twice refuses to accept assigned housing, or who refuses to accept or perform in an assignment, or who is deemed a program failure as defined in section 3000, shall be placed in Work Group C for a period not to exceed the number of disciplinary credits forfeited due to the serious disciplinary infraction(s).

(B) An inmate shall remain in zero credit earning status, not to exceed the amount of disciplinary credits forfeited, and shall revert to his/her previous work group upon completion of the credit forfeiture. Inmates shall be returned to a classification committee for placement on an appropriate waiting list.

(6) Work Group D-1: Lockup status. Inmates assigned to a segregated housing program, except for reasons specified within section 3043.4, shall be awarded one day credit for each day assigned to this work group. Segregated housing shall include, but not be limited to, the following:

(A) Administrative Segregation Unit (ASU).

(B) Security Housing Unit (SHU).

(C) Psychiatric Services Unit (PSU).

(D) Non-Disciplinary Segregation (NDS).

(7) Work Group D-2: Lockup Status. Inmates placed in SHU, PSU, or ASU for disciplinary related offenses described in Penal Code section 2933.6 or upon validation as an STG-I member or associate are ineligible to earn credits during placement in SHU, PSU, or ASU. Inmates placed in SHU, PSU, or ASU following the commission of any other serious disciplinary infraction(s) are ineligible to earn credits for a period not to exceed the number of disciplinary credits forfeited. Zero credit.

(A) An inmate assigned to a determinate SHU term which included a forfeiture of credits shall not be placed in a credit earning assignment during the period of credit forfeiture or 180 days, whichever is less, starting from the date of change in custodial classification. An inmate confined in a secure housing unit for a division A-1 offense, as designated in section 3323(c) of these regulations, and which included great bodily injury on a non-prisoner shall not receive participation or work-time credits for up to 360 days. Upon completion of the period of credit forfeiture, the inmate shall be re-evaluated by a classification committee.

(B) An inmate's status in Work Group D-2 may be extended, in up to six-month increments, by a classification committee in unusual cases where no credit qualifying program can be assigned the inmate without causing a substantial risk of physical harm to staff or others. At the end of the designated period (six months or less), the determination shall be reviewed by an institution classification committee.

(C) An inmate in ASU, SHU, or PSU, serving an administrative or determinate SHU term, who is deemed a program failure as defined in section 3000, may be assigned Work Group D-2 by a classification committee. An inmate assigned to Work Group C at the time of placement in ASU, SHU, or PSU, or who refuses to accept or perform work assignments, shall be assigned Work Group D-2. An inmate released from ASU, SHU, or PSU may be placed back into Work Group C by a classification committee not to exceed the remaining number of disciplinary credits forfeited due to the serious disciplinary infraction(s).

(D) If the administrative finding of the misconduct is overturned or if the inmate is criminally prosecuted for the misconduct and is found not guilty, credit earning status shall be restored to the inmate's previously-designated work group at the time of placement into segregated housing.

(8) Work Group U: Unclassified. An inmate undergoing reception center processing is in this status from the date of their reception until classified at their assigned institution. Inmates eligible to earn Penal Code section 2933 credits shall be awarded one day credit for each day assigned to this work group.

(c) Privileges. Privileges for each work group shall be those privileges earned by the inmate. Inmate privileges are administratively authorized activities and benefits required of the secretary, by statute, case law, governmental regulations, or executive orders. Inmate privileges shall be governed by an inmate's behavior, custody classification and assignment. A formal request or application for privileges is not required unless specified otherwise in this section. Institutions may provide additional incentives for each privilege group, subject to availability of resources and constraints imposed by security needs.

(1) To qualify for privileges generally granted by this section, an inmate shall comply with rules and procedures and participate in assigned activities.

(2) Privileges available to a work group may be denied, modified, or temporarily suspended by a hearing official at a disciplinary hearing upon a finding of an inmate's guilt for a disciplinary offense as described in sections 3314 and 3315 of these regulations or by a classification committee action changing the inmate's custody classification, work group, privilege group, or institution placement.

(3) Disciplinary action denying, modifying, or suspending a privilege for which an inmate would otherwise be eligible shall be for a specified period not to exceed 30 days for an administrative rule violation or 90 days for a serious rule violation.

(4) A permanent change of an inmate's privilege group shall be made only by classification committee action under provisions of section 3375. Disciplinary or classification committee action changing an inmate's privileges or privilege group shall not automatically affect the inmate's work group classification.

(5) No inmate or group of inmates shall be granted privileges not equally available to other inmates of the same custody classification and assignment who would otherwise be eligible for the same privileges.

(6) Changes in privilege group status due to the inmate's placement in lockup:

(A) An inmate housed in an ASU, SHU, or PSU shall be designated Privilege Group D with the exception of inmate designated as NDS who shall retain their privilege group prior to ASU placement.

(7) An inmate in a Reentry Hub assignment shall be eligible for available privileges subject to participating in assignment programs and shall not require a privilege group designation.

(8) An inmate's privileges shall be conditioned upon each of the following:

(A) The inmate's compliance with procedures governing those privileges.

(B) The inmate's continued eligibility.

(C) The inmate's good conduct and satisfactory participation in an assignment.

(9) Inmates returned to custody from parole may be eligible to receive privileges based upon their satisfactory participation in an assignment.

(d) Privilege Group A:

(1) Criteria:

(A) Full-time assignment as defined in section 3044(a).

(B) An inmate diagnosed by a physician and/or psychiatrist as totally disabled shall remain in Privilege Group A unless changed by disciplinary action.

(C) An inmate designated by a physician and/or psychiatrist as partially disabled pursuant to section 3044(a) shall remain in Privilege Group A unless changed by disciplinary action.

(2) Privileges for Privilege Group A are as follows:

(A) Family visits limited only by the institution/facility resources, security policy, section 3177(b), or other law.

(B) Visits during non-work/training hours, limited only by availability of space within facility visiting hours, or during work hours when extraordinary circumstances exist as defined in section 3045.2(e)(2). NDS inmates in Privilege Group A are restricted to non-contact visits consistent with those afforded to other inmates in ASU.

(C) Maximum monthly canteen draw as authorized by the secretary.

(D) Telephone access during the inmate's non-work/training hours limited only by institution/facility telephone capabilities. Inmates identified as NDS are permitted one personal telephone access per week under normal operating conditions.

(E) Access to yard, recreation and entertainment activities during the inmate's non-working/training hours and limited only by security needs.

(F) Excused time off as described in section 3045.2.

(G) The receipt of four inmate packages, 30 pounds maximum weight each, per year. Inmates may also receive special purchases, as provided in subsections 3190(j) and (k).

(e) Privilege Group B:

(1) Criteria, any of the following:

(A) Half-time assignment as defined in section 3044(a) or involuntarily unassigned as defined in section 3044(a) or involuntarily unassigned as defined in section 3044(b).

(B) A hearing official may temporarily place an inmate into the group as a disposition pursuant to section 3314 or 3315.

(2) Privileges for Privilege Group B are as follows:

(A) One family visit each six months, unless limited by section 3177(b) or other law.

(B) Visits during non-work/training hours, limited only by availability of space within facility visiting hours, or during work hours when extraordinary circumstances exist, as defined in section 3045. NDS inmates in Privilege Group B are restricted to non-contact visits consistent with those afforded to other inmates in ASU.

(C) Seventy-five percent (75%) of the maximum monthly canteen draw as authorized by the secretary.

(D) One personal telephone access period per month under normal operating conditions.

(E) Access to yard, recreation, and entertainment activities during the inmate's non-working/training hours and limited only by institution/facility security needs.

(F) Excused time off as described in section 3045.2.

(G) The receipt of four inmate packages, 30 pounds maximum weight each, per year. Inmates may also receive special purchases, as provided in subsections 3190(j) and (k).

(f) Privilege Group C:

(1) Criteria, any of the following:

(A) The inmate who twice refuses to accept assigned housing, or who refuses to accept or perform in an assignment, or who is deemed a program failure as defined in section 3000.

(B) A hearing official may temporarily place an inmate into the group as a disposition pursuant to section 3314 or 3315.

(C) A classification committee action pursuant to section 3375 places the inmate into the group. An inmate placed into Privilege Group C by a classification committee action may apply to be removed from that privilege group no earlier than 30 days from the date of placement. Subsequent to the mandatory 30 days placement on Privilege Group C, if the inmate submits a written request for removal, a hearing shall be scheduled within 30 days of receipt of the written request to consider removal from Privilege Group C.

(2) Privileges and non-privileges for Privilege Group C are as follows:

(A) No family visits.

(B) One-fourth the maximum monthly canteen draw as authorized by the secretary.

(C) Telephone calls on an emergency basis only as determined by institution/facility staff.

(D) Yard access limited by local institution/facility security needs. No access to any other recreational or entertainment activities.

(E) No inmate packages. Inmates may receive special purchases, as provided in subsections 3190(j) and (k).

(g) Privilege Group D:

(1) Criteria: Any inmate, with the exception of validated STG affiliates participating in the SDP or designated NDS inmates, housed in a special segregation unit, voluntarily or under the provisions of sections 3335–3345 of these regulations who is not assigned to either a full-time or half-time assignment.

Inmates assigned to steps 1 through 4 of the SDP while completing the interview phase of the debriefing process, are entitled to privileges and non-privileges commensurate with the SDP step to which the offender is currently assigned, in accordance with Section 3044(i).

(2) Any inmate removed from the general population due to disciplinary or administrative reasons, shall forfeit their privileges within their general population privilege group pending review by a classification committee.

(3) Privileges and non-privileges for Privilege Group D, other than those listed above, are as follows:

(A) No family visits.

(B) Twenty-five percent (25%) of the maximum monthly canteen draw as authorized by the secretary.

(C) Telephone calls on an emergency basis only as determined by institution/facility staff.

(D) Yard access limited by local institution/facility security needs. No access to any other recreational or entertainment activities.

(E) The receipt of one inmate package, 30 pounds maximum weight each, per year. Inmates shall be eligible to acquire an inmate package after completion of one year of Privilege Group D assignment. Inmates may also receive special purchases, as provided in subsections 3190(j) and (k).

(h) Privilege Group U:

(1) Criteria: Reception center inmates under processing.

(2) Privileges and non-privileges for Privilege Group U are:

(A) No family visits.

(B) Canteen Purchases. One-half of the maximum monthly canteen draw as authorized by the secretary.

(C) Telephone calls on an emergency basis only as determined by institution/facility staff.

(D) Yard access, recreation, and entertainment limited by local institution/facility security needs.

(E) Excused time off as described in section 3045.2.

(F) No inmate packages. Inmates may receive special purchases, as provided in subsections 3190(j) and (k).

(i) Privilege Group S1 through S4:

(1) Criteria: Participation in the STG SDP.

(2) Privileges and non-privileges for Privilege Groups S1 through S4 are:

(A) S1 for Step 1.

1. No Family Visits.

2. Visiting during non-work/training hours, limited by available space within facility non-contact visiting room.

3. Twenty-five percent (25%) of the maximum monthly canteen draw as authorized by the secretary.

4. Telephone calls on an emergency basis only as determined by institution/facility staff. At the 180-day Institution Classification Committee (ICC) review, if the inmate has met program expectations and has not been found guilty of STG related behavior, ICC shall authorize one (1) telephone call.

5. Yard access in accordance with Section 3343(h).

6. The receipt of one inmate package, 30 pounds maximum weight, per year, exclusive of special purchases as provided in Section 3190. Inmates shall be eligible to acquire an inmate package after completion of one year of Privilege Group D or SDP assignment.

7. One photograph - upon completion of 1 year free of serious disciplinary behavior while in SHU.

8. Electrical appliances are allowed in accordance with the Authorized Personal Property Schedule for SHU/PSU inmates, as described in Section 3190(b)(4).

(B) S2 for Step 2.

1. No Family Visits.

2. Visiting during non-work/training hours, limited by available space within facility non-contact visiting room.

3. Thirty-five percent (35%) of the maximum monthly canteen draw as authorized by the secretary.

4. One telephone call upon transition to Step 2.

5. Yard access in accordance with Section 3343(h).

6. The receipt of one inmate package, 30 pounds maximum weight, per year, exclusive of special purchases as provided in Section 3190. Inmates shall be eligible to acquire an inmate package after completion of one year of an SDP assignment.

7. One photograph upon completion of 1 year free of serious disciplinary behavior while in SHU.

8. Electrical appliances are allowed in accordance with the Authorized Personal Property Schedule for SHU/PSU inmates, as described in Section 3190(b)(4).

(C) S3 for Step 3.

1. No Family Visits.

2. Visiting during non-work/training hours, limited by available space within facility non-contact visiting room.

3. Forty-five percent (45%) of the maximum monthly canteen draw as authorized by the secretary.

4. One telephone call upon transition to Step 3 and one additional telephone call upon review and approval of ICC at the 180 day review.

5. Yard access in accordance with Section 3343(h).

6. The receipt of two inmate packages, 30 pounds maximum weight, per year, exclusive of special purchases as provided in Section 3190.

7. One photograph upon transition to Step 3 and one additional photograph upon review and approval of ICC at the 180 day review.

8. Electrical appliances are allowed in accordance with the Authorized Personal Property Schedule for SHU/PSU inmates, as described in Section 3190(b)(4).

(D) S4 for Step 4.

1. No Family Visits.

2. Visiting during non-work/training hours, limited by available space within facility non-contact visiting room.

3. Fifty percent (50%) of the maximum monthly canteen draw as authorized by the secretary.

4. One telephone call upon transition to Step 4 and one additional telephone call after review and approval of ICC at each 90 day review.

5. Yard access in accordance with Section 3343(h). Yard activities will include interaction with inmates of diverse affiliations after 6 months of programming within Step 4.

6. The receipt of two inmate packages, 30 pounds maximum weight each, per year, exclusive of special purchases as provided in Section 3190. In addition, receipt of one inmate package, non-food only, 15 pounds maximum weight, per year.

7. One photograph upon transition to Step 4 and one additional photograph upon review and approval of ICC at the third 90 day review.

8. Electrical appliances are allowed in accordance with the Authorized Personal Property Schedule for SHU/PSU inmates, as described in Section 3190(b)(4).

(j) Privilege Group S5:

(1) Criteria: Any offender in SHU for non-disciplinary reasons including a validated affiliate who has completed the SDP and is being retained in SHU for non-disciplinary reasons.

(2) Privileges and non-privileges for Privilege Groups S5 are:

(A) No Family Visits.

(B) Visiting during non-work/training hours, limited by available space within facility non-contact visiting room.

(C) Seventy Five percent (75%) of the maximum monthly canteen draw as authorized by the secretary.

(D) One telephone call per month.

(E) Yard access in accordance with Section 3343(h).

(F) The receipt of four inmate packages, 30 pounds maximum weight each, per year. Offenders may also receive special purchases, as provided in subsections 3190(j) and (k).

(G) One photograph upon completion of each 180-day ICC review.

(H) Electrical appliances are allowed in accordance with the Authorized Personal Property Schedule for SHU/PSU inmates, as described in Section 3190(b)(4).

(3) The local Inter-Disciplinary Treatment Team may further restrict or allow additional authorized personal property, in accordance with the Institution's Psychiatric Services Unit operational procedure, on a case-by-case basis above that allowed by the inmate's assigned Privilege Group.

NOTE: Authority cited: Sections 2700, 2701 and 5058, Penal Code. Reference: Sections 2932, 2933, 2933.05, 2933.3, 2933.6, 2935, 5005, 5054 and 5068, Penal Code; and *In re Monigold*, 205 Cal.App.3d 1224 (1988).

HISTORY:

1. Change without regulatory effect of subsection (c)(1) and NOTE pursuant to section 100, title 1, California Code of Regulations filed 12-28-89 (Register 90, No. 1). For prior history, see Register 88, No. 50.
2. Relocation of (a) to section 3045, amendment of redesignated (c)(4)–(f), new subsections (c)(8)–(9) and (i) and subsection renumbering filed 12-20-91 as an emergency; operative 12-20-91 (Register 92, No. 4). A Certificate of Compliance must be transmitted to OAL 4-20-92 or emergency language will be repealed by operation of law on the following day.
3. Editorial correction of printing errors (Register 92, No. 4).
4. Editorial correction of printing error in subsection (b)(1) (Register 92, No. 5).
5. Certificate of Compliance as to 12-20-91 order transmitted to OAL 4-20-92 and filed 5-28-92 (Register 92, No. 24).
6. Amendment of subsections (d)(3)(A) and (e)(3)(A) filed 2-27-95 as an emergency; operative 5-30-95 (Register 95, No. 9). A Certificate of Compliance must be transmitted to OAL by 11-6-95 or emergency language will be repealed by operation of law on the following day.
7. New subsections (f)(3)(H), (g)(4)(H) and (h)(3)(H) and amendment of Note filed 6-30-95 as an emergency; operative 7-1-95 (Register 95, No. 26). A Certificate of Compliance must be transmitted to OAL by 12-7-95 or emergency language will be repealed by operation of law on the following day.
8. Amendment of subsections (d)(3)(A) and (e)(3)(A) refiled 11-7-95 as an emergency; operative 11-6-95 (Register 95, No. 45). A Certificate of Compliance must be transmitted to OAL by 4-14-96 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 6-30-95 order transmitted to OAL 11-22-95 and filed 1-8-96 (Register 96, No. 2).
10. Editorial correction of History 8 (Register 96, No. 21).
11. Reinstatement of subsections (d)(3)(A) and (e)(3)(A) as they existed prior to emergency amendment filed 5-30-95 pursuant to Government Code section 11349.6(d) (Register 96, No. 21).
12. Amendment of subsections (d)(3)(A) and (e)(3)(A) filed 6-7-96 as an emergency; operative 6-7-96 (Register 96, No. 23). A Certificate of Compliance must be transmitted to OAL by 10-7-96 or emergency language will be repealed by operation of law on the following day.
13. Change without regulatory effect amending subsection (e)(2) filed 7-16-96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 29).
14. Certificate of Compliance as to 6-7-96 order transmitted to OAL 10-3-96 and filed 11-18-96 (Register 96, No. 47).
15. Repealer of subsections (f)(3)(H), (g)(4)(H) and (h)(3)(H) and amendment of Note filed 1-2-98 as an emergency; operative 1-2-98 (Register 98, No. 1). Pursuant to Penal Code section 5058(e), a Certificate of Compliance must be transmitted to OAL by 6-11-98 or emergency language will be repealed by operation of law on the following day.
16. Certificate of Compliance as to 1-2-98 order transmitted to OAL 6-9-98 and filed 7-21-98 (Register 98, No. 30).
17. Repealer of printed inmate time card, new subsection (b)(1), subsection renumbering and amendment of Note filed 10-23-2003 as an emergency; operative 10-23-2003 (Register 2003, No. 43). Pur-

suant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 4-1-2004 or emergency language will be repealed by operation of law on the following day.

18. Change without regulatory effect amending subsections (d)(3)(A) and (e)(3)(A) filed 12-1-2003 pursuant to section 100, title 1, California Code of Regulations (Register 2003, No. 49).
19. Amendment of section and Note filed 12-30-2003 as an emergency; operative 1-1-2004 (Register 2004, No. 1). Pursuant to Penal Code section 5058.3(a)(1), a Certificate of Compliance must be transmitted to OAL by 6-9-2004 or emergency language will be repealed by operation of law on the following day.
20. Amendment filed 1-9-2004 as an emergency; operative 1-9-2004 (Register 2004, No. 2). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 6-17-2004 or emergency language will be repealed by operation of law on the following day.
21. Certificate of Compliance as to 10-23-2003 order transmitted to OAL 3-19-2004 and filed 5-3-2004 (Register 2004, No. 19).
22. Withdrawal and repeal of 12-30-2003 amendments filed 5-27-2004 as an emergency; operative 5-27-2004 (Register 2004, No. 22). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 9-24-2004 or emergency language will be repealed by operation of law on the following day.
23. Amendment of section and Note, including relocation of former subsection 3044(g)(4)(G) to new section 3190(i)(3), filed 5-27-2004 as an emergency; operative 5-27-2004 (Register 2004, No. 22). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 11-3-2004 or emergency language will be repealed by operation of law on the following day.
24. Amendment of section, including further amendments, refiled 6-17-2004 as an emergency; operative 6-17-2004 (Register 2004, No. 25). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 11-24-2004 or emergency language will be repealed by operation of law on the following day.
25. Certificate of Compliance as to 5-27-2004 order transmitted to OAL 10-28-2004 and filed 12-14-2004 (Register 2004, No. 51).
26. Certificate of Compliance as to 6-17-2004 order, including further amendment of subsection (b)(5)(B), transmitted to OAL 11-16-2004 and filed 12-29-2004 (Register 2004, No. 53).
27. Amendment filed 6-9-2006; operative 7-9-2006 (Register 2006, No. 23).
28. Amendment of section and Note filed 1-25-2010 as an emergency; operative 1-25-2010 (Register 2010, No. 5). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 7-6-2010 or emergency language will be repealed by operation of law on the following day.
29. Certificate of Compliance as to 1-25-2010 order transmitted to OAL 6-23-2010 and filed 8-4-2010 (Register 2010, No. 32).
30. Amendment of subsections (b)(5)(A) and (b)(7), new subsection (b)(7)(C), subsection relettering and amendment of subsection (d)(2) filed 12-20-2011; operative 1-19-2012 (Register 2011, No. 51).
31. Repealer of subsection (c)(6)(B), amendment of subsection (c)(8)(B), repealer of subsections (d)(2), (e)(2), (f)(2), (g)(2) and (h)(2), subsection renumbering, amendment of newly designated subsection (g)(2) and repealer of subsection (i) filed 10-22-2012; operative 11-21-2012 (Register 2012, No. 43).
32. New subsection (b)(6)(D) and amendment of subsections (c)(6)(A), (d)(2)(B), (d)(2)(D), (e)(2)(B), (e)(2)(D) and (g)(1) filed 9-24-2013 as an emergency; operative 9-24-2013 (Register 2013, No. 39). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 3-3-2014 or emergency language will be repealed by operation of law on the following day.
33. Amendment of subsections (b)(2)(A), (b)(2)(C) and (c)(7) filed 10-29-2013 as an emergency; operative 10-29-2013 (Register 2013, No. 44). A Certificate of Compliance must be transmitted to OAL by 4-7-2014 or emergency language will be repealed by operation of law on the following day.
34. Amendment of subsections (d)(2)(G), (e)(2)(G), (f)(2)(E), (g)(3)(E) and (h)(2)(F) filed 1-8-2014 as an emergency; operative 1-8-2014 (Register 2014, No. 2). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 6-17-2014 or emergency language will be repealed by operation of law on the following day.
35. Certificate of Compliance as to 9-24-2013 order transmitted to OAL 2-20-2014 and filed 3-24-2014 (Register 2014, No. 13).
36. Certificate of Compliance as to 10-29-2013 order, including amendment of subsection (b)(2)(A), transmitted to OAL 4-4-2014 and filed 5-14-2014; amendments effective 5-14-2014 pursuant to Government Code section 11343.4(b)(3) (Register 2014, No. 20).
37. Certificate of Compliance as to 1-8-2014 order transmitted to OAL 6-16-2014 and filed 7-22-2014 (Register 2014, No. 30).
38. Amendment filed 10-17-2014; operative 10-17-2014 pursuant to Government Code section 11343.4(b)(3) (Register 2014, No. 42).
39. Amendment of subsections (b)(5)(A) and (f)(1)(A) filed 6-1-2015 as an emergency; operative 6-1-2015 (Register 2015, No. 23). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 11-9-2015 or emergency language will be repealed by operation of law on the following day.23. Amendment of subsection (c)(5) filed 7-31-2015; operative 10-1-2015 (Register 2015, No. 31).
40. Amendment of subsections (b)(2)(A)–(B) filed 7-31-2015; operative 7-31-2015 pursuant to Government Code section 11343.4(b)(3) (Register 2015, No. 31).
41. Certificate of Compliance as to 6-1-2015 order transmitted to OAL 10-19-2015 and filed 12-3-2015 (Register 2015, No. 49).

3045. Timekeeping and Reporting.

(a) Inmate timekeeping logs. The attendance and/or participation of each assigned inmate shall be recorded on an approved timekeeping log. If the assignment began or ended during the reporting month, the date(s) of such activity shall be recorded on the timekeeping log. Only the symbols designated on the timekeeping log shall be used to document the inmate's attendance. The symbol(s) and applicable hours for each day shall be recorded in the space corresponding to the calendar day. This log shall be the reference for resolving complaints or appeals and shall be retained at a secure location designated by the facility management for a period of 4 years from the date of completion.

(1) Staff shall record the work or training time and absences of each inmate assigned to their supervision as they occur. At intervals designated by the institution head, the supervisor shall:

(A) Enter the totals, hours worked and ETO hours used in the designated columns of timekeeping log.

(B) Sign the log to authenticate the information.

(C) Forward the log to the division head for review and approval.

(2) Mismanagement or falsification of an inmate timekeeping log may result in adverse action and/or prosecution.

(b) Security of timekeeping logs. Inmates shall not have unauthorized access to any timekeeping logs.

NOTE: Authority cited: Sections 2700, 2701 and 5058, Penal Code. Reference: Sections 2932, 2933, 2933.05, 2933.6, 2935, 5005, 5054 and 5068, Penal Code; and *In re Monigold*, 205 Cal. App. 3d 1224.

HISTORY:

1. New section filed 8-18-78; effective thirtieth day thereafter (Register 78, No. 33).
2. Repealer and new section filed 2-16-83; effective thirtieth day thereafter (Register 83, No. 8).
3. Amendment of subsection (c), repealer and new subsection (e) and new subsection (i) filed 8-7-87 as an emergency; operative 8-7-87 (Register 87, No. 34). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 12-7-87.
4. Certificate of Compliance as to 8-7-87 ordered transmitted to OAL 12-4-87; disapproved by OAL (Register 88, No. 16).
5. Amendment of subsection (c), repealer and new subsection (e) and new subsection (i) filed 1-4-88 as an emergency; operative 1-4-88 (Register 88, No. 16). A Certificate of Compliance must be trans-

mitted to OAL within 120 days or emergency language will be repealed on 5-3-88.

6. Certificate of Compliance as to 1-4-88 order transmitted to OAL 5-3-88; disapproved by OAL (Register 88, No. 24).
7. Amendment of subsection (c), repealer and new subsection (e) and new subsection (i) filed 6-2-88 as an emergency; operative 6-2-88 (Register 88, No. 24). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 9-30-88.
8. Certificate of Compliance including amendment transmitted to OAL 9-26-88 and filed 10-26-88 (Register 88, No. 50).
9. Renumbering and amendment of former section 3045 to section 3045.2, relocation and amendment of former section 3044(a) and adoption of subsections (b) and (c) filed 12-20-91 as an emergency; operative 12-20-91 (Register 92, No. 4). A Certificate of Compliance must be transmitted to OAL 4-20-92 or emergency language will be repealed by operation of law on the following day.
10. Certificate of Compliance as to 12-20-91 order transmitted to OAL 4-20-92 and filed 5-28-92 (Register 92, No. 24).
11. Editorial correction deleting language previously transferred to section 3045.2 (Register 93, No. 50).
12. Amendment filed 6-9-2006; operative 7-9-2006 (Register 2006, No. 23).
13. Amendment of subsections (a)–(a)(1) and Note filed 1-25-2010 as an emergency; operative 1-25-2010 (Register 2010, No. 5). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 7-6-2010 or emergency language will be repealed by operation of law on the following day.
14. Certificate of Compliance as to 1-25-2010 order transmitted to OAL 6-23-2010 and filed 8-4-2010 (Register 2010, No. 32).

3045.1. Timekeeping for Inmates in Administrative Segregation.

(a) A classification committee shall evaluate the reasons for an inmate's administrative segregation (ASU) placement to ensure appropriate credits are awarded the inmate. If the placement was for:

(1) A disciplinary infraction for which the finding was not guilty or pending an investigation where the inmate was released, the inmate shall retain their work group status at the time of their placement in ASU unless otherwise impacted by a classification or disciplinary action.

(2) A disciplinary infraction for misconduct described in section 3043.4 for which the finding was guilty, the inmate shall remain in Work Group D-2 for the period of the credit loss assessment effective the date of their placement in ASU, whether or not a SHU term was assessed.

NOTE: Authority cited:Sections 2700, 2701 and 5058, Penal Code. Reference: Sections 2932, 2933, 2933.05, 2933.6, 2935, 5005, 5054 and 5068, Penal Code; and *In re Monigold*, 205 Cal. App. 3d 1224.

HISTORY:

1. New section filed 8-7-87 as an emergency; operative 8-7-87 (Register 87, No. 34). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 12-7-87.
2. Certificate of Compliance as to 8-7-87 order transmitted to OAL 12-4-87; disapproved by OAL (Register 88, No. 16).
3. New section filed 1-4-88 as an emergency; operative 1-4-88 (Register 88, No. 16). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 5-3-88.
4. Certificate of Compliance as to 1-4-88 order transmitted to OAL 5-3-88; disapproved by OAL (Register 88, No. 24).
5. New section filed 6-2-88 as an emergency; operative 6-2-88 (Register 88, No. 24). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 9-30-88.
6. Certificate of Compliance including amendment transmitted to OAL 9-26-88 and filed 10-26-88 (Register 88, No. 50).
7. Renumbering and amendment of former section 3045.1 to section 3045.3 and adoption of new section 3045.1 filed 12-20-91 as an emergency; operative 12-20-91 (Register 92, No. 4). A Certificate of Compliance must be transmitted to OAL 4-20-92 or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 12-20-91 order including amendment of subsection (a)(2) transmitted to OAL 4-20-92 and filed 5-28-92 (Register 92, No. 24).
9. Repealer of subsection (b) filed 6-17-2004 as an emergency; operative 6-17-2004 (Register 2004, No. 25). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 11-24-2004 or emergency language will be repealed by operation of law on the following day.
10. Certificate of Compliance as to 6-17-2004 order transmitted to OAL 11-16-2004 and filed 12-29-2004 (Register 2004, No. 53).
11. Amendment of subsection (a)(1) filed 6-9-2006; operative 7-9-2006 (Register 2006, No. 23).
12. Amendment of section and Note filed 1-25-2010 as an emergency; operative 1-25-2010 (Register 2010, No. 5). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 7-6-2010 or emergency language will be repealed by operation of law on the following day.
13. Certificate of Compliance as to 1-25-2010 order transmitted to OAL 6-23-2010 and filed 8-4-2010 (Register 2010, No. 32).
14. Amendment of subsection (a)(2) filed 12-20-2011; operative 1-19-2012 (Register 2011, No. 51).

3045.2. Excused Time Off (ETO).

(a) It is the policy of the California Department of Corrections and Rehabilitation that inmates assigned to work groups A-1 and B may use excused time off (ETO) during approved absences from their assignment in the manner set forth in this article.

(b) ETO shall be authorized by the work supervisor/employer in no less than 15-minute increments. The inmate shall not be required to use excused time off for any service that the department requires. An inmate who is ill and requires a medical lay-in or is short term medically unassigned for 29 days or less shall use ETO.

(c) Inmates who are ill may use ETO, but will be responsible for notifying the work/training supervisor. Sick time must be approved/authorized by the appropriate institution medical authority. Upon becoming capable of performing medically unrestricted work activities the inmate will be given priority to resume his/her previous assignment. If the assignment is not immediately available, the inmate will be placed in an assignment in his/her previous work group category.

(d) Authorized uses of ETO. Excused time off may be approved by work/training supervisors only for the below stated reasons. A proposal to use ETO for any other reason requires approval by the secretary.

(1) Family visiting. An inmate scheduled for a family visit may be permitted to visit in the visiting room (regular visit) on the first day of a family visit while awaiting processing, and on the last day of the family visit.

(2) Regular visiting under extraordinary circumstances. Following are extraordinary circumstances for which use of ETO is authorized:

(A) Out-of-state visitors. Upon substantiation that the visitor(s) resides out-of-state and is in California for a temporary stay of 30 days or less, and the visitor(s) has not visited with the particular inmate for four months. No more than two such visits shall be permitted for each such occurrence.

(B) Excessive distance. When a visitor must travel a distance of 250 miles or more, and has not visited the inmate within the last 30 days.

(C) Weddings. When an inmate marries, the inmate may, with five working days prior approval, use ETO for a visit on the wedding day.

(D) Handicapped. When a visitor is handicapped as defined by California law and must rely on special transportation to the institution. Approval is required five working days prior to the visit.

(E) Family emergencies. When death, serious illness or injury occurs to an inmate's immediate family member as defined in Section 3000, clergymen, family members or close friends may visit the inmate to offer condolences or inform the inmate of the occurrence.

(F) Infrequent visits. When a visitor unexpectedly arrives who has not visited in the last six months, the visit will be considered an infrequent visit.

(G) Visiting during authorized absence. An inmate shall be permitted to visit using ETO during approved periods away from assignment involving circumstances beyond the inmate's control. (Refer to section 3045.3 of these regulations.)

(H) Work assignment conflicts. When the inmate has not received a visit in the last 30 days and would otherwise be prohibited from visiting because of a conflict in work, training, or education assignment.

(3) Temporary community leave.

(4) Attendance at approved religious services or approved religious functions. For routine religious services, the use of ETO shall be limited to instances where it is unduly burdensome to change the conflicting work/education assignment.

(5) Non-routine recreation and entertainment activities.

(6) Emergency telephone access.

(e) Excused time off applies only to authorized time away from an assignment.

(f) An inmate shall receive pay only for actual hours worked, and not for excused time off.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 2601, 2620, 2621, 2931, 2933 and 5054, Penal Code.

HISTORY:

1. New section filed 8-18-78; effective thirtieth day thereafter (Register 78, No. 33).
2. Repealer and new section filed 2-16-83; effective thirtieth day thereafter (Register 83, No. 8).
3. Amendment of subsection (c), repealer and new subsection (e) and new subsection (i) filed 8-7-87 as an emergency; operative 8-7-87 (Register 87, No. 34). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 12-7-87.
4. Certificate of Compliance as to 8-7-87 ordered transmitted to OAL 12-4-87; disapproved by OAL (Register 88, No. 16).
5. Amendment of subsection (c), repealer and new subsection (e) and new subsection (i) filed 1-4-88 as an emergency; operative 1-4-88 (Register 88, No. 16). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 5-3-88.
6. Certificate of Compliance as to 1-4-88 order transmitted to OAL 5-3-88; disapproved by OAL (Register 88, No. 24).
7. Amendment of subsection (c), repealer and new subsection (e) and new subsection (i) filed 6-2-88 as an emergency; operative 6-2-88 (Register 88, No. 24). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 9-30-88.
8. Certificate of Compliance including amendment transmitted to OAL 9-26-88 and filed 10-26-88 (Register 88, No. 50).
9. Renumbering of former section 3045 to section 3045.2 and amendment of subsections (b) and (f) filed 12-20-91 as an emergency; operative 12-20-91 (Register 92, No. 4). A Certificate of Compliance must be transmitted to OAL 4-20-92 or emergency language will be repealed by operation of law on the following day.
10. Certificate of Compliance as to 12-20-91 order transmitted to OAL 4-20-92 and filed 5-28-92 (Register 92, No. 24).
11. Change without regulatory effect amending subsection (e)(2)(G) filed 11-27-2001 pursuant to section 100, title 1, California Code of Regulations (Register 2001, No. 48).
12. Amendment of subsection (e)(2)(F) and new subsection (e)(2)(H) filed 2-18-2003; operative 3-20-2003 (Register 2003, No. 8).
13. Amendment of subsection (a), repealer of subsections (b), (f) and (g), subsection relettering and amendment of newly designated subsections (b)–(d) filed 6-9-2006; operative 7-9-2006 (Register 2006, No. 23).
14. Amendment of subsection (d)(2)(E) filed 10-16-2007; operative 11-15-2007 (Register 2007, No. 42).
15. Repealer and new subsection (d)(4) filed 10-14-2009; operative 11-13-2009 (Register 2009, No. 42).
16. Amendment of subsections (a), (c) and (e) filed 1-25-2010 as an emergency; operative 1-25-2010 (Register 2010, No. 5). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 7-6-2010 or emergency language will be repealed by operation of law on the following day.
17. Certificate of Compliance as to 1-25-2010 order, including further amendment of subsection (a), transmitted to OAL 6-23-2010 and filed 8-4-2010 (Register 2010, No. 32).

3045.3. "S" Time.

(a) "S" time shall be noted on timekeeping documents for an authorized absence from the inmate's assignment by order of the prison administration. The inmate shall receive sentence-reducing credit commensurate with their designated work group. Inmates who are removed from their assignment for the reasons noted below, shall retain their existing work group status unless otherwise impacted by a classification committee or disciplinary action.

(b) "S" time shall be authorized only for the following:

(1) Institutional lockdown or modified program.

(2) Emergency recall.

(3) Attorney visits.

(4) Fog or inclement weather conditions.

(5) Work/training supervisor's absence when no relief supervisor is provided.

(6) Removed to out-to-court status.

(7) Three working days prior to transfer to another institution.

(8) Ten working days prior to parole or discharge, including institution base camps. Conservation camp inmates shall receive 15 days "S" time prior to release.

(9) Thirty working days prior to parole or discharge of an inmate serving a term in another jurisdiction.

(10) Appearances at classification hearings or casework interviews which cannot be reasonably conducted during the inmate's off-duty hours.

(11) Staff interviews with inmates regarding a death or emergency involving a member of their immediate family as defined in section 3000.

(12) Emergency or life-threatening medical or dental treatment.

(13) A temporary interruption or delay in the inmate's assignment which is no fault of the inmate.

(14) Medical consultant appointments with other than state employees.

(15) Inmate match job development and initial screening interview.

(16) Hearings of the Board of Parole Hearings.

(17) Interviews with representatives of other governmental agencies.

(18) Delay in reporting to an assignment because of delayed meal schedule, unlocks, and clearing of the institutional count.

(19) Interview for staff preparation of a Penal Code Section 1170(d) report to the court.

(20) Temporary leave processing for a family emergency.

(21) A serious disciplinary hearing if overtime would be required for a staff witness to attend the hearing.

(22) Authorizations for any reason not listed in this section shall be considered on a case-by-case basis and require approval of the secretary or their designee.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 673, 1170, 2690, 2933, 2933.05, 2933.6 and 5054, Penal Code.

HISTORY:

1. New section filed 8-7-87 as an emergency; operative 8-7-87 (Register 87, No. 34). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 12-7-87.
2. Certificate of Compliance as to 8-7-87 order transmitted to OAL 12-4-87; disapproved by OAL (Register 88, No. 16).
3. New section filed 1-4-88 as an emergency; operative 1-4-88 (Register 88, No. 16). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 5-3-88.
4. Certificate of Compliance as to 1-4-88 order transmitted to OAL 5-3-88; disapproved by OAL (Register 88, No. 24).
5. New section filed 6-2-88 as an emergency; operative 6-2-88 (Register 88, No. 24). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 9-30-88.
6. Certificate of Compliance including amendment transmitted to OAL 9-26-88 and filed 10-26-88 (Register 88, No. 50).
7. Renumbering and amendment of former section 3045.1 to section 3045.3 filed 12-20-91 as an emergency; operative 12-20-91 (Register 92, No. 4). A Certificate of Compliance must be transmitted to OAL 4-20-92 or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 12-20-91 order transmitted to OAL 4-20-92 and filed 5-28-92 (Register 92, No. 24).
9. Amendment of subsections (a) and (b), repealer of subsection (b)(4), subsection renumbering and amendment of newly designated subsection (b)(22) filed 6-9-2006; operative 7-9-2006 (Register 2006, No. 23).
10. Amendment of subsections (a), (b)(13) and (b)(18) and Note filed 1-25-2010 as an emergency; operative 1-25-2010 (Register 2010, No. 5). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 7-6-2010 or emergency language will be repealed by operation of law on the following day.
11. Certificate of Compliance as to 1-25-2010 order transmitted to OAL 6-23-2010 and filed 8-4-2010 (Register 2010, No. 32).
12. Amendment of subsection (b)(1) filed 6-14-2011; operative 7-14-2011 (Register 2011, No. 24).
13. Change without regulatory effect amending subsection (b)(16) filed 3-11-2013 pursuant to section 100, title 1, California Code of Regulations (Register 2013, No. 11).

3046. Workers' Compensation for Inmates.

Inmates are eligible for workers' compensation benefits for injuries sustained while performing assigned work while imprisoned. They are not eligible for benefits for injuries resulting from an assault in which the inmate was found to be the aggressor; an intentional act of self-inflicted injury; nor injuries sustained while assigned to academic and Career Technical Education programs. The department is not liable for injuries sustained while a person is on parole or escape status.

(a) Inmates should immediately report any injury to their supervisor so that prompt medical attention can be given if needed, and for the supervisor's information and initiation of necessary reports.

(b) Inmates will have access to, and be given a copy upon request, of the department's guidelines covering workers' compensation for inmates. Such guidelines will be available at each institution's inmate assignment office or the office of the official responsible for inmate assignments; the inmate law libraries; each camp; and at or near the inmate's work location through the inmate's work supervisor.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 2601(i), 5054 and 5069, Penal Code; and Sections 3370 and 3351, Labor Code.

HISTORY:

1. New section filed 2-16-83; effective thirtieth day thereafter (Register 83, No. 8). For prior history, see Register 78, No. 33.
2. Amendment of first paragraph filed 10-29-2013 as an emergency; operative 10-29-2013 (Register 2013, No. 44). A Certificate of Compliance must be transmitted to OAL by 4-7-2014 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 10-29-2013 order transmitted to OAL 4-4-2014 and filed 5-14-2014 (Register 2014, No. 20).

3047. Unemployment Compensation and Disability Benefits.

NOTE: Authority cited: section 5058, Penal Code. Reference: Sections 2601 and 5054, Penal Code; and Sections 1480–1481, Unemployment Insurance Code.

HISTORY:

1. New section filed 2-16-83; effective thirtieth day thereafter (Register 83, No. 8). For prior history, see Register 78, No. 33.
2. Change without regulatory effect repealing section 3047 (Register 87, No. 24).

Article 4. Food Services

3050. Regular Meals.

(a) Each inmate shall be provided a wholesome, nutritionally balanced diet. Nutrition levels shall meet the Recommended Dietary Allowances and Dietary Reference Intakes as established by the Food and Nutrition Board of the Institute of Medicine, National Academy of Science.

(1) Inmates confined in segregated housing shall be served food representative of that being served to general population inmates. Food shall not be withheld nor standard menu varied as a disciplinary sanction for any inmate.

(2) Inmates shall be provided three meals each day, two of which shall be served hot. Variations to the two hot meals per day requirement may be allowed to accommodate religious observances, religious meal programs, and institution emergencies. The breakfast meal shall be served not more than 14 hours following the previous day's evening meal.

(3) Pregnant inmates shall receive two extra eight ounce cartons of milk or a calcium supplement if lactose intolerant, two extra servings of fresh fruit, and two extra servings of fresh vegetables daily. A physician may order additional nutrients as necessary.

(b) Facility menus shall be prepared at least one week in advance and posted in locations accessible to all general population inmates. Inmates in segregation housing shall, upon request, be provided a weekly menu.

NOTE: Authority cited; Section 5058, Penal Code. Reference: Sections 2084 and 5054, Penal Code.

HISTORY:

1. Amendment filed 2-24-77; effective thirtieth day thereafter (Register 77, No. 9).
2. Amendment filed 2-8-88; operative 3-9-88 (Register 88, No. 7).
3. Amendment of article heading and section filed 12-18-91 as an emergency; operative 12-18-91 (Register 92, No. 4). A Certificate of Compliance must be transmitted to OAL 4-16-92 or emergency language will be repealed by operation of law on the following day.
4. Editorial correction of History 2. (Register 92, No. 4).
5. Certificate of Compliance as to 12-18-91 order transmitted to OAL 4-15-92 and filed 5-26-92 (Register 92, No. 22).
6. Amendment of subsection (a)(2) filed 4-24-2006; operative 4-24-2006 pursuant to Government Code section 11343.4 (Register 2006, No. 17).
7. Amendment of subsection (a) and new subsection (a)(3) filed 3-6-2008; operative 4-5-2008 (Register 2008, No. 10).

3051. Use of Pork or Pork Derivatives.

(a) Pork or Pork derivatives may be part of meals within camp settings outside Institutions.

(b) Each menu food item containing pork or prepared in or seasoned with a pork derivative (including use of a shortening containing a pork product) shall be identified on the menu with a "P". Unless it can be determined with certainty that a food item does not contain pork or a pork derivative, that item shall be identified with an asterisk (\t*). A pork-free protein alternate shall be offered to those inmates who do not eat pork because of religious reasons.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 2084 and 5054, Penal Code.

HISTORY:

1. Amendment of section filed 12-18-91 as an emergency; operative 12-18-91 (Register 92, No. 4). A Certificate of Compliance must be transmitted to OAL 4-16-92 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 12-18-91 order transmitted to OAL 4-15-92 and filed 5-26-92 (Register 92, No. 22).
3. Editorial correction of subsection (c) (Register 95, No. 42).
4. Amendment of section and Note filed 4-24-2006; operative 4-24-2006 pursuant to Government Code section 11343.4 (Register 2006, No. 17).

3052. Health and Safety Standards.

(a) Standards for sanitation shall meet the requirements set forth in Health and Safety Code (H&SC) Sections 113945 through 114259.4 (California Retail Food Code (CFC)).

(b) An inspection of the food service area of each institution/camp shall be conducted at least once a year by the Department Food Administrator, Central Office, and/or a Department of Health Services' Environmental Health Specialist.

(c) The institution head or their designee shall conduct sanitation inspections of the institution/camp kitchens at least once a month to ensure compliance with the standards set forth in this section.

(d) Cooks and culinary officers shall conduct daily sanitation inspections of all workers who handle food to ensure cleanliness, proper attire, and the absence of open sores or any condition that may contaminate food.

(e) No person shall be assigned to handle food until instructed on the standards for sanitation as set forth in CFC, and on all requirements of this section.

(f) Food handlers shall keep their hands and fingernails clean, wear nets or caps entirely covering their hair and/or facial hair, wear clean garments, and conform to and comply with CFC. A hand washing requirement sign shall be posted in each restroom used by on-duty food service workers.

(g) No inmate shall be assigned to the food service area until medically cleared to handle food.

(h) An inmate food handler with any condition which may contaminate food shall be referred to the medical department for examination and shall not return to work in the food service area until medically cleared.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code; and Sections 113945 through 114259.4, Health and Safety Code.

HISTORY:

1. Amendment of section filed 12-18-91 as an emergency; operative 12-18-91 (Register 92, No. 4). A Certificate of Compliance must be transmitted to OAL 4-16-92 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 12-18-91 order transmitted to OAL 4-15-92 and filed 5-26-92 (Register 92, No. 22).
3. Amendment of section heading, section and Note filed 9-12-95; operative 10-12-95 (Register 95, No. 37).
4. Amendment of subsections (a)–(c) and (e)–(f) and Note filed 4-24-2006; operative 4-24-2006 pursuant to Government Code section 11343.4 (Register 2006, No. 17).
5. Change without regulatory effect amending subsections (a), (e) and (f) and amending Note filed 12-18-2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 51).
6. Amendment of subsection (f) filed 12-22-2011; operative 1-21-2012 (Register 2011, No. 51).

3053. Food for Religious Events.

(a) Inmate religious groups shall not be permitted more than two events each year where foods with religious significance are provided by the institution in place of the regularly planned meal. These event meals must be approved and sponsored by a Chaplain. For the purposes of this article, Chaplain means a local Institution Chaplain, or their designee representing the religious group.

(b) A Chaplain shall decide the two religious events when religious meals are provided. The religious group's request for ceremonial foods shall be directed to the institution head, or designee by the Chaplain at least 30 days, but no more than 90 days before the event, and shall include the following:

(1) Date and location of the event.
(2) Proposed menu.
(3) Number of inmates and/or guest to be served.
(4) Specific ceremonial foods.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.

HISTORY:

1. Renumbering and amendment of former section 3053 to section 3055 and adoption of new section 3053 filed 12-18-91 as an emergency; operative 12-18-91 (Register 92, No. 4). A Certificate of Compliance must be transmitted to OAL 4-16-92 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 12-18-91 order transmitted to OAL 4-15-92 and filed 5-26-92 (Register 92, No. 22).
3. Amendment of section heading and section filed 4-24-2006; operative 4-24-2006 pursuant to Government Code section 11343.4 (Register 2006, No. 17).

3054. Religious Diet Program.

(a) Each institution shall make reasonable efforts, as required by law, to accommodate those inmates who have been determined, pursuant to CCR, Title 15, subsection 3054.4(b)(1), to require a religious diet.

(b) Each institution shall provide religious awareness training for custody and food service staff, and anyone involved in the Religious Diet Program.

(c) Within an institution, religious meals shall not be restricted from inmates, based on their classification or housing placement. Inmates who are transferred shall have the ability to continue participating in their current Religious Diet Program at the receiving institution, barring medical needs or other extraordinary circumstances.

(d) Medical diets shall take precedence over religious diets.

(e) There shall be at least three distinct religious diet options:

(1) Vegetarian.
(2) Kosher.
(3) Religious Meat Alternate.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 383b, 5009 and 5054, Penal Code. *In re Garcia* (2012) 202 Cal.App.4th 892.

HISTORY:

1. New section filed 12-18-91 as an emergency; operative 12-18-91 (Register 92, No. 4). A Certificate of Compliance must be trans-

mitted to OAL 4-16-92 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 12-18-91 order transmitted to OAL 4-15-92 and filed 5-26-92 (Register 92, No. 22).
3. Editorial correction of History Note 1 (Register 95, No. 9).
4. Renumbering of former section 3054 to new section 3056 and new section filed 9-12-95; operative 10-12-95 (Register 95, No. 37).
5. Amendment of section heading, section and Note filed 4-24-2006; operative 4-24-2006 pursuant to Government Code section 11343.4 (Register 2006, No. 17).
6. Amendment of subsections (a), (c) and (e) and new subsection (e)(3) filed 2-2-2010; operative 2-2-2010 pursuant to Government Code section 11343.4 (Register 2010, No. 6).
7. Amendment of subsections (b) and (e)(2)–(3) and amendment of Note filed 6-29-2016 as an emergency; operative 6-29-2016 (Register 2016, No. 27). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 12-6-2016 or emergency language will be repealed by operation of law on the following day.

3054.1. Vegetarian Diet Program.

Vegetarian meals shall be available at all institutions upon request for inmates with any religious, personal, or ethical dietary need. Inmates may seek participation in the Vegetarian Diet Program by submitting to any Chaplain a CDCR Form 3030 (Rev. 04/16), Religious Diet Program Request, which is incorporated by reference. The CDCR Form 3030 shall be approved by any Chaplain. Participating inmates shall be provided with an approved vegetarian protein alternative(s), often from that same day's scheduled meal.

(a) The RRC shall determine inmate compliance violations.

NOTE: Authority cited: Sections 5058, Penal Code. Reference: Sections 383b, 5009 and 5054, Penal Code.

HISTORY:
1. New section filed 4-24-2006; operative 4-24-2006 pursuant to Government Code section 11343.4 (Register 2006, No. 17).
2. Change without regulatory effect amending section filed 12-18-2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 51).
3. Amendment section heading and section filed 2-2-2010; operative 2-2-2010 pursuant to Government Code section 11343.4 (Register 2010, No. 6).
4. Amendment of existing section 3054.1 and new subsection 3054.1(a) filed 6-29-2016 as an emergency; operative 6-29-2016 (Register 2016, No. 27). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 12-6-2016 or emergency language will be repealed by operation of law on the following day.

3054.2. Kosher Diet Program.

(a) Kosher meals shall be available at designated institutions for inmates with a religious dietary need that cannot be met by another religious diet option or by the mainline diet. Inmates may seek participation in the Kosher Diet Program by submitting to any Chaplain a CDCR Form 3030, Religious Diet Program Request. The Chaplain may approve the Form 3030 request or refer it to the Religious Review Committee (RRC) for determination.

(b) Inmates with unmet kosher dietary needs may, when classification is appropriate, be considered for transfer to another institution that can provide the inmate with a kosher diet.

(c) Inmates shall not give away, trade, or sell any portion of a kosher meal. Doing so may result in a compliance violation of the Religious Diet Program Agreement.

(d) All institutions will adhere to standardized departmental Kosher Diet Program menus and approved procedures for purchasing, preparing, and serving kosher meals.

(e) Observance of Passover constitutes a single religious event, requiring kosher for Passover foods to be provided during the eight days of observance.

(f) Each institution shall arrange for appropriate training for all inmate food service workers, custody, and food service employees involved in the supervising, ordering, preparation, and serving of Kosher Diet Program meals.

(g) The Kosher Diet Program shall be administered in accordance with the provisions of this Article.

(1) A Chaplain designated by the RRC shall annually review each institution's processes for the procurement, storage, and distribution of Kosher Diet Program meals, and shall provide a report of the review to the Correctional Food Manager (CFM).

(2) Upon review of the CDCR Form 3030, Religious Diet Program Request, any Chaplain or the RRC shall determine inmate entry into the Kosher Diet Program.

(3) Only the RRC may make the determination to deny the CDCR Form 3030, Religious Diet Program Request.

(4) The RRC shall determine inmate compliance violations.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 383b, 5009 and 5054, Penal Code. *In re Garcia* (2012) 202 Cal.App.4th 892.

HISTORY:
1. New section filed 4-24-2006; operative 4-24-2006 pursuant to Government Code section 11343.4 (Register 2006, No. 17).
2. Amendment of subsection (g)(2) filed 2-2-2010; operative 2-2-2010 pursuant to Government Code section 11343.4 (Register 2010, No. 6).
3. Amendment of section heading, section and Note filed 6-29-2016 as an emergency; operative 6-29-2016 (Register 2016, No. 27). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 12-6-2016 or emergency language will be repealed by operation of law on the following day.

3054.3. Religious Meat Alternate Program.

(a) A Religious Meat Alternate Program (offering meat that has been certified as halal) shall be available at all institutions. Inmates with a religious dietary need may seek participation in the Religious Meat Alternate Program by submitting to any Chaplain a CDCR Form 3030 (Rev. 04/16), Religious Diet Program Request. The Chaplain may approve this request or refer the request to the RRC for determination.

(b) All institutions will adhere to standardized departmental halal meat alternates, and approved procedures for procuring and serving halal meats.

(c) Each institution shall arrange for appropriate training for all inmate food service workers, custody, and food service employees involved in the supervising, ordering, and serving of halal meats.

(d) The Religious Meat Alternate Program shall be administered in accordance with the provisions of this Article.

(1) A Chaplain designated by the RRC shall annually review each institution's processes for the procurement, storage, and distribution of Religious Meat Alternate Program meals and shall provide a report of the review to the Correctional Food Manager.

(2) Upon review of the CDCR Form 3030, Religious Diet Program Request, any Chaplain or the RRC shall determine inmate entry into the Religious Meat Alternate Program.

(3) Only the RRC may make the determination to deny the CDCR Form 3030, Religious Diet Program Request.

(4) The RRC shall determine inmate compliance violations.

NOTE: Authority cited: Sections 5058, Penal Code. Reference: Sections 383b, 383c, 5009 and 5054, Penal Code. *In re Garcia* (2012) 202 Cal.App.4th 892.

HISTORY:
1. New section filed 4-24-2006; operative 4-24-2006 pursuant to Government Code section 11343.4 (Register 2006, No. 17).

2. Renumbering of former section 3054.3 to section 3054.4 and new section 3054.3 filed 2-2-2010; operative 2-2-2010 pursuant to Government Code section 11343.4 (Register 2010, No. 6).
3. Amendment of section and Note filed 6-29-2016 as an emergency; operative 6-29-2016 (Register 2016, No. 27). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 12-6-2016 or emergency language will be repealed by operation of law on the following day.

3054.4. Participation in a Religious Diet Program.

(a) Any inmate who claims to require a religious diet shall be responsible for completing a CDCR Form 3030, Religious Diet Program Request, and submitting it to any Chaplain. No more than 30 calendar days shall pass from the day the Chaplain receives the completed CDCR Form 3030, Religious Diet Program Request, which results in a determination of program eligibility, to the day an accepted inmate begins receiving the religious meals requested.

(b) The Chaplain or designated representative of the RRC shall:

(1) Interview the inmate requesting the religious diet. The CDCR Form 3030-E (04/16), Religious Diet Program Interview, which is incorporated by reference, shall be utilized for inmates who seek participation in the Kosher Diet Program or the Religious Meat Alternate Program.

(2) Determine the inmate's religious diet eligibility and placement into the appropriate Religious Diet Program per sections 3054.1 through 3054.3.

(3) When Religious Diet Program eligibility is determined, explain the department's Religious Diet Program Agreement.

(4) When applicable, have the inmate sign the CDCR Form 3030-A (Rev. 04/16), Religious Diet Program Agreement, which is incorporated by reference, and the CDCR Form 3030, Religious Diet Program Request. Document an inmate's refusal to sign any religious diet departmental forms.

(5) Distribute the completed CDCR Form 3030, Religious Diet Program Request and the CDCR Form 3030-A, Religious Diet Program Agreement, within three working days to the Community Resources Manager.

(6) Notify the inmate of the decision in writing by providing a copy of their CDCR Form 3030, Religious Diet Request.

(7) Enter pertinent information for each inmate approved to participate in a Religious Diet Program onto a religious diet participant list within 24 hours of approval. Maintain and update the list every 30 days, and provide the CFM with a copy of the list of those inmates who have been determined eligible to receive a religious diet, and which diet they will receive.

(8) Regularly monitor the religious diet lists with Food Service staff to ensure that all inmate Religious Diet Program participants are served their religious dietary meals with minimal delay.

(9) Provide each approved inmate with a CDCR Form 3030-B (Rev. 04/16), Religious Diet Card, which is incorporated by reference. Collect Religious Diet Cards that are no longer valid.

(10) Meet with inmates, giving them the opportunity to respond to allegation(s) of Religious Diet Program Agreement compliance violations, prior to making a determination of continuing eligibility in accordance with section 3054.5.

(c) Inmate participants shall:

(1) Show their Religious Diet Card when receiving their approved religious diet.

(2) Follow the conditions of the signed CDCR Form 3030-A, Religious Diet Program Agreement.

(d) An inmate who wishes to withdraw from the Religious Diet Program shall sign the CDCR Form 3030-D (Rev. 04/16), Religious Diet Program Cancellation Request, which is incorporated by reference. The inmate shall submit the completed CDCR Form 3030-D cancellation request to the institution's Community Resources Manager.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 383b, 5009 and 5054, Penal Code. *In re Garcia* (2012) 202 Cal.App.4th 892.

HISTORY:

1. New section filed 4-24-2006; operative 4-24-2006 pursuant to Government Code section 11343.4 (Register 2006, No. 17).
2. Renumbering of former section 3054.4 to section 3054.5 and renumbering and amendment of section 3054.3 to section 3054.4 filed 2-2-2010; operative 2-2-2010 pursuant to Government Code section 11343.4 (Register 2010, No. 6).
3. Amendment of section and Note filed 6-29-2016 as an emergency; operative 6-29-2016 (Register 2016, No. 27). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 12-6-2016 or emergency language will be repealed by operation of law on the following day.

3054.5. Monitoring for Religious Diet Program Inmate Compliance.

Any alleged compliance violation of the Religious Diet Program Agreement shall be reported using CDC Form 128-B, General Chrono, citing CCR, Title 15, section 3054. All reports shall be sent to the designated representative of the RRC, who shall consult with the inmate. The RRC shall make the final determination of continuing eligibility, and complete a CDCR Form 3030-C (Rev. 04/16), Religious Diet Program Notice of Non-Compliance, which is incorporated by reference. As described on the CDCR Form 3030-C, a first violation of the Religious Diet Program Agreement shall result in a warning issued to the inmate, and a second violation within six months of the first violation may subject the inmate to removal from the program. A copy of the completed CDCR Form 3030-C shall be provided to the inmate.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 5009 and 5054, Penal Code.

HISTORY:

1. New section filed 4-24-2006; operative 4-24-2006 pursuant to Government Code section 11343.4 (Register 2006, No. 17).
2. Renumbering of former section 3054.5 to section 3054.6 and renumbering of section 3054.4 to section 3054.5 filed 2-2-2010; operative 2-2-2010 pursuant to Government Code section 11343.4 (Register 2010, No. 6).
3. Amendment filed 6-29-2016 as an emergency; operative 6-29-2016 (Register 2016, No. 27). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 12-6-2016 or emergency language will be repealed by operation of law on the following day.

3054.6. Meals Served to Non-Inmates.

The meal charge for state employees and persons other than official guests in state-operated dining rooms maintained and operated for inmates shall be $1.00 plus sales tax. The meal charge for institution-operated employee dining rooms shall be in accordance with this article.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.

HISTORY:

1. New section filed 4-24-2006; operative 4-24-2006 pursuant to Government Code section 11343.4 (Register 2006, No. 17).
2. Renumbering of former section 3054.6 to section 3054.7 and renumbering and amendment of section 3054.5 to section 3054.6 filed 2-2-2010; operative 2-2-2010 pursuant to Government Code section 11343.4 (Register 2010, No. 6).

3054.7. Reimbursement for State Purchased Food.

Outside guests attending inmate banquets, luncheons, or other special events where state-purchased food is provided shall be charged a minimum of $1.00 plus sales tax per meal, per guest. Funds collected in excess of $1.00 plus sales tax, for the event shall

be accompanied by a statement, signed by a non-inmate representative of the group, which reads: "We donate the sum of $_____ to the Inmate Welfare Fund." If the cost of the meals exceeds the allowance of $1.00 per meal, an additional charge to the inmate group's trust account shall be made in accordance with this article.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.

HISTORY:

1. Renumbering and amendment of former section 3054.6 to new section 3054.7 filed 2-2-2010; operative 2-2-2010 pursuant to Government Code section 11343.4 (Register 2010, No. 6).

3055. Use of Food.

Inmates shall not steal, waste, or contaminate food or equipment used in preparing, processing or serving food. Inmates shall not remove any food from the dining room, kitchen, or food storage areas except as specifically authorized by facility staff.

NOTE: Authority cited: section 5058, Penal Code. Reference: Section 5054, Penal Code.

HISTORY:

1. Renumbering and amendment of former section 3053 to section 3055 filed 12-18-91 as an emergency; operative 12-18-91 (Register 92, No. 4). A Certificate of Compliance must be transmitted to OAL 4-16-92 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 12-18-91 order transmitted to OAL 4-15-92 and filed 5-26-92 (Register 92, No. 22).

3056. Meals Served to Non-Inmates.

Guests at an inmate banquet, luncheon or other special event shall be charged for state-purchased food. If funds collected from the guests for a meal are not the same as the allowed cost per meal, any excess shall be donated to the Inmate Welfare Fund; any deficiency shall be charged to the inmate group's trust account.

NOTE: Authority cited: section 5058, Penal Code. Reference: Section 5054, Penal Code; and Section 19822, Government Code.

HISTORY:

1. Renumbering of former section 3054 to new section 3056 filed 9-12-95; operative 10-12-95 (Register 95, No. 37).

Article 5. Personal Cleanliness

3060. Means.

Institutions will provide the means for all inmates to keep themselves and their living quarters clean and to practice good health habits.

Comment: Former DP-1501, policy, general.

3061. Personal Hygiene.

Inmates must keep themselves clean, and practice those health habits essential to the maintenance of physical and mental well-being.

Comment: Former DR-1501, personal hygiene.

3062. Inmate Grooming Standards.

(a) An inmate's hair and facial hair shall be clean, neatly styled, and groomed, as specified in these regulations, when he/she is away from the immediate area of his/her quarters.

(b) An inmate's hair and facial hair shall have no lettering, numbering, or designs of any kind cut, shaved, dyed, painted or in any way placed in the hair or on the scalp or face of the inmate.

(c) An inmate shall not alter the appearance of his/her hair or facial hair by changing its natural color.

(d) An inmate shall not possess a wig or hairpiece unless deemed medically necessary by the Chief Medical Officer and authorized, in writing, by the appropriate division of adult institutions' associate director.

(e) An inmate's hair or facial hair may be any length but the inmate's hair shall not extend over the eyebrows or cover the inmate's face. The hair and/or facial hair shall not pose a health and safety risk. If hair or facial hair is long, it shall be worn in a neat, plain style, which does not draw undue attention to the inmate.

(f) An inmate may possess and use approved hair and/or facial hair holding devices based on Section 3190.

(g) An inmate with hair/facial hair styles, including but not limited to braids, cornrows, ponytails, or dreadlocks, shall be required to unbraid, undo, or take down their hair, as applicable for thorough inspections, as instructed by custody staff to ensure hair and/or facial hair is free of contraband.

(h) Facial hair, including beards, mustaches, and sideburns are permitted for male inmates and shall be maintained in a manner as defined in this section.

(i) An inmate who is assigned to work in food preparation, processing or serving areas, and/or around machinery, or in high fire hazard areas, may be required, for safety and sanitation reasons, to further limit his/her grooming in order to properly wear such health and safety equipment as is deemed necessary by staff, including but not limited to, hair nets, safety head coverings, etc.

(j) An inmate's fingernails shall not extend more than 1/4 inch beyond the tips of the fingers. Nails shall be neat and clean. Female inmates may be permitted to wear only clear nail polish.

(k) An inmate may not pierce any part of his/her body for the purpose of wearing an earring or other jewelry. A male inmate may not possess or wear earrings. A female inmate may wear authorized earrings with only one matching earring worn in each ear. An inmate shall not possess or wear any type of jewelry or other object intended to be worn as a body piercing adornment.

(*l*) A female inmate may wear cosmetics that blend with or match the natural, non-ruddy skin tone. False eyelashes are not permitted.

(m) An inmate who fails to comply with these grooming standards may be deemed a program failure, pursuant to Section 3062, subject to progressive discipline and classification committee review for appropriate housing and program placement. Physical force shall not be used to enforce compliance with these regulations, except as permitted by existing law or with a court order.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code; *Sukhjinder S. Basra* v. *Matthew Cate*, Case No.: CV11-01676 SVW(FMOx), June 2011, *Warsoldier* v. *Woodford*, Case No.: 04-55879, DC No. CV-04-02233-RSWL, (July 2005); and *In re Corey Williams*, Case No.: SC133840A, (February 2004).

HISTORY:

1. Amendment of section heading and section and new Note filed 10-16-97 as an emergency; operative 10-16-97 (Register 97, No. 42). Pursuant to Penal Code section 5058(e), a Certificate of Compliance must be transmitted to OAL by 3-25-97 or emergency language will be repealed by operation of law on the following day.
2. Editorial correction of subsection (e) (Register 98, No. 19).
3. Certificate of Compliance as to 10-16-97 order, including amendment of subsection (m) and relocation and amendment of definition of "Program failure" from section 3000 to new subsection (n), transmitted to OAL 3-23-98 and filed 5-4-98 (Register 98, No. 19).
4. Amendment of subsection (h)(2) filed 8-25-2000; operative 9-24-2000 (Register 2000, No. 34).
5. Repealer of subsection (n) filed 1-9-2004 as an emergency; operative 1-9-2004 (Register 2004, No. 2). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 6-17-2004 or emergency language will be repealed by operation of law on the following day.
6. Repealer of subsection (n) refiled 6-17-2004 as an emergency; operative 6-17-2004 (Register 2004, No. 25). Pursuant to Penal Code

section 5058.3, a Certificate of Compliance must be transmitted to OAL by 11-24-2004 or emergency language will be repealed by operation of law on the following day.

7. Certificate of Compliance as to 6-17-2004 order transmitted to OAL 11-16-2004 and filed 12-29-2004 (Register 2004, No. 53).
8. Amendment of section and Note filed 1-17-2006 as an emergency; operative 1-17-2006 (Register 2006, No. 3). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 6-26-2006 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 1-17-2006 order transmitted to OAL 6-22-2006 and filed 7-27-2006 (Register 2006, No. 30).
10. Amendment of subsections (a)–(c) and (e)–(h) and amendment of Note filed 12-22-2011; operative 1-21-2012 (Register 2011, No. 51).

3063. Tattoos.

Inmates shall not tattoo themselves or others, and shall not permit tattoos to be placed on themselves. Inmates shall not remove or permit removal of tattoos from themselves or others.

NOTE: Authority cited: section 5058, Penal Code. Reference: Sections 653 and 2082, Penal Code.

HISTORY:

1. Amendment filed 3-2-83; effective thirtieth day thereafter (Register 83, No. 12).
2. Amendment filed 2-17-95 as an emergency; operative 3-1-95 (Register 95, No. 9). This regulatory action was deemed an emergency pursuant to section 5058(e) of the Penal Code and remains in effect for 160 days. A Certificate of Compliance must be transmitted to OAL by 8-8-95 or emergency language will be repealed by operation of law on the following day.
3. Amendment filed 8-7-95 as an emergency; operative 8-7-95 (Register 95, No. 32). This regulatory action was deemed an emergency pursuant to section 5058(e) of the Penal Code and remains in effect for 160 days. A Certificate of Compliance must be transmitted to OAL by 1-16-96 or emergency language will be repealed by operation of law on the following day.
4. Reinstatement of section as it existed prior to emergency amendment filed 2-17-95 by operation of Government Code section 11346.1(f) (Register 96, No. 8).
5. Amendment filed 2-21-96 as an emergency; operative 2-21-96 (Register 96, No. 8). A Certificate of Compliance must be transmitted to OAL by 6-20-96 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 2-21-96 order including amendment of section transmitted to OAL 6-18-96 and filed 7-9-96 (Register 96, No. 28).

3064. Quarters.

Inmates must keep their quarters and surroundings neat, clean and sanitary. Inmates may not alter their quarters or equipment without specific authorization to do so.

Comment: Former DR-1504, care of quarters.

Article 6. Camp Assignment

3070. Regulations and Procedures.

HISTORY:

1. Repealer of article 6 (Sections 3070–3073) and section filed 10-27-93; operative 11-26-93 (Register 93, No. 44).

3071. Camp Limits.

HISTORY:

1. Repealer filed 10-27-93; operative 11-26-93 (Register 93, No. 44).

3072. Public Contact.

HISTORY:

1. Renumbering and amendment of former section 3072 to section 3266, and repealer of former section 3072 filed 10-27-93; operative 11-26-93 (Register 93, No. 44).

3073. Vehicles.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 5054, 6202, 6204 and 6206, Penal Code.

HISTORY:

1. Renumbering and amendment of former section 3073 to section 3294.1 and repealer of former section 3073 filed 10-27-93; operative 11-26-93 (Register 93, No. 44).

Article 6.1. Alternative Sentencing Program

3074. Alternative Sentencing Program Establishment.

NOTE: Authority cited: section 5058, Penal Code. Reference: Sections 1173, et seq., and 5054, Penal Code; Chapter 1063, Statutes of 1992, section 4.

HISTORY:

1. New article heading and section filed 10-30-92 as an emergency; operative 10-30-92 (Register 92, No. 44). A Certificate of Compliance must be transmitted to OAL 3-1-93 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 10-30-92 order transmitted to OAL 2-9-93 and filed 3-12-93 (Register 93, No. 11).
3. Repealer filed 1-8-2002; operative 2-7-2002 (Register 2002, No. 2).

Article 6.3. The Family Foundations Program

3074.3. The Family Foundations Program.

(a) The Family Foundations Program (FFP) is a 12-month residential substance abuse treatment program for pregnant and/or parenting female inmates who have been determined by the court to benefit from participation, recommended by the court for placement, and are accepted by the Department to participate. Female inmates in the program will be placed in a Family Foundations facility in the community as an alternative to serving their prison term in a State prison institution.

(b) Eligibility. To be eligible, a female inmate shall be sentenced to serve a term of not more than 36 months and be recommended by the court to participate, must have an established history of substance abuse, and be either pregnant or the parent of a child under the age of six years. Medical/dental and mental health evaluations shall be performed prior to placement to determine the existence of health care conditions that would affect participation in the program or require a reasonable accommodation be provided to the participant.

(c) Ineligibility. Female inmates who have been convicted of violent crimes and other offenses enumerated in Penal Code section 1174.4 are excluded from the program. In addition, a woman is ineligible for the program if she has an active or potential United States Immigration and Naturalization hold, felony hold; her child is a dependent of the court and it has been determined by the representative of the appropriate county agency that it is not in the best interest of the child; she is determined by the Department to pose an unreasonable risk to the public; a staff physician or psychiatrist has determined that the inmate's medical or psychiatric condition is likely to cause an adverse effect upon the inmate or upon other persons if the inmate is placed in the program; or she is not willing to sign a CDC Form 1890, Voluntary Placement Agreement, (4/99), which is incorporated by reference, and outlines the obligations and responsibilities of program participants.

(d) Credit earnings and losses, including pre-sentence, behavioral, participation and work time credits shall not be applied while a woman is in the program. Participants who fail to complete the 12-month residential program shall have credit earnings and losses applied for time served in the program. Participants who fail the program for reasons identified in (e) below, shall be delivered to State prison where they shall serve the remainder of their original sentences. A classification committee hearing shall precede a participant's delivery to State prison.

(e) Adverse reasons for failure to complete the program include:

(1) Program participant fails to participate in programming activities; or,

(2) Program participant fails to comply with facility rules as presented in orientation; or,

(3) Program participant fails to participate in Career Technical Education program/educational activities; or,

(4) Program participant fails urinalysis/drug or alcohol testing; or,

(5) Program participant demonstrates violent or disruptive behavior.

(f) Program participants may be removed from the program because of a health care condition that cannot be adequately managed in the FFP facility. Behavioral credit loss shall not be applied in such cases.

(g) Individualized treatment plans shall be developed for each participant and her child. The treatment plan shall be formulated as a result of an individual assessment performed by a program counselor. Each plan shall address the specific treatment needs of the participant and child including the treatment needs necessary for transitioning the participant to parole and/or another treatment program, and shall describe treatment goals for both mother and child and specific activities and services to achieve these goals. Changes to this plan may occur throughout the course of treatment and must be relevant to the participant's progress toward treatment goals. Individualized treatment plans shall address a full range of problems including those directly and indirectly related to:

(1) Substance abuse.

(2) Physical and mental health.

(3) Social services.

(4) Parenting skills.

(5) Career Technical Education and educational skills.

(6) Long-term treatment goals.

(7) Treatment methods and resources.

(h) Early childhood care and development plans shall be developed for each child and shall address issues including, but not limited to:

(1) Immunizations and communicable diseases.

(2) Pediatric medical care.

(3) Nutrition.

(4) Psychological interventions.

(5) Communication skills.

(6) Motor skill development.

(7) Play therapies.

(i) Each participant shall be provided all of the following:

(1) Intensive substance abuse treatment education classes and relapse prevention counseling.

(2) Classes, as appropriate, on topics such as domestic violence, incest survivors, family relationships, co-dependency, living with AIDS, child custody issues, and legal issues.

(3) Individual counseling sessions.

(4) Group counseling.

(5) HIV-AIDS counseling for pre- and post-HIV testing.

(6) Classes on parenting skills.

(7) Early childhood care and development services.

(8) Educational, Career Technical Education programs, and life skills training.

(9) Medically necessary health services pursuant to section 3350 et seq.

(j) Each participant shall be assigned a case manager and casework team, comprised of a social worker, facility manager, counselor, child development specialist, child care worker, nurse, and departmental custody staff person. The casework team will manage the participant's intake, orientation and treatment program for the duration of the 12 months.

(k) Transition planning for the participant's release from the facility to parole, shall begin in the first six months of the program with a written Transition Services Plan for each participant to be developed no later than the seventh month. Each participant's Transition Services Plan shall be initiated after nine months of participation in the program. Transition Services Plans shall consist of, but are not limited to, transitional housing, job placement or assistance, identification of available social services, etc.

(*l*) An outpatient transitional services program shall be developed for each participant and shall include a twelve month period of intensive parole supervision pursuant to Penal Code Section 1174.2.

(m) The FFP shall maintain a zero tolerance for drugs and/or alcohol use. Frequent and random urine testing shall be conducted to detect any illegal drug use.

(n) Each facility shall maintain a library containing a variety of reference, fiction, self-help and children's books for use by participants and their children.

(o) Facilities shall accommodate requests for voluntary participation in religious programs.

(p) Facilities shall post visiting hours and conditions in English and Spanish and maintain a weekly visiting schedule for six hours on Saturday and six hours on Sunday of each week.

NOTE: Authority cited: Sections 1174.8(a) and 5058, Penal Code. Reference: Sections 1174–1174.9 and 5054, Penal Code.

HISTORY:

1. New article 6.3 (section 3074.3) and section filed 8-18-99 as an emergency; operative 8-18-99 (Register 99, No. 34). A Certificate of Compliance must be transmitted to OAL by 1-25-2000 pursuant to Penal Code section 5058(e) or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 8-18-99 order, including further amendment of subsection (*l*) and Note, transmitted to OAL 12-2-99 and filed 1-13-2000 (Register 2000, No. 2).
3. Amendment of subsections (e)(3), (g)(5), (i)(1) and (i)(8) filed 10-29-2013 as an emergency; operative 10-29-2013 (Register 2013, No. 44). A Certificate of Compliance must be transmitted to OAL by 4-7-2014 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 10-29-2013 order transmitted to OAL 4-4-2014 and filed 5-14-2014 (Register 2014, No. 20).

Article 6.5. Intake, Release and Discharge of Inmates

3075. Initial Intake and County Reimbursements.

(a) CDCR shall assign each county to a reception center (RC) institution for the delivery of new commitment State inmates.

(b) The county shall first contact the designated RC institution, on or before the Friday prior to the week of transfer, to notify and coordinate the upcoming delivery of the inmates(s).

(1) In the event the RC is unable to accept delivery of the inmate(s), the county shall contact the CDCR Intake Control Unit (ICU). The ICU will make every effort to direct the county to an alternate RC.

(A) If ICU is unable to provide an alternate RC for delivery, the county shall follow CDCR's notification process, pursuant to subsection (c), to be eligible for reimbursement.

(B) If ICU notifies a county that space is available at a RC after previously being denied, the county shall deliver the inmate(s) within two working days (Monday through Friday, excluding holidays), from CDCR's notification of bed availability.

(C) If the county is unable to deliver the inmate(s) within two working days, reimbursement will not be authorized for any additional days.

(D) Inmates shall be delivered in the order they were notified to the ICU.

(c) If the ICU has been notified by the county that a new commitment inmate is ready to be transported, and the department is unable to accept delivery by the fifth working day (Monday through Friday, excluding holidays), pursuant to Penal Code (PC) Section 4016.5(a), a county shall be reimbursed for costs incurred resulting from the detention of a new commitment State inmate, or a county referral of an inmate pursuant to PC Section 1203.03.

(1) CDCR shall reimburse a county for each day of an inmate's detention, starting on the day following the fifth working day after ICU is notified of the inmate's denied delivery.

(2) The county shall not be reimbursed if, upon notification of the pending transport, ICU directs the county to deliver the State inmate to an alternate RC and the county refuses or is unable to transport inmates to the alternate RC.

(3) The county shall not be reimbursed for the detention of an inmate(s) for any period of time prior to notification and within the five-day time period after notification.

(4) CDCR shall not reimburse a claim that is in excess of six months from the close of the month in which the costs were incurred.

(d) A county is also entitled to reimbursement for mileage expenses incurred when transporting State inmates to a State institution. A mileage expense will be paid for a total round trip distance.

(e) Inmates received by the department shall be accompanied by either a copy of the minute order or an abstract of the judgment certified by the clerk of the court or judge. Confidential medical/mental health documents indicating that the inmate is medically capable for transport are required upon delivery. The inmate's identity shall be verified by staff to prevent inadvertent acceptance of a person not legally committed to the department.

(f) Upon staff's receipt of an inmate's cash, personal securities and property, a CDCR Form 104 (Rev. 6/13), Inmate Property and Cash Receipt—Arrival, which is incorporated by reference, shall be completed.

(g) Each inmate shall be photographed and an identification card prepared. The identification photo shall be updated every five years or when there is a distinct change in the inmate's physical appearance. An inmate who noticeably changes his/her appearance will be charged for the cost of the updated identification photo/card, if the distinct change occurs anytime within the five-year period.

(h) Each inmate shall be informed of the departmental grooming standards and shall be afforded an opportunity to comply prior to being photographed. Each inmate will be advised that failure to comply with departmental grooming standards may result in the issuance of an administrative rule violation report and that a repeated pattern of administrative rule violations, may result in the inmate being deemed a program failure pursuant to Section 3000. The processing officer will document on a CDC Form 128-B (Rev. 4/74), General Chrono, the inmate's refusal to comply with the departmental grooming standards. The CDC Form 128-B will be forwarded to records for the inmate's initial classification committee review.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 1202a, 1203.03, 1216, 1217, 2081.5, 2901, 3058.5, 4016.5(a), 4537, 4750, 4751 and 5054, Penal Code; and Section 19853, Government Code.

HISTORY:

1. Article 6.5 heading and new section filed 12-20-91 as an emergency; operative 12-20-91 (Register 92, No. 4). A Certificate of Compliance must be transmitted to OAL 4-20-92 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 12-20-91 order including amendment of Note transmitted to OAL 4-15-92 and filed 5-28-92 (Register 92, No. 22).
3. New subsection (d) filed 10-16-97 as an emergency; operative 10-16-97 (Register 97, No. 42). Pursuant to Penal Code section 5058(e), a Certificate of Compliance must be transmitted to OAL by 3-25-97 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 10-16-97 order, including further amendment of subsection (d), transmitted to OAL 3-23-98 and filed 5-4-98 (Register 98, No. 19).
5. Amendment of subsection (c) filed 1-17-2006 as an emergency; operative 1-17-2006 (Register 2006, No. 3). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 6-26-2006 or emergency language will be repealed by operation of law on the following day.
6. Amendment of subsection (d) filed 6-9-2006; operative 7-9-2006 (Register 2006, No. 23).
7. Certificate of Compliance as to 1-17-2006 order transmitted to OAL 6-22-2006 and filed 7-27-2006 (Register 2006, No. 30).
8. Change without regulatory effect amending subsection (b), repealing CDC Form 104 and incorporating by reference new CDCR Form 104 filed 7-30-2013 pursuant to section 100, title 1, California Code of Regulations (Register 2013, No. 31).
9. Amendment of section and Note filed 1-23-2014; operative 1-23-2014 pursuant to Government Code section 11343.4(b)(3) (Register 2014, No. 4).

3075.1. Intake Processing.

(a) A CDC Form 188-L (Rev. 3/89), Cumulative Case Summary, shall be prepared for each inmate committed to the department and shall include:

(1) CDC Form 188, Legal Status Summary.

(2) CDC Form 112 (Rev. 9/83), Chronological History.

(3) CDC Form 174 (Rev. 3/87), Probation Officer's Report (POR).

(4) Criminal Identification and Investigation (CI&I) Report.

(5) A psychiatric/psychological evaluation, when completed pursuant to (c) below.

(6) The Institutional Staff Recommendation Summary (ISRS) described in (h), below.

(7) CDC Form 816 (Rev. 02/03), Reception Center Readmission Summary.

(8) A summary of the inmate's social factors regarding the inmate's: religion; driver's license number; social security number; and the names, birthdays, addresses and occupations of parents and siblings; dates and status of marriages; names, birthdays and custody of children; and family arrest history.

(b) Information affecting an inmate's conditions of confinement or parole and sentence shall be solicited from sources outside the department, with or without the inmate's consent, and shall include California Youth Authority/Division of Juvenile Justice commitment history within the last five years and history of any federal, state or local commitment.

(c) A psychiatric or psychological evaluation shall be prepared for each inmate whose behavior or background information causes staff to believe a serious mental problem may exist.

(d) Casework information and documents important to the placement and supervision of the inmate shall include:

(1) Notification in Case of Inmate Death, Serious Injury, or Serious Illness (see section 3357).

(2) CDC Form 128-O (8/92), Document Receipt.

(3) CDCR Form 345 (Rev. 2/13), Authorization for the Secretary to Maintain Trust Account, which is incorporated by reference.

(e) All questionable information shall be verified to the extent possible.

(f) Information obtained from other documents shall indicate the source. Unverified information affecting an inmate's conditions of confinement or parole and sentence shall be noted as unverified.

(g) Each inmate shall before initial classification be provided a copy of their CDC Form 188-L from which the CI&I Report and CDC Form 112 have been removed.

(h) An ISRS shall be prepared for each person committed with or returned as a parole violator with a new life term.

(1) The ISRS shall state the sources of information used and summarize the inmate's history of or status concerning: type of confidential information on file; holds or detainers; medical and dental requirements or limitations; results of a psychiatric or psychological referral; work experiences and skills; narcotics, drugs and alcohol use; escapes; arson offenses; sex-related offenses; academic and Career Technical Education program needs or interests; necessary casework follow-up; the counselor's evaluation of the inmate; release plans if the inmate has six months or less to release; Reentry Hub eligibility; classification score and custody designation suffix; community correctional facility eligibility; and recommended facility placement.

(2) An ISRS prepared for a Penal Code section 1203.03 (referred to as a presentence diagnostic) case shall:

(A) Address the inmate's past criminal behavior.

(B) Include in the counselor's evaluation of the inmate a sentencing recommendation to the court.

(C) If the court commits the inmate to the department, include a supplemental report of any changes affecting the inmate's conditions of confinement or parole and sentence since the presentence summary and a recommended facility placement.

(i) A CDC Form 816, Reception Center Readmission Summary, shall be completed for parole violators who are returned to custody with new terms other than a life sentence.

(j) Information affecting an inmate's conditions of confinement or parole and sentence and received after completion of the ISRS or CDC Form 816 shall be incorporated into the inmate's file.

(1) If the information is received after a transfer recommendation endorsement, or the nature of the information indicates a proposed classification action inappropriate, the case shall be referred to a classification committee for reconsideration.

(2) Information received after the inmate has been transferred shall be forwarded to the inmate's new facility.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 1203.01, 1203.03, 2930, 3002, 5054, and 5068, Penal Code.

HISTORY:

1. New section filed 11-5-92; operative 12-7-92 (Register 92, No. 45).
2. Change without regulatory effect amending subsection (d)(3) and adding new form filed 6-28-95 pursuant to section 100, title 1, California Code of Regulations (Register 95, No. 26).
3. Amendment of subsections (a), (a)(2) and (d)(1) filed 8-28-2000; operative 9-27-2000 (Register 2000, No. 35).
4. Change without regulatory effect amending subsection (a)(7) filed 8-21-2003 pursuant to section 100, title 1, California Code of Regulations (Register 2003, No. 34).
5. Change without regulatory effect amending subsections (b) and (d)(3) and amending and incorporating by reference Form CDCR 345 filed 3-11-2013 pursuant to section 100, title 1, California Code of Regulations (Register 2013, No. 11).
6. Amendment of subsection (h)(1) filed 10-29-2013 as an emergency; operative 10-29-2013 (Register 2013, No. 44). A Certificate of Compliance must be transmitted to OAL by 4-7-2014 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 10-29-2013 order transmitted to OAL 4-4-2014 and filed 5-14-2014 (Register 2014, No. 20).
8. Amendment of subsection (d)(1) filed 6-2-2014; operative 6-2-2014 pursuant to Government Code section 11343.4(b)(3) (Register 2014, No. 23).

3075.2. Releases.

(a) Day of release. Inmates, except as otherwise provided by applicable law and regulations, shall be released on their scheduled release date. Inmates shall not be retained beyond their discharge date.

(b) Release Instructions.

(1) Notification of registration requirements:

(A) An inmate required to register pursuant to Penal Code sections 290 or 457.1 or Health and Safety Code section 11590 shall be notified of the requirement before being released from custody.

(B) Such inmates shall complete a SS Form 8047, Notice of Registration Requirement, acknowledging notification of the requirement.

(2) Reporting instructions for inmates being released to parole, except for inmates released to non-revocable parole as provided in section 3505:

(A) The CDCR Form 611 (Rev. 8/12), Release Program Study, which is incorporated by reference; CDCR Form 1515 (Rev. 04/14), Notice and Conditions of Parole, which is incorporated by reference and reporting instructions shall be explained to the inmate at least 45 days before their scheduled release to parole or, if less than 45 days remain as a result of a change in the inmate's legal status, as soon as possible.

(B) The CDCR Form 611 shall specify a date, time, place and official to whom a newly released inmate shall report.

(C) Authorized delay in reporting. Any delay in reporting shall be in writing. The assigned parole agent may authorize a delay in reporting of no more than seven days from the parolee's scheduled reporting date. A delay of more than seven days shall require the authorization of a unit supervisor or higher staff. Parolees designated as high control cases shall not be granted a delay in reporting to their assigned parole agent.

(3) Notice and conditions of parole requirements, except for inmates released to non-revocable parole.

(A) The CDC Form 1515 shall be interpreted or otherwise communicated to any parolee who does not understand or read English.

(B) A unit supervisor or higher level staff may place an inmate or parolee refusing to sign the CDC Form 1515 into custody pending a revocation hearing.

(C) Any special conditions of parole imposed by the department shall be related to the inmate's commitment offense or to conduct that may reasonably lead to future criminal behavior.

(D) When a department-imposed special condition no longer applies to a parolee, a unit supervisor or higher level staff may remove or modify any but the following department-imposed special conditions:

1. A prohibition on the use of alcoholic beverages pursuant to Penal Code section 3053.5 and 15 CCR 3901.9.4(b).

2. A requirement to participate in psychiatric treatment, unless parole outpatient clinic staff have recommended, in writing, that the treatment be discontinued.

(E) Within five days after verbally requiring or prohibiting specific behavior of a parolee, staff shall give the parolee written confirmation of such instructions.

(4) Notice of non-revocable parole requirements:

(A) Inmates who are approved for non-revocable parole shall have a CDCR Form 1515-A (01/10), Notification of Non-Revocable Parole Requirements, which is incorporated by reference, effectively communicated to them at least 45 days prior to their scheduled release to parole, or as soon as possible if less than 45 days prior to release remain. The CDCR Form 1515-A shall document the offender's understanding of requirements including, but not limited to, the following:

(1) Return to the county of last legal residence prior to incarceration pursuant to Penal Code 3003(a).

(2) Obligation to register with local law enforcement as ordered by law.

(3) Obligation to pay outstanding restitution balances while on non-revocable parole.

(4) Search and seizure requirements pursuant to Penal Code section 3067.

(B) Inmates and parolees who refuse to sign the CDCR Form 1515-A shall be denied non-revocable parole pursuant to the provisions of Penal Code section 3000.03.

(C) Parolees on non-revocable parole are not assigned to a parole agent and have no requirement to report to a parole office upon release.

(5) Reporting instructions and notice of conditions of release for inmates released to Postrelease Community Supervision as provided in section 3079:

(A) The CDCR Form 611 (Rev. 8/12), Release Program Study; and the CDCR Form 1515-CS (Rev. 08/12), Notice and Conditions of Postrelease Community Supervision, which is incorporated by reference, and any additional reporting instructions or conditions received by the supervising county shall be explained to the inmate at least 45 days before their scheduled release date or, if less than 45 days remain as a result of a change in the inmate's legal status, as soon as possible.

(B) The CDCR Form 611 shall specify, at minimum, a place and official to whom a newly released inmate shall report.

(c) Release Clearances.

(1) Before release, an inmate shall be provided a CDC Form 162 (Rev. 1/66), Inmate Release Clearance, to obtain the signature indicating the release clearance of the facility officials as designated thereon, and return the form to the facility's receiving and release office.

(2) The original CDC Form 122 (Rev. 12/85), Property Receipt-Release, which is completed by receiving and release staff, shall be provided to the inmate before release.

(3) At time of release, the inmate shall sign a CDC Form 102 (Rev. 5/92), Release Statement and Clothing Authorization, acknowledging receipt of any cash, checks, and clothing.

(d) Release Allowances. A release allowance is a sum of money intended for the rehabilitative purpose of assisting in an inmate/parolee's reintegration into society, and shall only be provided to an inmate who is released from CDCR facilities to the direct supervision of a parole agent in the community, is placed on non-revocable parole, is released to Postrelease Community Supervision, or is discharged from the jurisdiction of the Department of Corrections and Rehabilitation. Except as stipulated below, inmates with six months or more served on a sentence or parole violation shall be given $200, less the costs of clothing and public transportation provided by the facility in connection with their release. Parolees who willfully abscond shall forfeit any remaining release allowance otherwise due them. Parolees placed in custody and released from county jail as a result of a parole violation are not eligible for CDCR release allowance.

(1) A release allowance shall not be provided to an inmate released to the custody of the federal government or another state unless the inmate is released from custody and available for parole supervision in California or a state under the interstate compact (Article 3 (commencing with Section 11175) and Article 3.5 (commencing with Section 11180) of Chapter 2 of Title 1 of Part 4 of the Penal Code)). Inmates released to the custody and supervision of the U.S. Immigration and Naturalization Service and awaiting a deportation hearing date are not entitled to receive a release allowance.

(2) Inmates who are released to the custody of local law enforcement as a result of a detainer or hold are ineligible to receive a release allowance until the inmate is released from custody to direct parole supervision or Postrelease Community Supervision. This includes a detainer or hold pursuant to commitment proceedings as a sexually violent predator (Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare & Institutions Code)). If the local custody detainer or hold results in a new commitment, the inmate will be ineligible for release funds for the prior prison term(s).

(3) Work furlough inmates:

(A) Work furlough inmates may receive an advance of up to $100 of their release allowance.

(B) A work furlough inmate subject to Penal Code section 1168 and returned to the institution and whose parole date is rescinded shall receive $200 if six months or more has been served since rescission, or up to $200, as determined by the assigned parole agent, if less than six months has been served.

(C) A work furlough inmate subject to Penal Code section 1170 and returned to the institution for administrative reasons shall receive $200 upon release, less any amount previously advanced during work furlough.

(D) Release funds shall not be used to repay facility program costs.

(4) Parole violators returned-to-custody and serving:

(A) Six consecutive months or more shall receive $200.

(B) Less than six consecutive months shall receive $1.10 for each day or fraction thereof in custody or revocation status up to a maximum of $200.

(C) A local concurrent sentence exceeding the Board of Parole Hearing's ordered revocation time shall receive funds only upon completion of the local concurrent term and after their release from jail.

(5) California Youth Authority/Division of Juvenile Justice wards confined in department facilities, and released:

(A) Within the state shall be given up to $10 cash in addition to transportation expenses and, if necessary, clothing which shall not exceed $20 in value.

(B) To independent placement may receive no more than $25 cash.

(6) Upon release from a revocation unit, parolees or civil addict parolees shall be provided bus transportation to their residence area plus $10 cash if the distance to their residence is less than 200 miles or $15 cash if such distance is 200 miles or more, if release is for one of the following reasons:

(A) Charges against the parolee were dismissed.

(B) Charges against the parolee were not substantiated.

(C) The parolee was continued on parole and a revocation term was not assessed.

(7) Inmates or parole violators transferred to the custody and supervision of the Department of Mental Health shall not be provided

a release allowance until they are released to the community and are either under the direct supervision of a parole agent, or discharged to the community and no longer under the jurisdiction of the Department of Corrections and Rehabilitation.

(8) Alternative Custody Program (ACP) Participants:

(A) Upon approval by the ACP Program Manager or designee, an ACP Participant may receive an advance of up to $100 of their release allowance upon release and placement to ACP.

(B) An ACP Participant shall receive $200 upon release to parole, less any amount previously advanced.

(e) Transportation Arrangements.

(1) An inmate's transportation upon release shall be arranged by the facility, unless a private party has contacted the facility at least three days before the inmate's scheduled release, has offered to provide transportation, and the facility has approved the arrangement.

(2) Any transportation costs paid by the state shall be deducted from the inmate's release allowance.

NOTE: Authority cited: Sections 2713.1, 3000.03, 5058 and 5058.3, Penal Code. Reference: Sections 290, 457.1, 1168, 1170, 1170.05, 2713.1, 2901, 2962, 3053.5, 3067, 3450, 3452, 3453, 3454, 5054, 11175, 11176 and 11180, Penal Code; Section 11592, Health and Safety Code; and Sections 6601 and 6604, Welfare and Institutions Code.

HISTORY:

1. New section filed 6-27-94; operative 7-27-94 (Register 94, No. 26).
2. Amendment of subsections (d) and (d)(1), new subsections (d)(2) and (d)(7), repealer of subsection (d)(4), subsection renumbering, amendment of newly designated subsection (d)(3)(C) and amendment of Note filed 1-21-2003; operative 2-20-2003 (Register 2003, No. 4).
3. Amendment of section and Note filed 1-25-2010 as an emergency pursuant to Penal Code section 5058.3(a)(2); operative 1-25-2010 (Register 2010, No. 5). Pursuant to Penal Code section 5058.3(c), a Certificate of Compliance must be transmitted to OAL by 7-6-2010 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 1-25-2010 order transmitted to OAL 6-17-2010 and filed 7-13-2010 (Register 2010, No. 29).
5. New subsections (d)(8)–(d)(8)(B) and amendment of Note filed 9-27-2011 as an emergency; operative 9-27-2011 (Register 2011, No. 39). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 3-5-2012 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 9-27-2011 order transmitted to OAL 2-3-2012; Certificate of Compliance withdrawn 3-19-2012 (Register 2012, No. 12).
7. New subsections (d)(8)–(d)(8)(B) and amendment of Note refiled 3-19-2012 as an emergency; operative 3-19-2012 (Register 2012, No. 12). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 6-18-2012 or emergency language will be repealed by operation of law on the following day.
8. Amendment of subsections (b)(2)–(b)(2)(B), new subsections (b)(5)–(b)(5)(C) and amendment of subsections (d) and (d)(2) and Note filed 6-26-2012 as an emergency; operative 6-26-2012 (Register 2012, No. 26). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 12-3-2012 or emergency language will be repealed by operation of law on the following day.
9. Reinstatement of section as it existed prior to 3-19-2012 emergency amendment by operation of Government Code section 11346.1(f) (Register 2012, No. 28).
10. New subsections (d)(8)–(d)(8)(B) and amendment of Note filed 9-13-2012 as an emergency; operative 9-13-2012 (Register 2012, No. 37). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 2-20-2012 or emergency language will be repealed by operation of law on the following day.
11. Certificate of Compliance as to 6-26-2012 order, including further amendment of subsections (b)(2)(A) and (b)(5)(A), repealer of subsection (b)(5)(C) and amendment of Note, transmitted to OAL 11-5-2012 and filed 12-20-2012 (Register 2012, No. 51).
12. Certificate of Compliance as to 9-13-2012 order transmitted to OAL 1-11-2013 and filed 2-25-2013 (Register 2013, No. 9).
13. Change without regulatory effect amending subsections (d)(4)(C), (d)(5) and (d)(7) filed 3-11-2013 pursuant to section 100, title 1, California Code of Regulations (Register 2013, No. 11).
14. Amendment of subsection (b)(2)(A) filed 2-6-2014 as an emergency; operative 2-6-2014 (Register 2014, No. 6). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 7-16-2014 or emergency language will be repealed by operation of law on the following day.
15. Certificate of Compliance as to 2-6-2014 order, including amendment of subsection (b)(2)(A), transmitted to OAL 7-16-2014 and filed 8-27-2014; amendments effective 8-27-2014 pursuant to Government Code section 11343.4(b)(3) (Register 2014, No. 35).

3075.3. Discharge Certificates.

(a) CDCR Form 163 (Rev. 10/06), Certificate of Discharge, which is incorporated by reference, shall be issued to each person who has completed their commitment to the department.

(b) Such certificate shall be issued to the inmate before release and mailed to parolees after their discharge date.

(c) Parolees on non-revocable parole, as provided in section 3505, must submit a written request to the department upon or after their discharge date to receive a CDCR Form 163 (Rev. 10/06), Certificate of Discharge.

(d) Inmates who are discharged due to release to Postrelease Community Supervision shall not be issued discharge certificates.

NOTE: Authority cited: Sections 5058 and 5058.3, Penal Code. Reference: Sections 3000.03, 3450 and 5054, Penal Code.

HISTORY:

1. New section filed 6-27-94; operative 7-27-94 (Register 94, No. 26).
2. Amendment of subsection (a) filed 12-9-2008; operative 1-8-2009 (Register 2008, No. 50).
3. New subsection (c) and amendment of Note filed 1-25-2010 as an emergency pursuant to Penal Code section 5058.3(a)(2); operative 1-25-2010 (Register 2010, No. 5). Pursuant to Penal Code section 5058.3(c), a Certificate of Compliance must be transmitted to OAL by 7-6-2010 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 1-25-2010 order transmitted to OAL 6-17-2010 and filed 7-13-2010 (Register 2010, No. 29).
5. Amendment of subsection (c), new subsection (d) and amendment of Note filed 6-26-2012 as an emergency; operative 6-26-2012 (Register 2012, No. 26). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 12-3-2012 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 6-26-2012 order transmitted to OAL 11-5-2012 and filed 12-20-2012 (Register 2012, No. 51).

3075.4. Earned Discharge From Parole. [Repealed]

NOTE: Authority cited: Section 5058.3, Penal Code. Reference: Sections 667.5(c), 1192.7 and 5054, Penal Code.

HISTORY:

1. New section filed 10-1-2007 as an emergency; operative 10-1-2007 (Register 2007, No. 40). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 3-10-2008 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 2-25-2008 as an emergency; operative 2-25-2008 (Register 2008, No. 9). A Certificate of Compliance must be transmitted to OAL by 5-26-2008 or emergency language will be repealed by operation of law on the following day.

3. Repealed by operation of Government Code section 11346.1(g) (Register 2008, No. 22).

3076. Recall of Commitment Recommendation Circumstances.

(a) The Secretary, or designee, may recommend at any time to the sentencing court the recall of an inmate's commitment pursuant to Penal Code section 1170(d), if the inmate is not sentenced to death, for one or more of the following reasons:

(1) It is evident from the inmate's exceptional behavior that is so extraordinary beyond simply complying with all regulations and procedures during incarceration that they have changed as a person and would be a positive asset to the community.

(2) Information which was not made available to the court in pronouncing the inmate's sentence is brought to the attention of the Secretary, who deems the information would have influenced the sentence imposed by the court.

(3) The Secretary deems that circumstances have changed to the extent that the inmate's continued incarceration is not in the interest of justice.

(b) The Secretary, or designee, may recommend at any time to the sentencing court the recall of an inmate's commitment pursuant to PC section 1170(e), if the inmate is not sentenced to death or to a term of life without the possibility of parole, for one or more of the following reasons:

(1) The inmate is terminally ill with an incurable condition caused by an illness or disease that would produce death within six months, as determined by a physician employed by the California Department of Corrections and Rehabilitation.

(2) The inmate is permanently medically incapacitated with a medical condition, that renders him or her permanently unable to perform activities of basic daily living, and results in the inmate requiring 24-hour total care, including, but not limited to coma, persistent vegetative state, brain death, ventilator dependency, loss of control of muscular or neurological function, and that incapacitation did not exist at the time of the original sentencing. Activities of basic daily living are breathing, eating, bathing, dressing, transferring, elimination, arm use, or physical ambulation.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 1170(d), 1170(e) and 5054, Penal Code.

HISTORY:

1. New section filed 5-20-92 as an emergency; operative 5-20-92 (Register 92, No. 21). A Certificate of Compliance must be transmitted to OAL 9-17-92 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 5-20-92 order transmitted to OAL 9-9-92; disapproved by OAL and order of repeal of 5-20-92 order filed on 10-22-92 (Register 92, No. 43).
3. New section refiled 10-23-92 as an emergency; operative 10-22-92 pursuant to Government Code section 11346.1(h) (Register 92, No. 43). A Certificate of Compliance must be transmitted to OAL 2-23-93 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 10-23-92 order including amendment of first paragraph and subsection (b) transmitted to OAL 12-18-92 and filed 2-3-93 (Register 93, No. 6).
5. Amendment of section and Note filed 7-7-2011 as an emergency pursuant to Penal Code section 5058.3(a)(2); operative 7-7-2011 (Register 2011, No. 27). Pursuant to Penal Code section 5058.3(c), a Certificate of Compliance must be transmitted to OAL by 12-14-2011 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 7-7-2011 order transmitted to OAL 12-5-2011 and filed 1-19-2012 (Register 2012, No. 3).

3076.1. Recall of Commitment Recommendation Consideration Factors for Penal Code Section 1170(d).

For inmates meeting one or more of the recall eligibility requirements of section 3076(a), the Classification and Parole Representative, shall consider the following factors as may be applicable when recommending recall of commitment consideration for an inmate:

(a) The inmate's commitment offense.

(b) Whether the inmate has a history of affiliation with organized criminal activity, including, but not limited to, any known disruptive group, street gang, prison gang, terrorist group, or racketeering enterprise.

(c) The inmate is or is not designated as a Public Interest Case by the Classification Staff Representative, or their placement has or has not been ordered by the Departmental Review Board because of an unusual threat to the safety of persons or public interest in the inmate's case.

(d) Whether the inmate's prior criminal history includes violent acts against persons pursuant to Penal Code (PC) section 667.5(c) or PC section 1192.7(c), or registerable offenses pursuant to PC section 290.

(e) Whether there exists a documented victim or next of kin of the inmate's commitment offense in the community who would suffer fear from the release of the inmate back into the community.

(f) Whether the inmate's documented institutional behavior reflects a history of offenses involving force, violence, assault, arson or predatory sexual behavior.

(g) Whether the inmate has committed any other criminal acts, either prior to or during the current period of incarceration, that indicate he or she would be a danger to the public if released.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 1170(d), 3043 and 5054, Penal Code.

HISTORY:

1. New section filed 5-20-92 as an emergency; operative 5-20-92 (Register 92, No. 21). A Certificate of Compliance must be transmitted to OAL 9-17-92 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 5-20-92 order transmitted to OAL 9-9-92; disapproved by OAL and order of repeal of 5-20-92 order filed on 10-22-92 (Register 92, No. 43).
3. New section refiled 10-23-92 as an emergency; operative 10-22-92 pursuant to Government Code section 11346.1(h) (Register 92, No. 43). A Certificate of Compliance must be transmitted to OAL 2-23-93 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 10-23-92 order including amendment of first paragraph and subsection (c) transmitted to OAL 12-18-92 and filed 2-3-93 (Register 93, No. 6).
5. Amendment of section heading and section filed 7-7-2011 as an emergency pursuant to Penal Code section 5058.3(a)(2); operative 7-7-2011 (Register 2011, No. 27). Pursuant to Penal Code section 5058.3(c), a Certificate of Compliance must be transmitted to OAL by 12-14-2011 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 7-7-2011 order transmitted to OAL 12-5-2011 and filed 1-19-2012 (Register 2012, No. 3).
7. Amendment of subsection (c) filed 6-26-2012 as an emergency; operative 7-1-2012 (Register 2012, No. 26). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 12-10-2012 or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 6-26-2012 order transmitted to OAL 12-5-2012 and filed 1-17-2013 (Register 2013, No. 3).

3076.2. Recall of Commitment Processing for Penal Code Section 1170(d).

(a) Requests for consideration which are initiated by the facility at any time or by the sentencing court more than 120 days after the date of the inmate's commitment shall be referred to the Classification and Parole Representative (C&PR).

(b) Upon receipt of the request, the C&PR shall consider the factors listed in section 3076.1 and review the inmate's central file to determine if the inmate is sentenced to death.

(1) If the inmate is sentenced to death, the C&PR shall document the reason for the ineligibility on a CDC Form 128-B (Rev. 04/74), General Chrono. The original CDC Form 128-B shall be filed in the inmate's central file and a copy, excluding any confidential material as defined in section 3321, sent to the inmate. A formal, written response shall be provided to the sentencing court or the Secretary, including the reason the inmate is not eligible for Penal Code (PC) section 1170(d) recall.

(2) If the inmate is not sentenced to death, the C&PR shall submit the request to the inmate's caseworker. The inmate's caseworker shall have five working days to prepare an evaluation report, noting the inmate's case factors as listed in section 3076.1, and include the following information and attachments:

(A) The inmate's cumulative case summary including, but not limited to the following information:

1. Inmate's name and CDC number.
2. Current commitment offense, brief description of the crime, and sentence.
3. County of commitment.
4. Prior juvenile and adult criminal history.
5. Active or potential holds, warrants, detainers.
6. Institutional adjustment, including rules violation reports, counseling chronos, pending disciplinary actions, gang/disruptive group information, placement score, current housing assignment, work and education assignments, and participation in self-help activities.
7. Mental health and developmental disability status.

(B) A list of any victim notification or other special notification requirements.

(C) The inmate's post-release plan.

(D) Abstract of Judgment for the inmate's current commitment offense.

(E) Probation Officer's Report for the inmate's current commitment offense.

(F) Institutional Staff Recommendation Summary.

(G) Legal Status Summary.

(H) CDC Form 112 (Rev. 09/83), Chronological History.

(I) The inmate's most recent Board of Parole Hearings Parole Consideration Report with the Lifer Parole Hearing Decision Face Sheet containing the Board of Parole Hearings' disposition (applies only to inmates who are sentenced to an indeterminate term).

(c) The C&PR shall review and forward the evaluation report to the warden or chief deputy warden within three working days.

(d) The warden or chief deputy warden shall review and sign the evaluation report and ensure it is forwarded to California Department of Corrections and Rehabilitation headquarters within three working days.

(e) The evaluation report for a PC section 1170(d) recall shall be referred to the Secretary, or designee, for review and consideration.

(1) If a positive recommendation for recall is made, and the inmate is sentenced to a determinate term, the Secretary, or designee's, recommendation shall be referred directly to the sentencing court.

(2) If the inmate is sentenced to an indeterminate term, the Secretary or designee's recommendation, whether positive or negative, shall be referred to the Board of Parole Hearings for review and consideration.

(f) When the court requests a post-sentence report within 120 days of the inmate's sentencing, the inmate's caseworker shall evaluate all available information, and assess the inmate's potential for completing probation or other alternate sentencing, and the threat posed to the community if the inmate fails to realize that potential. The inmate's caseworker shall complete an evaluation report, as described in subsection 3076.2(b)(2), and forward the report to the C&PR within five working days.

(g) The C&PR shall have three working days to review the evaluation report and forward it to the warden or chief deputy warden.

(h) The warden or chief deputy warden shall review and sign the evaluation report and submit it directly to the sentencing court within three working days.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 1170(d), 3043 and 5054, Penal Code.

HISTORY:

1. New section filed 5-20-92 as an emergency; operative 5-20-92 (Register 92, No. 21). A Certificate of Compliance must be transmitted to OAL 9-17-92 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 5-20-92 order transmitted to OAL 9-9-92; disapproved by OAL and order of repeal of 5-20-92 order filed on 10-22-92 (Register 92, No. 43).
3. New section refiled 10-23-92 as an emergency; operative 10-22-92 pursuant to Government Code section 11346.1(h) (Register 92, No. 43). A Certificate of Compliance must be transmitted to OAL 2-23-93 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 10-23-92 order including amendment of subsections (a)(1), (a)(3)–(5) and (b)(2) transmitted to OAL 12-18-92 and filed 2-3-93 (Register 93, No. 6).
5. Amendment of section heading and section filed 7-7-2011 as an emergency pursuant to Penal Code section 5058.3(a)(2); operative 7-7-2011 (Register 2011, No. 27). Pursuant to Penal Code section 5058.3(c), a Certificate of Compliance must be transmitted to OAL by 12-14-2011 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 7-7-2011 order transmitted to OAL 12-5-2011 and filed 1-19-2012 (Register 2012, No. 3).

3076.3. Recall of Commitment Recommendation Consideration Factors for Penal Code Section 1170(e).

For inmates meeting one or more of the recall eligibility requirements of section 3076(b), the Classification and Parole Representative (C&PR), shall consider the following factors as may be applicable when recommending recall of commitment consideration for an inmate:

(a) The inmate's commitment offense.

(b) Whether the inmate has a history of affiliation with organized criminal activity, including, but not limited to, any known disruptive group, street gang, prison gang, terrorist group, or racketeering enterprise.

(c) The inmate is or is not designated as a Public Interest Case by the Classification Staff Representative, or their placement has or has not been ordered by the Departmental Review Board because of an unusual threat to the safety of persons or public interest in the inmate's case.

(d) Whether the court was aware of the inmate's medical condition at the time of sentencing.

(e) Whether the inmate's prior criminal history includes violent acts against persons pursuant to Penal Code (PC) section 667.5(c) or PC section 1192.7(c), or registerable offense pursuant to PC section 290.

(f) Whether there exists a documented victim or next of kin of the inmate's commitment offense in the community who would suffer fear from the release of the inmate back into the community.

(g) Whether the inmate's documented institutional behavior reflects a history of offenses involving force, violence, assault, arson, or predatory sexual behavior.

(h) Whether there are verifiable community resources appropriate, sufficient, and immediately available to provide support and sustenance and to meet the inmate's medical and/or psychological needs upon release.

(i) Whether the inmate has committed any other criminal acts, either prior to or during the current period of incarceration, that indicates he or she would be a danger to the public if released.

(j) Whether the inmate retains the capacity to commit or to influence others to commit criminal acts that endanger public safety.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 1170(e), 3043 and 5054, Penal Code; and *Martinez* v. *Board* of Parole Hearings (2010) 183 Cal.App.4th 578.

HISTORY:

1. New section filed 5-20-92 as an emergency; operative 5-20-92 (Register 92, No. 21). A Certificate of Compliance must be transmitted to OAL 9-17-92 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 5-20-92 order transmitted to OAL 9-9-92; disapproved by OAL and order of repeal of 5-20-92 order filed on 10-22-92 (Register 92, No. 43).
3. New section refiled 10-23-92 as an emergency; operative 10-22-92 pursuant to Government Code section 11346.1(h) (Register 92, No. 43). A Certificate of Compliance must be transmitted to OAL 2-23-93 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 10-23-92 order transmitted to OAL 12-18-92 and filed 2-3-93 (Register 93, No. 6).
5. Renumbering of former section 3076.3 to section 3076.5 and new section 3076.3 filed 7-7-2011 as an emergency pursuant to Penal Code section 5058.3(a)(2); operative 7-7-2011 (Register 2011, No. 27). Pursuant to Penal Code section 5058.3(c), a Certificate of Compliance must be transmitted to OAL by 12-14-2011 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 7-7-2011 order transmitted to OAL 12-5-2011 and filed 1-19-2012 (Register 2012, No. 3).
7. Amendment of subsection (c) filed 6-26-2012 as an emergency; operative 7-1-2012 (Register 2012, No. 26). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 12-10-2012 or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 6-26-2012 order transmitted to OAL 12-5-2012 and filed 1-17-2013 (Register 2013, No. 3).

3076.4. Recall of Commitment Processing for Penal Code Section 1170(e).

A physician employed by the California Department of Corrections and Rehabilitation (CDCR) who determines an inmate meets the eligibility requirements described in Subsection 3076(b), shall initiate the recall process on behalf of the inmate. The inmate or his or her family member or designee may also independently request Penal Code (PC) section 1170(e) recall consideration by contacting the institution's Chief Medical Officer (CMO) or Chief Medical Executive (CME), or the Secretary.

(a) The physician shall document on a CDC Form 128-C (Rev. 01/96), Chrono—Medical-Psychiatric-Dental, the inmate's illness, functional status, including the inmate's abilities or limitations in performing activities of daily living, ambulatory status, the reason why the inmate has six months or less to live or is permanently medically incapacitated, and his or her desire to participate in the recall process.

(b) The CMO or CME, Deputy Medical Executive, and Statewide Chief Medical Executive, California Prison Health Care Services, shall have five working days to review and sign the CDC Form 128-C, approving the physician's prognosis. The signed CDC Form 128-C shall be submitted to the C&PR within three working days following the Statewide Chief Medical Executive's approval.

(1) If the CMO or CME, or the Deputy Medical Executive, or the Statewide Chief Medical Executive do not concur with the physician's prognosis, the recall of commitment process shall be terminated.

(c) The C&PR shall review the CDC Form 128-C and the inmate's central file.

(1) If the inmate is sentenced to death or to life without the possibility of parole, the Classification and Parole Representative (C&PR) shall document the reason for the ineligibility on a CDC Form 128-B (Rev. 04/74), General Chrono, and file the original in the inmate's central file. A copy of the CDC Form 128-B excluding any confidential information, as defined in section 3321, shall be sent to the inmate and the inmate's physician.

(2) If the inmate is not sentenced to death or to life without the possibility of parole, medical staff shall explain the recall of commitment process to the inmate within 48 hours of notification and arrange for the inmate to designate a family member or other outside agent on CDCR Form 7385 (Rev. 09/09), Authorization for Release of Information, which is incorporated by reference. The inmate's designee shall be informed about the recall of commitment process and the inmate's medical condition. If the inmate is mentally unfit to designate a family member or other outside agent, medical staff shall contact the inmate's emergency contact listed on the Notification in Case of Inmate Death, Serious Injury, or Serious Illness (see section 3357) and advise them of the recall process.

(d) The C&PR shall submit the CDC Form 128-C to the inmate's caseworker. The inmate's caseworker shall have five working days to prepare an evaluation report noting the inmate's case factors as listed in section 3076.3, which consists of the following information and attachments:

(1) CDC Form 128-C.

(2) The inmate's cumulative case summary, including, but not limited to the following information:

(A) Inmate's name and CDC number.

(B) Current commitment offense, brief description of the crime, and sentence.

(C) County of commitment.

(D) Prior juvenile and adult criminal history.

(E) Active or potential holds, warrants, detainers.

(F) Institutional adjustment, including rules violation reports, counseling chronos, pending disciplinary actions, gang/disruptive group information, placement score, current housing assignment, work and education assignments, and participation in self-help activities.

(G) Mental health and developmental disability status.

(3) A list of any victim notification or other special notification or registration requirements.

(4) The inmate's post-release plan.

(5) CDCR Form 7385 (Rev. 09/09), Authorization for Release of Information.

(6) CDCR Form 3038 (12/10) Notification to Inmate/Inmate Designee—Recall and Re-sentencing Procedure, which is incorporated by reference.

(7) CDCR Form 3039 (12/10), Waiver of Defendant's Personal Presence at the Recall and Re-sentencing Hearing, which is incorporated by reference.

(8) Abstract of Judgment for the inmate's current commitment offense.

(9) Probation Officer's Report for the inmate's current commitment offense.

(10) Institutional Staff Recommendation Summary.

(11) Legal Status Summary.

(12) CDC Form 112 (Rev. 09/83) Chronological History.

(13) The inmate's most recent Board of Parole Hearings Parole Consideration Report with the Lifer Parole Hearing Decision Face Sheet containing the Board of Parole Hearings' disposition (applies only to inmates who are sentenced to an indeterminate term).

(e) The C&PR shall review and forward the evaluation report to the warden or chief deputy warden within three working days.

(f) The warden or chief deputy warden shall review and sign the evaluation report and ensure it is forwarded to CDCR headquarters within three working days.

(g) The evaluation report for a PC section 1170(e) recall shall be referred to the Secretary, or designee, for review and consideration.

(1) If a positive recommendation for recall is made, and the inmate is sentenced to a determinate term, the recommendation shall be referred directly to the sentencing court and shall include one or more medical evaluations, the findings of which must determine the inmate meets the criteria set forth in PC section 1170(e)(2), and a post-release plan.

(2) If the inmate is sentenced to an indeterminate term, the Secretary or designee's recommendation, whether positive or negative, shall be referred to the Board of Parole Hearings for review and consideration.

(h) Pursuant to PC section 1170(e)(9), if the sentencing court grants the recall and resentencing application, the inmate shall be released by the department within 48 hours of receipt of the court's order, unless a longer time period is agreed to by the inmate or ordered by the court. If the inmate has agreed to waive the 48-hour release requirement, the department shall request the sentencing court include in its order that the inmate shall be released within 30 calendar days to allow for the coordination of his or her housing and medical needs in the community to a location where access to care is available.

(i) If the Division of Adult Parole Operations (DAPO) is coordinating the inmate's placement within the community, the C&PR shall provide a copy of the release order to DAPO upon receipt from the sentencing court.

(j) At the time of release, medical staff shall ensure the inmate has each of the following in his or her possession; a discharge medical summary, full medical records, State identification, parole medication, and all property belonging to the inmate. After discharge, any additional records shall be sent to the inmate's forwarding address.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 1170(e), 3043 and 5054, Penal Code; and *Martinez* v. *Board* of Parole Hearings (2010) 183 Cal.App.4th 578.

HISTORY:

1. New section filed 7-7-2011 as an emergency pursuant to Penal Code section 5058.3(a)(2); operative 7-7-2011 (Register 2011, No. 27). Pursuant to Penal Code section 5058.3(c), a Certificate of Compliance must be transmitted to OAL by 12-14-2011 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 7-7-2011 order, including amendment of subsection (c)(2), transmitted to OAL 12-5-2011 and filed 1-19-2012 (Register 2012, No. 3).
3. Amendment of subsection (c)(2) filed 6-2-2014; operative 6-2-2014 pursuant to Government Code section 11343.4(b)(3) (Register 2014, No. 23).

3076.5. Victim Notification for Recall of Commitment Recommendations.

When informed by department headquarters or the Board of Parole Hearings that an inmate's commitment has been recommended for recall to the sentencing court, the Classification and Parole Representative shall notify any victim of a crime committed by the inmate, or the victim's next of kin, provided that the victim or the victim's next of kin has formally requested notice about the status of the inmate in prison, including, but not limited to, notification of release, escape, or death, or of any hearing to review or consider the release or parole suitability or the setting of a parole date for the inmate, in writing; either by submitting a signed letter or a completed CDCR Form 1707 (Rev. 10/11), Request For Victim Services, which is incorporated by reference, to the Office of Victim and Survivor Rights and Services, and the requesting party has kept the department or the Board of Parole Hearings apprised of their current mailing address. The notification shall include the name and address of the court that will consider the recall of the inmate's commitment.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 1170(d), 1170(e), 3043 through 3043.3 and 5054, Penal Code.

HISTORY:

1. Renumbering of former section 3076.3 to section 3076.5, including amendment of section and Note, filed 7-7-2011 as an emergency pursuant to Penal Code section 5058.3(a)(2); operative 7-7-2011 (Register 2011, No. 27). Pursuant to Penal Code section 5058.3(c), a Certificate of Compliance must be transmitted to OAL by 12-14-2011 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 7-7-2011 order, including amendment of section, transmitted to OAL 12-5-2011 and filed 1-19-2012 (Register 2012, No. 3).
3. Amendment of section and Note filed 1-3-2017; operative 1-3-2017 pursuant to Government Code section 11343.4(b)(3) (Register 2017, No. 1).

Article 6.7. Transfer of Inmate Assessment Responsibility

3077. County Assessment Program.

The California Department of Corrections and Rehabilitation (CDCR), pursuant to the provisions in sections 3375 through 3379, provides upon reception, an assessment and classification process to each person committed to the custody of the CDCR. Exception to this are Senate Bill (SB) 618 Participants, as defined in section 3000, who will be participating in a SB 618 Program, as defined in section 3000. Pursuant to the authority and process as described in this section, SB 618 Participants, prior to reception by the CDCR, shall be assessed by the county in which the offender is adjudged to have committed his or her crime.

(a) Assessment transfer authority. Pursuant to Penal Code (PC) section 1203.8, the CDCR is authorized to enter into an agreement with up to three counties in the State of California to carry out the assessment of nonviolent felony offenders and to develop a multi-agency plan (MAP).

(1) The MAP shall be developed at the participating county and subject to the approval of the CDCR, will be the general plan and agreement permitting the transfer of the assessment responsibility to the county. The MAP shall be developed by and have the concurrence of the following local county representatives or their designees, which shall include:

(A) The presiding judge.

(B) The chief probation officer.

(C) The district attorney.

(D) The county defense agency.

(E) The local custodial agency (e.g. sheriff).

(2) The MAP shall be submitted to the Board of Supervisors for approval.

(b) Inmate eligibility. An eligible offender may voluntarily participate in a SB 618 Program. To be eligible, the offender must meet the following criteria:

(1) Is convicted in the current case of a non-violent felony.

(2) Must be in custody to participate with no convictions under PC section 667.5(c) except as provided in subsection 3077(d)(1).

(3) Is a legal resident of the participating county at the time of his or her conviction (county of last legal residence).

(4) Is sentenced to a state prison for a period of 7 and 72 months with time to serve remaining to permit commencement and completion of programming of no more than 36 months or less than 4 months.

(5) Is able to live independently in the General Population (GP) of the participating institution independent of housing designation.

(6) Has a classification score below 52 points.

(c) Exclusionary criteria. An offender is excluded from participating in the SB 618 Program if he or she:

(1) Is a documented and validated STG member or associate.

(2) Has a prior conviction where the offender's victim(s) suffered death, disability, or serious injury.

(3) Has any history of sex or arson offenses subject to registration pursuant to PC sections 290 and 457.1.

(4) Has a United States Immigration and Customs Enforcement hold from countries without immigration treaties.

(5) Possesses outstanding or active felony holds from other jurisdictions.

(6) Qualifies for participation in a drug treatment program as defined in PC section 1210(b).

(7) Repeat offenders with a new sentence and who are offered a probationary sentence are not automatically excluded from consideration for participation in the SB 618 Program upon approval of the court.

(d) Discretionary factors. The following are discretionary factors that will be taken into consideration when determining on a case-by-case basis, SB 618 Program eligibility:

(1) Prior convictions for PC section 667.5(c). Where a defendant has been out of custody for no less than five years and has committed no other violent felony as defined under Penal Code section 667.5(c), prior convictions for violent felonies under Penal Code section 667.5(c) that do not involve death, great bodily injury or permanent disability will be screened for SB 618 eligibility on a case-by-case basis.

(2) Repeat offenders as described in 3077(d)(1) with a new offense who pick up a new prison term are not automatically excluded from consideration for participation in the SB 618 Program upon recommendation of the court with concurrence of CDCR.

(3) Parole violators with a new term, who before parole were SB 618 Participants, are automatically excluded from consideration for participation in the SB 618 Program.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 667.5(c), 1203.8 and 5054, Penal Code.

HISTORY:

1. New article 6.7 (sections 3077–3077.4) and section filed 2-5-2009 as an emergency; operative 2-5-2009 (Register 2009, No. 6). This filing contains a certification that the operational needs of the Department required filing of these regulations on an emergency basis and were deemed an emergency pursuant to Penal Code section 5058.3. A Certificate of Compliance must be transmitted to OAL by 7-15-2009 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 2-5-2009 order transmitted to OAL 6-25-2009 and filed 7-28-2009 (Register 2009, No. 31).
3. Amendment of subsection (c)(1) filed 10-17-2014; operative 10-17-2014 pursuant to Government Code section 11343.4(b)(3) (Register 2014, No. 42).

3077.1. Senate Bill 618 Program Participant Determination, Assessment, and Processing.

(a) When an offender is arrested and charges filed, the participating county district attorney (DA) will conduct preliminary screening for Senate Bill (SB) 618 Program eligibility utilizing the criteria provided in subsections 3077(b), (c) and (d). If the offender is identified as a possible SB 618 Participant, as defined in section 3000, the DA, defense attorney, and court shall affirm eligibility for the SB 618 Program, as defined in section 3000. If eligibility for participation is approved by the court, the offender will be petitioned to voluntarily participate in the SB 618 Program. If the offender agrees, the court will refer the case to county probation for pre-sentence investigation, multidisciplinary assessment, and the development of a Life Plan, as described in subsection 3077.1(b). Within 3 working days of the court referral, the offender will be transported to a predetermined county site for assessment by a Multi-Disciplinary Team (MDT).

(1) The MDT shall include the following:

(A) County Probation Officer.

(B) Community Case Manager (CCM) who will assist the SB 618 Participant in the community to which he/she is released and will help to develop a community reentry plan with the SB 618 Participant, his/her family, treatment and social service providers, and community support persons.

(C) Correctional Counselor (CC) I. The CCI shall make appropriate placement recommendations to a primary California Department of Corrections and Rehabilitation (CDCR) institution/facility and an alternate CDCR institution/facility. The Participant's Life Plan and available Substance Abuse Treatment programs, and Academic and Career Technical Education programs to advance the Participant's Life Plan, shall be used in consideration of the institution/facility recommendation.

(D) Prison Case Manager (PCM). The PCM shall be a licensed Clinical Social Worker, or other professional social work classification such as a Bachelor or Master's degree in Social Work. The PCM will work with the SB 618 Participant from time of assessment at the county facility to parole release. The PCM is a member of the CDCR institution's Multidisciplinary Team.

(2) The MDT may also include the following:

(A) An education specialist who is a subject matter expert on educational and Career Technical Education programs assessment, testing and programs.

(B) A licensed mental health clinician who is a subject matter specialist on mental health and substance abuse screenings, assessments and treatments.

(C) Medical staff, which will include but not be limited to, doctors, nurse practitioners, nurses, dentists, optometrists, and medical technical assistants. Medical staff may perform medical assessments pursuant to the provisions of section 3077.2.

(b) The Life Plan. The SB 618 Participant's Life Plan will be a plan based on the assessed needs of the offender which shall outline the inmate's specific programming needs and act as a guide for the SB 618 Participant from sentence and incarceration through release on supervised parole. The Life Plan, which may be referenced differently at each participating county (e.g. Case Plan, Participant Plan, etc.), shall be developed by and have the concurrence of the participating county's MDT.

(1) The Life Plan shall:

(A) Include, but not be limited to, the SB 618 Participant's court recommended behavioral health treatment, education literacy, and Career Technical Education program needs.

(B) Include a recommendation for completion while in state prison, all programs to address those needs identified in the assessment.

(2) The CDCR, to the extent feasible, shall provide to the SB 618 Participant, all programs pursuant to the Life Plan recommendations.

(c) Within 23 days of the court referral, the following will occur:

(1) The SB 618 Participant's Life Plan, as described in subsection 3077.1(b), shall be developed.

(2) The county probation officer will include the Life Plan with the pre-sentence report and return it to the court.

(d) Within 28 working days post conviction, the court will affirm the Life Plan recommendations and sentence the Participant to state prison.

(e) Within 14 working days after sentencing, the SB 618 Participant shall be transported to the appropriate CDCR institution for placement.

(f) All SB 618 Participants in substance abuse programs will be subject to random drug testing pursuant to the provisions of section 3290.

(g) Upon the SB 618 Participant's arrival at the institution's reception center (RC), the SB 618 RC CCI will review the SB 618 Participant's Life Plan, complete the casework and recommend endorsement for placement into the General Population. The case will be presented to a Classification Staff Representative for endorsement with the SB 618 Participant in RC status.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 667.5(c), 1203.8 and 5054, Penal Code.

HISTORY:

1. New section filed 2-5-2009 as an emergency; operative 2-5-2009 (Register 2009, No. 6). This filing contains a certification that the operational needs of the Department required filing of these regulations on an emergency basis and were deemed an emergency pursuant to Penal Code section 5058.3. A Certificate of Compliance must be transmitted to OAL by 7-15-2009 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 2-5-2009 order, including amendment of subsections (a)(1)(C) and (d), transmitted to OAL 6-25-2009 and filed 7-28-2009 (Register 2009, No. 31).
3. Amendment of subsections (a)(1)(C), (a)(2)(A) and (b)(1)(A) filed 10-29-2013 as an emergency; operative 10-29-2013 (Register 2013, No. 44). A Certificate of Compliance must be transmitted to OAL by 4-7-2014 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 10-29-2013 order transmitted to OAL 4-4-2014 and filed 5-14-2014 (Register 2014, No. 20).

3077.2. Senate Bill 618 Participant Medical, Dental, and Mental Health Assessments.

(a) For each county participating in the Senate Bill (SB) 618 Program, as defined in section 3000, and pursuant to California Department of Corrections and Rehabilitation (CDCR) and Division of Correctional Health Care Services medical, dental, and mental health court or Receiver ordered requirements, regulations, policies and procedures, the following assessments may be performed at an appropriate county facility for each SB 618 Participant, as defined in section 3000:

(1) Medical assessments. As permitted by the Medical Care Receiver, all applicable medical tests and assessments, including tuberculosis and other tests as necessary relating to communicable diseases and other medical conditions, may be performed by one or more of the following:

(A) CDCR medical staff.

(B) County medical staff.

(C) County contract medical staff.

(2) Dental screening, as permitted by the court, may be performed by one or more of the following:

(A) CDCR dental staff.

(B) County dental staff.

(C) County contract dental staff.

(3) Dental training. The CDCR Dental Quality Management Assessment Team staff or designee shall schedule and provide any necessary training for county dental staff or county contract dental staff on-site at the appropriate county correctional facility. Any necessary materials or supplies, as needed, shall also be provided to county dental staff or county contract dental staff.

(4) Mental health evaluations, as permitted by the court, may be performed by one or more of the following:

(A) CDCR mental health staff.

(B) County mental health staff.

(C) County contract mental health staff.

(b) After the arrival of the SB 618 Participant at the appropriate CDCR institution's reception center, CDCR medical staff shall:

(1) Complete as necessary, the medical history and physical exam.

(2) Complete all required medical, dental, and mental health assessments within mandatory time frames.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 667.5(c), 1203.8 and 5054, Penal Code; Title 15, CCR, Section 3350(b)(1); Title 15, CCR, Article 8, Medical and Dental Services; Title 15, CCR, Article 9, Mental Health Services; *Coleman* v. *Schwarzenegger* (No. S90-0520 LKK JFM P) U.S. District Court, Eastern District of California; *Plata* v. *Schwarzenegger* (No. C01-1351 TEH), U.S. District Court, Northern District of California; and Settlement Agreement, *Perez* v. *Tilton, et al.,* Case No. C05-5241 JSW, U.S. District Court, Northern District of California.

HISTORY:

1. New section filed 2-5-2009 as an emergency; operative 2-5-2009 (Register 2009, No. 6). This filing contains a certification that the operational needs of the Department required filing of these regulations on an emergency basis and were deemed an emergency pursuant to Penal Code section 5058.3. A Certificate of Compliance must be transmitted to OAL by 7-15-2009 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 2-5-2009 order, including amendment of Note, transmitted to OAL 6-25-2009 and filed 7-28-2009 (Register 2009, No. 31).

3077.3. Senate Bill 618 Participant Institutional Programming.

(a) The Senate Bill (SB) 618 Participant, as defined in section 3000, shall be delivered to a Departmental RC as arranged between the respective county Sheriff's personnel and CDCR's Transportation Unit. The RC shall expedite the RC processing of the SB 618 Participant and present the Participant's case to the Classification Staff Representative (CSR) within 30 days of arrival at the RC. The CSR shall endorse the case for placement at an appropriate institution/facility in consideration of the SB 618 Participant's Life Plan. The Departmental Transportation Unit shall expedite movement of SB 618 Participants to the endorsed institution/facility utilizing existing resources when possible. Within 14 days from the time the Senate Bill (SB) 618 Participant, as defined in section 3000, arrives at the endorsed institution, the SB 618 Participant shall be seen by the Initial Classification Committee to ensure that the SB 618 Participant is assigned to appropriate programming according to his or her Life Plan as described in subsection 3077.1(b).

(b) Upon completion of the Initial Classification Committee, the Inmate Assignment Office shall assign the SB 618 Participant into assignments that correspond with his or her Life Plan.

(1) If there are no vacancies available in appropriate work/training assignments, the SB 618 Participant shall be placed at the top of the waiting list for assignment. SB 618 Participants having the earliest release date shall be given priority.

(2) A Classification Committee action shall be required to place SB 618 Participants onto a waiting list or remove them from a waiting list.

(c) A Classification Committee shall review the SB 618 Participant's progress and case factors at least once a year.

(d) The Prison Case Manager (PCM), as described in subsection 3077.1(a)(1)(D), shall:

(1) Monitor, track, record, and evaluate the SB 618 Participant's participation and completion in the assigned programs.

(2) Attend the SB 618 Advisory Committee meetings to report program status and to make any recommendations for changes in the SB 618 Participant's Life Plan, if appropriate.

(3) Assist the SB 618 Participant in meeting their Life Plan needs and goals.

(e) Six months prior to release, the PCM, the SB 618 Participant, parole representative, and the CCM will meet and revise the Life Plan with an emphasis on the community reentry plan for housing, transportation, and immediate enrollment in community support programs which include, but are not limited to, substance abuse and mental health services, work readiness training and placement.

(f) A SB 618 Participant who no longer wishes to participate in the SB 618 Program or is no longer eligible for retention at the SB 618 programming institutions, will be seen by an SB 618 Advisory Group in the institution or while on parole in the community. Reasons for being determined ineligible while in the program may include, but are not limited to, rule violations in prison with a guilty finding, archive information which if known prior to entry into the program, such as past violence, would have precluded the SB 618 Participant from the program, not following program requirements, and parole violations subsequent to parole. The respective Advisory Group will make a determination regarding the SB 618 Participant's continued participation in the SB 618 Program.

(1) The Advisory Group at the institution shall include:

(A) Associate Warden or designee.

(B) Classification representative or designee.

(C) PCM Coordinator or designee.

(D) SB 618 Participant's assigned PCM or designee.

(E) Division of Community Partnership (DCP) analyst or designee.

(2) The Advisory Group in the parole community shall include:

(A) SB 618 Participant.

(B) SB 618 Participant's assigned:

1. Parole Agent or designee.

2. Community Case Manager or designee.

(C) DCP analyst or designee.

(3) The respective Advisory Group's findings shall be documented on a CDC Form 128-B, (4/74) General Chrono, as described in section 3000 under General Chrono, with a copy placed in the SB 618 Participant's Central File.

(4) An SB 618 Participant who is determined to no longer be eligible for the SB 618 Program, may appeal the Advisory Group decision by utilizing the inmate appeal process as provided in the California Code of Regulations, Title 15, Chapter 1, Article 8, sections 3084 through 3085.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 667.5(c), 1203.8 and 5054, Penal Code.

HISTORY:

1. New section filed 2-5-2009 as an emergency; operative 2-5-2009 (Register 2009, No. 6). This filing contains a certification that the operational needs of the Department required filing of these regulations on an emergency basis and were deemed an emergency pursuant to Penal Code section 5058.3. A Certificate of Compliance must be transmitted to OAL by 7-15-2009 or emergency language will be repealed by operation of law on the following day.

2. Certificate of Compliance as to 2-5-2009 order, including amendment of subsections (a) and (c), transmitted to OAL 6-25-2009 and filed 7-28-2009 (Register 2009, No. 31).

3077.4. Senate Bill 618 Participant Community Services.

(a) To meet the objective of providing a state and local response that will support and sustain the Senate Bill (SB) 618 Participant, as defined in section 3000, with his or her rehabilitative efforts, community services, which may be subject to available state and local funding, may be made available to the SB 618 Participant.

(b) The community services which are designed to maintain the SB 618 Participant through discharge from parole or 18 months from release from parole, whichever is the longest period of time, may include, but are not limited to:

(1) Transitional or step-down housing.

(2) Occupational development and job placement.

(3) Outpatient mental health services.

(4) Substance abuse treatment services.

(5) Education.

(6) Life skills counseling.

(7) Restitution and community services.

(8) Case management.

(9) Intermediate sanctions for technical violations of conditions of parole.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 1203.8 and 5054, Penal Code.

HISTORY:

1. New section filed 2-5-2009 as an emergency; operative 2-5-2009 (Register 2009, No. 6). This filing contains a certification that the operational needs of the Department required filing of these regulations on an emergency basis and were deemed an emergency pursuant to Penal Code section 5058.3. A Certificate of Compliance must be transmitted to OAL by 7-15-2009 or emergency language will be repealed by operation of law on the following day.

2. Certificate of Compliance as to 2-5-2009 order transmitted to OAL 6-25-2009 and filed 7-28-2009 (Register 2009, No. 31).

Article 6.8. Alternative Custody Program

3078. Alternative Custody Program Definitions.

For the purposes of the ACP, the following definitions shall apply:

(a) Alternative Custody Program (ACP) Case Manager means a designated Division of Adult Parole Operations (DAPO) employee who is assigned to supervise those persons released to ACP while in the community.

(b) ACP Program Manager means a department employee who is responsible for the overall coordination of the ACP and the ACP Participants within the community.

(c) Residential Home means a structure in an area that is zoned for residential habitation, and can be located and identified by a street number and street name.

(d) Transitional Care Facility means an approved facility located in a structure in an area that is zoned for residential habitation, and can be located and identified by a street number and street name and which assists in the transition from a custody or treatment environment to an independent living environment.

(e) Residential Drug or Treatment Program means an approved program located in a structure in an area that is zoned for residential habitation, that can be located and identified by a street number and street name, and which provides substance abuse or other treatment.

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

HISTORY:

1. New article 6.8 (sections 3078–3078.6) and section filed 9-27-2011 as an emergency; operative 9-27-2011 (Register 2011, No. 39). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 3-5-2012 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 9-27-2011 order transmitted to OAL 2-3-2012; Certificate of Compliance withdrawn 3-19-2012 (Register 2012, No. 12).
3. New article 6.8 (sections 3078–3078.6) and section refiled 3-19-2012 as an emergency; operative 3-19-2012 (Register 2012, No. 12). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 6-18-2012 or emergency language will be repealed by operation of law on the following day.
4. Repealer of article 6.8 (sections 3078–3078.6) and section by operation of Government Code section 11346.1(g) (Register 2012, No. 28).
5. New section filed 9-13-2012 as an emergency; operative 9-13-2012 (Register 2012, No. 37). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 2-20-2012 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 9-13-2012 order transmitted to OAL 1-11-2013 and filed 2-25-2013 (Register 2013, No. 9).

3078.1. Alternative Custody Program General Policy.

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

HISTORY:

1. New section filed 9-27-2011 as an emergency; operative 9-27-2011 (Register 2011, No. 39). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 3-5-2012 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 9-27-2011 order transmitted to OAL 2-3-2012; Certificate of Compliance withdrawn 3-19-2012 (Register 2012, No. 12).
3. New section refiled 3-19-2012 as an emergency; operative 3-19-2012 (Register 2012, No. 12). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 6-18-2012 or emergency language will be repealed by operation of law on the following day.
4. Repealed by operation of Government Code section 11346.1(g) (Register 2012, No. 28).
5. New section filed 9-13-2012 as an emergency; operative 9-13-2012 (Register 2012, No. 37). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 2-20-2012 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 9-13-2012 order transmitted to OAL 1-11-2013 and filed 2-25-2013 (Register 2013, No. 9).
7. Amendment of section and Note filed 3-29-2016 as an emergency; operative 3-29-2016 (Register 2016, No. 14). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 9-6-2016 or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 3-29-2016 order transmitted to OAL 9-6-2016 and filed 10-11-2016 (Register 2016, No. 42).

3078.2. Alternative Custody Program Eligibility Criteria.

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

(b) The inmate shall have no more than 12 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; and *Sassman* v. *Brown* (E.D. Cal. 2015) 99 F.Supp.3d 1223.

HISTORY:

1. New section filed 9-27-2011 as an emergency; operative 9-27-2011 (Register 2011, No. 39). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 3-5-2012 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 9-27-2011 order transmitted to OAL 2-3-2012; Certificate of Compliance withdrawn 3-19-2012 (Register 2012, No. 12).
3. New section refiled 3-19-2012 as an emergency; operative 3-19-2012 (Register 2012, No. 12). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 6-18-2012 or emergency language will be repealed by operation of law on the following day.
4. Repealed by operation of Government Code section 11346.1(g) (Register 2012, No. 28).
5. New section filed 9-13-2012 as an emergency; operative 9-13-2012 (Register 2012, No. 37). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 2-20-2012 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 9-13-2012 order transmitted to OAL 1-11-2013 and filed 2-25-2013 (Register 2013, No. 9).
7. Amendment of subsections (a)–(b) and amendment of Note filed 3-29-2016 as an emergency; operative 3-29-2016 (Register 2016, No. 14). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 9-6-2016 or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 3-29-2016 order transmitted to OAL 9-6-2016 and filed 10-11-2016 (Register 2016, No. 42).

3078.3. Alternative Custody Program Exclusionary Criteria.

(a) Mandatory 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) 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 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 STG-I members or associates, as defined in subsection 3378.1(c). Validated STG dropouts are not excluded from ACP.

(b) Additional exclusionary criteria shall be reviewed on a case-by-case basis, including but not limited to:

(1) The inmate has not satisfactorily complied with rules and regulations while in custody or on parole.

(2) Current or prior child abuse conviction(s), or conviction(s) where the offense was related to abuse or neglect of a child.

(3) Current or prior conviction(s) for stalking.

(4) Prior ACP participation that resulted in a return to an institution.

(5) Upon review of all case factors, no appropriate 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.

HISTORY:

1. New section filed 9-27-2011 as an emergency; operative 9-27-2011 (Register 2011, No. 39). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 3-5-2012 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 9-27-2011 order transmitted to OAL 2-3-2012; Certificate of Compliance withdrawn 3-19-2012 (Register 2012, No. 12).
3. New section refiled 3-19-2012 as an emergency; operative 3-19-2012 (Register 2012, No. 12). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 6-18-2012 or emergency language will be repealed by operation of law on the following day.
4. Repealed by operation of Government Code section 11346.1(g) (Register 2012, No. 28).
5. New section filed 9-13-2012 as an emergency; operative 9-13-2012 (Register 2012, No. 37). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 2-20-2012 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 9-13-2012 order transmitted to OAL 1-11-2013 and filed 2-25-2013 (Register 2013, No. 9).
7. Amendment of subsections (a), (a)(2)–(3) and (a)(13), repealer of subsections (a)(13)–(16), repealer and new subsection (b)(1), repealer of subsection (b)(2), subsection renumbering, amendment of newly designated subsections (b)(2)–(5) and new subsections (b)(6)–(c) filed 3-29-2016 as an emergency; operative 3-29-2016 (Register 2016, No. 14). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 9-6-2016 or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 3-29-2016 order transmitted to OAL 9-6-2016 and filed 10-11-2016 (Register 2016, No. 42).

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 (03/16), Alternative Custody Program (ACP) Application and Voluntary Agreement, which is incorporated by reference.

(2) Upon receipt of a CDCR Form 2234, the 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) Preliminary screening for ACP eligibility shall be completed by the Correctional Counselor utilizing the criteria provided in section 3078.2 on a CDCR Form 2235 (03/16), 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) 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, an Individualized Treatment and Rehabilitation Plan (ITRP) shall be 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 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:

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.

HISTORY:

1. New section filed 9-27-2011 as an emergency; operative 9-27-2011 (Register 2011, No. 39). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 3-5-2012 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 9-27-2011 order transmitted to OAL 2-3-2012; Certificate of Compliance withdrawn 3-19-2012 (Register 2012, No. 12).
3. New section refiled 3-19-2012 as an emergency, including amendment of subsection (a)(4); operative 3-19-2012 (Register 2012, No. 12). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 6-18-2012 or emergency language will be repealed by operation of law on the following day.
4. Repealed by operation of Government Code section 11346.1(g) (Register 2012, No. 28).
5. New section filed 9-13-2012 as an emergency; operative 9-13-2012 (Register 2012, No. 37). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 2-20-2012 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 9-13-2012 order transmitted to OAL 1-11-2013 and filed 2-25-2013 (Register 2013, No. 9).
7. Amendment of subsection (b)(1)(G) filed 10-29-2013 as an emergency; operative 10-29-2013 (Register 2013, No. 44). A Certificate of Compliance must be transmitted to OAL by 4-7-2014 or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 10-29-2013 order transmitted to OAL 4-4-2014 and filed 5-14-2014 (Register 2014, No. 20).
9. Amendment of subsections (a)(1)–(2), new subsection (a)(3), subsection renumbering, new subsection (a)(5), amendment of subsections (b)(1) and (b)(2), repealer of subsections (b)(2)(A)–(B), amendment of subsection (b)(3) and new subsections (d)–(e) filed 3-29-2016 as an emergency; operative 3-29-2016 (Register 2016, No. 14). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 9-6-2016 or emergency language will be repealed by operation of law on the following day.
10. Certificate of Compliance as to 3-29-2016 order transmitted to OAL 9-6-2016 and filed 10-11-2016 (Register 2016, No. 42).

3078.5. Alternative Custody Program Participant Case Management and Supervision.

(a) Each Alternative Custody Program (ACP) Participant shall be assigned to the supervision of a designated Division of Adult Parole Operations (DAPO) staff who shall function as the case manager. The designated DAPO staff shall:

(1) Monitor, track, record, evaluate, and provide guidance to ACP Participants and their progress in meeting their Individualized Treatment and Rehabilitation Plan (ITRP) goals and objectives.

(2) Act as a liaison with the ACP Program Manager to ensure tracking and administrative processes are completed including but not limited to:

(A) Case Records, including such things as providing proposed address during the release process, reviewing and completing forms and documents regarding residence verification and reporting instructions, etc.

(B) Disciplinary process, including such things as obtaining copies of police reports, providing information regarding witnesses and witness testimony, curfew violation reports, positive anti-narcotic test reports, etc.

(C) Return to institution process.

(D) Transitioning from ACP to parole or post-release community supervision.

(b) Level of supervision will be determined by DAPO staff based on prior criminal history, case factors, risk factors and participant's current behavior. Supervision includes but is not limited to:

(1) Electronic monitoring, consistent with section 3540.

(2) Anti-narcotic testing, if applicable.

(3) Face-to-Face Contacts, as defined in section 3000.

(c) The participant and their residence shall be subject to search and seizure by a peace officer at any time of the day or night, with or without a warrant and with or without cause, for the purpose of verifying compliance with the requirements of the ACP.

(d) Subsequent residential and/or program changes after initial ACP placement shall require coordination between designated DAPO staff, involved relevant staff from the participant's program,

if applicable, and the ACP Program Manager. Any such changes that involve movement into or between any combination of Transitional Care Facilities or Residential Drug or Treatment Programs, as defined in section 3078(d) and (e), must be coordinated between designated DAPO staff and the ACP Program Manager.

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

HISTORY:

1. New section filed 9-27-2011 as an emergency; operative 9-27-2011 (Register 2011, No. 39). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 3-5-2012 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 9-27-2011 order transmitted to OAL 2-3-2012; Certificate of Compliance withdrawn 3-19-2012 (Register 2012, No. 12).
3. New section refiled 3-19-2012 as an emergency; operative 3-19-2012 (Register 2012, No. 12). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 6-18-2012 or emergency language will be repealed by operation of law on the following day.
4. Repealed by operation of Government Code section 11346.1(g) (Register 2012, No. 28).
5. New section filed 9-13-2012 as an emergency; operative 9-13-2012 (Register 2012, No. 37). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 2-20-2012 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 9-13-2012 order transmitted to OAL 1-11-2013 and filed 2-25-2013 (Register 2013, No. 9).

3078.6. Alternative Custody Program Return to Institution.

(a) An Alternative Custody Program (ACP) Participant may be returned to state prison to serve the remainder of their original sentence, with or without cause, pursuant to the provisions of subsections (b)–(b)(7) below.

(b) Division of Adult Parole Operations staff shall conduct a Case Conference Review, as defined in section 3000, regarding whether a participant should be returned to prison. Reasons for return to prison may include, but are not limited to:

(1) Reasonable suspicion that the participant is not complying with the terms or requirements of the program exists.

(2) The participant for any other reason no longer meets the established criteria pursuant to section 3078.2.

(3) The electronic monitoring device is unable for any reason to properly perform its function at the designated place of detention.

(4) The participant's needs can no longer be met by existing community programs.

(5) Local law enforcement has identified the participant as a suspect in new criminal activity that if charged and found guilty would result in a misdemeanor and/or felony conviction.

(6) A felony hold, warrant or detainer is received by the department after an inmate is placed in the ACP.

(7) The participant requests voluntary return.

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

HISTORY:

1. New section filed 9-27-2011 as an emergency; operative 9-27-2011 (Register 2011, No. 39). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 3-5-2012 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 3-5-2012 order transmitted to OAL 2-3-2012; Certificate of Compliance withdrawn 3-19-2012 (Register 2012, No. 12).
3. New section refiled 3-19-2012 as an emergency; operative 3-19-2012 (Register 2012, No. 12). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 6-18-2012 or emergency language will be repealed by operation of law on the following day.
4. Repealed by operation of Government Code section 11346.1(g) (Register 2012, No. 28).
5. New section filed 9-13-2012 as an emergency; operative 9-13-2012 (Register 2012, No. 37). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 2-20-2012 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 9-13-2012 order transmitted to OAL 1-11-2013 and filed 2-25-2013 (Register 2013, No. 9).

Article 6.9. Postrelease Community Supervision

3079. Postrelease Community Supervision.

(a) Pursuant to the provisions of the Postrelease Community Supervision Act of 2011, enacted in Penal Code section 3450, all offenders released from a CDCR facility on or after October 1, 2011, may be eligible for Postrelease Community Supervision (PRCS).

(b) Inmates released to PRCS are discharged from the department's custody and placed under the jurisdiction of a county agency.

NOTE: Authority cited: Sections 5058 and 5058.3, Penal Code. Reference: Sections 3450, 3451 and 5054, Penal Code.

HISTORY:

1. New article 6.9 (sections 3079–3079.1) and section filed 6-26-2012 as an emergency; operative 6-26-2012 (Register 2012, No. 26). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 12-3-2012 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 6-26-2012 order transmitted to OAL 11-5-2012 and filed 12-20-2012 (Register 2012, No. 51).

3079.1. Postrelease Community Supervision Exclusionary Criteria.

The following shall make an inmate ineligible for Postrelease Community Supervision:

(a) An inmate serving a current term for a serious felony, as described in Penal Code (PC) Section 1192.7(c) or 1192.8.

(b) An inmate serving a current term for a violent felony described in PC section 667.5(c).

(c) An inmate serving a life term.

(d) An inmate who is determined by the California Department of Corrections and Rehabilitation to be a High Risk Sex Offender, as defined in section 3582.

(e) Any inmate who is determined to require a condition of parole as a Mentally Disordered Offender, pursuant to PC section 2962.

(f) The inmate is subject to a period of parole exceeding three years at the time they committed their current offense, pursuant to PC section 3000.

NOTE: Authority cited: Sections 5058 and 5058.3, Penal Code. Reference: Sections 3451 and 5054, Penal Code.

HISTORY:

1. New section filed 6-26-2012 as an emergency; operative 6-26-2012 (Register 2012, No. 26). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 12-3-2012 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 6-26-2012 order transmitted to OAL 11-5-2012 and filed 12-20-2012 (Register 2012, No. 51).

Article 7. Furloughs and Temporary Leave

3080. Administration.

Institution and parole division staff will administer inmate work and educational furloughs and temporary community release programs in a prudent manner, and in keeping with the basic need for public protection.

Comment: Former DP-1701, policy, general.

3081. Compliance.

Inmates who are granted a furlough or temporary leave must comply with all departmental rules and regulations governing such programs; with any conditions for approval; and, with all applicable laws; and must meet eligibility requirements in accordance with departmental procedures and Sections 2690, 2691, 6250 et seq., 6263 of the Penal Code and Section 3306 of the Welfare and Institutions Code.

NOTE: Authority cited: section 5058, Penal Code. Reference: Sections 6250–6253 and 6260, Penal Code; and Section 3306, Welfare and Institutions Code.

HISTORY:

1. Amendment filed 3-2-83; effective thirtieth day thereafter (Register 83, No. 12).

3082. Temporary Leaves.

Temporary leaves will be granted only for inmates who meet the criteria for such leaves, as prescribed in guidelines established by the Secretary, for the following reasons:

(a) Family Emergency. Emergency leaves will normally be considered only for attendance at services for deceased members of the inmate's immediate family, and for visits to critically ill members of the inmate's immediate family. Immediate family members are defined in section 3000.

(b) Prerelease Planning. Prerelease planning leaves may be considered for the purpose of employment interviews, making residential plans and for other reasons closely connected to release programs. A prerelease leave will not normally be granted earlier than 63 days before the inmate has an established or reasonably anticipated release date nor any earlier than is required to accomplish the purpose of a prerelease leave.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 2690 and 5054, Penal Code.

HISTORY:

1. Amendment filed 3-22-78; effective thirtieth day thereafter (Register 78, No. 12).
2. Amendment filed 8-22-79; effective thirtieth day thereafter (Register 79, No. 34).
3. Amendment of subsection (b) filed 9-24-81; effective thirtieth day thereafter (Register 81, No. 39).
4. Change without regulatory effect amending subsection (a) filed 12-2-2003 pursuant to section 100, title 1, California Code of Regulations (Register 2003, No. 49).
5. Change without regulatory effect amending first paragraph filed 3-11-2013 pursuant to section 100, title 1, California Code of Regulations (Register 2013, No. 11).

3083. Court Hearing on Inmate's Children.

Upon a court order, inmates will be released to the custody of the sheriff for appearance in court in actions concerning termination of parental rights of an inmate or other parental or marital rights.

HISTORY:

1. Editorial correction of printing error (Register 92, No. 5).

Article 8. Appeals

3084. Definitions.

For the purpose of Article 8, the following definitions shall apply:

(a) Appellant means an inmate or parolee who has submitted an appeal.

(b) General allegations means allegations that lack specificity or factual evidence to support them.

(c) Material adverse effect means a harm or injury that is measurable or demonstrable, or the reasonable likelihood of such harm or injury. In either case, the harm or injury must be due to any policy, decision, action, condition, or omission by the department or its staff.

(d) Modification order means an order by the institution, parole region, or third level Appeals Chief directing a previous decision to be modified.

(e) Remedy means a process or means to address an issue or correct a wrong.

(f) Reviewer means the individual with signature authority for the approval or disapproval of an appeal response at any level.

(g) Staff misconduct means staff behavior that violates or is contrary to law, regulation, policy, procedure, or an ethical or professional standard.

(h) Supporting documents means documents that are needed to substantiate allegations made in the appeal including, but not limited to, classification chronos, property inventory sheets, property receipts, disciplinary reports with supplements, incident reports, notifications of disallowed mail, trust account statements, memoranda or letters, medical records and written requests for interviews, items or services. Supporting documents do not include documents that simply restate the matter under appeal, argue its merits, or introduce new issues not identified in the present appeal form.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.

HISTORY:

1. New section filed 12-13-2010 as an emergency; operative 1-28-2011 (Register 2010, No. 51). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 7-7-2011 or emergency language will be repealed by operation of law on the following day. For prior history, see Register 91, No. 6.
2. Certificate of Compliance as to 12-13-2010 order transmitted to OAL 6-15-2011 and filed 7-28-2011 (Register 2011, No. 30).

3084.1. Right to Appeal.

The appeal process is intended to provide a remedy for inmates and parolees with identified grievances and to provide an administrative mechanism for review of departmental policies, decisions, actions, conditions, or omissions that have a material adverse effect on the welfare of inmates and parolees. All appeals shall be processed according to the provisions of Article 8, Appeals, unless exempted from its provisions pursuant to court order or superseded by law or other regulations.

(a) Any inmate or parolee under the department's jurisdiction may appeal any policy, decision, action, condition, or omission by the department or its staff that the inmate or parolee can demonstrate as having a material adverse effect upon his or her health, safety, or welfare.

(b) Unless otherwise stated in these regulations, all appeals are subject to a third level of review, as described in section 3084.7, before administrative remedies are deemed exhausted. All lower level reviews are subject to modification at the third level of review. Administrative remedies shall not be considered exhausted relative to any new issue, information, or person later named by the appellant that was not included in the originally submitted CDCR Form 602

(Rev. 08/09), Inmate/Parolee Appeal, which is incorporated by reference, and addressed through all required levels of administrative review up to and including the third level. In addition, a cancellation or rejection decision does not exhaust administrative remedies.

(c) Department staff shall ensure that inmates and parolees, including those who have difficulties communicating, are provided equal access to the appeals process and the timely assistance necessary to participate throughout the appeal process.

(d) No reprisal shall be taken against an inmate or parolee for filing an appeal. This shall not prohibit appeal restrictions against an inmate or parolee abusing the appeal process as defined in section 3084.4, nor shall it prohibit the pursuit of disciplinary sanctions for violation of department rules.

(e) The department shall ensure that its departmental appeal forms for appeal of decisions, actions, or policies within its jurisdiction are readily available to all inmates and parolees.

(f) An inmate or parolee has the right to file one appeal every 14 calendar days unless the appeal is accepted as an emergency appeal. The 14 calendar day period shall commence on the day following the appellant's last accepted appeal.

(g) An appellant shall adhere to appeal filing time constraints as defined in section 3084.8.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code; Civil Rights of Institutionalized Persons Act; Title 42 U.S.C. Section 1997 et seq., Public Law 96-247, 94 Stat. 349; Section 35.107, Title 28, Code of Federal Regulations; and *Wolff* v. *McDonnell* (1974) 418 U.S. 539, 558-560.

HISTORY:

1. New section filed 5-18-89 as an emergency; operative 5-18-89 (Register 89, No. 21). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 9-15-89. For prior history, see section 3003.
2. Certificate of Compliance as to 5-18-89 order including a clarifying change of subsection (b) transmitted to OAL 9-7-89 and filed 10-10-89 (Register 89, No. 41).
3. Amendment of subsection (a) filed 1-16-92; operative 2-17-92 (Register 92, No. 13).
4. Amendment of subsections (a) and (d), new subsection (e), and amendment of Note filed 12-23-96 as an emergency; operative 12-23-96 (Register 96, No. 52). Pursuant to Penal Code section 5058(e), a Certificate of Compliance must be transmitted to OAL by 6-2-97, or emergency language will be repealed by operation of law on the following day.
5. Amendment of subsections (a) and (d), new subsection (e), and amendment of Note refiled 5-29-97 as an emergency; operative 6-2-97 (Register 97, No. 22). A Certificate of Compliance must be transmitted to OAL by 9-30-97 or emergency language will be repealed by operation of law on the following day.
6. Editorial correction of History 5 (Register 97, No. 24).
7. Certificate of Compliance as to 5-29-97 order, including amendment of subsections (a) and (e), transmitted to OAL 9-25-97 and filed 11-7-97 (Register 97, No. 45).
8. Amendment of subsection (c) filed 9-13-2005; operative 9-13-2005 pursuant to Government Code section 11343.4 (Register 2005, No. 37).
9. Amendment of subsection (e) and amendment of Note filed 11-3-2006 as an emergency; operative 11-3-2006 (Register 2006, No. 44). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 4-12-2007 or emergency language will be repealed by operation of law on the following day.
10. Certificate of Compliance as to 11-3-2006 order transmitted to OAL 3-12-2007 and filed 4-19-2007 (Register 2007, No. 16).
11. Amendment of section and Note filed 12-13-2010 as an emergency; operative 1-28-2011 (Register 2010, No. 51). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 7-7-2011 or emergency language will be repealed by operation of law on the following day.
12. Certificate of Compliance as to 12-13-2010 order, including amendment of Note, transmitted to OAL 6-15-2011 and filed 7-28-2011 (Register 2011, No. 30).

3084.2. Appeal Preparation and Submittal.

(a) The appellant shall use a CDCR Form 602 (Rev. 08/09), Inmate/Parolee Appeal, to describe the specific issue under appeal and the relief requested. A CDCR Form 602-A (08/09), Inmate/Parolee Appeal Form Attachment, which is incorporated by reference, shall be used if additional space is needed to describe the issue under appeal or the relief requested.

(1) The inmate or parolee is limited to one issue or related set of issues per each Inmate/Parolee Appeal form submitted. The inmate or parolee shall not combine unrelated issues on a single appeal form for the purpose of circumventing appeal filing requirements. Filings of appeals combining unrelated issues shall be rejected and returned to the appellant by the appeals coordinator with an explanation that the issues are deemed unrelated and may only be submitted separately.

(2) The inmate or parolee is limited to the space provided on the Inmate/Parolee Appeal form and one Inmate/Parolee Appeal Form Attachment to describe the specific issue and action requested. The appeal content must be printed legibly in ink or typed on the lines provided on the appeal forms in no smaller than a 12-point font. There shall be only one line of text on each line provided on these forms.

(3) The inmate or parolee shall list all staff member(s) involved and shall describe their involvement in the issue. To assist in the identification of staff members, the inmate or parolee shall include the staff member's last name, first initial, title or position, if known, and the dates of the staff member's involvement in the issue under appeal. If the inmate or parolee does not have the requested identifying information about the staff member(s), he or she shall provide any other available information that would assist the appeals coordinator in making a reasonable attempt to identify the staff member(s) in question.

(4) The inmate or parolee shall state all facts known and available to him/her regarding the issue being appealed at the time of submitting the Inmate/Parolee Appeal form, and if needed, the Inmate/Parolee Appeal Form Attachment.

(b) The inmate or parolee shall submit the signed original appeal forms and supporting documents. If originals are not available, copies may be submitted with an explanation why the originals are not available. The appeals coordinator shall have the discretion to request that any submitted copy is verified by staff.

(1) Only supporting documents, as defined in subsection 3084(h), necessary to clarify the appeal shall be attached to the appeal. Attachments shall not raise new issues, but shall only serve to clarify the present appeal issue and action(s) requested as stated in Parts A and B of the Inmate/Parolee Appeal form. New issues raised in the supporting documents shall not be addressed and any decision rendered will pertain only to the present appeal issue and requested action(s).

(2) Inmates or parolees shall submit their appeal documents in a single mailing and shall not divide their appeal documents into separate mailings.

(3) Inmates or parolees shall not deface or attach dividers or tabs to their appeal forms.

(4) Inmates or parolees shall not contaminate or attach physical/organic objects or samples to their appeal documents. Examples of these objects or samples include, but are not limited to, food, clothing, razor blades, books, magazines, tape, string, hair, blood, and/or bodily fluids/excrement.

(c) First and second level appeals as described in section 3084.7 shall be submitted to the appeals coordinator at the institution or parole region for processing.

(d) If dissatisfied with the second level response, the appellant may submit the appeal for a third level review, as described in section 3084.7, provided that the time limits pursuant to section 3084.8 are met. The appellant shall mail the appeal and supporting documents to the third level Appeals Chief via the United States mail service utilizing his or her own funds, unless the appellant is indigent in which case the mailing of appeals to the third level of review shall be processed in accordance with indigent mail provisions pursuant to section 3138.

(e) If the appeal has been accepted and processed as an emergency appeal and the appellant wishes a third level review, the appellant must forward the appeal to the appeals coordinator who shall electronically transmit it to the third level Appeals Chief. The third level review shall be completed within five working days.

(f) An inmate or parolee or other person may assist another inmate or parolee with preparation of an appeal unless the act of providing such assistance would create an unmanageable situation including but not limited to: acting contrary to the principles set forth in sections 3163 and 3270, allowing one offender to exercise unlawful influence/assume control over another, require an offender to access unauthorized areas or areas which would require an escort, or cause avoidance or non-performance in assigned work and program activities. Inmates or parolees shall not give any form of compensation for receiving assistance or receive any form of compensation for assisting in the preparation of another's appeal. The giving or receiving of compensation is considered misconduct and is subject to disciplinary action.

(g) An inmate or parolee shall not submit an appeal on behalf of another person.

(h) Group appeal. If a group of inmates/parolees intend to appeal a policy, decision, action, condition or omission affecting all members of the group, one CDCR Form 602, Inmate/Parolee Appeal, shall be submitted describing the appeal issue(s) and action requested, accompanied by a CDCR Form 602-G (08/09), Inmate/Parolee Group Appeal, which is incorporated by reference, with the legible name, departmental identification number, assignment, housing, and dated signature of the inmate or parolee who prepared the appeal. Each page of the CDCR Form 602-G must contain the appeal issue, action requested, and a statement that all the undersigned agree with the appeal issue/action requested.

(1) The legible names of the participating inmates/parolees, departmental identification numbers, assignments, housing, and dated signatures shall be included in the space provided on the Inmate/Parolee Group Appeal form and no other signature page shall be accepted by the appeals coordinator.

(2) The inmate or parolee submitting the appeal shall be responsible for sharing the appeal response with the inmates or parolees who signed the appeal attachment.

(3) If the inmate or parolee submitting the appeal is transferred, released, discharged, or requests to withdraw from the group appeal, responses shall be directed to the next inmate or parolee listed on the appeal attachment who remains at the facility/region, and who shall be responsible for sharing the response with the other inmates or parolees identified on the appeal.

(4) An appeal shall not be accepted or processed as a group appeal if the matter under appeal requires a response to a specific set of facts (such as disciplinary and staff complaint appeals) that are not the same for all participants in the appeal. In such case, the group appeal shall be screened out and returned to the inmate or parolee submitting the appeal with directions to advise all those who signed the appeal attachment to submit individual appeals on their separate issues.

(5) Every inmate or parolee who signs a group appeal is ineligible to submit a separate appeal on the same issue.

(6) A group appeal counts toward each appellant's allowable number of appeals filed in a 14 calendar day period.

(i) Multiple appeals of the same issue. When multiple appeals are received from more than one inmate or parolee on an identical issue, each such appeal shall be individually processed. However, if other issues in addition or extraneous to the multiple appeal issue are contained in the submitted appeal, this particular complaint shall not be processed as a multiple appeal, but will be subject to processing as a separate, individual appeal.

(1) The original inmate or parolee, and as needed for clarification of issues, one or more of the other inmates or parolees, shall be interviewed.

(2) The appellant shall be provided with an appeal response. A statement shall be included in the response indicating that the appeal has been designated as one of multiple identical appeals for processing purposes and the same response is being distributed to each appellant.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 832.5(a) and 5054, Penal Code; Civil Rights of Institutionalized Persons Act; Title 42 U.S.C. Section 1997 et seq., Public Law 96-247, 94 Stat. 349; and Section 35.107, Title 28, Code of Federal Regulations.

HISTORY:

1. New section filed 5-18-89 as an emergency; operative 5-18-89 (Register 89, No. 21). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 9-15-89.
2. Certificate of Compliance as to 5-18-89 order transmitted to OAL 9-7-89 and filed 10-10-89 (Register 89, No. 41).
3. New subsection (g) filed 5-6-92 as an emergency; operative 5-6-92 (Register 92, No. 19). A Certificate of Compliance must be transmitted to OAL 9-3-92 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 5-6-92 order transmitted to OAL 8-31-92 and filed 10-7-92 (Register 92, No. 41).
5. Amendment of subsection (a) and Note filed 4-7-95 as an emergency pursuant to Penal Code section 5058; operative 4-7-95 (Register 95, No. 14). A Certificate of Compliance must be transmitted to OAL by 9-14-95 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 4-7-95 order transmitted to OAL 6-26-95 and filed 7-25-95 (Register 95, No. 30).
7. Amendment of subsections (a)(1), (a)(2), (c) and (f)(1) filed 12-23-96 as an emergency; operative 12-23-96 (Register 96, No. 52). Pursuant to Penal Code section 5058(e), a Certificate of Compliance must be transmitted to OAL by 6-2-97, or emergency language will be repealed by operation of law on the following day.
8. Amendment of subsections (a)(1), (a)(2), (c) and (f)(1) refiled 5-29-97 as an emergency; operative 6-2-97 (Register 97, No. 22). A Certificate of Compliance must be transmitted to OAL by 9-30-97 or emergency language will be repealed by operation of law on the following day.
9. Editorial correction of History 8 (Register 97, No. 24).
10. Certificate of Compliance as to 5-29-97 order, including amendment of subsection (c), transmitted to OAL 9-25-97 and filed 11-7-97 (Register 97, No. 45).
11. Amendment of section heading, repealer and new section and amendment of Note filed 12-13-2010 as an emergency; operative 1-28-2011 (Register 2010, No. 51). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 7-7-2011 or emergency language will be repealed by operation of law on the following day.
12. Certificate of Compliance as to 12-13-2010 order, including amendment of subsections (b), (e)–(f) and (h)(6), transmitted to OAL 6-15-2011 and filed 7-28-2011 (Register 2011, No. 30).

3084.3. Supporting Documents.

(a) An inmate or parolee shall obtain and attach all supporting documents, as described in section 3084(h), necessary for the clarification and/or resolution of his or her appeal issue prior to submitting the appeal to the appeals coordinator.

(b) The inmate or parolee shall not delay submitting an appeal within time limits established in section 3084.8 if unable to obtain supporting documents, but shall submit the appeal with all available supporting documents and in Part B of their CDCR Form 602 (Rev. 08/09), Inmate/Parolee Appeal, provide an explanation why any remaining supporting documents are not available. Time limits for filing an appeal are not stayed by failure to obtain supporting documentation and commence as set forth in subsection 3084.8(b).

(c) Failure to attach all necessary supporting documents may result in the appeal being rejected as specified in subsection 3084.6(b)(7). The appeals coordinator shall inform the inmate or parolee that the appeal is rejected because necessary supporting documents are missing. The appellant shall be allowed an additional 30 calendar days to secure any missing supporting documents and resubmit the appeal.

(d) The appeals coordinator may grant additional time extensions beyond the initial 30 calendar day extension if the inmate or parolee submits a reasonable explanation of why the supporting documents still are not available.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.

HISTORY:

1. New section filed 5-18-89 as an emergency; operative 5-18-89 (Register 89, No. 21). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 9-15-89.
2. Certificate of Compliance as to 5-18-89 order transmitted to OAL 9-7-89 and filed 10-10-89 (Register 89, No. 41).
3. Amendment of subsection (b) and new subsections (b)(1)–(2) filed 5-6-92 as an emergency; operative 5-6-92 (Register 92, No. 19). A Certificate of Compliance must be transmitted to OAL 9-3-92 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 5-6-92 order transmitted to OAL 8-31-92 and filed 10-7-92 (Register 92, No. 41).
5. Amendment of subsection (a) filed 12-23-96 as an emergency; operative 12-23-96 (Register 96, No. 52). Pursuant to Penal Code section 5058(e), a Certificate of Compliance must be transmitted to OAL by 6-2-97, or emergency language will be repealed by operation of law on the following day.
6. Amendment of subsection (a) refiled 5-29-97 as an emergency; operative 6-2-97 (Register 97, No. 22). A Certificate of Compliance must be transmitted to OAL by 9-30-97 or emergency language will be repealed by operation of law on the following day.
7. Editorial correction of History 6 (Register 97, No. 24).
8. Certificate of Compliance as to 5-29-97 order transmitted to OAL 9-25-97 and filed 11-7-97 (Register 97, No. 45).
9. Repealer and new section heading and section and amendment of Note filed 12-13-2010 as an emergency; operative 1-28-2011 (Register 2010, No. 51). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 7-7-2011 or emergency language will be repealed by operation of law on the following day.
10. Certificate of Compliance as to 12-13-2010 order, including amendment of subsection (b), transmitted to OAL 6-15-2011 and filed 7-28-2011 (Register 2011, No. 30).

3084.4. Appeal System Abuse.

(a) The following are deemed misuse or abuse of the appeals process and may lead to appeal restriction as described in subsection 3084.4(g).

(1) The submittal of more than one appeal for initial review within a 14 calendar day period is considered excessive, unless the inmate or parolee is submitting an emergency appeal.

(2) The repeated filing of appeals that have been cancelled pursuant to subsection 3084.6(c).

(3) The appeal submission contains information the appellant knows to be false or consists of a deliberate attempt at distorting the facts.

(4) The appeal contains threatening, grossly derogatory, slanderous or obscene statements and/or organic contamination is included in or makes up any part of the appeal package.

(5) The description of the problem and/or requested action deliberately exceeds the space provided on the 602 forms or the appeal is intentionally filed contrary to instructions.

(b) When an inmate or parolee submits appeals as described above in subsections 3084.4(a)(1)–(a)(5):

(1) The first appeal received shall be screened for routine processing.

(2) All subsequent non-emergency appeals submitted by that individual shall be screened and the appeals coordinator shall begin documenting any abuse as evidenced by the screening results.

(c) If an inmate or parolee persists in submitting excessive, demonstrably false, noncompliant or abusive appeals, as described in subsection 3084.4(a), he or she shall receive a warning letter from the appeals coordinator that will document the history and nature of appeal system abuse.

(d) If the abuse of process continues after the issuance of a warning letter, the appeals coordinator shall meet with the inmate or parolee in a timely manner before imposition of any restriction to provide instruction for the appropriate use of the appeals process and to rule out any unintended basis for non-compliance. If a face-to-face meeting is not possible, an agent acting on behalf of the appeals coordinator shall conduct the meeting.

(e) Excessive, demonstrably false, noncompliant or abusive appeals, as described in subsection 3084.4(a), submitted by an inmate or parolee after the issuance of a warning letter, pursuant to subsection 3084.4(c) above, shall be screened by the appeals coordinator to ensure they do not contain qualifying emergency issues.

(1) If the appeal contains emergency issues, as described in subsection 3084.9(a)(1), it shall be processed as an emergency appeal.

(2) If no such issue is determined to be present, the appeal shall be retained by the appeals coordinator pending placement of the appellant on appeal restriction by the third level Appeals Chief. The appellant shall be informed in writing why the appeal constitutes abuse of the appeal process and informed that appeal processing has been suspended pending determination of appeal restriction status.

(f) If the appeal abuse continues after the issuance of a warning letter and a face-to-face meeting, the request for placement on restriction shall be referred to the third level Appeals Chief for approval.

(g) Upon confirmation of continued abuse and verification that a face-to-face interview and warning letter have occurred, the third level Appeals Chief shall have the discretion to authorize preparation of a notice by the Appeals Coordinator restricting the inmate or parolee to one non-emergency appeal every 30 calendar days for a period of one year. Any subsequent violation of the appeal restriction shall result in an extension of the restriction for an additional one-year period upon approval by the third level Appeals Chief.

(h) If the third level Appeals Chief makes a decision not to place the inmate or parolee on appeal restriction, any appeal submitted by the inmate or parolee and retained pursuant to subsection 3084.4(e)(2) shall be returned to the inmate or parolee who may then resubmit a returned appeal if he or she desires to do so. Resubmitted

appeals are not exempt from the standard submittal requirements set forth in this Article, except that the appellant's original submittal date of the appeal may serve to satisfy filing time requirements.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 148.6(a), 832.5(c) and 5054, Penal Code.

HISTORY:

1. New section filed 5-18-89 as an emergency; operative 5-18-89 (Register 89, No. 21). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 9-15-89.
2. Certificate of Compliance as to 5-18-89 order including a clarifying change of subsections (a) and (b) transmitted to OAL 9-7-89 and filed 10-10-89 (Register 89, No. 41).
3. Amendment of subsections (a), (a)(1) and (a)(3), repealer and new subsection (a)(4), and amendment of subsections (b) and (d) filed 12-23-96 as an emergency; operative 12-23-96 (Register 96, No. 52). Pursuant to Penal Code section 5058(e), a Certificate of Compliance must be transmitted to OAL by 6-2-97, or emergency language will be repealed by operation of law on the following day.
4. Amendment of subsections (a), (a)(1) and (a)(3), repealer and new subsection (a)(4), and amendment of subsections (b) and (d) refiled 5-29-97 as an emergency; operative 6-2-97 (Register 97, No. 22). A Certificate of Compliance must be transmitted to OAL by 9-30-97 or emergency language will be repealed by operation of law on the following day.
5. Editorial correction of History 4 (Register 97, No. 24).
6. Certificate of Compliance as to 5-29-97 order, including amendment of subsection (d), transmitted to OAL 9-25-97 and filed 11-7-97 (Register 97, No. 45).
7. Repealer and new section and amendment of Note filed 12-13-2010 as an emergency; operative 1-28-2011 (Register 2010, No. 51). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 7-7-2011 or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 12-13-2010 order, including amendment of subsection (a)(3), transmitted to OAL 6-15-2011 and filed 7-28-2011 (Register 2011, No. 30).

3084.5. Screening and Managing Appeals.

(a) Each institution head and parole region administrator shall designate an appeals coordinator at a staff position level no less than a Correctional Counselor II or Parole Agent II.

(b) The appeals coordinator or a delegated staff member under the direct oversight of the coordinator shall screen all appeals prior to acceptance and assignment for review.

(1) When an appeal indicates the inmate or parolee has difficulty describing the problem in writing or has a primary language other than English, the appeals coordinator shall ensure that the inmate or parolee receives assistance in completing and/or clarifying the appeal.

(2) When an appeal is received as an emergency appeal that does not meet the criteria for an emergency appeal as defined in subsection 3084.9(a), the appellant shall be notified that the appeal does not meet the criteria for processing as an emergency appeal and has been either accepted for regular processing or is rejected for the specific reason(s) cited.

(3) When an appeal is not accepted, the inmate or parolee shall be notified of the specific reason(s) for the rejection or cancellation of the appeal and of the correction(s) needed for the rejected appeal to be accepted.

(4) When an appeal is received that describes staff behavior or activity in violation of a law, regulation, policy, or procedure or appears contrary to an ethical or professional standard that could be considered misconduct as defined in subsection 3084(g), whether such misconduct is specifically alleged or not, the matter shall be referred pursuant to subsection 3084.9(i)(1) and (i)(3), to determine whether it shall be:

(A) Processed as a routine appeal but not as a staff complaint.

(B) Processed as a staff complaint appeal inquiry.

(C) Referred to Internal Affairs for an investigation/inquiry.

(5) If an appeal classified as a staff complaint includes other non-related issue(s), the provisions of 3084.9(i)(2) shall apply.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 832.5, 832.7, 832.8, 5054 and 5058.4(a), Penal Code; Americans With Disabilities Act, Public Law 101-336, July 26, 1990, 104 Stat. 328; Civil Rights of Institutionalized Persons Act; Title 42 U.S.C. Section 1997 et seq., Public Law 96-247, 94 Stat. 349; and Section 35.107, Title 28, Code of Federal Regulations.

HISTORY:

1. New section filed 5-18-89 as an emergency; operative 5-18-89 (Register 89, No. 21). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 9-15-89. For prior history, see section 3003(a) and (b).
2. Certificate of Compliance as to 5-18-89 order including amendment of subsections (a) and (g) transmitted to OAL 9-7-89 and filed 10-10-89 (Register 89, No. 41).
3. New subsection (a)(3)(F), amendment of subsection (b), new subsections (g) and (h), and relettering of subsection (g) to (i) filed 5-6-92 as an emergency; operative 5-6-92 (Register 92, No. 19). A Certificate of Compliance must be transmitted to OAL 9-3-92 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 5-6-92 order transmitted to OAL 8-31-92 and filed 10-7-92 (Register 92, No. 41).
5. New subsection (a)(3)(G) filed 2-1-93 as an emergency; operative 2-1-93 (Register 93, No. 6). A Certificate of Compliance must be transmitted to OAL 6-1-93 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 2-1-93 order transmitted to OAL 5-20-93 and filed 6-8-93 (Register 93, No. 24).
7. New subsection (a)(3)(H) and amendment of Note filed 4-7-95 as an emergency pursuant to Penal Code section 5058; operative 4-7-95 (Register 95, No. 14). A Certificate of Compliance must be transmitted to OAL by 9-14-95 or emergency language will be repealed by operation of law on the following day.
8. New subsection (b)(4) filed 5-5-95; operative 6-5-95 (Register 95, No. 18).
9. Certificate of Compliance as to 4-7-95 order transmitted to OAL 6-26-95 and filed 7-25-95 (Register 95, No. 30).
10. Amendment of subsections (c), (d) and (e)(1) filed 12-23-96 as an emergency; operative 12-23-96 (Register 96, No. 52). Pursuant to Penal Code section 5058(e), a Certificate of Compliance must be transmitted to OAL by 6-2-97, or emergency language will be repealed by operation of law on the following day.
11. Amendment of subsections (c), (d) and (e)(1) refiled 5-29-97 as an emergency; operative 6-2-97 (Register 97, No. 22). A Certificate of Compliance must be transmitted to OAL by 9-30-97 or emergency language will be repealed by operation of law on the following day.
12. Editorial correction of History 11 (Register 97, No. 24).
13. Certificate of Compliance as to 5-29-97 order transmitted to OAL 9-25-97 and filed 11-7-97 (Register 97, No. 45).
14. Repealer and new section heading and section and amendment of Note filed 12-13-2010 as an emergency; operative 1-28-2011 (Register 2010, No. 51). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 7-7-2011 or emergency language will be repealed by operation of law on the following day.
15. Certificate of Compliance as to 12-13-2010 order transmitted to OAL 6-15-2011 and filed 7-28-2011 (Register 2011, No. 30).

3084.6. Rejection, Cancellation, and Withdrawal Criteria.

(a) Appeals may be rejected pursuant to subsection 3084.6(b), or cancelled pursuant to subsection 3084.6(c), as determined by the appeals coordinator.

(1) Unless the appeal is cancelled, the appeals coordinator shall provide clear and sufficient instructions regarding further actions the inmate or parolee must take to qualify the appeal for processing.

(2) An appeal that is rejected pursuant to subsection 3084.6(b) may later be accepted if the reason noted for the rejection is corrected and the appeal is returned by the inmate or parolee to the appeals coordinator within 30 calendar days of rejection.

(3) At the discretion of the appeals coordinator or third level Appeals Chief, a cancelled appeal may later be accepted if a determination is made that cancellation was made in error or new information is received which makes the appeal eligible for further review.

(4) Under exceptional circumstances any appeal may be accepted if the appeals coordinator or third level Appeals Chief conclude that the appeal should be subject to further review. Such a conclusion shall be reached on the basis of compelling evidence or receipt of new information such as documentation from health care staff that the inmate or parolee was medically or mentally incapacitated and unable to file.

(5) Erroneous acceptance of an appeal at a lower level does not preclude the next level of review from taking appropriate action, including rejection or cancellation of the appeal.

(b) An appeal may be rejected for any of the following reasons, which include, but are not limited to:

(1) The appeal concerns an anticipated action or decision.

(2) The appellant has failed to demonstrate a material adverse effect on his or her welfare as defined in subsection 3084(c).

(3) The inmate or parolee has exceeded the allowable number of appeals filed in a 14 calendar day period pursuant to the provisions of subsection 3084.1(f).

(4) The appeal contains threatening, obscene, demeaning, or abusive language.

(5) The inmate or parolee has attached more than one CDCR Form 602-A (08/09), Inmate/Parolee Appeal Form Attachment.

(6) The appeal makes a general allegation, but fails to state facts or specify an act or decision consistent with the allegation.

(7) The appeal is missing necessary supporting documents as established in section 3084.3.

(8) The appeal involves multiple issues that do not derive from a single event, or are not directly related and cannot be reasonably addressed in a single response due to this fact.

(9) The appeal issue is obscured by pointless verbiage or voluminous unrelated documentation such that the reviewer cannot be reasonably expected to identify the issue under appeal. In such case, the appeal shall be rejected unless the appellant is identified as requiring assistance in filing the appeal as described in subsection 3084.1(c).

(10) The inmate or parolee has not submitted his/her appeal printed legibly in ink or typed on the lines provided on the appeal forms in no smaller than a 12-point font or failed to submit an original.

(11) The appeal documentation is defaced or contaminated with physical/organic objects or samples as described in subsection 3084.2(b)(4). Appeals submitted with hazardous or toxic material that present a threat to the safety and security of staff, inmates, or the institution may subject the appellant to disciplinary action and/or criminal charges commensurate with the specific act.

(12) The appellant has attached dividers or tabs to the appeal forms and/or supporting documents.

(13) The appeal is incomplete; for example, the inmate or parolee has not provided a signature and/or date on the appeal forms in the designated signature/date blocks provided.

(14) The inmate or parolee has not submitted his/her appeal on the departmentally approved appeal forms.

(15) The inmate or parolee has submitted the appeal for processing at an inappropriate level bypassing required lower level(s) of review, e.g., submitting an appeal at the third level prior to lower level review.

(16) The appeal issue or complaint emphasis has been changed at some point in the process to the extent that the issue is entirely new, and the required lower levels of review and assessment have thereby been circumvented.

(c) An appeal may be cancelled for any of the following reasons, which include, but are not limited to:

(1) The action or decision being appealed is not within the jurisdiction of the department.

(2) The appeal duplicates an inmate or parolee's previous appeal upon which a decision has been rendered or is pending.

(3) The inmate or parolee continues to submit a rejected appeal while disregarding appeal staff's previous instructions to correct the appeal including failure to submit necessary supporting documents, unless the inmate or parolee provides in Part B of the CDCR Form 602 (Rev. 08/09), Inmate/Parolee Appeal, a reasonable explanation of why the correction was not made or documents are not available.

(4) Time limits for submitting the appeal are exceeded even though the inmate or parolee had the opportunity to submit within the prescribed time constraints. In determining whether the time limit has been exceeded, the appeals coordinator shall consider whether the issue being appealed occurred on a specific date or is ongoing. If the issue is ongoing, which may include but is not limited to, continuing lockdowns, retention in segregated housing, or an ongoing program closure, the inmate or parolee may appeal any time during the duration of the event; however, the inmate or parolee is precluded from filing another appeal on the same issue unless a change in circumstances creates a new issue.

(5) The appeal is submitted on behalf of another person.

(6) The issue is subject to a department director level review independent of the appeal process such as a Departmental Review Board decision, which is not appealable and concludes the appellant's departmental administrative remedy pursuant to the provisions of section 3376.1.

(7) The appellant is deceased before the time limits for responding to an appeal have expired and the appeal is not a group appeal.

(8) The appellant refuses to be interviewed or to cooperate with the reviewer.

(A) The appellant's refusal to be interviewed or to cooperate with the reviewer shall be clearly articulated in the cancellation notice.

(B) If the appellant provides sufficient evidence to establish that the interviewer has a bias regarding the issue under appeal, the appeals coordinator shall assign another interviewer.

(9) The appeal is presented on behalf of a private citizen.

(10) Failure to correct and return a rejected appeal within 30 calendar days of the rejection.

(11) The issue under appeal has been resolved at a previous level.

(d) Group appeals shall not be cancelled at the request of the submitting individual unless all of the inmate signatories are released, transferred, or agree to withdraw the appeal.

(e) Once cancelled, an appeal shall not be accepted except pursuant to subsection 3084.6(a)(3); however, the application of the rules provided in subsection 3084.6(c) to the cancelled appeal may be separately appealed. If an appeal is cancelled at the third level of review, any appeal of the third level cancellation decision shall be made directly to the third level Appeals Chief.

(f) An appeal may be withdrawn by the appellant by requesting to have the processing stopped at any point up to receiving a

signed response. The request for the withdrawal shall identify the reason for the withdrawal in section H of the CDCR Form 602, Inmate/Parolee Appeal and shall be signed and dated by the appellant. If there is an agreed upon relief noted in writing at the time of a withdrawal and the relief is not provided when and as promised, then the failure to provide the agreed upon relief may be appealed within 30 calendar days of the failure to grant the promised relief. The withdrawal of an appeal does not preclude further administrative action by the department regarding the issue under appeal. A withdrawn staff complaint shall be returned to the hiring authority to review for possible further administrative action.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 832.5 and 5054, Penal Code; Sections 19570, 19575.5, 19583.5 and 19635, Government Code.

HISTORY:

1. New section filed 5-18-89 as an emergency; operative 5-18-89 (Register 89, No. 21). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 9-15-89.
2. Certificate of Compliance as to 5-18-89 order including amendment of subsection (b) transmitted to OAL 9-7-89 and filed 10-10-89 (Register 89, No. 41).
3. Amendment of subsections (b)(1)–(5), repealer and new subsection (b)(6)(D), amendment of subsections (b)(7) and (c), and repealer of subsections (c)(1) and (c)(2) filed 12-23-96 as an emergency; operative 12-23-96 (Register 96, No. 52). Pursuant to Penal Code section 5058(e), a Certificate of Compliance must be transmitted to OAL by 6-2-97, or emergency language will be repealed by operation of law on the following day.
4. Amendment of subsections (b)(1)–(5), repealer and new subsection (b)(6)(D), amendment of subsections (b)(7) and (c), and repealer of subsection (c)(1) and (c)(2) refiled 5-29-97 as an emergency; operative 6-2-97 (Register 97, No. 22). A Certificate of Compliance must be transmitted to OAL by 9-30-97 or emergency language will be repealed by operation of law on the following day.
5. Editorial correction of History 4 (Register 97, No. 24).
6. Certificate of Compliance as to 5-29-97 order, including amendment, transmitted to OAL 9-25-97 and filed 11-7-97 (Register 97, No. 45).
7. Repealer and new section heading and section and amendment of Note filed 12-13-2010 as an emergency; operative 1-28-2011 (Register 2010, No. 51). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 7-7-2011 or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 12-13-2010 order transmitted to OAL 6-15-2011 and filed 7-28-2011 (Register 2011, No. 30).

3084.7. Levels of Appeal Review and Disposition.

(a) All appeals shall be initially submitted and screened at the first level unless the first level is exempted. The appeals coordinator may bypass the first level for appeal of:

(1) A policy, procedure or regulation implemented by the department.

(2) A policy or procedure implemented by the institution head.

(3) An issue that cannot be resolved at the division head level such as Associate Warden, Associate Regional Parole Administrator, CALPIA manager or equivalent.

(4) Serious disciplinary infractions.

(b) The second level is for review of appeals denied or not otherwise resolved to the appellant's satisfaction at the first level, or for which the first level is otherwise waived by these regulations. The second level shall be completed prior to the appellant filing at the third level as described in subsection 3084.7(c).

(1) A second level of review shall constitute the department's final action on appeals of disciplinary actions classified as "administrative" as described in section 3314, or of minor disciplinary infractions documented on the Counseling Only Rules Violation Report, pursuant to section 3312(a)(2), and shall exhaust administrative remedy on these matters.

(2) Movies/videos that have been given a rating of other than "G", "PG", or "PG-13" by the Motion Picture Association of America are not approved for either general inmate viewing pursuant to section 3220.4 or for viewing within the classroom, and will not be accepted for appeal at any level. The first level shall be waived for appeals related to the selection or exclusion of a "G", "PG", or "PG-13" rated or non-rated movie/video for viewing and the second level response shall constitute the department's final response on appeals of this nature.

(c) The third level is for review of appeals not resolved at the second level, or:

(1) When the inmate or parolee appeals alleged third level staff misconduct or appeals a third level cancellation decision or action.

(2) In the event of involuntary psychiatric transfers as provided in subsection 3084.9(b).

(d) Level of staff member conducting review.

(1) Appeal responses shall not be reviewed and approved by a staff person who:

(A) Participated in the event or decision being appealed. This does not preclude the involvement of staff who may have participated in the event or decision being appealed, so long as their involvement with the appeal response is necessary in order to determine the facts or to provide administrative remedy, and the staff person is not the reviewing authority and/or their involvement in the process will not compromise the integrity or outcome of the process.

(B) Is of a lower administrative rank than any participating staff. This does not preclude the use of staff, at a lower level than the staff whose actions or decisions are being appealed, to research the appeal issue.

(C) Participated in the review of a lower level appeal refiled at a higher level.

(2) Second level review shall be conducted by the hiring authority or designee at a level no lower than Chief Deputy Warden, Deputy Regional Parole Administrator, or the equivalent.

(3) The third level review constitutes the decision of the Secretary of the California Department of Corrections and Rehabilitation on an appeal, and shall be conducted by a designated representative under the supervision of the third level Appeals Chief or equivalent. The third level of review exhausts administrative remedies; however, this does not preclude amending a finding previously made at the third level.

(e) At least one face-to-face interview shall be conducted with the appellant at the first level of review, or the second level if the first level of review is bypassed, unless:

(1) The appellant waives the interview by initialing the appropriate box on the CDCR Form 602 (Rev. 08/09), Inmate/Parolee Appeal. An appellant's waiver of the interview shall not preclude staff from conducting an interview in the event of staff determination that an interview is necessary.

(2) The reviewer has decided to grant the appeal in its entirety.

(3) The appeal is a request for a Computation Review Hearing, in which case the initial interview shall occur at the second level of review.

(4) The appellant is not present at the institution or parole region where the appeal was filed.

(A) In such case, a telephone interview with the appellant shall meet the requirement of a personal interview. If the appeal concerns a disciplinary action, the telephone interview may be waived if the appeals coordinator determines an interview would not provide additional facts.

(B) The response must note that the interview was conducted by telephone, explain the extraordinary circumstances that required it, and state why a face-to-face interview was not possible under the circumstances.

(C) If the appellant is not available for a telephone interview, the reviewer may request that a suitable employee in the jurisdiction where the appellant is located complete the interview and provide a report.

(f) An interview may be conducted at any subsequent level of review when staff determine that the issue under appeal requires further clarification.

(g) When a group or multiple appeal is received, one or more of the participating inmates/parolees shall be interviewed to clarify the issue(s).

(h) At the first and second level of review, the original appeal, within the time limits provided in section 3084.8, shall be returned to the appellant with a written response to the appeal issue providing the reason(s) for each decision. Each response shall accurately describe the matter under appeal and fully address the relief requested. If the decision is a partial grant, the response shall clarify for each requested action whether it is granted, granted in part, or denied, and shall also state the action taken.

(i) Modification orders issued by the institution, parole region, or by the third level of review shall be completed within 60 calendar days of the appeal decision which determined the need for a modification order. Reasonable documented proof of completion of the modification order shall accompany the completed order, or a statement shall be added by the responder clarifying the action taken and why documentation is not available.

(1) If it is not possible to comply with the modification order within 60 calendar days, staff responsible for complying with the modification order shall advise the local appeals coordinator every 30 calendar days of the reason for the delay and provide a projected date of completion. If the modification order was imposed by the third level of review, the local appeals coordinator shall notify the third level Appeals Chief every 30 calendar days of the reason for the delay and provide a projected date of completion.

(2) When it is clear that the modification order cannot be completed in the allotted time, the appeals coordinator shall advise the appellant of the reason for the delay and the anticipated date of completion. This process shall occur every 30 calendar days until the modification order is completed. All time constraints for an appellant to submit an appeal to the next level are considered postponed up to 120 days until the completion of a previous level modification order. Thereafter, the appellant must submit his/her appeal to the next level within 30 calendar days of receiving the modification order response.

(3) If the modification order is not completed after 120 calendar days of the issuance, the appellant may submit the appeal to the next level for administrative review within 30 calendar days.

(4) If the appellant transfers prior to the completion of the modification order, the originally assigned institution or parole region shall retain responsibility for completion of the modification order as specified in subsection 3084.7(i), including cases where the receiving institution or parole region provides the actual relief.

(5) In cases where a modification order is issued on an emergency appeal, the order shall specify the timeframe for the completion of the action granted. The appeals coordinator, if granted at the second level of review, and the third level Appeals Chief or designee, if granted at the third level of review, shall notify the hiring authority by electronic transmission of the emergency timeframe for completion of the granted action.

NOTE: Authority cited: Sections 5058 and 10006(b), Penal Code. Reference: Sections 5054 and 10006(b), Penal Code; Americans With Disabilities Act, Public Law 101-336, July 26, 1990, 104 Stat. 328; Civil Rights of Institutionalized Persons Act; Title 42 U.S.C. Section 1997 *et seq.,* Public Law 96-247, 94 Stat. 349; and Section 35.107, Title 28, Code of Federal Regulations.

HISTORY:

1. New section filed 5-18-89 as an emergency; operative 5-18-89 (Register 89, No. 21). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 9-15-89. For prior history, see section 3325(c).
2. Certificate of Compliance as to 5-18-89 order including amendment of subsections (a) and (d) transmitted to OAL 9-7-89 and filed 10-10-89 (Register 89, No. 41).
3. Editorial correction of printing errors in subsections (f)(1)(B) and (g)(2) (Register 92, No. 5).
4. Amendment of subsection (e)(4) and new subsections (h)(3), (i)(2)(c)1. and 2., and (k) filed 5-6-92 as an emergency; operative 5-6-92 (Register 92, No. 19). A Certificate of Compliance must be transmitted to OAL 9-3-92 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 5-6-92 order including amendment of subsections (e)(4) and (i)(2)(C)1. transmitted to OAL 8-31-92 and filed 10-7-92 (Register 92, No. 41).
6. New subsection (*l*) and amendment of Note filed 4-7-95 as an emergency pursuant to Penal Code section 5058; operative 4-7-95 (Register 95, No. 14). A Certificate of Compliance must be transmitted to OAL by 9-14-95 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 4-7-95 order transmitted to OAL 6-26-95 and filed 7-25-95 (Register 95, No. 30).
8. New subsections (m)–(m)(3) and amendment of Note filed 6-28-96 as an emergency; operative 6-28-96 (Register 96, No. 26). A Certificate of Compliance must be transmitted to OAL by 1-6-97 or emergency language will be repealed by operation of law on the following day.
9. Editorial correction of subsection (m)(3) (Register 96, No. 51).
10. New subsections (m)–(m)(3) and amendment of Note refiled 12-19-96 as an emergency; operative 12-19-96 (Register 96, No. 51). Pursuant to Penal Code section 5058(e), a Certificate of Compliance must be transmitted to OAL by 5-28-97 or emergency language will be repealed by operation of law on the following day.
11. Repealer of subsection (a)(1)(D), amendment of subsections (a)(2)(A), (b)(2), (d)(4), (d)(4)(A) and (e)(1), repealer of subsections (h) and (h)(1), renumbering of old subsections 3084.7(h)(2) and (h)(3) to new subsections 3391(b) and (c), subsection relettering, and amendment of newly designated subsection (k) filed 12-23-96 as an emergency; operative 12-23-96 (Register 96, No. 52). Pursuant to Penal Code section 5058(e), a Certificate of Compliance must be transmitted to OAL by 6-2-97, or emergency language will be repealed by operation of law on the following day.
12. Certificate of Compliance as to 12-19-96 order, incorporating relettering from 12-23-96 order and further amending section and Note, transmitted to OAL 4-14-97 and filed 5-23-97 (Register 97, No. 21).
13. Repealer of subsection (a)(1)(D), amendment of subsections (a)(2)(A), (b)(2), (d)(4), (d)(4)(A) and (e)(1), repealer of subsections (h) and (h)(1), renumbering of old subsections 3084.7(h)(2) and (h)(3) to new subsections 3391(b) and (c), subsection relettering, and amendment of newly designated subsection (k) refiled 5-29-97 as an emergency; operative 6-2-97 (Register 97, No. 22). A Certificate of Compliance must be transmitted to OAL by 9-30-97 or emergency language will be repealed by operation of law on the following day.
14. Editorial correction of subsection (j)(1) and History 13 (Register 97, No. 24).
15. Certificate of Compliance as to 5-29-97 order, including amendment of subsections (b)(2) and (k), transmitted to OAL 9-25-97 and filed 11-7-97 (Register 97, No. 45).
16. New subsections (m)–(m)(4) and amendment of Note filed 9-13-2005; operative 9-13-2005 pursuant to Government Code section 11343.4 (Register 2005, No. 37).

17. Repealer and new section heading and section and amendment of Note filed 12-13-2010 as an emergency; operative 1-28-2011 (Register 2010, No. 51). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 7-7-2011 or emergency language will be repealed by operation of law on the following day.
18. Certificate of Compliance as to 12-13-2010 order transmitted to OAL 6-15-2011 and filed 7-28-2011 (Register 2011, No. 30).
19. Change without regulatory effect amending subsection (a)(3) filed 1-8-2014 pursuant to section 100, title 1, California Code of Regulations (Register 2014, No. 2).
20. Change without regulatory effect repealing subsection (b)(3) filed 4-22-2015 pursuant to section 100, title 1, California Code of Regulations (Register 2015, No. 17).
21. Amendment of subsection (b)(1) filed 6-2-2016 as an emergency; operative 6-2-2016 (Register 2016, No. 23). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 11-9-2016 or emergency language will be repealed by operation of law on the following day.
22. Certificate of Compliance as to 6-2-2016 order, including amendment of subsection (b)(1), transmitted to OAL 11-7-2016 and filed 12-22-2016; amendments effective 12-22-2016 pursuant to Government Code section 11343.4(b)(3) (Register 2016, No. 52).

3084.8. Appeal Time Limits.

(a) Time limits for reviewing appeals shall commence upon the date of receipt of the appeal form by the appeals coordinator.

(b) An inmate or parolee must submit the appeal within 30 calendar days of:

(1) The occurrence of the event or decision being appealed, or;

(2) Upon first having knowledge of the action or decision being appealed, or;

(3) Upon receiving an unsatisfactory departmental response to an appeal filed.

(c) All appeals shall be responded to and returned to the inmate or parolee by staff within the following time limits, unless exempted pursuant to the provisions of subsections 3084.8(f) and (g):

(1) First level responses shall be completed within 30 working days from date of receipt by the appeals coordinator.

(2) Second level responses shall be completed within 30 working days from date of receipt by the appeals coordinator.

(3) Third level responses shall be completed within 60 working days from date of receipt by the third level Appeals Chief.

(d) Exception to the time limits provided in subsection 3084.8(c) is authorized only in the event of:

(1) Unavailability of the inmate or parolee, or staff, or witnesses.

(2) The complexity of the decision, action, or policy requiring additional research.

(3) Necessary involvement of other agencies or jurisdictions.

(4) State of emergency pursuant to subsection 3383(c) requiring the postponement of nonessential administrative decisions and actions, including normal time requirements for such decisions and actions.

(e) Except for the third level, if an exceptional delay prevents completion of the review within specified time limits, the appellant, within the time limits provided in subsection 3084.8(c), shall be provided an explanation of the reasons for the delay and the estimated completion date.

(f) An appeal accepted as an emergency appeal shall be processed within the time frames set forth in subsections 3084.9(a)(4) and (a)(5).

(g) An appeal of the involuntary psychiatric transfer of an inmate or parolee shall be made directly to the third level pursuant to subsection 3084.9(b), within 30 calendar days of receipt of the hearing decision on the need for involuntary transfer.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code; Civil Rights of Institutionalized Persons Act; Title 42 U.S.C. Section 1997 et seq., Public Law 96-247, 94 Stat. 349; and Section 35.107, Title 28, Code of Federal Regulations.

HISTORY:

1. New section filed 12-13-2010 as an emergency; operative 1-28-2011 (Register 2010, No. 51). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 7-7-2011 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 12-13-2010 order transmitted to OAL 6-15-2011 and filed 7-28-2011 (Register 2011, No. 30).

3084.9. Exceptions to the Regular Appeal Process.

(a) Emergency appeals. Emergency appeals should not be used by inmates or parolees as a substitute for verbally or otherwise informing staff of an emergency situation requiring immediate response.

(1) When circumstances are such that the regular appeal time limits would subject the inmate or parolee to a substantial risk of personal injury or cause other serious and irreparable harm, the appeal shall be processed as an emergency appeal. Emergency circumstances include, but are not limited to:

(A) Threat of death or injury due to enemies or other placement concerns.

(B) Serious and imminent threat to health or safety.

(2) An emergency appeal shall be submitted directly to the appeals coordinator and shall include a clear description of the circumstances warranting emergency processing. A request for emergency processing of an appeal that clearly does not meet the criteria for emergency processing or is made for the purpose of circumventing normal procedures or obtaining an expedited response may be considered misuse or abuse of the appeals process.

(3) If the appeals coordinator determines emergency processing is unwarranted, the inmate or parolee shall be notified and the appeal shall be processed pursuant to subsection 3084.5(b)(2).

(4) If emergency processing is warranted, the first level shall be waived and the second level review shall be completed within five working days.

(5) Prison Rape Elimination Act (PREA) Sexual Violence (Inmate on Inmate) and Staff Sexual Misconduct Appeals.

A grievance in whole or part containing allegations of sexual violence or staff sexual misconduct shall be processed as an emergency appeal. The appeal shall be immediately reviewed by the Hiring Authority or designee and processed directly at the Second Level of Review. When the appeal alleges or indicates that the inmate may be in substantial risk of imminent sexual violence or imminent staff sexual misconduct, a risk assessment shall be undertaken.

(A) Staff Complaints: While the department maintains the right to defend against an inmate lawsuit on the grounds of the applicable statute of limitations, a time limit shall not be imposed upon when an appellant may file such a grievance. The time limits for processing an emergency Staff Complaint are as follows:

1. There shall be no time limit for allegations of staff sexual misconduct, but once received by the appeals coordinator, the appeal shall be screened in accordance with subsection 3084.5(b)(4).

2. A risk assessment determination of all staff sexual misconduct related appeals shall be immediately completed by the Hiring Authority to determine if the appellant is in substantial risk of imminent staff sexual misconduct. If the assessment results in a determination of the appellant being in substantial risk of imminent staff sexual misconduct, the Hiring Authority shall take immediate corrective action.

3. The appeals coordinator shall provide an initial response to the appellant within 48 hours that shall include whether or not the appeal is being processed as an emergency Staff Complaint.

4. An initial risk assessment shall be documented within 48 hours and the completed risk assessment determination by the Hiring Authority shall be documented within 5 calendar days describing whether the appellant was determined to be in substantial risk of imminent staff sexual misconduct and the action(s) taken in response to the appeal.

5. If the conditions of exceptional delay exist as described in subsection 3084.8(d), the time constraints of Second Level of Review or Third Level of Review may be extended in increments of 30 days, but shall not exceed 160 days from the date the appeal was received by the appeals coordinator. Any extension shall require written notification to the appellant and shall include the estimated completion date. The time consumed by the appellant in preparing the appeal shall not count in the calculation of a timely response.

6. The appellant may consider an absence of a timely response at any level, including that of any properly noticed extension, a denial at that level.

7. The appellant is required to respond to the Second Level Review within 30 calendar days in accordance with subsection 3084.8(b)(3).

(B) PREA Allegations Against Another Offender: A time limit shall not be imposed upon when an appellant may file a grievance alleging inmate on inmate sexual violence. The time limits for processing an emergency sexual violence appeal are as follows:

1. Once received by the appeals coordinator, the appeal shall be screened in accordance with section 3084.8. When the appeal alleges or indicates that the inmate is at substantial risk of imminent sexual violence, a risk assessment shall be undertaken.

2. A risk assessment determination of all sexual violence related appeals shall be immediately completed by the Hiring Authority to determine if the appellant is in substantial risk of imminent sexual violence. If the assessment results in a determination of the appellant being in substantial risk of imminent sexual violence, the Hiring Authority shall take immediate corrective action.

3. The appeals coordinator shall provide an initial response to the appellant within 48 hours that shall include whether or not the appeal is being processed as an emergency PREA appeal.

4. An initial risk assessment shall be documented within 48 hours and the completed risk assessment determination by the Hiring Authority shall be documented within 5 calendar days describing whether the appellant was determined to be in substantial risk of imminent sexual violence and the action(s) taken in response to the appeal.

5. If the conditions of exceptional delay exist as described in subsection 3084.8(d), the time constraints of Second Level of Review or Third Level of Review may be extended in increments of 30 days, but shall not exceed 160 days from the date the appeal was received by the appeals coordinator. Any extension shall require written notification to the appellant and shall include the estimated completion date. The time consumed by the appellant in preparing the appeal shall not count in the calculation of a timely response.

6. The appellant may consider an absence of a timely response at any level, including that of any properly noticed extension, a denial at that level.

7. The appellant is required to respond to the Second Level Review within 30 calendar days in accordance with subsection 3084.8(b)(3).

(b) Involuntary psychiatric transfers. An inmate or parolee may appeal the written decision of an involuntary psychiatric transfer, pursuant to subsection 3379(d), directly to the third level. A copy of the hearing decision shall be attached to the CDCR Form 602 (Rev. 08/09), Inmate/Parolee Appeal, but the absence of such documentation shall not be cause for rejection of the appeal.

(c) Joint Venture Program (JVP) employer related grievances.

(1) Any current or former Joint Venture inmate-employee who believes he/she has a grievance regarding a wage and hour or retaliation claim against a JVP employer shall submit the written grievance to the JVP Chief.

(2) The JVP Chief shall attempt to resolve all complaints.

(3) Time frames for filing grievances will be governed by the Division of Labor Standards Enforcement's (DLSE) statutes of limitations, including but not limited to, Labor Code section 98.7 and Code of Civil Procedure sections 337, 338, and 339, for the appropriate type of complaint.

(4) If the inmate is dissatisfied with the JVP Chief's decision, the inmate may file a complaint with the Labor Commissioner.

(d) Parole period and term computation appeals. Parole period and term computation appeals shall be reviewed at the first level by the department's records staff. The inmate or parolee must state in detail the alleged error or reason for disputing the calculation of his or her release date.

(1) Records staff shall research the relevant case factors and document the findings. If the appeal is denied, the denial shall be delivered by records staff or by the appropriate caseworker to the appellant who shall sign and date a CDC Form 1031 (8-88), Acknowledgement of Receipt.

(2) The inmate or parolee may request a Computation Review Hearing that constitutes the second level review. The inmate or parolee shall be notified at least 24 hours prior to the hearing via the CDC Form 1032 (12/86), Notice of Time, Date, and Place of Computation Review Hearing, but may sign a voluntary waiver of such notice.

(3) The inmate or parolee shall be provided a copy of the CDC Form 1033 (8-88), Computation Review Hearing Decision, at the conclusion of the hearing.

(e) California Prison Industry Authority (CALPIA) health and safety complaints.

(1) A health and safety complaint should not be used by inmates as a substitute for verbally or otherwise informing staff of an urgent health or safety situation requiring immediate response.

(2) Pursuant to Labor Code and Industrial Relations regulations, an inmate who believes a health or safety hazard exists in a CALPIA operation shall deposit a written complaint in a readily accessible complaint box or give the complaint to any CALPIA staff member who shall submit it to the CALPIA health and safety committee for review and response. The committee shall undertake all authorized levels of review and referral.

(f) Property appeals. All property loss or damage arising from the same event or action for a single appellant shall be included in one appeal.

(1) An inmate or parolee who is appealing missing/damaged property that he or she believes occurred as a result of an error made by the receiving entity or by the transportation unit during the transfer of his/her property shall submit the appeal to the appeals coordinator of the receiving institution/region.

(2) An inmate or parolee who is appealing missing/damaged property that he or she alleges occurred as a result of an error made by the sending entity during the transfer from one institution/region to another institution/region, shall submit the appeal to the appeals coordinator of the receiving institution/region who will forward it to the sending institution/region for processing.

(3) The appeals coordinator shall process the appeal for a first level response.

(A) An attempt shall be made by staff to assess the damaged property and/or conduct a thorough search to locate the missing property.

(B) An attempt shall be made by staff to research the appellant's claim utilizing departmental inmate property records.

(4) If an administrative decision is made that the department is responsible for loss or damage to the appellant's property pursuant to section 3193, an attempt by staff to use donated property to substitute for or replace lost property at no cost to the state, or any effort to repair damaged property at institution expense, will be made prior to awarding monetary compensation for the loss.

(5) An appellant's refusal to accept repair, replacement, or substitution of like items and value shall be cause to deny the appeal. When denying an appeal on this basis, the reviewer must state why the replacement offered to the appellant is considered an equivalent item and value.

(6) The provisions of subsection 3193(b) shall apply when monetary compensation is determined to be the appropriate remedy.

(7) Before payment of any granted claim, the inmate or parolee shall discharge the state from further liability for the claim if required pursuant to Government Code section 965.

(8) The document denying a property claim appeal shall inform the appellant of the right to submit a claim directly with the Victim Compensation and Government Claims Board and shall provide the mailing address for such filing.

(9) An inmate or parolee who intends to submit a claim with the Victim Compensation and Government Claims Board shall adhere to the rules and timeframes governing those claims, which may be more restrictive than those of the CDCR appeals process.

(g) Disciplinary Appeals.

(1) A disciplinary action cannot be appealed until the hearing process is completed, including any re-hearing.

(2) Inmates who wish to exhaust their administrative remedies for "serious" disciplinary issues pursuant to section 3315 must appeal through the third level of review.

(h) Transfer Appeals. A decision for transfer to another institution may be appealed by the affected inmate after the transfer endorsement by the classification staff representative.

(1) Filing of an appeal of a transfer decision shall not normally be cause to stay or delay a transfer except in extraordinary circumstances and at the discretion of the Warden or designee.

(2) Regular transfer appeals:

(A) The first level of appeal shall be waived.

(B) If the appeal is granted at second level, the appellant's case shall be presented to a second classification staff representative for reconsideration.

(C) If the second classification staff representative disagrees with institution's recommendation, the institution head may submit the case to the departmental review board for final decision.

(D) If the appeal is denied at second level or the institution head does not refer the case to the departmental review board, the appellant may appeal at the third level.

(3) Reception center transfer appeals:

(A) First level review shall be conducted by the reception center's correctional administrator.

(B) If the appeal is granted, the appellant may be retained at the reception center until the case is presented to a second classification staff representative only if the proposed transfer poses a threat to the health or safety of the appellant.

(C) If the second classification staff representative disagrees with the first level appeal decision, the appellant may resubmit the appeal for second level review.

(D) Second level review shall be conducted by the institution head, who may retain the appellant at the reception center as a second level review action and refer the appeal to the departmental review board for resolution. The board's decision shall constitute final review.

(i) Staff complaints. A staff complaint filed by an inmate or parolee shall be processed as an appeal pursuant to this Article, not as a citizen's complaint. However, any appeal alleging misconduct by a departmental peace officer as defined in subsection 3291(b) shall be accompanied by the subsection 3391(d) Rights and Responsibility Statement.

(1) An inmate or parolee alleging staff misconduct by a departmental employee shall forward the appeal to the appeals coordinator. Only after the appeal has been reviewed and categorized as a staff complaint by the hiring authority or designee at a level not below Chief Deputy Warden, Deputy Regional Parole Administrator, or equivalent level shall it be processed as a staff complaint. If the hiring authority makes a determination that the complaint shall not be accepted as a staff complaint, it shall be processed as a routine appeal pursuant to subsection 3084.5(b)(4)(A).

(2) When an appeal is accepted alleging staff misconduct that also includes any other issue(s), the appeals coordinator at the time the appeal is accepted as a staff complaint shall notify the inmate or parolee that any other appeal issue(s) may only be appealed separately and therefore resubmission of those issues is required if the intention is to seek resolution of such matters. Upon receiving such a notice, the inmate or parolee has 30 calendar days to submit separate appeal(s) regarding the other issue(s).

(3) All appeals alleging staff misconduct will be presented by the appeals coordinator to the hiring authority or designee within five working days. The hiring authority will review the complaint and determine if:

(A) The allegation warrants a request for an Internal Affairs investigation as the alleged conduct would likely lead to adverse personnel action. The case will be referred for an Internal Affairs investigation as instructed by the hiring authority.

(B) The allegation does not warrant a request for an Internal Affairs investigation in which case a confidential inquiry shall be completed by the reviewer. An inquiry shall be conducted whenever the appeal is designated as a staff complaint but is not referred to the Office of Internal Affairs (OIA) or when the matter is declined by the OIA.

1. A confidential report shall summarize the review and include a determination of the findings concerning the allegation. This document shall not be provided to the appellant. It shall be kept in the appeal file in the Appeals Office and no other copies shall be kept or maintained except as herein described or as needed for Third Level review or litigation. This document is strictly confidential to all inmates and any staff except those involved in the inquiry process or litigation involving the department.

2. The accused staff may review the confidential report in the appeals office upon approval of the litigation coordinator, but if any information relating to other staff is contained in the confidential document, a copy shall be made and that information redacted prior to the review. Neither the original nor the copy shall leave the appeals office except as required for litigation and any redacted copy shall be placed with the original after review.

3. The assigned reviewer will interview the appellant and as many witnesses as necessary to reach a determination concerning the allegation. The subject(s) of the staff complaint may be interviewed by a person trained to conduct administrative interviews and will be given notice of the interview at least 24 hours prior to the interview. If the subject chooses to waive the 24-hour requirement, he/she must indicate this at the time they are given notice. If waived, the subject may be interviewed immediately.

4. A confidential inquiry shall review the information available to determine whether policy was violated.

(4) The institution's appeal response to a staff complaint shall inform the appellant of either:

(A) The referral for investigation and the status of the investigation. Additionally, the appellant shall be notified of the outcome at the conclusion of the investigation.

(B) The decision to conduct a confidential inquiry and whether the findings determined that the staff in question did or did not violate departmental policy with regard to each of the specific allegation(s) made.

(5) A staff complaint alleging excessive or inappropriate use of force shall be addressed pursuant to the procedures described in sections 3268 through 3268.2.

(6) An appeal alleging staff misconduct by an appeals coordinator shall be reviewed by the hiring authority for determination of processing.

NOTE: Authority cited: Section 5058, Penal Code; and Section 6304.3, Labor Code. Reference: Sections 148.6, 832.5, 832.7, 832.8, 5054 and 5058.4, Penal Code; Sections 935.6, 965, 3300-3313, 19570-19575.5, 19583.5 and 19635, Government Code; Sections 98.7 and 6304.3, Labor Code; Sections 337, 338 and 339, Code of Civil Procedure; Sections 344.40, 344.41, 344.42 and 344.43, Title 8, Industrial Relations, California Code of Regulations; Americans With Disabilities Act, Public Law 101-336, July 26, 1990, 104 Stat. 328; Civil Rights of Institutionalized Persons Act; Title 42 U.S.C. Section 1997 et seq., Public Law 96-247, 94 Stat. 349; 28 CFR Sections 35.107 and 115.52; *Wolff* v. *McDonnell* (1974) 418 U. S. 539, 558-560; and *Vasquez* v. *State of California*, 105 Cal.App.4th 849 (2003) as implemented by the Stipulated Injunction and Order entered by the Superior Court of San Diego County in Case No.GIC-740832.

HISTORY:

1. New section filed 12-13-2010 as an emergency; operative 1-28-2011 (Register 2010, No. 51). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 7-7-2011 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 12-13-2010 order, including repealer of subsection (a)(5), transmitted to OAL 6-15-2011 and filed 7-28-2011 (Register 2011, No. 30).
3. New subsections (a)(5)–(a)(5)(B)7. and amendment of Note filed 10-20-2016; operative 10-20-2016 pursuant to Government Code section 11343.4(b)(3) (Register 2016, No. 43).

3085. Americans With Disabilities Act.

Explanation: Departmental compliance with the Americans with Disabilities Act (ADA) is currently under the supervision of federal courts as specified in Court Ordered Remedial Plans articulated in the *Armstrong* v. *Schwarzenegger* (previously: *Armstrong* v. *Davis*) case. Accordingly, departmental ADA practices, including offender ADA appeal rights are currently carried out in accordance with an Armstrong Remedial Plan (ARP) established by the court of jurisdiction.

NOTE: *Armstrong* v. *Schwarzenegger* (2002) USDC-ND (No. C-94-2307-CW); Americans With Disabilities Act, Public Law 101-336, July 26, 1990, 104 Stat. 328.

HISTORY:

1. New section and forms filed 4-7-95 as an emergency pursuant to Penal Code section 5058; operative 4-7-95 (Register 95, No. 14). A Certificate of Compliance must be transmitted to OAL by 9-14-95 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 4-7-95 order transmitted to OAL 6-26-95 and filed 7-25-95 (Register 95, No. 30).
3. Repealer of section and Form CDC 1824, new explanatory paragraph and amendment of Note filed 12-13-2010 as an emergency; operative 1-28-2011 (Register 2010, No. 51). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 7-7-2011 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 12-13-2010 order transmitted to OAL 6-15-2011 and filed 7-28-2011 (Register 2011, No. 30).

Article 8.5. Written Request Process

3086. Inmate/Parolee Request for Interview, Item or Service.

(a) Inmates and parolees may request interviews with staff and/or request items and services via a written request process. The objectives of timely resolution of routine matters through an effective and non-conflictive communication process shall be facilitated by the practices set forth in this article, which shall be henceforth applied uniformly toward that end. Department staff shall attempt to resolve inmate and parolee issues expeditiously.

(b) The written request process may be used when the inmate or parolee seeks a response to an issue or concern related to his or her confinement or parole.

(c) The department shall ensure that inmates and parolees will have access to the CDCR Form 22 (10/09), Inmate/Parolee Request for Interview, Item or Service, which is incorporated by reference. This form shall be made readily available in:

(1) All inmate housing units, general or segregated.

(2) All institutional libraries.

(3) Any facility under the department's jurisdiction, whether residential or medical, where inmates are required to remain more than 24 hours.

(4) All parole field offices.

(d) The Inmate/Parolee Request for Interview, Item or Service form will provide:

(1) A written method for an inmate or parolee to address issues and concerns with staff and/or to request items and services.

(2) A record of the date the form was first presented to staff, and the date of each staff response.

(e) When seeking response to a written request for an interview, item, or service, the inmate or parolee shall complete the Request for Interview, Item or Service form to describe his or her request. The inmate shall deliver or mail via institutional mail the completed form to any staff member who is able to respond to the issue. The parolee shall deliver or mail via the United States Postal Service the completed form to his or her parole agent, who shall respond to the issue or, as appropriate, route the form to another staff member who is able to respond to the issue.

(1) If the inmate or parolee mails the form, the receipted copy of their request may also be returned by staff via the mail.

(2) As the written request process does not stay the time constraints for filing an appeal, the inmate or parolee is not precluded from filing an appeal on the same issue prior to receiving a response to their written request. However, the appeal may be rejected by the appeals coordinator or designee with instructions to complete the request form process before resubmitting the appeal.

(f) Upon receipt of an inmate or parolee completed Request for Interview, Item or Service form, the employee shall:

(1) Accept, date and sign the form.

(2) Provide to the inmate or parolee the bottom copy of the employee signed form, which shall serve as the inmate's or parolee's receipt to verify the date of submittal. The employee, at his or her discretion, can respond to the request at this time or wait until he or she has more time to respond within the constraints of this article.

(3) The receipt of an inmate- or parolee-completed form does not preclude a staff member from forwarding the document to a more appropriate responder; however, employees shall either deliver the form to the staff member or place it in institutional mail addressed to the intended staff member within 24 hours.

(4) Within three working days after receipt of the form, the responding employee shall:

(A) Note his or her decision or action on the form.

(B) Sign and date the form.

(C) Retain a copy for his or her records.

(D) Return the original and remaining copy of the form to the inmate or parolee.

(g) If the inmate or parolee is dissatisfied with or disagrees with the staff member's response, he or she may submit the Request for Interview, Item or Service form to the employee's supervisor for review, while retaining a copy for his or her records. Only in the absence of the staff member's supervisor may the inmate or parolee submit the form to another supervisor of the office or unit in question.

(h) Within seven calendar days of receipt of the Request for Interview, Item or Service form, the supervisor shall:

(1) Indicate a decision or action on the form.

(2) Sign and date the form.

(3) Ensure a copy is made and retained in the facility records for a period no less than prescribed for inmate correspondence in the approved departmental records retention schedule.

(4) Return the original to the inmate or parolee.

(i) An inmate or parolee's documented use of a Request for Interview, Item or Service form does not constitute exhaustion of administrative remedies as defined in subsection 3084.1(b).

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 148.6, 832.5 and 5054, Penal Code; Section 19583.5, Government Code; Americans With Disabilities Act, Public Law 101-336, July 26, 1990, 104 Stat. 328; Civil Rights of Institutionalized Persons Act; Title 42 U.S.C. Section 1997 et seq., Public Law 96-247, 94 Stat. 349; Section 35.107, Title 28, Code of Federal Regulations; and *Wolff* v. *McDonnell* (1974) 418 U.S. 539, 558–560.

HISTORY:

1. New article 8.5 (section 3086) and section filed 12-13-2010 as an emergency; operative 1-28-2011 (Register 2010, No. 51). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 7-7-2011 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 12-13-2010 order transmitted to OAL 6-15-2011 and filed 7-28-2011 (Register 2011, No. 30).

SUBCHAPTER 2. INMATE RESOURCES

Article 1. Canteens

3090. Inmate Canteen Establishment and Draw Limits.

(a) Each facility shall establish an inmate canteen pursuant to penal code section 5005 enabling inmate purchases of approved merchandise. Facility staff shall consult with representatives of the inmate population when determining items to be stocked in the canteen for resale to the inmates.

(b) The maximum monthly canteen draw authorized by the Secretary is $220.00. An inmate's regular canteen purchase shall not exceed the limits specified in section 3044 or the inmate trust account balance, whichever is less.

(c) Inmates shall be permitted to deduct from their trust accounts for canteen purchases by signing a canteen sales receipt.

(d) An inmate's trust account deductions for canteen purchases shall not be restricted beyond limits established by the Secretary for all inmates in like work groups, except by formal disciplinary action for a violation involving canteen or the intentional or negligent destruction, damage, or misuse of state property, or in accordance with subsections 3315(f)(5)(K) and 3315(f)(5)(M).

(e) Trust account statements showing current balances shall be issued to those inmates submitting written requests, provided 90 days have elapsed since their previous request.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 5005 and 5054, Penal Code.

HISTORY:

1. Amendment filed 2-24-77; effective thirtieth day thereafter (Register 77, No. 9).
2. Amendment filed 9-30-77; effective thirtieth day thereafter (Register 77, No. 40).
3. Amendment filed 3-22-78; effective thirtieth day thereafter (Register 78, No. 12).
4. Amendment of subsections (a) and (c) filed 2-16-83; effective thirtieth day thereafter (Register 83, No. 8).
5. Amendment of section heading, text and Note filed 10-14-93; operative 11-15-93 (Register 93, No. 42).
6. Amendment of subsection (b) filed 3-8-2001; operative 4-7-2001 (Register 2001, No. 10).
7. Amendment of subsections (b) and (c) filed 5-25-2010; operative 6-24-2010 (Register 2010, No. 22).
8. Amendment of subsection (d) filed 7-19-2011; operative 8-18-2011 (Register 2011, No. 29).

3091. Inmate Canteen Operation.

(a) A current list of approved available merchandise, the price of each item, and the canteen operating hours shall be conspicuously posted at each canteen. Copies shall be made available to inmates denied direct access to the canteen.

(b) Canteen draw schedules shall:

(1) Be published at least once every six months.

(2) Be posted in each housing unit at each facility and camp.

(3) Include no less than three canteen draw dates each month based on the last two digits of the inmate's department identification number.

(4) Each inmate shall be entitled to no less than one draw each month.

(c) When purchasing merchandise, inmates shall be required to:

(1) Complete an itemized order list prior to purchasing canteen items.

(2) Place a clear thumbprint or three fingerprints on the canteen sales receipt.

(3) Sign the canteen sales receipt to authorize the Trust Account withdrawal and verify the amount purchased.

(4) Segregated inmates shall sign the approved canteen shopping list prior to submitting it to the segregation unit staff authorizing the Trust Account withdrawal, and upon receipt of the merchandise, shall sign the approved institution distribution forms to verify the amount purchased and received.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 5005, 5006 and 5054, Penal Code.

HISTORY:

1. Amendment filed 2-24-77; effective thirtieth day thereafter (Register 77, No. 9).
2. Amendment of section heading, text and Note filed 10-14-93; operative 11-15-93 (Register 93, No. 42).
3. Repealer of subsection (b)(2), subsection renumbering, amendment of newly designated subsection (b)(3), new subsection (b)(4), amendment of subsections (d)(2)–(3) and repealer and new subsection (d)(4) filed 5-25-2010; operative 6-24-2010 (Register 2010, No. 22).
4. Repealer of subsection (c) and subsection relettering filed 10-22-2012; operative 11-21-2012 (Register 2012, No. 43).

3092. Special Inmate Canteen Purchases.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 5006 and 5054, Penal Code.

HISTORY:

1. Amendment of section heading and text and new Note filed 10-14-93; operative 11-15-93 (Register 93, No. 42).
2. Amendment relocating former section 3092 to section 3190(e)–(f) filed 12-30-2003 as an emergency; operative 1-1-2004 (Register 2004, No. 1). Pursuant to Penal Code section 5058.3(a)(1), a Cer-

tificate of Compliance must be transmitted to OAL by 6-9-2004 or emergency language will be repealed by operation of law on the following day.

3. Withdrawal and repeal of 12-30-2003 amendment filed 5-27-2004 as an emergency; operative 5-27-2004 (Register 2004, No. 22). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 9-24-2004 or emergency language will be repealed by operation of law on the following day.
4. Amendment relocating former section 3092 to section 3190(h) and (p) filed 5-27-2004 as an emergency; operative 5-27-2004 (Register 2004, No. 22). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 11-3-2004 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 5-27-2004 order transmitted to OAL 10-28-2004 and filed 12-14-2004 (Register 2004, No. 51).

3093. Canteen Yard and Cash Register Cards.

(a) Facilities may issue IWF Form 22, Canteen Yard Cards (Rev. 8/90), for inmate use in making canteen purchases. Inmates shall not alter such card, nor possess or control another inmate's card or other approved means of canteen purchase.

(b) A transferring inmate's IWF Form 22 shall be returned to the canteen cancelled and its value credited to the inmate's trust account.

(c) Annually on May 31, IWF Form 22 of a color different from that currently used shall be issued and the previous color no longer honored. The facility shall post, in conspicuous locations available to every inmate, a written notice of the IWF Form 22 exchange. Inmates may, before June 30, exchange their old IWF Form 22 for new or for credit to their trust account. Exception: IWF Form 22 of the previous color may be exchanged after June 30 for inmates who were out-to-court or in any inpatient medical or mental health facility during the exchange period.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 5005, 5006 and 5054, Penal Code.

HISTORY:

1. Repealer and new section filed 10-7-82; effective thirtieth day thereafter (Register 82, No. 41).
2. Amendment of section heading, text and Note filed 10-14-93; operative 11-15-93 (Register 93, No. 42).
3. Amendment of subsections (b) and (c) filed 5-25-2010; operative 6-24-2010 (Register 2010, No. 22).

3094. Exceeding Inmate Canteen Limits.

Inmates shall not possess canteen items and IWF Form 22, Canteen Yard Card (Rev. 8/90), with a combined value exceeding the monthly canteen limits established in section 3044. Excess canteen items and IWF Form 22 shall be confiscated and stored in a secure area pending a disciplinary hearing and resolution of any appeal of the matter.

NOTE: Authority cited: section 5058, Penal Code. Reference: Sections 5005, 5006 and 5054, Penal Code.

HISTORY:

1. Amendment of section heading and text and new Note filed 10-14-93; operative 11-15-93 (Register 93, No. 42).

3095. Nonroutine Canteen Draws.

(a) A newly arrived inmate may within 30 days of arrival be permitted to make purchases at the canteen during any scheduled draw. Such exceptions shall not be made for the inmate's subsequent draws.

(b) Conservation camp inmates shall submit their request for canteen draw to the camp lieutenant or designee.

(c) Segregated inmates shall not be permitted to go to the canteen and shall submit their canteen shopping list to the segregation unit staff.

(d) Infirmary patients shall submit their requests for canteen purchases to the infirmary unit staff.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 5005 and 5054, Penal Code.

HISTORY:

1. Repealer and new section filed 10-14-93; operative 11-15-93 (Register 93, No. 42).
2. Amendment of subsections (a)–(c) filed 5-25-2010; operative 6-24-2010 (Register 2010, No. 22).

Article 1.5. Inmate Wages and Deductions

3097. Inmate Restitution Fine and Direct Order Collections.

(a) When an inmate owes any obligation pursuant to a direct order of restitution imposed by a court, the department shall deduct 30 percent or the balance owing, whichever is less, from the inmate's wages and trust account deposits, regardless of the source of such income, subject to the exemptions enumerated in subsection (j). In addition, an administrative fee of 10 percent of the deduction shall be deducted to reimburse the department for its administrative costs, for a maximum deduction of 33 percent. A maximum deduction of 33 percent shall remain in effect through December 31, 2004 at which time subsection (b) shall take effect.

(b) Effective January 1, 2005, when an inmate owes any obligation pursuant to a direct order of restitution imposed by a court, the department shall deduct 40 percent or the balance owing, whichever is less, from the inmate's wages and trust account deposits regardless of the source of such income, subject to the exemptions enumerated in subsection (j). In addition, an administrative fee of 10 percent of the deduction shall be deducted to reimburse the department for its administrative costs, for a maximum deduction of 44 percent. A maximum deduction of 44 percent shall remain in effect through December 31, 2006 at which time subsection (c) shall take effect.

(c) Effective January 1, 2007 and thereafter, when an inmate owes any obligation pursuant to a direct order of restitution imposed by a court, the department shall deduct 50 percent or the balance owing, whichever is less, from the inmate's wages and trust account deposits regardless of the source of such income, subject to the exemptions enumerated in subsection (j). In addition, an administrative fee of 10 percent of the deduction shall be deducted to reimburse the department for its administrative costs, for a maximum deduction of 55 percent.

(d) When an inmate owes any obligation pursuant to a restitution fine imposed by a court, the department shall deduct 30 percent or the balance owing, whichever is less, from the inmate's wages and trust account deposits, regardless of the source of such income, subject to the exemptions enumerated in subsection (j). In addition, an administrative fee of 10 percent of the deduction shall be deducted to reimburse the department for its administrative costs, for a maximum deduction of 33 percent. The amount deducted, less the administrative fee, shall be transferred to the California Victim Compensation and Governing Claims Board for deposit in the Crime Victims' Restitution Fund in the State Treasury. The inmate shall be credited for the amount deducted, less the administrative fee, against the amount owing on the fine. A maximum deduction of 33 percent shall remain in effect through December 31, 2004 at which time subsection (e) shall take effect.

(e) Effective January 1, 2005, when an inmate owes any obligation pursuant to a restitution fine imposed by a court, the department shall deduct 40 percent or the balance owing, whichever is less, from the inmate's wages and trust account deposits regardless of the source of such income subject to the exemptions enumerated in subsection (j). In addition, an administrative fee of 10 percent

of the deduction shall be deducted to reimburse the department for its administrative costs, for a maximum deduction of 44 percent. The amount deducted, less the administrative fee, shall be transferred to the California Victim Compensation and Government Claims Board for deposit in the Crime Victims' Restitution Fund in the State Treasury. The inmate shall be credited for the amount deducted, less the administrative fee, against the amount owing on the fine. A maximum deduction of 44 percent shall remain in effect through December 31, 2006 at which time subsection (f) shall take effect.

(f) Effective January 1, 2007 and thereafter, when an inmate owes any obligation pursuant to a restitution fine imposed by a court, the department shall deduct 50 percent or the balance owing, whichever is less, from the inmate's wages and trust account deposits regardless of the source of such income subject to the exemptions enumerated in subsection (j). In addition, an administrative fee of 10 percent of the deduction shall be deducted to reimburse the department for its administrative costs, for a maximum deduction of 55 percent. The amount deducted, less the administrative fee, shall be transferred to the California Victim Compensation and Government Claims Board for deposit in the Crime Victims' Restitution Fund in the State Treasury. The inmate shall be credited for the amount deducted, less the administrative fee, against the amount owing on the fine.

(g) When an inmate owes both a restitution fine and a direct order of restitution from a sentencing court, the department shall collect on the direct order(s) of restitution first. Upon satisfaction of the direct order(s) of restitution, collection of any unsatisfied restitution fine(s) shall commence until paid in full.

(h) Fines and direct orders of restitution shall be collected from inmates/parolees who owe restitution while the inmate/parole violator remains under the jurisdiction of the department, with certain exceptions, set out in subsection (j).

(i) Fines and direct orders of restitution may be collected from inmates and parole violators housed in a Reception Center, Community Correctional Center, Community Correctional Facility, Community Correctional Reentry Center, Restitution Community Correctional Center or Return to Custody Substance Abuse Treatment Facility. Fines and direct orders of restitution may also be collected from inmates in the Community Prisoner Mother, Family Foundations Programs and the Alternative Custody Program.

(j) Joint Venture Program deposits, funds designated to pay the costs of a family visit ("family visit funds"), Temporary Community Leave funds, federal disability payments, veteran benefits, any reimbursement to an inmate as a result of a claim for lost or damaged property, or money reimbursed to an inmate due to a failed attempt to purchase merchandise are exempt from deductions for fines and direct orders of restitution enumerated in subsections (a), (b), (c), (d), (e), and (f).

(k) Family visit funds and Temporary Community Leave funds shall be so designated by the sender on Form 1839 (Rev. 5/97), Exemption of Family Visit/Temporary Community Leave Funds From Restitution Fines/Orders, to be completed in its entirety and returned to staff with the appropriate funds. Any funds received for either of these two purposes that are not accompanied by the prescribed form, properly completed, shall be deposited in the inmate's trust account and shall be subject to a deduction for restitution pursuant to subsections (a), (b), (c), (d), (e), and (f).

(*l*) Existing funds from the inmate's trust account can be used to pay for a family visit or a Temporary Community Leave. Upon the inmate's request, a hold will be placed on a specified portion of these funds to pay for the upcoming family visit or Temporary Community Leave. The inmate shall not use these designated funds for any other purpose other than the planned family visit or Temporary Community Leave. Should the family visit or Temporary Community Leave not take place then the hold previously placed on the funds shall be removed and no restitution deduction shall be made.

(m) If the family visit does not occur, then the funds designated for the family visit on Form 1839 (Rev. 5/97), shall have a permanent hold placed on them in the inmate's trust account for a future family visit or until the inmate is released on parole. Should the inmate transfer to another institution, the hold shall be removed, the funds deposited into the inmate's trust account, and no restitution deduction shall be made.

(n) If the Temporary Community Leave does not occur, then the funds designated for the leave on Form 1839 (Rev. 5/97), shall be refunded to the sender.

(o) Any remaining balance on the Temporary Community Leave fund for a Temporary Community Leave that took place shall be refunded to the sender.

NOTE: Authority cited: Sections 5058, 5058.3 and 1170.05, Penal Code. Reference: Sections 1170.05, 2085.5 and 5054, Penal Code.

HISTORY:

1. New section filed 9-16-92 as an emergency; operative 9-16-92 (Register 92, No. 38). A Certificate of Compliance must be transmitted to OAL 1-14-93 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 9-16-92 order transmitted to OAL 12-24-92 and filed 2-8-93 (Register 93, No. 7).
3. Amendment of section filed 10-17-95 as an emergency pursuant to Penal Code section 5058(e); operative 10-17-95 (Register 95, No. 42). A Certificate of Compliance must be transmitted to OAL by 3-25-96 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance, including amendment of section, as to 10-17-95 order transmitted to OAL 3-15-96 and filed 4-24-96 (Register 96, No. 17).
5. Editorial correction of subsection (a) (relettered to subsection (b)) (Register 98, No. 9).
6. Amendment of section heading, new subsections (a), (c), and (e), subsection relettering, and amendment of newly designated subsections (b), (d), and (f)–(j) filed 2-26-98 as an emergency pursuant to Penal Code section 5058(e); operative 2-26-98 (Register 98, No. 9). A Certificate of Compliance must be transmitted to OAL by 8-5-98 or emergency language will be repealed by operation of law on the following day.
7. Amendment of section heading, new subsections (a), (c) and (e), subsection relettering, and amendment of newly designated subsections (b), (d) and (f)–(j) refiled 8-11-98 as an emergency pursuant to Penal Code section 5058(e); operative 8-11-98 (Register 98, No. 33). A Certificate of Compliance must be transmitted to OAL by 1-19-99 or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 8-11-98 order, including further amendment of subsections (a) and (b), transmitted to OAL 9-25-98 and filed 11-4-98 (Register 98, No. 45).
9. Amendment of section and Note filed 5-27-2003; operative 7-1-2003 (Register 2003, No. 22).
10. Amendment of section and Note filed 6-18-2004 as an emergency; operative 6-18-2004 (Register 2004, No. 25). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 11-29-2004 or emergency language will be repealed by operation of law on the following day.
11. Certificate of Compliance as to 6-18-2004 order transmitted to OAL 11-16-2004 and filed 12-30-2004 (Register 2004, No. 53).
12. Amendment of subsection (i) and Note filed 9-27-2011 as an emergency; operative 9-27-2011 (Register 2011, No. 39). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 3-5-2012 or emergency language will be repealed by operation of law on the following day.

13. Certificate of Compliance as to 9-27-2011 order transmitted to OAL 2-3-2012; Certificate of Compliance withdrawn 3-19-2012 (Register 2012, No. 12).
14. Amendment of subsection (i) and Note refiled 3-19-2012 as an emergency; operative 3-19-2012 (Register 2012, No. 12). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 6-18-2012 or emergency language will be repealed by operation of law on the following day.
15. Reinstatement of section as it existed prior to 3-19-2012 emergency amendment by operation of Government Code section 11346.1(f) (Register 2012, No. 28).
16. Amendment of subsection (i) and Note filed 9-13-2012 as an emergency; operative 9-13-2012 (Register 2012, No. 37). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 2-20-2012 or emergency language will be repealed by operation of law on the following day.
17. Certificate of Compliance as to 9-13-2012 order transmitted to OAL 1-11-2013 and filed 2-25-2013 (Register 2013, No. 9).

3099. Inmate Trust Account Interest.

(a) Beginning January 1, 2009, interest earned on Inmate Trust Account deposits shall be distributed to qualifying inmates' trust accounts based upon the average daily balance in their trust account. A qualifying inmate is one who has provided a Social Security Account Number or a Taxpayer ID Number and that number has been validated with either the Social Security Administration or Internal Revenue Service.

(b) Interest will be distributed in whole penny increments. (Interest will not be rounded up to the next penny).

(c) Inmate Trust Account funds shall be deposited into an interest bearing account within the California State Treasury.

(d) The State Treasury account bears interest quarterly. Operational costs shall be deducted from the interest earned on that account prior to disbursal of the remainder to qualifying inmate trust accounts on a monthly basis. The interest rate paid to inmates will be determined by reducing the rate earned to a rate that will allow maximum distribution of available interest to qualifying inmates. The rate paid will not exceed the rate earned.

(e) Inmates with validated U. S. Social Security Account numbers or validated Tax ID numbers shall be eligible to receive interest.

(f) Inmates who have received $10 or more interest during a tax year shall have a Form 1099INT filed by CDCR.

(g) Interest distribution shall occur monthly and be subject to all normal debts and obligations including restitution.

(h) Costs for providing interest such as charges by Social Security Administration for validation of Social Security Numbers, cost of forms for reporting, and mailing costs will be deducted from the interest earned prior to distribution to inmates.

(i) The balance of the interest earned is the amount remaining after distribution of whole penny increments plus interest earned on non-qualifying inmate trust accounts less cost of providing interest. The balance of interest earned remaining at the end of a fiscal year shall be deposited into the Inmate Welfare Fund for the benefit of all inmates.

NOTE: Authority cited: Sections 5058 and 5058.3, Penal Code. Reference: Sections 5008 and 5054, Penal Code.

HISTORY:

1. New section filed 12-16-2008 as an emergency; operative 12-16-2008 (Register 2008, No. 51). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 5-26-2009 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 12-16-2008 order transmitted to OAL 5-22-2009 and filed 6-17-2009 (Register 2009, No. 25).

Article 2. Handicraft

3100. Handicraft Program Participation.

(a) Each institution or their designee may establish a handicraft program based on, but not limited to, the following conditions:

(1) possible threat to facility security,

(2) space availability,

(3) sufficient staffing, and

(4) available funding.

(b) Only those inmates in Privilege Groups A and B are eligible to apply for participation in the handicraft program and must submit CDC Form 165 (Rev. 7/95), Application for Handicraft Privilege.

(c) Approval may be granted to those inmates whom, in the judgement of the institution head or their designee, intend serious participation and have the skills or the potential and an interest to develop the skills required for the craft.

(d) The reason(s) for denying an inmate handicraft privileges shall be documented on Form 165 (Rev. 7/95), Application for Handicraft Privilege, and returned to the inmate with their application.

(e) An inmate's right to own, sell or convey personal property, including all written and artistic material produced or created by that inmate shall be governed by Section 2601 of the Penal Code.

(f) Handicraft projects or tools necessary for completion of handicraft projects shall be restricted to the extent necessary to provide for the reasonable security of the facility and the protection of persons and shall be subject to review by the institution head or their designee.

(g) Only those items approved by the institution head or their designee shall be manufactured. A project shall not be approved under any one or more of the following circumstances:

(1) The size of the materials would exceed the limits established pursuant to section 3101.

(2) The proposed quantities of the finished item for sale would exceed probable demands.

(3) The inmate's loan request for the cost of materials exceeds the limit established by the institution head or their designee.

(h) Handicraft projects, tools, and materials within a designated handicraft area, shall be controlled by staff and may be stored in a designated secured storage area of the facility, dependant upon space availability at the institution/facility.

(i) Inmates shall not work on a project or participate in any other handicraft activity during their scheduled work/training assignment hours.

(j) Supplies and materials for a project shall not be ordered until the project is approved by the institution head or their designee.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 2079, 2600, 2601, 5006 and 5054, Penal Code.

HISTORY:

1. Repealer and new section filed 10-7-82; effective thirtieth day thereafter (Register 82, No. 41).
2. Amendment of section heading, section and Note filed 3-20-96; operative 4-19-96 (Register 96, No. 12).
3. Amendment of subsection (h) filed 5-27-2004 as an emergency; operative 5-27-2004 (Register 2004, No. 22). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 11-3-2004 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 5-27-2004 order transmitted to OAL 10-28-2004 and filed 12-14-2004 (Register 2004, No. 51).

3101. Volume.

Inmates assigned to handicraft programs may possess handicraft articles and materials in their quarters/living area. Any authorized

handicraft items in excess of six cubic feet of space shall be confiscated and disposed of in accordance with Section 3191(c).

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 2601 and 5054, Penal Code.

HISTORY:

1. Amendment of section and new Note filed 5-27-2004 as an emergency; operative 5-27-2004 (Register 2004, No. 22). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 11-3-2004 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 5-27-2004 order transmitted to OAL 10-28-2004 and filed 12-14-2004 (Register 2004, No. 51).

3102. Suspension or Termination.

(a) Violation of institution handicraft procedures may result in the inmate being denied participation in the program. Such denial through disciplinary action will be for a specific period of time in keeping with the seriousness of the violation. Participation in handicraft programs or in specific handicraft projects may be terminated or suspended as a result of classification committee action which changes the inmate's custodial classification, housing, or other circumstances which preclude handicraft or specific kinds of handicraft activity.

(b) Upon suspension or termination of handicraft through disciplinary action, classification committee action, or upon the inmate's voluntary termination of handicraft activity, all personally owned handicraft tools and materials will be placed in institution storage, or at the inmate's option and own expense, shipped to any person designated by the inmate. If placed in institution storage, tools and materials will be returned to the inmate no later than the time of release from the institution.

Comment: Former DP-2203, suspension of privilege.

3103. Gifts.

Inmates may give gifts of handicraft items produced by themselves to any correspondent or visitor, subject to institution procedures for doing so. No limitation will be placed upon the number of gifts or estimated value of gifts that may be given in total or to any one person, except that no gift may be given to or be accepted by an employee of the Department of Corrections and Rehabilitation.

Comment: Former DP-2204, handicraft gifts.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.

HISTORY:

1. Change without regulatory effect amending section and adding Note filed 3-11-2013 pursuant to section 100, title 1, California Code of Regulations (Register 2013, No. 11).

3104. Inmate Handicraft Sales.

(a) Handicraft items may be sold to the public only at the facility and as otherwise may be specifically authorized by the institution head.

(b) The sale price of handicraft items shall be set by the inmate. An additional 10 percent mark up shall be added to the price of all articles placed for sale.

(1) One percent of the mark up shall be given to the inmate for the purpose of refunding duplicate sales tax paid on raw materials used in the handicraft articles sold.

(2) Nine percent of the mark up shall be deposited into the Inmate Welfare Fund for the purpose of offsetting administrative costs.

(c) Inmate handicraft items shall not be sold or given to other persons for the purpose of resale, except as provided in subsection (a).

Comment: Former DP-2205, dealing with handicraft.

Former DP-2206, sales of handicraft.

NOTE: Authority cited: section 5058, Penal Code. Reference: Sections 2600, 2812, and 2813, Penal Code.

HISTORY:

1. Editorial correction of printing error in subsection (b) (Register 92, No. 5).
2. Amendment of section heading and subsection (a), new subsection (b), subsection relettering, and amendment of newly designated subsection (c) filed 1-3-95 as an emergency; operative 1-3-95 (Register 95, No. 1). A Certificate of Compliance must be transmitted to OAL 6-12-95 or emergency language will be repealed by operation of law on the following day.
3. Reinstatement of section as it existed prior to emergency amendment filed 7-25-95 by operation of Government Code section 11346.1(f) (Register 95, No. 30).
4. Amendment of section heading and subsection (a), new subsection (b), subsection relettering and amendment of newly designated subsection (c) filed 7-25-95 as an emergency; operative 7-25-95 (Register 95, No. 30). A Certificate of Compliance must be transmitted to OAL by 11-22-95 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-25-95 order transmitted to OAL 11-17-95 and filed 1-3-96 (Register 96, No. 1).
6. Amendment of subsection(b), new subsections (b)(1)–(2) and amendment of Note filed 5-6-2002; operative 6-5-2002 (Register 2002, No. 19).

3105. Handicraft Program Assistance to Indigent Inmates.

The institution head or their designee may authorize loans from the inmate welfare fund (IWF) to help indigent inmates purchase materials for their initial or continued participation in the handicraft program. The institution head or their designee shall establish a limit on the dollar amount of IWF loans. A hold for the amount of the loan shall be placed on the trust account of such an inmate until the loan is fully repaid.

NOTE: Authority cited: section 5058, Penal Code. Reference: Sections 2079, 2813, 5006, and 5054, Penal Code.

HISTORY:

1. Amendment of section heading, section and new Note filed 3-20-96; operative 4-19-96 (Register 96, No. 12).

3106. Materials.

Inmates must use only materials purchased from their own funds or approved for their use by the institution's designated supervisor of the handicraft program in the manufacture of handicraft articles.

Comment: Former DR-2201, source of handicraft materials.

3107. Donating Items to the Institution.

Inmates may donate handicraft items, articles, tools, and materials to the institution for use by other inmates who are properly enrolled in approved handicraft programs. Such donations shall be recorded by the institution's supervisor of handicraft programs.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 2601 and 5054, Penal Code.

HISTORY:

1. Amendment of section heading and section and new Note filed 5-27-2004 as an emergency; operative 5-27-2004 (Register 2004, No. 22). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 11-3-2004 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 5-27-2004 order transmitted to OAL 10-28-2004 and filed 12-14-2004 (Register 2004, No. 51).

3108. Subcontracting.

(a) Inmates may not employ another inmate or inmates in the manufacture of any handicraft article.

(b) Inmates may collaborate in the manufacture of handicraft articles only with the prior and specific approval of the institution's designated supervisor of the handicraft program. All inmates involved in such joint productions or creations shall be given recognition if the article is disposed of as a gift by or through the institution. If sold, all inmates involved in its production or creation are to share in any profit as determined by the institution's supervisor of the handicraft program.

Comment: Former DR-2203, subcontracting handicraft production.

HISTORY:

1. Amendment of subsection (b) filed 2-24-77; effective thirtieth day thereafter (Register 77, No. 9).

3109. Business Dealings.

NOTE: Authority cited: section 5058, Penal Code. Reference: Sections 2600 and 2812, Penal Code.

HISTORY:

1. Repealer and new section filed 10-7-82, effective thirtieth day thereafter (Register 82, No. 41).
2. Editorial correction filed 2-19-85 (Register 85, No. 8).
3. Repealer filed 1-3-95 as an emergency; operative 1-3-95 (Register 95, No. 1). A Certificate of Compliance must be transmitted to OAL 6-12-95 or emergency language will be repealed by operation of law on the following day.
4. Reinstatement of section as it existed prior to emergency repeal filed 7-25-95 by operation of Government Code section 11346.1(f) (Register 95, No. 30).
5. Repealer filed 7-25-95 as an emergency; operative 7-25-95 (Register 95, No. 30). A Certificate of Compliance must be transmitted to OAL by 11-22-95 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 7-25-95 order transmitted to OAL 11-17-95 and filed 1-3-96 (Register 96, No. 1).

Article 3. Library

3120. Inmate Library Requirements.

(a) Each warden shall ensure a library, law library and related services are maintained for the benefit of all inmates in their facility, including those inmates confined to segregated housing units. A library access schedule shall be approved by the warden and posted throughout the facility.

(b) Material that contains any of the characteristics listed in sections 3006(a) and (c) shall be prohibited from inmate libraries unless specifically authorized by the institution head.

(c) To check out material from a library, each inmate shall:

(1) Present photo identification card as required.

(2) Sign a trust account withdrawal order.

(3) Display the materials to staff when leaving the library.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 2600, 2601 and 5054, Penal Code; *Toussaint* v. *McCarthy*, 801 F.2d 1080 (9th Cir. 1986); and *Bounds* v. *Smith*, 97 S.Ct. 1491 (1977), 430 U.S. 817.

HISTORY:

1. Repealer and new section filed 10-7-82; effective thirtieth day thereafter (Register 82, No. 41).
2. Amendment filed 6-30-93; operative 7-30-93 (Register 93, No. 27).
3. Certificate of Compliance as to 12-27-95 order including amendment of subsection (b) and Notetransmitted to OAL 4-25-96 and filed 6-6-96 (Register 96, No. 23).
4. Amendment of subsection (c)(1) and Note filed 10-22-2012; operative 11-21-2012 (Register 2012, No. 43).

3121. Library Restrictions and Penalties.

(a) No books or other reference material shall be removed from an inmate library without the librarian's authorization.

(b) Books or other library material checked out to an inmate shall not be loaned to or borrowed by another inmate, and shall be returned to the library as required.

(c) Inmates whose checked out library material is lost, damaged, or stolen shall be subject to disciplinary actions and may also be charged for the costs of repair or replacement of the material and may be denied or have restrictions placed upon their library privileges.

NOTE: Authority cited: section 5058, Penal Code. Reference: section 5054, Penal Code.

HISTORY:

1. Amendments filed 10-7-82; effective thirtieth day thereafter (Register 82, No. 41).
2. Editorial correction of printing error in Note (Register 92, No. 5).
3. Renumbering and amendment of former section 3122 to section 3121 and renumbering and amendment of former section 3121 to section 3122 filed 6-30-93; operative 7-30-93 (Register 93, No. 27).

3122. Inmate Law Library.

(a) Each facility shall provide legal materials through its law library to provide inmates with meaningful access to the courts.

(b) Inmates who have established court deadlines may apply for Priority Legal User (PLU) status to the prison law libraries. Inmates who are granted PLU status based on their application shall receive higher priority to prison law library resources than other inmates. All inmates who are not on PLU status are on General Legal User (GLU) status.

(1) An established court deadline may be either a court imposed deadline for an active case or a statutory deadline. Inmates who apply for PLU status based on a court imposed deadline must show documentation from the court to verify that deadline. Inmates who apply for PLU status based on a statutory deadline must identify the legal rule that compels the deadline.

(2) An inmate who is represented by an attorney for a case shall not be eligible for PLU status for any established court deadline pertaining to that case. An inmate with attorney representation for the established court deadline shall be entitled to GLU status only.

(3) Inmates shall complete and sign a CDCR Form 2171 (Rev. 9/09), Priority Library User (PLU) Request and Declaration, which is incorporated by reference, to apply for PLU status. The Form 2171 shall include check boxes for inmates to designate their established court deadlines. The Form 2171 shall also include a check box for inmates to confirm that they do not have attorney representation for their listed deadline.

(4) Except under extraordinary circumstances beyond staff control, law library staff shall have seven calendar days after receipt of the completed and signed Form 2171 to process an inmate's application for PLU status and make a decision to approve or disapprove the application. Staff members who disapprove an inmate's application shall provide the reasons for their disapproval on the form and shall provide a copy of that document to the inmate.

(5) An inmate who is found to have provided false information on his or her application for PLU status shall be guilty of an administrative rule violation and shall not be able to obtain PLU status based on that application.

(6) An inmate may receive PLU status within 30 calendar days of his or her established court deadline unless the inmate can demonstrate need for a longer period of PLU status based on extraordinary circumstances beyond the inmate's control.

(7) PLU status is intended to assist inmates to do legal work in a quiet law library setting. An inmate on PLU status who, while

in the law library, is observed by staff to act in an unreasonably disruptive manner or to engage in non-legal work shall be removed from the PLU list and shall be dismissed from the library for that day. Inmates who are removed from the PLU list for these reasons shall be ineligible to reapply for PLU status for 30 calendar days, but may continue to use the law library on GLU status.

(c) Inmates may not in any way trade, transfer, or delegate their PLU status to other inmates. An inmate who assists another inmate in the preparation of legal documents, as described in section 3163, may not use the PLU status of the inmate being assisted.

(d) An inmate in a facility without a law library and requesting access to such resources shall be transferred to a facility with a law library of departmental choosing for the period of time needed to complete legal work.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code; *Gilmore* v. *Lynch*, 319 F.Supp. 105 (N.D. Cal. 1970); *Toussaint* v. *McCarthy*, 801 F.2d 1080 (9th Cir. 1986); *Toussaint* v. *McCarthy*, USDC N.D. Cal. No. C 73-1422 SAW, First Special Report of the Monitor, August 19, 1987; and *Toussaint* v. *Rowland*, USDC N.D. Cal. No. C 73-1422 SAW, Second Special Report of the Monitor, June 30, 1988; *Zatko* v. *Rowland*, 835 F.Supp. 1174 (N.D. Cal. 1993); *Lewis* v. *Casey*, 518 U.S. 343 (1996).

HISTORY:

1. Amendment filed 10-7-82; effective thirtieth day thereafter (Register 82, No. 41).
2. Renumbering and amendment of former section 3121 to section 3122 and renumbering and amendment of former section 3122 to section 3121 filed 6-30-93; operative 7-30-93 (Register 93, No. 27).
3. Amendment of subsection (a), new subsections (b)–(c), subsection relettering and amendment of Note filed 11-24-2009; operative 12-24-2009 (Register 2009, No. 48).

3123. Access to Law Libraries.

(a) Physical law library access means physical entry into a facility law library for the purpose of using its legal resources. A facility law library includes, but is not limited to, a print law library or the Law Library Electronic Delivery System (LLEDS) with any necessary print supplements.

(b) All inmates, regardless of their classification or housing status, shall be entitled to physical law library access that is sufficient to provide meaningful access to the courts. Inmates on PLU status may receive a minimum of 4 hours per calendar week of requested physical law library access, as resources are available, and shall be given higher priority to the law library resources. Inmates on GLU status may receive a minimum of 2 hours per calendar week of requested physical law library access, as resources are available.

(c) When unable to physically access the law library, an inmate may request access to legal material through delivery of those materials to the inmate by library staff. This process is referred to as law library paging. An inmate shall not be limited to law library paging for access to legal materials except under extraordinary circumstances including, but not limited to, the following:

(1) The inmate is directly under a prison lockdown or modified program.

(2) The inmate is under restricted movement due to his or her medical status.

(3) The inmate has been suspended from physical access to the law library pending investigation of a serious rule violation.

(d) Inmates who are limited to law library paging due to a lockdown or modified program shall, whenever possible, have their law library access restored within 16 calendar days unless a high security risk continues to exist to prohibit physical law library access.

(e) When inmates are limited to law library paging for any reason as described in section 3123(c), law library staff must deliver the requested legal material to their cells as soon as possible, but no later than 16 calendar days from the date of the paging request.

(f) Disciplinary action for an inmate who is found to be guilty of a serious rule violation pertaining to law library resources, facilities, or staff may include a suspension of all physical law library access for up to 90 calendar days. This action does not preclude an inmate from pursuing legal research through the reasonable use of law library paging, beginning three calendar days after the date of suspension until the suspension period ends.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code; *Gilmore* v. *Lynch*, 319 F.Supp. 105 (N.D. Cal. 1970); *Toussaint* v. *McCarthy*, 801 F.2d 1080 (9th Cir. 1986); *Toussaint* v. *McCarthy*, USDC N.D. Cal. No. C 73-1422 SAW, First Special Report of the Monitor, August 19, 1987; *Toussaint* v. *Rowland*, USDC N.D. Cal. No. C 73-1422 SAW, Second Special Report of the Monitor, June 30, 1988; *Zatko* v. *Rowland*, 835 F.Supp. 1174 (N.D. Cal. 1993); *Lewis* v. *Casey*, 518 U.S. 343 (1996).

HISTORY:

1. New section filed 11-24-2009; operative 12-24-2009 (Register 2009, No. 48).
2. Amendment of subsections (c)(1) and (d) filed 6-14-2011; operative 7-14-2011 (Register 2011, No. 24).

3124. Content of Law Libraries.

(a) Each institution shall maintain at least one law library for the use of inmates, in print and/or by means of the Electronic Law Library Delivery System with any necessary print or other electronic supplements. Except for items that are out of print, the law library collection shall include, but shall not be limited to, the following current and updated legal materials or their equivalents from other publishers:

(1) Deering's California Codes Annotated.

(2) Judicial Council of California Civil and Criminal Jury Instructions.

(3) Michie, California Official Reports.

(4) Matthew Bender, Standard California Codes: Rules of Court (latest edition).

(5) Matthew Bender, California Criminal Defense Practice (latest edition).

(6) Matthew Bender, California Criminal Discovery (latest edition).

(7) Matthew Bender, California Evidence Courtroom Manual (latest edition).

(8) Matthew Bender, California Forms of Pleading and Practice (latest edition).

(9) Michie, United States Code Service.

(10) Matthew Bender, Moore's Federal Practice (latest edition).

(11) All United States Supreme Court Cases.

(12) All Federal Appeals Court Cases—as reported in the Federal Reporter.

(13) All Federal District Court Cases—as reported in the Federal Supplement.

(14) Anderson, Constitutional Rights of Prisoners (latest edition).

(15) Michie, Federal Habeas Corpus Practice and Procedure (latest edition).

(16) The Daily Journal (newspaper), one year back file.

(17) Shepard's United States Citations.

(18) Shepard's Federal Citations.

(19) Shepard's California Citations.

(20) A recognized law dictionary, such as Black's or Ballantine's (latest edition).

(21) California Code of Regulations.

(22) California Family Law Litigation Guide (latest edition).

(23) California Family Law Practice and Procedure (latest edition).

(24) Civil Rights Actions (latest edition).

(25) California Courtroom Evidence, by Cotchett.

(26) California Juvenile Courts Practice and Procedure (latest edition).

(27) California Superior Court Local Rules.

(b) Each institution shall also make supplemental legal materials available to inmates from an outside source. Except for items that are out of print, the supplemental legal materials shall include, but shall not be limited to, the following legal materials or their equivalents from other publishers:

(1) Federal Rules Decisions.

(2) Corpus Juris Secundum.

(3) California Jurisprudence (latest edition).

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code; *Gilmore* v. *Lynch*, 319 F.Supp. 105 (N.D. Cal. 1970); *Toussaint* v. *McCarthy*, 801 F.2d 1080 (9th Cir. 1986); *Toussaint* v. *McCarthy*, USDC N.D. Cal. No. C 73-1422 SAW, First Special Report of the Monitor, August 19, 1987; *Toussaint* v. *Rowland*, USDC N.D. Cal. No. C 73-1422 SAW, Second Special Report of the Monitor, June 30, 1988; *Zatko* v. *Rowland*, 835 F.Supp. 1174 (N.D. Cal. 1993); *Lewis* v. *Casey*, 518 U.S. 343 (1996).

HISTORY:

1. New section filed 11-24-2009; operative 12-24-2009 (Register 2009, No. 48).
2. Amendment of subsection (a), repealer and new subsections (a)(1)–(a)(16), new subsections (a)(21)–(a)(27), repealer of subsections (b)(1)–(b)(5) and subsection renumbering filed 6-2-2015 as an emergency; operative 6-2-2015 (Register 2015, No. 23). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 11-9-2015 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 6-2-2015 order, including amendment of subsections (a)(2)–(3), (a)(9) and (a)(12)–(13) and amendment of Note, transmitted to OAL 10-28-2015 and filed 12-14-2015; amendments effective 12-14-2015 pursuant to Government Code section 11343.4(b)(3) (Register 2015, No. 51).

Article 4. Mail

3130. General Policy.

The California Department of Corrections and Rehabilitation (CDCR) encourages correspondence between inmates and persons outside the correctional facility. The sending and receiving of mail by inmates shall be uninhibited except as specifically provided for in this article. The Regulations contained in this article shall provide for the orderly processing of inmate mail and to give direction to staff, inmates, and their correspondents concerning facility mail requirements. Mail shall be delivered to inmates, regardless of housing, unless it is contraband pursuant to section 3006, or is disturbing or Offensive Correspondence pursuant to section 3135.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 2600, 2601(d) and 5054, Penal Code; and *Procunier* v. *Martinez*, 416 U.S. 396.

HISTORY:

1. Repealer of Article 4 (Sections 3130–3143) and new Article 4 (Sections 3130–3147) filed 10-7-82; effective thirtieth day thereafter (Register 82, No. 41). For prior history, see Registers 78, No. 33; 78, No. 12; 77, No. 40; 77, No. 20; 77, No. 9 and 76, No. 31.
2. Amendment filed 7-17-2008; operative 7-17-2008 pursuant to Government Code section 11343.4 (Register 2008, No. 29).

3131. Plan of Operation.

Each warden or head of a correctional facility shall prepare and maintain a plan of operation for the sending and receiving of mail for all inmates housed in the facility. Procedures of the correctional facility shall conform to the policies, regulations and the provisions of law made reference to and shall apply to all inmates of the facility. Correctional staff shall promptly inform each newly received inmate of all department regulations and local procedures governing inmate mail.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 2080, Penal Code; and *Procunier* v. *Martinez*, 416 U.S. 396.

HISTORY:

1. Amendment filed 7-17-2008; operative 7-17-2008 pursuant to Government Code section 11343.4 (Register 2008, No. 29).

3132. Responsibility and Compliance.

(a) Correspondents are personally responsible for the content of each item of mail they send into or out of a correctional facility. All persons corresponding with inmates must comply with existing laws, regulations and local rules. Any violation of laws governing mail will be referred to postal authorities and to appropriate criminal authorities. Violations of law, the policies and regulations set forth in this article, or of approved facility mail procedures may result in the temporary suspension or denial of correspondence between the persons involved.

(b) Departmental employees, inmates and persons corresponding with inmates must comply with the regulations set forth in this article and with approved facility mail procedures. Failure to do so may result in legal or administrative measures against the person or persons involved.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 2601, 2930, 5054 and 5058, Penal Code; and *Procunier* v. *Martinez*, 416 U.S. 396.

HISTORY:

1. Amendment of subsection (a) filed 7-17-2008; operative 7-17-2008 pursuant to Government Code section 11343.4 (Register 2008, No. 29).

3133. Definitions and Disposition of Mail.

(a) Definitions:

(1) First-Class Mail is all mail wholly or partly in writing or typewriting, all actual and personal correspondence, all bills and statements of account, and all matter sealed or otherwise closed against inspection. The maximum weight for a First-Class letter is 13 ounces. All First-Class Mail shall be delivered to the inmate as soon as possible, but not later than seven calendar days from receipt of the mail at the facility mailroom.

(2) Standard Mail, formerly called Bulk Mail, is used for advertising mail, catalogues, and newsletters of a non-personal nature that are not required to be mailed as First-Class Mail. The maximum weight for Standard Mail is 16 ounces.

(3) Periodicals are a class of mail consisting of magazines, newspapers or other publications formed of printed sheets that are published at least four times a year at regular, specified intervals from a known office of publication. The known office of publication must be a public office for transacting the business of the publication during normal business hours, and must also be the office where the publication's circulation records are available for USPS examination.

(4) Package Services are Parcel Post, bound Printed Matter, Media Mail, and Library Mail. With the exception of parole clothes and third party special purchase health appliances, inmates shall not be allowed to receive package services directly from personal correspondents. Packages containing parole clothes or third party special purchase health care appliances must be clearly marked with either "Parole Clothes" or "Health Care Appliance" on the outside of the package. Personal correspondents do not include the Courts, Law Firms, County, State and Federal Agencies, Publishers, Bookstores,

Book Distributors, Religious Organizations that provide written materials only, etc.

(5) For purposes of this article, the definition of indigent inmate is an inmate who has $1.00 or less in their Inmate Trust Account for 30 consecutive days.

(b) All incoming and outgoing mail shall be handled in accordance with the following:

(1) All incoming mail shall be properly addressed. Appropriately addressed mail shall include the inmate's name and department identification number. The mail should also include the address designated by the institution for inmate mail. The receiving institution is required to update any mail piece that does not reflect accurate housing or institutional location. Standard Mail must be addressed to an individual inmate, showing their name, CDCR number and the address for the applicable institution.

(2) All outgoing mail shall be properly addressed, and shall be marked indicating that it originated from a California State Correctional Facility. If addressed to an inmate, it must contain the sender's name, department identification number and the return address designated by the institution for inmate mail, including housing. It shall also contain the recipient's name, address, city, state, and zip code.

(3) All incoming packages and non-confidential mail addressed to an inmate will be opened and inspected before delivery to the inmate. The purpose of inspection will be to receive or receipt any funds enclosed for deposit to the inmate's trust account, to verify and record the receipt of permitted personal property, and to prevent the introduction of contraband. All non-confidential inmate mail, incoming or outgoing, is subject to being read in its entirety by designated staff. All non-confidential inmate mail that is "returned to sender" shall be opened and inspected before being returned to the inmate.

(4) Facilities shall not require incoming books, magazines or newspapers to have an institution pre-approved "vendor approved" label affixed to the packaging. A departmentally approved vendor is any publisher, book store, or book distributor, that does mail order business. Books, periodicals or other publications that are mailed from a religious organization shall be considered as coming from an authorized vendor.

(c) Confidential Mail with Inmate Trust Account Withdrawals. Inmate confidential mail submitted with a CDC Form 193, Inmate Trust Withdrawal (Rev. 1/88), to pay for filing fees or other costs may be left unsealed so that the voucher (check) can be enclosed after the trust account withdrawal has been processed. Inmates who do not wish to forward this type of mail unsealed should attach a stamped, appropriately addressed envelope to the confidential mail so the check can be enclosed and forwarded in the extra envelope.

(d) Undelivered Mail. All undelivered letters and packages returned to a facility by the post office shall be opened and inspected before being returned to the inmate. This inspection is to determine if the content originated with the inmate sender identified on the letter or package, and to prevent the transmission of contraband, material, substances, and property that an inmate is not authorized to possess in the correctional facility. The inspection of returned mail includes regular mail and letters that were mailed as confidential correspondence. In the case of returned confidential correspondence, the envelope shall be opened in the presence of the inmate. It shall be examined and read to the degree necessary to determine if it was sent by the inmate and opened or tampered with before its return to the facility. Upon completion of this examination, the returned correspondence shall be given to the inmate. Any contraband found in the returned correspondence shall be confiscated and processed, and appropriate disciplinary action taken.

(e) Unmailed Correspondence. If any First-Class Mail is not accepted for mailing, or is accepted for mailing but is not properly mailed, the inmate shall be notified in writing of the reason for refusal to accept or to promptly mail the item(s). When the delay in mailing exceeds 5 business days, the notice shall be sent and include the disposition of such mail. Unless retention of such mail is required in administrative, legal, or disciplinary proceedings against the inmate or other persons, it shall be promptly mailed or returned to the inmate.

(f) Forwarding Mail. Mail received for an inmate who has been transferred from the facility where the mail is received shall be immediately forwarded to the facility or agency that has current custody of the inmate. Mail addressed to an inmate who has been transferred or released shall not be returned to the sender as "Addressee Unknown" unless the individual has been discharged from CDCR. First-Class Mail and Periodicals addressed to an inmate who has been transferred within the CDCR shall have a label affixed with the current address and shall be forwarded via the USPS. For inmates who have paroled, the affixed label shall state "Paroled Region #____", and shall show that Parole Regions' address. Standard Mail with a "Mailer Endorsement" that was appropriately addressed, but is undeliverable because the inmate is no longer housed at the facility, shall be returned to the USPS for processing. Mailroom staff shall affix a label to the Standard Mail piece showing the correct address before returning it to the USPS for processing. For inmates who have paroled, the label affixed to the Standard Mail piece shall state "Paroled Region #____" and shall show that Parole Regions' address. The Mailer Endorsement will appear either near the address block or below the return address in the top left corner of the mail piece. A Mailer Endorsement may read "Address Service Requested", or "Forwarding Service Requested", or "Change Service Requested", or "Return Service Requested". Staff may dispose of any Standard Mail piece that does not have a Mailer Endorsement, and is undeliverable because the inmate is not currently housed at the institution. Daily newspapers that are delivered by courier will not be forwarded nor will they be held for an inmate who is temporarily away from the facility for longer than 72 hours. Exceptions will be made when the absence results from the inmate's participation in facility approved activities such as a community release program, firefighting or other disaster control assignments. Newspapers that are delivered by the USPS will have a forwarding address affixed and shall be returned to the USPS for processing.

(g) Forwarding Confidential Correspondence. All confidential correspondence for inmates that must be forwarded will be done on a daily basis. If delivery of confidential correspondence from the courts is impeded because the addressee's name and CDCR number do not conform to each other, the mailroom will contact the Litigation Coordinator who will telephone the court to clarify the identification of the addressee in order to expedite delivery of confidential correspondence. Staff will document their efforts to identify the addressee when confidential correspondence from the courts cannot be delivered.

(h) Temporary Absence. Mail shall be held for an inmate who is temporarily away from the facility when the inmate's return is anticipated within one week.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 2601 and 4570, Penal Code; *Procunier* v. *Martinez*, 416 U.S. 396; and *Bell* v. *Wolffish*, 99 S. Ct 1861.

HISTORY:

1. Repealer of former section 3133 and renumbering of former section 3147 to new section 3133, including amendment of section heading and repealer and new section, filed 7-17-2008; operative 7-17-2008 pursuant to Government Code section 11343.4 (Register 2008, No. 29).

3134. General Mail Regulations.

(a) First-Class Mail can have the following items enclosed, including but not limited to:

(1) Photographs, with the exception of photographs with attached backing, framed photographs that cannot be searched, Polaroid's, negatives, and slides.

(2) Calendars.

(3) Blank greeting cards (No 3-dimensional attachments or stamps).

(4) Postage embossed envelopes, up to forty.

(5) Blank envelopes.

(6) Writing paper/tablets (white or yellow lined only - no cotton paper).

(7) Typing paper (no cotton paper).

(8) Legal paper, to include colored paper required by court rules (no cotton paper).

(9) Children's drawings.

(10) Newspaper clippings, Internet downloaded articles, photocopies of clippings/articles, or electronic mail (e-mail). Prior to issuance they shall be reviewed to ensure that they comply with sections 3006 and 3135.

(11) Forty postage stamps. If there is a rate change, then forty stamps at the old rate, and 40 stamps at the amount needed to equal the new rate. No personalized postage stamps will be allowed.

The weight limit for First-Class Mail is 13 ounces, and for Standard Mail is 16 ounces. Photo albums can be obtained by the inmate from the canteen and the Vendor Package Program. Any unacceptable mail shall be immediately returned to the sender with the envelope annotated "Unauthorized Mail, Return to Sender". Inmates shall be noticed pursuant to section 3136.

(b) Metered Envelopes. Metered reply envelopes sent in with correspondence must adhere to the following conditions:

(1) The postage amount must be enough to prepay the postage in full.

(2) Indicia may be printed directly on the mail piece or on a label and must be positioned appropriately.

(3) Indicia used to prepay reply postage must not show the date.

(4) The words "NO POSTAGE STAMP NECESSARY POSTAGE HAS BEEN PREPAID BY" must be printed above the address.

(c) Inspection of Incoming and Outgoing Packages will occur as follows:

(1) Facilities will establish and make available to all inmates procedures for shipping packages to their correspondents.

(2) Facilities will make available to all inmates local procedures for the receipt of packages from their correspondents in accordance with limits set for their assigned inmate work/training incentive group. A facility may refuse to deliver the package if the inmate is not qualified to receive it. If the package is in excess of the 30-pound limit, or is damaged, the package shall be returned to the vendor at the vendor's expense.

(3) All incoming packages addressed to an inmate shall be opened and inspected in the presence of the inmate. The contents of the package are inspected to record authorized personal property, and to prevent the introduction of contraband.

(4) Delivery by staff of packages, special purchases, and all publications, shall be completed as soon as possible but not later than 15 calendar days, except during holiday seasons such as Christmas, Easter, and Thanksgiving, and during lockdowns or modified programs of affected inmates.

(5) All packages shall be processed and issued from a designated distribution area. All outgoing packages shall be inspected for contraband prior to being sealed and mailed.

(d) Contests. Inmates shall not participate in any contest when a financial obligation is involved or when such participation shall result in expense to the facility beyond the cost of processing mail. If lottery tickets, lottery scratchers, or other contest materials, are discovered in incoming mail, the entire envelope and its contents shall be returned to sender with a pre-printed notice to the sender which states: "Unauthorized item".

(e) Inmate Manuscripts. Manuscripts include, but are not limited to, written, typed or printed articles of fiction and nonfiction, poems, essays, gags, plays, skits, paintings, sketches, drawings, or musical compositions created by an inmate. Any manuscript remains the property of the inmate who created it. It may be retained in the inmate's possession, unless it violates sections 3006 or 3135. If unauthorized state materials have been used in the creation of a manuscript, the item shall be confiscated pending disciplinary action and reimbursement by the inmate for the state materials. Incoming and outgoing manuscripts shall be processed as regular mail in accordance with the provisions of this article.

(f) There shall be no limitations placed on the number of persons with whom an inmate may correspond.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 2601 and 4570, Penal Code; *Procunier* v. *Martinez*, 416 U.S. 396; and *Bell* v. *Wolffish,* 99 S. Ct. 1861.

HISTORY:

1. Change without regulatory effect amending section filed 10-29-90 pursuant to section 100, title 1, California Code of Regulations (Register 91, No. 6).
2. Editorial correction deleting duplicate sentence (Register 91, No. 11).
3. Editorial correction of printing error in Note (Register 92, No. 5).
4. Amendment filed 11-18-96; operative 12-18-96 (Register 96, No. 47).
5. Renumbering of former section 3134 to section 3138 and renumbering of former section 3138 to section 3134, including repealer and new section, filed 7-17-2008; operative 7-17-2008 pursuant to Government Code section 11343.4 (Register 2008, No. 29).
6. Amendment of subsection (c)(4) filed 6-14-2011; operative 7-14-2011 (Register 2011, No. 24).

3134.1. Processing of Publications.

(a) Publications. Inmates may subscribe to, purchase, or have items sent in to them such as newspapers, periodicals, magazines or books. If subscriptions or books are purchased for the inmate by a third party or donated to an inmate, they must be mailed directly from a book store, book distributor, or publisher. Personal correspondents cannot mail books, periodicals, or other publications directly to inmates and state that they are a donation. There shall be no "Approved Vendor Lists" for any publications.

(b) Processing and Inspection of Incoming Magazines and Newspapers. All magazines and newspapers shall be inspected prior to issuance to ensure that they comply with sections 3006, 3134, and 3135. Attached free CD's and packaged samples of perfume, lotion, moisturizers, stickers, or any item deemed to be contraband, contained in magazines shall be removed; notification of such to the inmate is not required. No other items shall be removed from a magazine or other publication in order to issue it to an inmate.

(c) Processing and Inspection of Incoming Books. All incoming paperback and hardback books and any enclosures within them shall be inspected prior to issuance to ensure they comply with sections 3006, 3134, and 3135. For hardback books staff shall allow the inmate to determine whether to accept the book with the cover removed or, if that option is declined, decide how the book is to be disposed of per section 3191(c). If the inmate chooses to accept the book, staff shall insure the book does not violate any other departmental regulation, and then shall remove the entire cover in front

of the inmate. Should such removal render the book unstable, staff shall take measures to ensure the book remains intact.

(d) Notifications, to Publisher, to the Inmate, and to the Division of Adult Institutions (DAI) for Disapproval of Publication. When incoming books, magazines, or publications to an inmate are withheld or disallowed on a temporary basis by the institution pending approval from DAI, a letter shall be sent by the institution to the publisher explaining why the item was denied. A book, magazine, or publication denied to an inmate(s) based on a violation of departmental regulation or policy, and that is not included on the current Centralized List of Disapproved Publications (Centralized List) pursuant to subsection 3134.1(e), shall only require one notification letter persuant to institution to be sent to the publisher. At a minimum the letter must include the reason why the book, magazine, or publication was denied, the names and CDCR number for all inmates, the applicable CCR section that the publication violates, and a notice to the Publisher of their right to appeal pursuant to subsection 3137(c). The letter must be sent within 15 calendar days of the determination to disallow the book, magazine or publication, with a copy of the notification letter and supporting documents to be retained by the facility for a minimum of seven years. Concurrent to the letter to the publisher, when incoming or outgoing publications addressed to or being sent by an inmate are withheld or disallowed, the institution shall also notify the inmate addressee via CDCR Form 1819 (Rev. 01/16), Notification of Disapproval-Mail/Packages/Publications, which is incorporated by reference. The CDCR Form 1819 shall include the reason, disposition, name of official disallowing the publication, and the name of the official to whom an appeal can be directed.

The institution shall also concurrently notify DAI and request that DAI affirm or deny the withholding of the temporarily disallowed publication. DAI shall provide the decision within 30 calendar days of receiving the request. If DAI affirms the withholding of the publication, disallowance of the publication shall become permanent. If DAI denies the withholding of the publication, the institution shall deliver the publication to the inmate within 15 calendar days, upon receipt of DAI's decision.

For periodicals, as defined in subsection 3133(a)(3), the DAI may include a periodical on the Centralized List, in accordance with subsection 3134.1(e), provided that all issues of the publication for twelve consecutive months violate departmental regulation or policy. However, an institution may disallow individual issues of a periodical in accordance with this subsection. The disallowance of individual issues of a periodical shall become permanent, as to those issues only, if DAI affirms an institution's decision to temporarily withhold/disallow the individual issues. If the DAI denies the institution's decision to temporarily withhold individual issues of a periodical, the institutional shall deliver those issues to the inmate within 15 calendar days upon receipt of DAI's decision.

(e) Centralized List Of Disapproved Publications. The Division of Adult Institutions shall distribute to each institution a Centralized List of Disapproved Publications that are prohibited as contraband. Examples of publications that would be included on the Centralized List would include, but not be limited to, publications that contain, obscene material as described in subsection 3006(c)(15), sexually explicit images that depict frontal nudity as described in subsection 3006(c)(17)(A) warfare or weaponry, bomb making instructions, or STG written materials or photographs, as described in subsections 3378.2(b)(5)–(6). Publications that are enumerated on the Centralized List are not allowed in any institution. Local institutions may not add items to the Centralized List. When a publication is placed on the Centralized List, the Division of Adult Institutions shall send a letter to the publisher explaining why the publication was excluded. At a minimum, the letter must include the reason why the publication is excluded, the applicable CCR section that the publication violates, and a notice to the Publisher of its right to appeal per CCR subsection 3137(c). The letter must be sent within 15 calendar days of the determination to disapprove the publication, with a copy of the notification letter and supporting documents to be retained by the facility for a minimum of seven years.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 2601 and 4570, Penal Code; *Procunier* v. *Martinez* (1974) 416 U.S. 396; and *Bell* v. *Wolfish* (1979) 441 U.S. 520.

HISTORY:

1. New section filed 7-17-2008; operative 7-17-2008 pursuant to Government Code section 11343.4 (Register 2008, No. 29).
2. Amendment of subsections (d) and (e) filed 4-30-2015; operative 4-30-2015 pursuant to Government Code section 11343.4(b)(3) (Register 2015, No. 18).
3. Amendment of subsection (d) and Note filed 10-20-2016; operative 10-20-2016 pursuant to Government Code section 11343.4(b)(3) (Register 2016, No. 43).

3135. Disturbing or Offensive Correspondence.

(a) Non-confidential correspondence may be disallowed if the text of such correspondence presents a danger, or a threat of danger, to any person. The authority to disallow such correspondence shall not be delegated below the staff level of Correctional/Facility Captain.

(b) Disagreement with the sender's or receiver's morals, values, attitudes, veracity, or choice of words will not be cause for correctional staff to disallow mail. Correctional staff shall not challenge or confront the sender or receiver with such value judgments.

(c) Certain correspondence, including but not limited to the following, is disallowed, regardless of values or morals, in order to ensure the safety and security of the institution/facility:

(1) Any mail of a character tending to incite murder, arson, a riot, or any form of violence or physical harm to any person, or any ethnic, gender, racial, religious, or other group.

(2) Threatens blackmail or extortion.

(3) Contraband, or sending or receiving contraband.

(4) Concerns plans to escape or assist in an escape.

(5) Concerns plans to disrupt the order, or breach the security, of any institution/facility.

(6) Concerns plans for activities which violate the law, these regulations or local procedures.

(7) Contains coded messages.

(8) Describes the making of any weapon, explosive, poison, or destructive device.

(9) Contains illustrations, explanations, and/or descriptions of how to sabotage or disrupt computers, communications, or electronics.

(10) Contains maps depicting any area within a ten-mile radius of an institution/facility.

(11) Contains gambling or lottery information or paraphernalia.

(12) Contains material obscene in nature.

(13) Contains human or animal hair, substances, or fluids.

(14) Contains written materials or photographs that indicate an association with validated STG members or associates, as described in subsections 3378.2(b)(5)–(6).

(d) Inmates shall not possess or have under their control obscene material and/or mail containing information concerning where, how, or from whom obscene material may be obtained. Obscene material means catalogs, advertisements, brochures, and/or material taken as a whole, which to the average person, applying contemporary statewide standards, appeals to the prurient interest. It is material which taken as a whole, depicts sexual conduct, and lacks serious literary, artistic, political, or scientific value. Additionally, material is considered obscene when it appears from

the nature of the matter or the circumstances of its dissemination, distribution or exhibition that it appeals to deviant sexual groups. Material subject to the test of the above includes, but is not limited to, pictures or images that depict:

(1) Sexually explicit materials, which are defined as materials that show frontal nudity including personal photographs, drawings, and magazines and pictorials that show frontal nudity.

(2) Penetration of the vagina or anus, or contact between the mouth and genitals.

(3) Bestiality, sadomasochism, or an excretory function, including urination, defecation, or semen.

(4) Nudity of a minor, or person who appears to be under 18 years old.

(5) Conduct that appears to be non-consensual behavior.

(6) Conduct that appears to be forceful, threatening, or violent.

(7) Sexual conduct where one of the participants is a minor, or appears to be under 18 years old.

Text-only material shall not be considered obscene unless designated by the Division of Adult Institutions (DAI). DAI shall then place the designated text-only material on the Centralized List of Disapproved Publications, subject to subsection 3134.1(e).

(e) If the receiver of any mail, confidential or nonconfidential, directs a written complaint to administrative staff of the department or to facility officials, consideration will be given to any reasonable remedy sought by the individual. This may include discussion of the complaint with the inmate in an attempt to resolve the matter, reading of all mail, including confidential mail, addressed to the individual, and either disallowing only that which appears to perpetuate the problem, or disallowing all mail to the individual. Complaints and requests for actions which would, if approved, restrict an inmate's correspondence, and any action taken in response to such complaints or requests, will be fully documented on a CDC Form 128B (Rev. 4-74). The inmate shall receive a copy of the documentation and the original shall be placed in the inmate's C-file.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 2601 and 5054, Penal Code; and *Procunier* v. *Martinez*, 416 U.S. 396.

HISTORY:

1. Change without regulatory effect amending subsection (a) filed 8-6-2001 pursuant to section 100, title 1, California Code of Regulations (Register 2001, No. 32).
2. Amendment filed 7-17-2008; operative 7-17-2008 pursuant to Government Code section 11343.4 (Register 2008, No. 29).
3. New subsection (c)(19) and amendment of subsections (d)–(d)(7) filed 4-30-2015; operative 4-30-2015 pursuant to Government Code section 11343.4(b)(3) (Register 2015, No. 18).

3136. Disapproval of Inmate Mail.

(a) Disapproval of inmate mail that is in clear violation of CCR sections 3006 or 3135 shall be referred to staff not below the level of Captain for determination and appropriate action. Disapproval of inmate mail that is not in clear violation of CCR sections 3006 or 3135 shall be referred to the Warden, but not lower than the Chief Deputy Warden, for determination and appropriate action. When incoming or outgoing mail/packages/publications addressed to or being sent by an inmate are withheld or disallowed, the inmate shall be informed via CDCR Form 1819 (Rev. 01/16), Notification of Disapproval-Mail/Packages/Publications, of the reason, disposition, name of official disallowing the mail/package/publication, and the name of the official to whom an appeal can be directed.

(b) When inmate mail is disapproved based on the criteria established in this section, a copy of the CDCR Form 1819 and the supporting document(s) shall be retained by each facility for a minimum of seven years.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 2600 and 2601(d), Penal Code.

HISTORY:

1. Amendment of section heading and section, and redesignation of former subsections 3136(a)–(h) to subsections 3006(c)(1)–(8) filed 1-3-95 as an emergency; operative 1-3-95 (Register 95, No. 1). A Certificate of Compliance must be transmitted to OAL 6-12-95 or emergency language will be repealed by operation of law on the following day.
2. Editorial correction of History 1 (Register 95, No. 24).
3. Amendment of section heading and section, and redesignation of former subsections 3136(a)–(h) to subsections 3006(c)(1)–(8) refiled 6-13-95 as an emergency; operative 6-13-95 (Register 95, No. 24). A Certificate of Compliance must be transmitted to OAL by 11-20-95 or emergency language will be repealed by operation of law on the following day.
4. Reinstatement of section as it existed prior to emergency amendment filed 12-27-95 by operation of Government Code section 11346.1(f). Certificate of Compliance as to 6-13-95 order transmitted to OAL 11-9-95; disapproved by OAL and order of repeal as to 6-13-95 order filed on 12-27-95 (Register 95, No. 52).
5. Amendment filed 12-27-95 as an emergency pursuant to Government Code section 11346.1; operative 12-27-95 (Register 95, No. 52). A Certificate of Compliance must be transmitted to OAL by 4-25-96 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 12-27-95 order including amendment of subsection (b) transmitted to OAL 4-25-96 and filed 6-6-96 (Register 96, No. 23).
7. Amendment filed 7-17-2008; operative 7-17-2008 pursuant to Government Code section 11343.4 (Register 2008, No. 29).
8. Amendment filed 10-20-2016; operative 10-20-2016 pursuant to Government Code section 11343.4(b)(3) (Register 2016, No. 43).

3137. Appeals Relating to Mail and Correspondences.

(a) Inmates, their correspondents, and publishers may appeal departmental rules, regulations, policies, approved facility procedures and their application relating to mail and correspondence.

(b) Inmates shall use the established inmate appeal procedures as provided in section 3084, et seq. An inmate's submittal of an appeal within 30 calendar days of a notice that mail is being designated as undelivered will postpone any disposition of the mail until an appeal decision is made at the third level of appeal review. If the inmate's appeal is denied at the third level of appeal review, the item of mail shall be disposed of as provided in subsection 3191(c).

(c) Persons other than inmates should address any appeal relating to department policy and regulations to the Director of the Division of Adult Institutions (DAI). Appeals relating to a specific facility procedure or practice should be addressed in writing to the Warden, or Associate Director of the facility where the appeal issue arises. A written response shall be provided within 15 working days. Appeals that are not satisfactorily resolved at this level may be forwarded in writing to the Director of the DAI who shall provide a written response within 20 working days.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 2600 and 2601, Penal Code; and *In re Muszalski*, 52 Cal.App.3rd 500.

HISTORY:

1. Amendment of section heading, renumbering and amendment of former subsection 3147(a)(5)(C) to section 3137 subsection (b), and amendment of Note filed 6-6-96; operative 6-6-96 pursuant to Government Code section 11343.4(d) (Register 96, No. 23).
2. Amendment of section heading and section filed 7-17-2008; operative 7-17-2008 pursuant to Government Code section 11343.4 (Register 2008, No. 29).
3. Amendment of subsection (b) filed 12-13-2010 as an emergency; operative 1-28-2011 (Register 2010, No. 51). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 7-7-2011 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 12-13-2010 order transmitted to OAL 6-15-2011 and filed 7-28-2011 (Register 2011, No. 30).

3138. Indigent Inmates.

(a) Upon an indigent inmate's request, writing paper, envelopes, a writing implement, and the postage required for five 1-ounce First-Class letters per week shall be supplied. Inmates are not allowed to trade, transfer, or swap indigent inmate supplies with another inmate.

(b) Except as provided in subsection 3138(h) for mail to the courts or to the Attorney General, indigent inmates may request to mail any type of correspondence that weighs more than one ounce. Indigent inmates must relinquish the appropriate number of indigent envelopes to either their assigned Correctional Counselor or housing unit staff with the item to be mailed. If the item to be mailed weighs more than five ounces, the indigent inmate must relinquish all five indigent envelopes. Staff must forward the indigent envelopes with the item to be mailed to the mailroom with the notation that it is to be mailed for the indigent inmate. In order to facilitate this mailing, if requested, staff shall provide the indigent inmate with one appropriately sized envelope.

(c) Foreign mail requiring postage in excess of the minimum required for First-Class Mail shall be limited to two of the five letters.

(d) Indigent envelopes issued to an inmate become their property. The inmate shall be allowed to utilize the envelopes regardless of current financial status. A charge shall not be placed against future deposits to the inmate's trust account to recover the cost of materials and postage provided, while the inmate was indigent as defined in subsection 3133(a)(5).

(e) All inmate requests for indigent envelopes shall be authorized by the Institutional Inmate Trust Account Office.

(f) Any inmate attempting to use a State issued envelope intended for another inmate who is indigent shall receive progressive discipline pursuant to CCR section 3312.

(g) Indigent inmates desiring to correspond with their attorney or any other confidential correspondent shall be required to utilize their weekly allotment of indigent supplies to send such correspondence.

(h) In addition to indigent writing supplies and postage for the five (5) one (1) ounce letters per week, indigent inmates shall have free and unlimited mail to any court or the Attorney General's Office.

(1) Upon request, institutions shall also provide indigent inmates free copying of the legal documents limited to the number of copies of a document required by the court, plus one copy for the opposing party and one copy for the inmate's records.

(2) If the case is accepted by the court, the need for future copies of legal documents and necessary postage will be evaluated on a case-by-case basis.

(3) A charge shall not be placed against future deposits to the inmate's trust account to recover the cost of materials, copying and postage provided, while the inmate was indigent.

(i) Each institution shall establish local procedures for the issuance of writing supplies to indigent inmates.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 2601 and 4570, Penal Code; and *Procunier* v. *Martinez*, 416 U.S. 396; and *Bell* v. *Wolfish*, 99 S. Ct. 1861.

HISTORY:

1. Amendment filed 1-3-95 as an emergency; operative 1-3-95 (Register 95, No. 1). A Certificate of Compliance must be transmitted to OAL 6-12-95 or emergency language will be repealed by operation of law on the following day.
2. Reinstatement of section as it existed prior to emergency amendment filed 7-25-95 by operation of Government Code section 11346.1(f) (Register 95, No. 30).
3. Amendment of subsections (a)–(c) filed 7-25-95 as an emergency; operative 7-25-95 (Register 95, No. 30). A Certificate of Compliance must be transmitted to OAL by 11-22-95 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-25-95 order transmitted to OAL 11-17-95 and filed 1-3-96 (Register 96, No. 1).
5. Renumbering of former subsections 3147(a)(9)(G) through (a)(9)(J) to newly designated subsections 3138(d) through (g), amendment of newly designated subsections (d)(1), (f)(1)–(f)(2), (g) and Note filed 6-6-96; operative 6-6-96 pursuant to Government Code section 11343.4(d) (Register 96, No. 23).
6. Amendment of subsection (d)(1) filed 12-30-2003 as an emergency; operative 1-1-2004 (Register 2004, No. 1). Pursuant to Penal Code section 5058.3(a)(1), a Certificate of Compliance must be transmitted to OAL by 6-9-2004 or emergency language will be repealed by operation of law on the following day.
7. Withdrawal and repeal of 12-30-2003 amendment filed 5-27-2004 as an emergency; operative 5-27-2004 (Register 2004, No. 22). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 9-24-2004 or emergency language will be repealed by operation of law on the following day.
8. Amendment of subsection (d)(1) and Note filed 5-27-2004 as an emergency; operative 5-27-2004 (Register 2004, No. 22). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 11-3-2004 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 5-27-2004 order transmitted to OAL 10-28-2004 and filed 12-14-2004 (Register 2004, No. 51).
10. Renumbering of former section 3138 to section 3134 and renumbering of former section 3134 to new section 3138, including repealer and new section, filed 7-17-2008; operative 7-17-2008 pursuant to Government Code section 11343.4 (Register 2008, No. 29).

3139. Correspondence Between Inmates, Parolees, and Probationers.

(a) Inmates shall obtain written authorization from the Warden/Regional Parole Administrator or their designee/assigned probation officer, person in charge of the County Jail and/or other State Correctional Systems, at a level not less than Correctional Captain/Facility Captain or Parole Agent III, to correspond with any of the following:

(1) Inmates under the jurisdiction of any county, state or federal, juvenile or adult correctional agency.

(2) Persons committed to any county, state or federal program as a civil addict.

(3) Persons on parole or civil addict outpatient status under the jurisdiction of any county, state or federal, juvenile or adult correctional agency.

(4) Persons on probation.

(b) Inmates may initiate requests to correspond with the above by contacting their Correctional Counselor I (CCI). Parolees may initiate request by contacting their Parole Agent (PA).

Inmates may be allowed to correspond with the persons described in subsections 3139(a)(1) through (4) provided those persons meet the criteria of approval of no known STG affiliation, or involvement with a known terrorist group or racketeering enterprise.

(c) The CCI/PA shall interview the inmate/parolee and/or review their C-file/Field File to obtain the information required to process an inmate's Request for Correspondence Approval, CDC Form 1074 (Rev. 08/87). If an inmate's request to correspond with another inmate/parolee is denied, the CCI/PA shall advise the inmate in writing.

(1) When reviewing the initiating inmates C-file, staff shall ascertain whether prior approval exists. If prior approval exists, a copy of the previously approved CDC Form 1074 shall be forwarded to both institutional mailrooms.

(2) When an initiating inmate's request to correspond with another inmate meets the criteria for approval per section 3139(b),

and no prior approval exists, the CCI/PAI shall ensure that a CDC Form 1074 is completed.

(3) If the request is approved, staff shall retain the fifth page in the C-File/Field/File at the requesting institution/parole office. The remaining four pages shall be forwarded, intact, to the institution/parole office/probation office/other county, state or federal facility where the other requested correspondent is housed. Neither a photocopy of the CDC Form 1074, nor the fifth page, shall be forwarded to the C-File or mailroom while the correspondence approval is pending.

(4) If the request to correspond is denied at the institution/parole office/probation office/other state correctional facility, the reason for denial shall be annotated on the CDC Form 1074, and it shall be returned, in its entirety, to the sending institution/ parole office.

(5) Copies/photocopies shall not be delivered to the requested inmate, the receiving institutions mailroom, or the housing unit.

(6) Upon receipt of the disapproved CDC 1074, staff at the sending institution/field office shall ensure that the 2nd page is returned to the initiating inmate.

(7) If correspondence is approved at the institution/parole office, staff shall ensure that the CDC Form 1074 is completed. They shall retain the third and fourth pages for distribution. If the third page and fourth pages are not legible, the CCI/PAI shall make photocopies of the first page prior to forwarding the completed CDC Form 1074 to the sending institution. The approved CDC Form 1074 will be distributed as directed on the form.

(8) Photocopies of the CDC Form 1074 shall not be made for the housing unit(s). The housing units shall not keep records of approved correspondents.

(9) The mailroom supervisor shall establish and maintain a record of approved CDC Form 1074s.

(10) When a CDCR inmate requests to correspond with an inmate in a county, state, or federal facility, or if the request is from a county, state, or federal inmate, the CCI shall ensure that a CDC Form 1074 is completed along with a cover letter that thoroughly explains the need for the CDC Form 1074. If the request is denied, the CCI shall ensure that a letter is forwarded to the requesting agency thoroughly explaining the denial.

(d) There shall be no limits set on the number of times approved inmates/parolees/probationers can correspond with one another unless revoked. The approval to correspond may be revoked due to disciplinary violations involving correspondence between the inmates/parolees or as a result of a classification action based on safety and security. Any such restriction, or revocation of approval, shall be communicated to inmate(s)/parolee(s) and to the warden(s)/parole administrator(s) of the institution/facility where the inmate(s)/parolee(s) are housed.

(e) Wardens at institutions where there are segregated housing units such as, but not limited to, Security Housing Units (SHU), Administrative Segregation Units (ASU), and Psychiatric Services Units (PSU), shall outline in their local procedure any further restrictions on correspondence due to safety and security concerns, limited to those specific housing units.

(f) The most restrictive a facility can be with respect to inmate mail privileges is to limit correspondence between inmates to only the following:

(1) Immediate Family Members as defined in section 3000.

(2) Co-litigants on active cases, until the case is resolved.

(3) Incarcerated natural parent of the inmate's child.

A facility may not restrict mail privileges between an inmate and any of the above three types of correspondents, unless the inmate or the correspondent violates section 3006 or other CCR section.

(g) Approval to correspond shall remain in effect upon transfer to another departmental facility or another parole office.

(h) If an inmate's transfer is based on case factors that create security concerns, such as, but not limited to, placement in SHU, ASU, or PSU, a reexamination by committee of all approved correspondence shall be conducted. The CCI shall review and recommend to committee whether to continue approval of the correspondence.

(i) If an institution/parole office receives mail from an unapproved inmate/parolee correspondent, staff shall mark the envelope with "Not an Approved Correspondent" or equivalent language and return it to the sender.

(j) Inmates confined in departmental facilities may correspond with former inmates. Prior approval of the warden, superintendent, or person in charge of the correctional facility is required if the person was discharged from a facility within the past twelve months.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 2601 and 4570, Penal Code; *Procunier* v. *Martinez*, 416 U.S. 396; and *Bell* v. *Wolffish*, 99 S. Ct 1861.

HISTORY:

1. Change without regulatory effect amending first paragraph and subsection (b) filed 4-4-2001 pursuant to section 100, title 1, California Code of Regulations (Register 2001, No. 14).
2. Amendment of section heading and section, including renumbering and amendment of former section 3140 to new subsection 3139(j), filed 7-17-2008; operative 7-17-2008 pursuant to Government Code section 11343.4 (Register 2008, No. 29).
3. Designation of first paragraph as subsection (a) and amendment of subsection (b) filed 10-17-2014; operative 10-17-2014 pursuant to Government Code section 11343.4(b)(3) (Register 2014, No. 42).

3140. Funds Enclosed in Correspondence.

(a) Funds may be mailed to an inmate in the form of a money order, cashier's check, certified check, personal check, or any other negotiable instrument except cash and traveler's checks.

(1) The personal check, money order, cashier's check, certified check, or any other negotiable instrument shall be made payable to the California Department of Corrections and Rehabilitation with the inmate's last name and departmental identification number. This information, along with the sender's name and address, shall be on the face of the negotiable instrument.

(2) Funds from other inmates/parolees shall be only accepted from approved correspondents, pursuant to section 3139, who are members of the same family, or the parent of the inmate's child(ren).

(3) Funds received in the mail shall be removed from the envelope by mailroom staff, and the envelope shall be imprinted with a stamp that reads "Funds Enclosed." The date, amount, and initials of the person processing the funds shall be recorded on the envelope before it is forwarded to the inmate. The stamped envelope is the inmate's receipt for the funds.

(4) Cash received in incoming mail will be returned to the sender. Mailroom staff shall notify the inmate in writing, informing them that cash was received and will be returned to sender. The envelope containing the cash and two copies of the memo will be forwarded to the Inmate Trust Office to be returned to the sender.

(5) If a personal check, money order, cashier's check, certified check, or any other negotiable instrument is received in the mailroom and it does not contain the sender's name and address on its face, it will be considered contraband per section 3006, and will be disposed of in accordance with section 3191(c). The negotiable instrument will be held in the Trust Office safe for thirty days while the inmate is contacted in regards to the disposition of the contraband, in accordance with section 3191(c).

(6) Mailroom staff shall arrange the day's remittances in numerical order. The remittances shall be listed in sequence on the report of collections. This report shall include each inmate's name, departmental identification number, type of payment, amount, and the total received.

(b) Generally, inmates are not eligible to receive Supplemental Security Income (SSI) checks from the Social Security Administration, Veteran Affairs Benefits, or Welfare checks from the California Department of Social Services/County Welfare agencies. Depending upon eligibility, inmates may be allowed to receive tax refund checks.

(1) A facility representative shall be appointed by the Associate Warden, Business Services, to assist outside agencies in determining an inmate's eligibility.

(2) Mailroom staff shall deliver all received SSI, Veteran Affairs Benefits, and/or welfare and/or tax refund checks to the Inmate Trust Office. The Accounting Officer shall notify the facility representative that checks are being held pending determination of eligibility of the inmates to receive the checks. The facility representative shall notify the appropriate agency.

(3) Unauthorized checks shall be returned to the appropriate agency.

(c) When a U.S. Government check is received for an inmate who is deceased or discharged from CDCR, the check and envelope shall be returned to the sending agency with the necessary information shown as to the inmate being deceased or discharged.

(1) If an inmate has been transferred to another facility, the check shall be forwarded including a note requesting the inmate to notify the state or federal agency of their change of address.

(2) Mail received for inmates who have been paroled shall be forwarded to the office of the parole region to which the inmate was released, or if unable to locate the parolee, the check should be returned to the originating state or federal agency.

(d) Funds shall not be released for spending by the inmate for thirty (30) days from the date of deposit into the inmate trust account and must have cleared the bank upon which they were drawn. When any personal check, money order, cashier's check, certified check, or any other negotiable instrument is received, the face of the envelope in which the funds were received shall be imprinted with a stamp indicating the funds have been accepted at this time. This stamp is not intended to indicate that the funds are immediately available for inmate use, but only that the funds were accepted for processing by the department.

(e) No foreign currency shall be accepted. If foreign currency is received, the entire envelope and its contents shall be returned to sender with a pre-printed notice to the sender which states it is unauthorized.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 2601, Penal Code.

HISTORY:

1. Renumbering of former section 3140 to subsection 3139(j) and new section 3140 filed 7-17-2008; operative 7-17-2008 pursuant to Government Code section 11343.4 (Register 2008, No. 29).
2. Amendment of subsection (d) filed 6-27-2011 as an emergency pursuant to Penal Code section 5058.3(a)(2); operative 6-27-2011 (Register 2011, No. 26). Pursuant to Penal Code section 5058.3(a)(1), a Certificate of Compliance must be transmitted to OAL by 12-5-2011 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 6-27-2011 order, including further amendment of subsection (d), transmitted to OAL 11-21-2011 and filed 1-5-2012 (Register 2012, No. 1).
4. Amendment of subsections (a) and (a)(1), new subsection (a)(5), subsection renumbering and amendment of subsection (d) filed 11-14-2016; operative 1-1-2017 (Register 2016, No. 47).

3141. Confidential Correspondence.

(a) Confidential correspondence is a right guaranteed by law. Using confidential correspondence for personal non-business correspondence, the transmission of contraband items, or the smuggling of letters and other communications to be forwarded to persons not listed in subsection (c) is an abuse of this right and such proven abuse may be subject to disciplinary action as described in Sections 3314 and 3315.

(b) Confidential mail will not be limited to First Class mail standards. Mail received from confidential correspondents will be processed regardless of weight or postage class.

(c) Persons and employees of persons with whom inmates may correspond confidentially and from whom inmates may receive confidential correspondence include:

(1) All state and federal elected officials.

(2) All state and federal officials appointed by the governor or the President of the United States.

(3) All city, county, state and federal officials having responsibility for the inmate's present, prior or anticipated custody, parole or probation supervision.

(4) County agencies regarding child custody proceedings, as clearly identified in the communication and listed on the envelope.

(5) All state and federal judges and courts.

(6) An attorney at law, on active status or otherwise eligible to practice law, listed with a state bar association.

(7) All officials of a foreign consulate.

(8) The Secretary, Undersecretary, Chief Deputy Secretaries, Executive Director, Assistant Secretaries, Division Directors, Deputy Directors, Associate Directors, the Chief, Inmate Appeals, and the Lead Ombudsman's Office of the Department.

(9) A legitimate legal service organization that consists of an established group of attorneys involved in the representation of offenders in judicial proceedings including, but not limited to:

(A) The American Civil Liberties Union.

(B) The Prison Law Office.

(C) The Young Lawyers Section of the American Bar Association.

(D) The National Association of Criminal Defense Lawyers.

(E) California Appellate Project.

(d) All incoming confidential mail from an attorney or legal service organization shall include the attorney's name, title, and return address of their office. Institution mailroom staff shall contact the CDCR Office of Legal Affairs Division at Headquarters if there is any question regarding the legitimacy of a legal service organization.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 2600 and 5054, Penal Code; and *In re Jordan*, 12 CA 3rd 575 (1974); and *King* v. *Borg*, USDC-ED Case No. CIV. S-87–0519 LKK/PAN/P.

HISTORY:

1. Editorial correction of subsection (a) filed 2-19-85 (Register 85, No. 8).
2. Change without regulatory effect adopting new subsection (c)(8) and amending Note filed 8-19-93; operative 8-19-93 (Register 93, No. 34).
3. Repealer of subsection (c)(6) and subsection renumbering filed 4-8-96 as an emergency; operative 4-8-96 (Register 96, No. 15). Pursuant to Penal Code section 5058(e), a Certificate of Compliance must be transmitted to OAL by 9-15-96 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 4-8-96 order transmitted to OAL 9-13-96 and disapproved 10-28-96 (Register 96, No. 44).
5. Repealer of subsection (c)(6) and subsection renumbering filed 10-28-96 as an emergency; operative 10-28-96 (Register 96, No. 44). Pursuant to Penal Code section 5058(e), a Certificate of Compliance must be transmitted to OAL by 4-6-97 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 10-28-96 order transmitted to OAL 3-3-97 and filed 4-14-97 (Register 97, No. 16).
7. New subsection (c)(4), subsection renumbering, and amendment of Note filed 7-28-97 as an emergency; operative 7-28-97 (Regis-

ter 97, No. 31). Pursuant to Penal Code 5058(e), a Certificate of Compliance must be transmitted to OAL by 1-5-98 or emergency language will be repealed by operation of law on the following day.

8. Certificate of Compliance as to 7-28-97 order, including further amendment of subsection (c)(4), transmitted to OAL 12-2-97 and filed 1-15-98 (Register 98, No. 3).
9. Amendment filed 7-17-2008; operative 7-17-2008 pursuant to Government Code section 11343.4 (Register 2008, No. 29).

3142. Processing of Outgoing Confidential Mail.

In order to be accepted and processed as confidential correspondence, an inmate's letter shall comply with the following requirements:

(a) The letter must be addressed to a person or to the office of a person listed in Section 3141. The address of an attorney must match the address listed with the State Bar.

(b) The inmate's full name, department identification number, and the address of the facility shall be included in the return address appearing on the outside of the envelope.

(c) The word "confidential" shall appear on the face of the envelope. Failure to do this will result in the letter being processed as regular mail or being returned to the inmate if for any reason the mail cannot be processed as regular mail.

(d) Inmates shall post confidential mail by presenting the mail unsealed to designated staff. In the presence of the inmate, the staff shall remove the contents of the envelope upside down to prevent reading of the contents. Staff shall remove the pages and shake them to ensure there is no prohibited material, consistent with these regulations. If no prohibited material is discovered, the contents shall be returned to the envelope and sealed. Staff shall place their signature, badge number and date across the sealed area on the back of the envelope. Staff shall then deposit the confidential mail in the appropriate depository.

(e) If prohibited material is found in the confidential mail, the prohibited material shall be confiscated; however, the letter may be returned to the inmate or mailed following the process outlined above. If the prohibited material indicates a violation of the law or intent to violate the law, the matter may be referred to the appropriate authorities for possible prosecution. Administrative and/or disciplinary action shall also be taken against all parties involved.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 2601, Penal Code.

HISTORY:

1. Amendment filed 7-17-2008; operative 7-17-2008 pursuant to Government Code section 11343.4 (Register 2008, No. 29).

3143. Processing Incoming Confidential Mail.

Incoming letters must show the name, title, return address and the office of persons listed in Section 3141 on the outside of the envelope to be processed as confidential correspondence. An attorney's return address must match the address listed with the State Bar. A notice or request for confidentiality is not required on the envelope. Correspondence that is appropriately addressed with a return address that indicates it may be confidential shall be processed and treated as confidential correspondence whether or not it is stamped as such.

(a) Designated staff shall open the letter in the presence of the addressed inmate at a designated time and place. Staff shall not read any of the enclosed material. Staff shall remove the pages and shake them to ensure the absence of prohibited material.

(b) Inmates shall sign for all confidential mail at the time of delivery. This shall be accomplished by use of a permanent logbook or use of receipts. If receipts are used, the receipts shall be forwarded to the mailroom for filing. The log book at a minimum must record the date of delivery, the inmates name and departmental identification number, and the senders name and address.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 2601, Penal Code.

HISTORY:

1. Amendment filed 7-17-2008; operative 7-17-2008 pursuant to Government Code section 11343.4 (Register 2008, No. 29).

3144. Inspection of Confidential Mail.

Confidential mail will be opened and inspected for contraband in the presence of the inmate addressee. Inspecting correctional officials will not read any of the contents of the confidential mail. Confidential mail may be further inspected, for cause only.

(a) Cause may include, but is not limited to, the reasonable belief by correctional officials that the letter is not addressed to or is not from an official or office listed in Section 3141 or when other means of inspection indicates the presence of physical contraband in the envelope. In such instances the mail will be opened in the presence of the inmate for determination.

(b) Administrative action may be taken to restrict, for cause, the confidential mail privileges afforded to an attorney pursuant to this Article.

(1) A first offense of a non-serious mail rule violation of the department's mail regulations shall result in a written warning or up to a six-month suspension of the attorney's confidential mail privileges. A non-serious mail violation means a violation of the inmate regulations that is not chargeable as a felony but is nevertheless unlawful, such as an enclosure of contraband into the confidential mail, or a misrepresentation of the sender or addressee's identity.

(2) A second offense of a non-serious mail rule violation shall result in modification/suspension of confidential mail privileges for a period of up to twelve months.

(3) A third offense of a similar nature and/or a first offense that could be charged as a felony that jeopardizes the safety of persons, or the security of the facility, shall result in confidential mail privileges being suspended from one year up to an indefinite period of time.

(4) The attorney must petition the Warden or Director of the Division of Adult Institutions (DAI) for reinstatement of confidential mail privileges.

The confidential mail privilege may be a statewide suspension for any offense that could be prosecuted as a felony. Only the Director of the DAI or designee shall issue a statewide suspension of confidential mail privileges.

(c) Upon determining that the envelope contains prohibited material or that there is a misrepresentation of the sender's or the addressee's identity the letter and any enclosures may be examined and read in its entirety to determine the most appropriate of the following actions:

(1) When the prohibited material or misrepresentation of identity indicates a violation of the law or an intent to violate the law, the matter will be referred to the appropriate criminal authorities for possible prosecution. Any case referred to criminal authorities will be reported to the Director of the DAI. When a case is referred to criminal authorities and the determination is made not to prosecute, the fact of the referral and the determination made will be reported to the inmate and to the inmate's correspondent. The Director of the DAI will be informed of the outcome of all referrals to criminal authorities.

(2) When an inmate's action or complicity indicates a violation of law; the regulations set forth in this article; or approved facility mail procedures; the matter may also be handled by appropriate disciplinary action.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 2601, Penal Code; and *Wolff* v. *McDonald*, 94 S. Ct. 2963 (1974).

HISTORY:

1. Amendment filed 7-17-2008; operative 7-17-2008 pursuant to Government Code section 11343.4 (Register 2008, No. 29).
2. Change without regulatory effect amending subsection (b)(4) filed 3-11-2013 pursuant to section 100, title 1, California Code of Regulations (Register 2013, No. 11).

3145. Enclosures in Confidential Mail.

When the inspection of confidential correspondence discloses written or printed enclosures, the enclosures will be treated in the same manner as confidential correspondence. The inmate will not be given the enclosures or be allowed access to the enclosures except as authorized in the following subsections:

(a) The inmate may consent to an immediate examination of the enclosure by staff who issues mail. Such examination will be limited to the extent necessary to determine if the enclosure may be safely admitted into the facility under the standards of Penal Code Section 2601. The conclusion of the examiner will be written on the enclosure, and be dated and signed by the examiner. If the enclosure can be safely admitted into the facility, it will be given to the inmate. If in the examiner's opinion the enclosure does not meet the standards of Penal Code Section 2601 and cannot be safely admitted into the facility, it will be referred to staff at not less than the Correctional/Facility Captain level, for final determination. If not released to the inmate at this level, the inmate will be allowed access to the enclosure only as authorized in subsection (b).

(b) The inmate may decline to consent to examination of enclosures in confidential mail by any staff. When this occurs, the enclosure will be immediately placed in a separate envelope and the envelope will be sealed in the presence of the inmate. The separate envelope will, at the inmate's choosing, be returned to the sender with the mailing cost charged to the inmate's trust account, or disposed of pursuant to section 3191(c). The inmate is entitled to keep the letter or correspondence and the envelope it came in.

(c) Any person who examines the content of mail under the authority of this article or in connection with an appeal by an inmate of a ruling under this article, must keep the content of the material which was examined in strict confidence. No original, copy, excerpt, or summary of personal correspondence to or from an inmate shall be made or be placed in an inmate's C-file unless such correspondence is or has been the subject of:

(1) Legal, disciplinary, criminal investigation, or casework determination and actions affecting the inmate.

(2) When the recipient of an inmate's disturbing or offensive mail corresponds with the facility and requests administrative action, subject to section 3135.

(3) If an inmate requests that a copy of personal correspondence be placed in their C-file and the inmate's caseworker deems it appropriate to do so based on the relationship of the correspondence to the inmates incarceration.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 2600, Penal Code; and *In re Jordan*, 12 CA 3rd 575 (1974).

HISTORY:

1. Change without regulatory effect amending subsection (a) filed 4-3-2001 pursuant to section 100, title 1, California Code of Regulations (Register 2001, No. 14).
2. Amendment filed 7-17-2008; operative 7-17-2008 pursuant to Government Code section 11343.4 (Register 2008, No. 29).

3146. Mail in Languages Other Than English.

Mail may be subject to a delay for translation of its contents by staff. When such delay exceeds normal mail processing by five business days, the inmate shall be notified in writing of the delay, the reason for the delay, and subsequent determinations and actions regarding that item of mail. If staff are unable to translate the letter and its contents within 20 business days of notice to the inmate, then the letter shall be delivered to the inmate untranslated.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 2600 and 2601, Penal Code.

HISTORY:

1. Amendment filed 1-3-95 as an emergency; operative 1-3-95 (Register 95, No. 1). A Certificate of Compliance must be transmitted to OAL 6-12-95 or emergency language will be repealed by operation of law on the following day.
2. Amendment refiled 6-13-95 as an emergency; operative 6-13-95 (Register 95, No. 24). A Certificate of Compliance must be transmitted to OAL by 11-20-95 or emergency language will be repealed by operation of law on the following day.
3. Reinstatement of section as it existed prior to emergency amendment filed 12-27-95 by operation of Government Code section 11346.1(f). Certificate of Compliance as to 6-13-95 order transmitted to OAL 11-9-95; disapproved by OAL and order of repeal as to 6-13-95 order filed on 12-27-95 (Register 95, No. 52).
4. Amendment filed 12-27-95 as an emergency pursuant to Government Code section 11346.1; operative 12-27-95 (Register 95, No. 52). A Certificate of Compliance must be transmitted to OAL by 4-25-96 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 12-27-95 order including amendment of section transmitted to OAL 4-25-96 and filed 6-6-96 (Register 96, No. 23).
6. Amendment filed 7-17-2008; operative 7-17-2008 pursuant to Government Code section 11343.4 (Register 2008, No. 29).

3147. Definition and Disposition of Mail.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 2080, 2600, 2601, 4570 and 5054, Penal Code; *Procunier* v. *Martinez*, (1974) 416 U.S. 396; *Bell* v. *Wolfish*, (1979) 99 S. Ct. 1861; *Thornburgh* v. *Abbott* (1989) 109 S. Ct. 1874; *Turner* v. *Safely* (1987) 107 S. Ct. 2256; and Sections C031.3.0 and C031.5.4, Domestic Mail Manual, issue 46 7/1/93, U.S. Postal Regulations.

HISTORY:

1. Amendment of subsection (a)(9)(G) filed 2-16-83; effective thirtieth day thereafter (Register 83, No. 8).
2. Editorial correction of subsection (a)(9)(G) filed 2-17-83 (Register 83, No. 8).
3. Editorial correction of printing error in subsection (a)(5)(A) (Register 92, No. 5).
4. Amendment of subsection (a)(2) and Note filed 6-17-94 as an emergency; operative 6-17-94 (Register 94, No. 24). A Certificate of Compliance must be transmitted to OAL by 10-15-94 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 6-17-94 order transmitted with amendments to OAL 10-17-94 and filed 12-1-94 (Register 94, No. 48).
6. Amendment of subsection (a)(9)(I) and Note filed 1-3-95 as an emergency; operative 1-3-95 (Register 95, No. 1). A Certificate of Compliance must be transmitted to OAL 6-12-95 or emergency language will be repealed by operation of law on the following day.
7. Amendment of subsections (a)(9)(I)1.-5. and Note refiled 6-13-95 as an emergency; operative 6-13-95 (Register 95, No. 24). A Certificate of Compliance must be transmitted to OAL by 11-20-95 or emergency language will be repealed by operation of law on the following day.
8. Reinstatement of section as it existed prior to emergency amendment filed 12-27-95 by operation of Government Code section 11346.1(f). Certificate of Compliance as to 6-13-95 order transmitted to OAL 11-9-95; disapproved by OAL and order of repeal as to 6-13-95 order filed on 12-27-95 (Register 95, No. 52).
9. Amendment filed 12-27-95 as an emergency pursuant to Government Code section 11346.1; operative 12-27-95 (Register 95,

No. 52). A Certificate of Compliance must be transmitted to OAL by 4-25-96 or emergency language will be repealed by operation of law on the following day.

10. Certificate of Compliance as to 12-27-95 order including amendment of subsections (a)(5) and (a)(5)(A), relocation of former subsection (a)(5)(C) to section 3137(b), redesignation and amendment of former subsection (a)(6) to subsection (a)(5)(B), repealer of former subsections (a)(6)(A) through (a)(6)(D) and subsection renumbering, amendment of newly designated subsections (a)(6), (a)(7), (a)(8)(C) through (a)(8)(E), and relocation of former subsections (a)(9)(G) through (a)(9)(J) to section 3138(d) through (g) transmitted to OAL 4-25-96 and filed 6-6-96 (Register 96, No. 23).
11. Renumbering of former section 3147 to new section 3133 filed 7-17-2008; operative 7-17-2008 pursuant to Government Code section 11343.4 (Register 2008, No. 29).

Article 5. Inmate Manuscripts

3150. Definitions.

HISTORY:

1. Change without regulatory effect repealing section filed 10-29-90 pursuant to section 100, Title 1, California Code of Regulations (Register 91, No. 6).

3151. Possession.

Any manuscript as defined in section 3000 remains the property of the inmate who created it. It may be retained in the inmate's possession except as otherwise described in section 3152.

Comment: Former DP-2502, possession of manuscripts.

HISTORY:

1. Change without regulatory effect amending section filed 10-29-90 pursuant to section 100, Title 1, California Code of Regulations (Register 91, No. 6).

3152. Unauthorized or Dangerous Material.

(a) If unauthorized state materials have been used in the creation of a manuscript, the item may be impounded pending disciplinary action and reimbursement by the inmate for materials used.

(b) An inmate will not be permitted to retain in his or her personal possession manuscripts, which violate the provisions of Section 3006. Any such manuscript will be confiscated and disposed of in accordance with the provisions of Section 3006(c), or providing there is no conflict with the regulations governing mail and handicraft as set forth in Subchapter 1, Articles 2 and 4 of these regulations, the manuscript and related material may be sent to a person outside the correctional facility as designated by the inmate.

NOTE: Authority cited: section 5058, Penal Code. Reference: Sections 2600, 2601 and 5054, Penal Code.

HISTORY:

1. Repealer and new subsection (b) filed 10-7-82; effective thirtieth day thereafter (Register 82, No. 41).

3153. Mailing.

Incoming and outgoing manuscripts will be processed as regular mail in accordance with the provisions of Sections 3136 and 3138.

NOTE: Authority cited: section 5058, Penal Code. Reference: Sections 5054 and 5055, Penal Code.

HISTORY:

1. Repealer and new section filed 10-7-82; effective thirtieth day thereafter (Register 82, No. 41).

Article 6. Legal Documents

3160. Inmate Access to Courts.

(a) Inmate access to courts shall not be obstructed. Staff shall assist illiterate inmates or those physically incapable of preparing forms adopted under rules of the United States courts and the Judicial Council of California for petitions for habeas corpus or modification of custody if such an inmate requests assistance. Staff shall not in any way retaliate against or discipline any inmate for initiating or maintaining a lawsuit.

(b) In addition to any other court costs, filing fees, or procedures, an inmate initiating a state civil action shall pay a three-dollar ($3) filing fee to the Department.

(1) Civil actions are defined as any non-criminal actions. For the purposes of this regulation, habeas corpus actions are not considered civil actions.

(2) The filing fee shall be charged against the inmate's trust account.

(3) If the inmate is without sufficient funds at the time of the charge, the civil action shall be allowed to be transmitted to the courts, and the inmate shall not be charged for any remaining balance of the filing fee.

NOTE: Authority cited: section 5058, Penal Code. Reference: Sections 5054 and 2601, Penal Code.

HISTORY:

1. Amendment of section heading and text and new Note filed 10-19-93; operative 11-18-93 (Register 93, No. 43).
2. Newly designated subsection (a), new subsections (b)–(b)(2) and amendment of Note filed 1-3-95 as an emergency; operative 1-3-95 (Register 95, No. 1). A Certificate of Compliance must be transmitted to OAL 6-12-95 or emergency language will be repealed by operation of law on the following day.
3. Reinstatement of section as it existed prior to emergency amendment filed 7-25-95 by operation of Government Code section 11346.1(f) (Register 95, No. 30).
4. New emergency amendment filed 7-25-95; operative 7-25-95 (Register 95, No. 30). A Certificate of Compliance must be transmitted to OAL by 11-22-95 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-25-95 order transmitted to OAL 9-7-95 and filed 10-16-95 (Register 95, No. 42).

3161. Inmate-Owned Legal Materials.

Inmate-owned legal materials/documents, law books and papers shall be limited to the availability of space authorized by section 3190(b) for personal property in the inmate's quarters/living area except as specified in this section. Inmates may possess up to one cubic foot of legal materials/documents related to their active cases, in excess of the six cubic feet of allowable property in their assigned quarters/living area. Legal materials/documents, law books and papers in excess of this limitation shall be disposed of pursuant to section 3191(c). Inmates may request the institution/facility store excess legal materials/documents related to their active cases(s) when such materials/documents exceed this one cubic foot additional allowance. Inmate-owned law books in excess of the additional allowance shall not be stored by the institution/facility.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.

HISTORY:

1. Amendment of section heading and text and new Note filed 10-19-93; operative 11-18-93 (Register 93, No. 43).
2. Amendment filed 5-27-2004 as an emergency; operative 5-27-2004 (Register 2004, No. 22). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 11-3-2004 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 5-27-2004 order transmitted to OAL 10-28-2004 and filed 12-14-2004 (Register 2004, No. 51).

3162. Legal Forms and Duplicating Services.

(a) For purposes of this article, an indigent inmate means an inmate who currently has and for the previous 30 consecutive days has maintained $1.00 or less in his or her inmate trust account.

(b) Legal duplication services may be provided to inmates for the purposes of initiating or maintaining a court action. The printed forms required by state and federal courts shall be made available to inmates. An inmate shall be required to pay for the duplication of printed forms and other written or typed materials, and for any special paper and envelopes required for mailing to the courts so long as the inmate has more than $1.00 in his or her trust account or the inmate has attorney representation for the court action. An inmate who is indigent and is without attorney representation for the court action may receive legal duplicating services without charge subject to subsection (d).

(c) A legal document to be duplicated for any inmate, including all exhibits and attachments, shall be limited to the maximum number of pages needed for the filing, not to exceed 50 pages in total length, except when necessary to advance litigation. The inmate shall provide to designated staff a written explanation of the need for excess document length.

(d) Subject to the length requirements of subsection 3123(c), an indigent inmate who does not have attorney representation may receive duplication services without charge for the following legal documents to a court:

(1) Petition for a writ of habeas corpus.

(2) Traverse, Reply Pleading, and other documents in support of a petition for writ of habeas corpus, as authorized by the court or as required by statute or court rule.

(3) Appeal from the denial of a writ of habeas corpus.

(4) Summons and Complaint for a civil action.

(5) Documents in support of a civil action, as authorized by the court or as required by statute or court rule.

(6) Petition for a hearing in an appellate court.

(7) Appellant's Brief, Reply Brief, and other documents in support of an appeal, as authorized by the court or as required by statute or court rule.

(8) Petition for a writ of certiorari to the Supreme Court.

(9) Motion to proceed in forma pauperis (as an indigent person).

(10) Additional documents that are necessary to advance litigation. The inmate shall provide to designated staff a written explanation of the need for additional documents.

(e) The authority to place restrictions on duplication services for any reason as described in this section shall not be delegated to staff below the level of correctional captain unless the person is designated by the Warden. The reasons for any restrictions on the services provided an inmate shall be documented on a CDC Form 128-B (Rev. 4.74), General Chrono, and placed in the inmate's central file.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.

HISTORY:

1. Amendment filed 8-18-78; effective thirtieth day thereafter (Register 78, No. 33).
2. Amendment filed 4-18-80; effective thirtieth day thereafter (Register 80, No. 16).
3. Amendment of section heading and text filed 10-19-93; operative 11-18-93 (Register 93, No. 43).
4. Amendment filed 11-24-2009; operative 12-24-2009 (Register 2009, No. 48).
5. Amendment of subsection (e) filed 9-13-2012; operative 10-13-2012 (Register 2012, No. 37).

3163. Assisting Other Inmates.

One inmate may assist another in the preparation of legal documents, but shall not receive any form of compensation from the inmate assisted. Legal papers, books, opinions and forms being used by one inmate to assist another may be in the possession of either inmate with the permission of the owner. All papers must be returned to the respective owners when either inmate is transferred to another institution or when other administrative action prevents direct communications between the inmates. An inmate may be barred from giving legal assistance to other inmates when violations of regulations and established procedures relate directly to such activities. An inmate will not be barred from giving or receiving legal assistance for violations of regulations and procedures which are unrelated to providing or receiving legal assistance. However, no otherwise prohibited contacts or access to prohibited areas will be permitted because of this regulation.

NOTE: Authority cited: section 5058, Penal Code. Reference: *Johnson* v. *Avery,* 89 S. Ct. 747 (1969).

HISTORY:

1. Amendment filed 2-24-77; effective thirtieth day thereafter (Register 77, No. 9).
2. Amendment filed 10-7-82; effective thirtieth day thereafter (Register 82, No. 41).

3164. Administrative Segregation.

(a) Inmates confined in administrative segregation for any reason will not be limited in their access to the courts.

(b) During a period of disciplinary detention, as described in Section 3330, legal resources may be limited to pencil and paper which will be provided upon request for correspondence with an attorney or the preparation of legal documents for the courts. Other legal material in the inmate's personal property may be issued to an inmate in disciplinary detention if litigation was in progress before the inmate's placement in disciplinary detention and legal due dates are imminent.

(c) Inmates who are housed in any restricted unit and who are not serving a period of disciplinary detention may possess and have access to any legal resource material available to the general population and may assist each other in their legal work to the extent compatible with institution security. For the purpose of this subsection, restricted units include reception centers, institution reception or orientation units, controlled housing and security housing units.

(d) An inmate in a restricted housing unit may have access to an inmate law library subject to the provisions of section 3123.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.

HISTORY:

1. Amendment filed 10-7-82; effective thirtieth day thereafter (Register 82, No. 41).
2. Repealer and new subsection (d) filed 11-24-2009; operative 12-24-2009 (Register 2009, No. 48).

3165. Mailing Legal Documents.

(a) The mailing of legal documents to courts and claims to the California Victim's Compensation and Government Claims Board (VCGCB) is the inmate's responsibility. Mail designated by the inmate as legal mail will be delivered to the facility mail room for inspection, pursuant to Sections 3144 and 3145, and mailing in accordance with local facility mail procedures. The mail room shall maintain a current address list of federal, state, county, appellate, and district courts. The mail room will send mail out each working day.

(b) With each transmittal of mail to a court or claim filed with the VCGCB requiring the addition of postage, the inmate must submit a signed CDC Form 193, Trust Account Withdrawal Order. The

mail room will remove the trust account withdrawal order, enter the amount of postage required, and forward the order to the trust office for processing. Mail addressed to a court or claims addressed to the VCGCB will be posted on the inmate's CDC Form 119, Mail Record.

(c) Notarization of legal documents is not normally required by the courts and will not be provided as a free service to any inmate, indigent or not. Inmates must pay the established notary fee for such service.

(d) The cost of postage for mailing documents to the courts will be charged against an inmate's trust account unless the inmate was indigent, as defined in subection 3162(a), at the time the documents were submitted for mailing.

NOTE: Authority cited: Section 5058, Penal Code. Reference: *In re Jordan*, 7 Cal. 3rd 930 (1972).

HISTORY:

1. Amendment filed 9-30-77; effective thirtieth day thereafter (Register 77, No. 40).
2. New subsection (d) filed 4-18-80; effective thirtieth day thereafter (Register 80, No. 16).
3. Amendment filed 10-7-82; effective thirtieth day thereafter (Register 82, No. 41).
4. Amendment of subsections (a) and (b) and amendment of Note filed 11-18-96; operative 12-18-96 (Register 96, No. 47).
5. Amendment of subsection (d) filed 11-24-2009; operative 12-24-2009 (Register 2009, No. 48).
6. Change without regulatory effect amending subsections (a) and (b) filed 1-8-2014 pursuant to section 100, title 1, California Code of Regulations (Register 2014, No. 2).

Article 7. Visiting

3170. General Visiting.

(a) These regulations are made in recognition and consideration of the value of inmate visitation as a means of increasing safety in prisons, maintaining family and community connections, and preparing inmates for successful release and rehabilitation. It is the intent of these regulations to establish a visiting process in the institutions/facilities of the department that is conducted in as accommodating a manner as possible, subject to the need to maintain order, the safety of persons, the security of the institution/facility, and required prison activities and operations.

(b) The privacy of inmates and their visitors shall be respected subject to the need to verify the identity of an inmate or visitor; enforce laws, regulations, and procedures; and/or ensure the safety of persons and institution/facility security. Video-recording devices may be utilized in visiting areas, excluding family visiting units or confidential attorney consultation areas.

(c) Visits with inmates may, without prior notification, be terminated, temporarily suspended, or modified in response to an institution/facility emergency as determined by the institution head or designee. Emergency modifications of the visiting schedule shall be posted at the institution/facility as soon as practical and will be included in the automated telephonic visiting information system.

(d) Devices that do not allow physical contact between inmates and visitors shall not normally be used, except as provided in section 3170.1 or as necessary in the following circumstances:

(1) Physical contact with a visitor(s), or with other inmates, will seriously endanger the safety of persons or the security of the institution/facility,

(2) As a temporary measure for willful failure or refusal to abide by visiting regulations.

(e) Each inmate and visitor is responsible for his or her own conduct during visits. Any violation of laws, regulations, or local procedures governing visits may result in termination, suspension, revocation, or denial of visiting with the person or persons involved, as described in section 3176. Such violation may also result in exclusion from the facility, as described in section 3176.3.

(f) Reasonable accommodation shall be afforded visitors and inmates with disabilities to facilitate their full participation in contact, non-contact, or family visiting as provided in these rules.

NOTE: Authority cited: section 5058, Penal Code. Reference: Sections 2600, 5054 and 6400, Penal Code; and *In re French,* 164 Cal Rptr. 800 (1980).

HISTORY:

1. Amendment filed 9-30-77; effective thirtieth day thereafter (Register 77, No. 40).
2. Amendment filed 8-22-79; effective thirtieth day thereafter (Register 79, No. 34).
3. Amendment of subsection (d) filed 8-23-82; effective thirtieth day thereafter (Register 82, No. 35).
4. Amendment of subsections (a), (c) and (e) filed 2-16-83; effective thirtieth day thereafter (Register 83, No. 8).
5. Editorial correction of printing error restoring subsection (g) (Register 94, No. 2).
6. Repealer of former article 7 (sections 3170–3179) and new article 7 (sections 3170–3179) and repealer and new section filed 2-18-2003; operative 3-20-2003 (Register 2003, No. 8).
7. Change without regulatory effect amending subsection (e) filed 5-22-2003 pursuant to section 100, Title 1, California Code of Regulations (Register 2003, No. 21).

3170.1. General Visiting Guidelines.

(a) Visiting is permitted only in designated areas and at designated times.

(b) Inmates shall not be permitted to visit during the hours of their assignment to work, training, Career Technical Education program and/or academic education, except as provided in section 3045.2.

(c) No limitations shall be placed on the number of visitors approved to visit an inmate. However, limitations on the length and frequency of visits may be imposed to avoid overcrowding or the inequitable allocation of visiting time or for other reasons as provided in section 3176.

(1) An inmate shall not be permitted a contact visit with more than five persons, including minors, at the same time. Groups of visitors in excess of five may be accommodated only once per visit by means of rotation through the visiting area. Such rotation shall be considered a single visit in the event it is necessary to terminate a visit in progress in accordance with 3176(a)(9) and (10).

(2) An inmate shall not be permitted a non-contact visit with more than three persons, including minors, at the same time. Groups of visitors in excess of three may be accommodated only one per visit by means of rotation through the visiting area. Such rotation shall be considered a single visit in the event it is necessary to terminate a visit in progress in accordance with 3176(a)(9) and (10).

(d) Visiting with more than one inmate at the same time, shall require that both inmates are approved to visit in the same visiting room, and that either:

(1) The visitors and inmates are immediate family members as defined in Section 3000; or

(2) The visitor(s) has prior written approval from the institution/facility head or designee.

(e) Inmates undergoing reception center processing shall be limited to non-contact visiting. If non-contact visiting cannot be accommodated because of physical plant limitations, the institution head shall take such limitations into account in establishing an alternative visiting plan. Inmates with disabilities, who remain at the reception center for extended stays (exceeding 60 days) due to their disability, shall be authorized regular visiting privileges.

(f) Inmates assigned to Administrative Segregation and Security Housing Units shall be eligible for non-contact visits only. On a case-by-case basis, the institution head or designee may allow contact visits for administratively segregated inmates. Visitors who have made appointments in advance for non-contact Administrative Segregation and Security Housing Unit visits shall be given priority. Non-contact visits shall be scheduled in one-hour increments and may be extended based on space availability. When overcrowding occurs, those who have visited at least one-hour and who have been visiting for the longest time may have their visits terminated as outlined in sections 3176(a)(9) and (10).

(g) During contact visits, the inmate and visitor may pass, exchange, or examine any items of property or consume any items of food or beverage that either party is permitted to bring into or purchase in the visiting area, except for items that are contraband under section 3006. Neither the inmate nor the visitor shall take any property items out of the visiting area that were passed or exchanged from the other party, except for legal documents as provided in section 3178 and photographs that were taken during the visit. Neither the inmate nor the visitor shall take any food or beverage items out of the visiting area.

(h) Possession and/or use of a cell phone, wireless communication device or their components thereof is prohibited within the secure perimeter of the institution without authorization. Any such unauthorized device is subject to confiscation and the visitor may be subject to penalties allowed by law. Any visitor who brings such devices inside the secure perimeter is deemed to have consented to the department to preventing electronic communications to and from the device. Notice shall be posted in areas where visitors are searched.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 2600, 2601(c)(2), 4570, 4576 and 5054, Penal Code.

HISTORY:

1. New section filed 2-18-2003; operative 3-20-2003 (Register 2003, No. 8).
2. Change without regulatory effect amending subsection (c)(1) and amending Note filed 5-22-2003 pursuant to section 100, title 1, California Code of Regulations (Register 2003, No. 21).
3. Amendment of subsection (d)(1) filed 10-16-2007; operative 11-15-2007 (Register 2007, No. 42).
4. Amendment of subsection (g) filed 5-25-2010; operative 6-24-2010 (Register 2010, No. 22).
5. New subsection (h) and amendment of Note filed 12-9-2011 as an emergency; operative 12-9-2011 (Register 2011, No. 49). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 5-17-2012 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 12-9-2011 order transmitted to OAL 5-3-2012 and filed 6-6-2012 (Register 2012, No. 23).
7. Amendment of subsection (b) filed 10-29-2013 as an emergency; operative 10-29-2013 (Register 2013, No. 44). A Certificate of Compliance must be transmitted to OAL by 4-7-2014 or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 10-29-2013 order transmitted to OAL 4-4-2014 and filed 5-14-2014 (Register 2014, No. 20).

3170.5. Child Victim Visiting Restrictions.

NOTE: Authority cited: section 5058, Penal Code. Reference: Sections 1202.05, 5054 and 5054.2, Penal Code; and section 362.6, Welfare and Institutions Code.

HISTORY:

1. New section filed 8-12-93; as an emergency; operative 8-12-93 (Register 93, No. 33). A Certificate of Compliance must be transmitted to OAL by 12-10-93 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 8-12-93 order including amendments transmitted to OAL 11-20-93 and filed 1-11-94 (Register 94, No. 2).
3. Repealer filed 2-18-2003; operative 3-20-2003 (Register 2003, No. 8).

3171. Visiting Procedures.

(a) The institution head shall maintain visiting procedures for inmate visiting at each institution/facility. All local visiting procedures must conform to and shall not conflict with the rules and regulations set forth in this article. The degree of informality of inmate visiting will be consistent with the security requirements of each institution/facility.

(b) Inmates shall be informed of local visiting procedures and shall be given a written summary of all rules, regulations and procedures governing visiting at the institution/facility. Additional copies shall be readily available for inmates to give or send to their visitors. The written summary shall include the institution/facility visiting schedule. This same summary will be conspicuously displayed in all public entrances to the institution/facility and will be available to any interested person. Institutions/facilities shall have the visiting days and hours, as well as appropriate dress standards, clearly published in the visiting centers and in the visitor processing area.

(c) Inmates may refuse to see a visitor. Such refusal shall not result in removal of the visitor from the inmate's visitor list. To remove a visitor from their approved visitor list, inmates shall submit a written request to the visiting staff. After six months, the inmate may make a written request to have the visitor placed back on their approved visitor list. At this time, the visitor shall reapply for approval to visit by submitting a visiting questionnaire.

NOTE: Authority cited: section 5058, Penal Code. Reference: Sections 2080, 2086, 2930, and 5054, Penal Code.

HISTORY:

1. Amendment of subsection (b) filed 8-27-82; effective thirtieth day thereafter (Register 82, No. 35).
2. Repealer and new section filed 2-18-2003; operative 3-20-2003 (Register 2003, No. 8).
3. Change without regulatory effect amending Note filed 5-22-2003 pursuant to section 100, Title 1, California Code of Regulations (Register 2003, No. 21).

3172. Applying to Visit an Inmate.

(a) It is the inmate's responsibility to forward a visiting questionnaire to any prospective visitor.

(b) All adults seeking to visit an inmate shall provide a completed visiting questionnaire and obtain institution/facility approval before they may be permitted to visit with an inmate.

(1) An emancipated minor shall apply as an adult visitor, and shall provide a certified copy of the court order granting emancipation.

(2) A minor legal spouse of an inmate may apply to visit the inmate as an adult visitor with a certified copy of their marriage license.

(c) Minor visitors shall have prior written approval from a parent or legal guardian unless the minor applies as an adult as provided in (b) above. Except when prior approval has been obtained from the institution head or designee for an inmate to visit with his or her unchaperoned minor children or siblings, visitors under 18 years of age shall be accompanied by an adult who is also approved to visit.

(d) It is a felony for any former prison inmate to come on institution/facility property for any reason, without prior approval of the institution head or designee. Requests must be made in writing and include a visiting questionnaire and a Certificate of Discharge. Parolees and prospective visitors under probation or civil addict outpatient supervision shall provide written proof of permission to make such a visit from their case supervisor.

(e) The visiting approval application process shall include an inquiry of personal, identifying, and the arrest history information of the prospective visitor sufficient to complete a criminal records clearance applicant and a decision by the institution/facility designated staff to approve or disapprove based upon the information provided. This information is subject to periodic review by designated staff. Any change in the visitor's name, address, telephone number, or arrest history must be reported and may require submission of an updated questionnaire in order to retain the status of an approved visitor.

(f) Previously approved visitors shall submit a new visiting questionnaire prior to visiting any inmate who has been returned to an institution/facility from parole or admitted into a substance abuse treatment control unit while on parole. The visitor shall not be allowed to visit prior to obtaining the institution/facility approval.

(g) The applicant shall return the completed questionnaire to the institution/facility via common carrier or personal delivery (except as provided in subsection (d) above) addressed to the attention of "Visiting". Any questionnaire received by the visiting office directly from an inmate shall be disapproved. Approved visitors required to update information in accordance with (e) above, shall, absent information which would warrant immediate disapproval, be allowed to continue to visit pending review and approval/disapproval of the questionnaire.

NOTE: Authority cited: section 5058, Penal Code. Reference: Sections 4570.5 and 5054, Penal Code.

HISTORY:

1. Amendment filed 9-30-77; effective thirtieth day thereafter (Register 77, No. 40).
2. Repealer and new section filed 2-18-2003; operative 3-20-2003 (Register 2003, No. 8).
3. Change without regulatory effect amending Note filed 5-22-2003 pursuant to section 100, Title 1, California Code of Regulations (Register 2003, No. 21).

3172.1. Approval/Disapproval of Prospective Visitors.

(a) The authority to approve or disapprove prospective visitors may be delegated by the institution head. This authority shall not be delegated below the level of a correctional sergeant or parole agent II.

(b) Reasons for disapproving a prospective visitor include but are not limited to the following:

(1) The prospective visitor has outstanding arrests/warrants including a Department of Motor Vehicles Failure to Appear notice with no disposition from the court.

(2) The prospective visitor has one felony conviction within the last three years or two felony convictions within the last six years or three or more felony convictions during the last ten years.

(3) The prospective visitor has any one conviction of the following types of offenses:

(A) Distributing a controlled substance into or out of a state prison, correctional institution/facility or jail.

(B) Transporting contraband (weapons, alcohol, escape and drug paraphernalia, cell phones or other wireless communication devices or the components thereof etc.) in or out of a state prison, correctional institution/facility or jail.

(C) Aiding or attempting to aid in an escape or attempted escape from a state prison, correctional institution/facility or jail.

(D) The prospective visitor is a co-offender of the incarcerated inmate.

(4) The prospective visitor is a former prison inmate who has not received the prior written approval of the institution head or designee. After one year from the date of a former inmate's discharge from an institution/facility, or after discharge from parole or outpatient status, the institution head will only deny visiting by a former prison inmate for reasons that would apply to any other person as set forth in this article.

(5) The prospective visitor is a supervised parolee, probationer, or on civil addict outpatient status and has not received written permission of his or her case supervisor and/or the prior approval of the institution head.

(6) The identity of the prospective visitor or any information on the visiting questionnaire, is omitted or falsified.

(A) If the prospective visitor has omitted information, the request to visit shall be reconsidered when the information is provided.

(B) If the applicant has falsified information no other request to visit shall be considered until six months after the date of disapproval.

(C) When positive identity cannot be established or clearing the criminal history of the prospective visitor is not possible due to inadequate or conflicting information, the visiting request will be reconsidered when positive identity is established.

(c) The documentation of the approval or disapproval of an application to visit shall be in writing.

(1) If the application is approved, inmates shall be notified in writing and are responsible for informing their prospective visitor(s) of the institution/facility decision to approve the application.

(2) If disapproved, the prospective visitor and inmate shall both be notified in writing. The prospective visitor's notification shall include the specific reason(s) for disapproval and instructions regarding the process for reconsideration.

(d) The prospective visitor may appeal the disapproval by following the established visitor appeal process described in section 3179.

(e) Approval to visit an inmate is conditioned upon compliance with all laws, regulations, and procedures governing visitor conduct on institution/facility property.

(f) There are no restrictions on the number of inmates that a visitor may be approved to visit at one or more institution/facility.

(g) Any visitor approved for visiting at one institution/facility shall be approved to visit the same inmate upon transfer to another institution/facility provided the visitor's approval status remains unchanged.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 4576 and 5054, Penal Code.

HISTORY:

1. New section filed 2-18-2003; operative 3-20-2003 (Register 2003, No. 8).
2. Amendment of subsection (b)(3)(B) and amendment of Note filed 12-9-2011 as an emergency; operative 12-9-2011 (Register 2011, No. 49). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 5-17-2012 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 12-9-2011 order transmitted to OAL 5-3-2012 and filed 6-6-2012 (Register 2012, No. 23).

3172.2. Minimum Visiting Days and Hours.

(a) Each institution/facility shall provide visiting for no less than 12 hours per week. Any reduction of an institution/facility visiting schedule below 12 hours shall require the prior approval of the Secretary or designee. Regular visiting days shall be consecutive and include Saturday and Sunday.

(b) Each institution head shall develop an operational supplement that includes the respective visiting schedules as follows:

(1) Regular Visiting Days: Four days (Thursday through Sunday); or Three days (Friday through Sunday); or Two days (Saturday and Sunday); and

(2) Holiday Visiting Days: New Year's Day; Independence Day; Thanksgiving Day; Christmas Day.

(3) Visiting Appointments: The institution/facility shall specify procedures and criteria for scheduling visiting appointments for non-contact visits in accordance with the provisions of this article.

(c) When a holiday listed in (b)(2) occurs on a day not regularly scheduled for visiting, each institution/facility shall provide the same number of hours of visiting on that holiday as for any single regularly scheduled visiting day.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 2600 and 5054, Penal Code; and *In re French*, 164 Cal. Rptr. 800 (1980).

HISTORY:

1. New section filed 2-18-2003; operative 3-20-2003 (Register 2003, No. 8).
2. Amendment of subsection (b)(2) filed 4-9-2012; operative 5-9-2012 (Register 2012, No. 15).
3. Change without regulatory effect amending subsection (a) filed 3-11-2013 pursuant to section 100, title 1, California Code of Regulations (Register 2013, No. 11).

3173. Processing of Approved Visitors.

(a) Approved visitors shall complete a visitor pass upon their arrival at the institution/facility visitor processing center and their approval to visit shall be verified.

(b) All adult visitors shall present picture identification before being permitted to visit. For each minor, a certified record of birth (official birth certificate, or county embossed abstract of birth) shall be presented during each visit.

(c) Acceptable proof of picture identification for visitors may be, but is not restricted to, the following valid documents:

(1) Driver's license with picture,

(2) Department of Motor Vehicles identification card with picture,

(3) Picture passport,

(4) Armed forces identification card with picture,

(5) Picture identification cards issued by the United States Department of Justice—Immigration and Naturalization Service, or

(6) Picture identification issued by the Mexican Consulate.

(d) Minors may be allowed to visit an inmate subject to the restrictions of section 3173.1. If the accompanying adult is not the parent or legal guardian of the minor, a notarized written consent shall be required from a person with legal custody of the minor, authorizing the minor to visit while accompanied by a designated adult.

NOTE: Authority cited: section 5058, Penal Code. Reference: Sections 4570.5 and 5054, Penal Code.

HISTORY:

1. Amendment of subsections (h) and (p) filed 8-22-79; effective thirtieth day thereafter (Register 79, No. 34). For prior history, see 78, No. 33, 78, No. 30; 78, No. 12; 77, No. 40; 77, No. 20, and 77, No. 9.
2. Amendment of subsection (m) filed 9-24-81; effective thirtieth day thereafter (Register 81, No. 39).
3. Amendment of subsections (b), (g) and (k) filed 8-23-82; effective thirtieth day thereafter (Register 82, No. 35).
4. Amendment of subsection (f) filed 8-27-82; effective thirtieth day thereafter (Register 82, No. 35).
5. Change without regulatory effect amending section filed 10-29-90 pursuant to section 100, Title 1, California Code of Regulations (Register 91, No. 6).
6. Editorial correction of printing errors in subsections (f), (g) and (h) (Register 92, No. 5).
7. New subsections (p) and (q) filed 2-11-98 as an emergency; operative 2-11-98 (Register 98, No. 7). A Certificate of Compliance must be transmitted to OAL by 6-11-98 or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 2-11-98 order transmitted to OAL 5-4-98 and filed 6-16-98 (Register 98, No. 25).
9. Change without regulatory effect amending subsection (f) filed 12-18-98 pursuant to section 100, Title 1, California Code of Regulations (Register 98, No. 51).
10. Repealer and new section filed 2-18-2003; operative 3-20-2003 (Register 2003, No. 8).
11. Change without regulatory effect amending Note filed 5-22-2003 pursuant to section 100, Title 1, California Code of Regulations (Register 2003, No. 21).

3173.1. Visiting Restrictions with Minors.

(a) For inmates convicted of Penal Code (PC) Section(s) 261, 264.1, 266c, 269, 285, 286, 288, 288a, 288.5, or 289 when the victim is a minor, visitation with the minor victim shall be prohibited, except as authorized by an order of the juvenile court pursuant to Welfare and Institutions Code Section 362.6. Visitation pursuant to such an order shall be limited to non-contact status.

(b) For inmates convicted of PC Section(s) 261, 264.1, 266c, 285, 286, 288, 288a, 288.5, or 289 when the victim is a minor, visitation with any minor who is not the victim of the crime shall be limited to non-contact status except as authorized by the Institution Classification Committee.

(c) For inmates convicted of PC Section(s) 273a, or 273d, visitation with the minor victim shall be limited to non-contact status.

(d) For inmates convicted of violating PC Section(s) 187, 269, 273a, 273ab, or 273d, when the victim is a minor, visitation with any other minor shall be limited to non-contact status except as authorized by the Institution Classification Committee.

(e) When an inmate has been arrested, but not convicted, of any crime involving a minor victim included in this Section, a classification committee shall determine whether all visitation with a minor(s) is to be limited to non-contact status.

Unless otherwise prohibited, the inmate's visiting status shall be unrestricted until a classification committee has done the following:

(1) Made a case-by-case determination whether the inmate poses a threat of harm to minor visitors in contact visitation.

(2) Considered the circumstances of the misconduct involving a minor victim in determining whether the inmate poses a threat of harm to minor visitors in contact visitation. In making its determination, the classification committee shall consider, but is not limited to, arrest reports, probation officer reports, court transcripts, parole revocation transcripts.

(f) If a classification committee, when making a decision regarding the visiting status of an inmate described in (e) above, determines that the inmate will pose a threat of harm to minor visitors in contact visitation, it will order all the inmate's visitation with minors be restricted to non-contact visiting status.

(g) If an inmate disagrees with the decision of a classification committee, the inmate may file an inmate grievance via the CDCR Form 602 appeal process as outlined in sections 3084 through 3084.9.

NOTE: Authority cited: Sections 5058 and 5058.3, Penal Code. Reference: Sections 1202.05, 5054 and 5054.2, Penal Code; Section 362.6, Welfare and Institutions Code; and *People* v. *Glass* (2004) 114 Cal. App.4th 1032.

HISTORY:

1. New section filed 2-18-2003; operative 3-20-2003 (Register 2003, No. 8).
2. Repealer and new section and amendment of Note filed 12-5-2005 as an emergency; operative 12-5-2005 (Register 2005, No. 49). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 5-15-2006 or emergency language will be repealed by operation of law on the following day.

3. Certificate of Compliance as to 12-5-2005 order, including amendment of subsections (f) and (g), transmitted to OAL 4-24-2006 and filed 6-6-2006 (Register 2006, No. 23).
4. Amendment of subsections (a)–(c) and amendment of Note filed 10-6-2009; operative 10-6-2009 pursuant to Government Code section 11343.4 (Register 2009, No. 41).
5. Amendment of subsection (g) filed 12-13-2010 as an emergency; operative 1-28-2011 (Register 2010, No. 51). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 7-7-2011 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 12-13-2010 order transmitted to OAL 6-15-2011 and filed 7-28-2011 (Register 2011, No. 30).

3173.2. Searches and Inspections.

(a) Any person coming onto the property of an institution/facility shall be subject to inspection as necessary to ensure institution/facility security including prevention of the introduction of contraband. Inspections may include a search of the visitor's person, personal property and vehicle(s) when there is reasonable suspicion to believe the visitor is attempting to introduce or remove contraband or unauthorized items or substances into, or out of, the institution/facility.

(b) Visitors shall not be forcibly searched unless institution/facility officials possess a court issued warrant to conduct the search, or are being detained for unlawful actions or activities in accordance with section 3292.

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

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

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

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

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

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

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

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

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

(3) Results of a Canine Search.

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

(B) If the canine does alert during an air scan search of the visitor, the visitor shall be required to submit to an unclothed body search as a condition of contact visiting. Refusal to submit to the search shall result in the denial of contact visiting for that day and approval for non-contact visiting only, if available. All requests for unclothed body searches, the reason for the request, and specific facts on which the search is based shall be documented on CDCR Form 888 (Rev. 04/15), Notice of Request for Search, which is incorporated by reference. This form shall include the subject's name, date, and signature of person authorizing the search. Should the visitor refuse to be searched or in instances where drugs or contraband are discovered, a CDC Form 887-B (01/03), Notice of Visitor Warning/ Termination/ Suspicion/ Denial/ Revocation, which is incorporated by reference, shall be completed. This form shall specify the reason for the denial of visiting and time frames for which the denial/suspension are in effect.

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

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

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

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

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

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

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

(4) Positive Canine Alert due to prescribed medications.

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

(B) Should the visitor claim that a positive canine alert is due to one or more prescribed medications, that person must provide

current documentation in the form of a doctor's, licensed physician's assistant's or certified nurse practitioner's verification or a valid prescription for the medication that is suspected to have caused the positive alert before they will be permitted a contact visit.

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

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

(5) Outside Law Enforcement Agencies.

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

(6) Arrests/Citations/District Attorney Referral.

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

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

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

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

(d) Visitor Screening.

(1) Metal Detectors

At institutions equipped with a functional walk-through metal detector, all visitors shall successfully pass through the detector unless a documented medical condition or disability exists that would preclude the visitor from passing through the detector.

(A) At institutions or facilities without a functioning walk-through metal detector, a hand-held wand type of metal detector may be used.

(B) Areas of the body that have piercings or undergarments with an underwire often alarm metal detectors and may delay or even prevent visiting.

(C) Processing may require the removal of shoes, jackets, sweaters, suspenders, belts, piercings, jewelry, or other accessories for closer inspection or separate processing.

(2) Subject to subsection 3173.2(a), additional screening will occur when an individual sets off the alarm of the metal detector, an individual is selected for additional screening, or an individual has provided documentation to substantiate a condition that precludes successful screening by metal detector. This additional screening may include either:

(A) A hand-held wand inspection in conjunction with a clothed body search of the visitor's body, including the torso;

(B) A clothed body search alone; or

(C) An unclothed body search.

(3) When additional screening is required, visitors should let staff know of any personal needs or concerns they may have due to religious or cultural considerations, disability, or other medical concern.

(4) Additional searches will be conducted by staff of the same gender as the visitor.

(5) Hand-held wand inspection: A hand-held wand inspection helps staff to identify what may have set off the alarm on the walk-through metal detector or to confirm an alarm present during the initial screening. During the wanding procedure the visitor shall be asked to stand with feet and legs apart and arms out to the side while the staff member passes the wand in close proximity to all areas of the visitor's body.

(6) Clothed body search: To ensure security, a clothed body search may be used in conjunction with the hand-held wand inspection. A clothed body search may also be performed as a stand-alone procedure, when appropriate, or to resolve alarms set off during an inspection by the metal detector. A clothed body search may include touching sensitive areas of the body.

(7) Unclothed body search: An unclothed body search is a security procedure that involves visual inspection of a person's body with all of their clothing removed and a thorough inspection of the person's clothing for the purpose of detecting contraband. This procedure may be conducted with the visitor's consent when there is a reasonable suspicion that the visitor is carrying contraband and when no less intrusive means are available to conduct the search.

(e) Visitors with medically implanted or prosthetic devices:

(1) Visitors with temporary or permanent medically implanted or prosthetic device(s) who cannot clear the metal detection device and/or visitors who require the use of a wheelchair or other assistive devices for mobility impairment shall present a letter of verification signed by their physician, physiatrist, prosthetist, or orthotist. The letter must confirm the mobility impairment, and/or the nature of the medically implanted or prosthetic device and its specific location in/on the body, and the need for any assistive device.

(2) Visitors with a temporary medically implanted or prosthetic device(s) shall be required to renew the verification letter, as described in subsection 3173.2(e)(1), every two years.

(3) Visitors with a permanent medically implanted or prosthetic device(s) shall be required to renew the verification letter, as described in subsection 3173.2(e)(1), to coincide with any changes to the device(s).

(f) Visitors who require the use of a wheelchair shall temporarily transfer to a designated institution/facility wheelchair, when available, while visiting staff conduct an inspection of the visitor's wheelchair. Visitors who present a letter signed by their physician that confirms the need for using a battery powered or custom designed wheelchair shall be exempt from the requirement of transferring from their personal wheelchair. In such cases, the visitor shall permit an inspection of the personal wheelchair and allow a hand held metal detection device to be used.

(g) Except as provided in subsection (b), if the search of any visitor's person, property or vehicle exceeds that which is normally required for all visitors, the visitor shall be informed in writing of the reason for the search and the name of the official ordering the search. Consent shall be obtained from the visitor prior to the search.

(h) A visitor who refuses to be searched shall be denied visiting for that day.

(i) Any person who brings an unauthorized cell phone or wireless communication device within the secure perimeter of the California Department of Corrections and Rehabilitation facility is deemed to have given consent to the department to prevent wireless communication using available technology.

(1) The inmate and the visitor who refused to be searched shall be notified in writing as described in section 3176(a)(3).

(2) Future visits may be conditioned upon the visitor's willingness to submit to a search prior to each visit for as long as institution/

facility officials have reasonable suspicion to believe that the visitor will attempt to introduce contraband or unauthorized substances into the institution/facility.

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

HISTORY:

1. New section filed 2-18-2003; operative 3-20-2003 (Register 2003, No. 8).
2. Amendment of subsections (a) and (g)(2) filed 4-7-2008; operative 5-7-2008 (Register 2008, No. 15).
3. Amendment of subsection (d) and new subsections (d)(1)–(3) filed 5-25-2010; operative 6-24-2010 (Register 2010, No. 22).
4. New subsection (h) and amendment of Note filed 12-9-2011 as an emergency; operative 12-9-2011 (Register 2011, No. 49). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 5-17-2012 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 12-9-2011 order transmitted to OAL 5-3-2012 and filed 6-6-2012 (Register 2012, No. 23).
6. New subsections (d)–(d)(7), subsection relettering and amendment of newly designated subsections (e)(2)–(3) filed 5-16-2013; operative 5-16-2013 pursuant to Government Code section 11343.4(b)(3) (Register 2013, No. 20).
7. Amendment of subsection (c) and Note filed 10-2-2014 as an emergency; operative 10-2-2014 (Register 2014, No. 40). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 3-11-2015 or emergency language will be repealed by operation of law on the following day.
8. Amendment of subsection (c) and new subsections (c)(1)–(c)(6)(D) filed 10-8-2014 as an emergency; operative 10-8-2014 (Register 2014, No. 41). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 3-17-2015 or emergency language will be repealed by operation of law on the following day.
9. Amendment of subsection (c) and new subsections (c)(1)–(c)(6)(D) refiled with additional amendments to subsection (c)(3)(F) 3-17-2015 as an emergency; operative 3-17-2015 (Register 2015, No. 12). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 6-15-2015 or emergency language will be repealed by operation of law on the following day.
10. Certificate of Compliance as to 10-2-2014 order transmitted to OAL 3-4-2015 and filed 4-16-2015 (Register 2015, No. 16).
11. Certificate of Compliance as to 3-17-2015 order, including amendment of subsections (c)(2), (c)(2)(B), (c)(3)(A)–(C), (c)(3)(I), (c)(4)(B) and (c)(6)(A) and amendment of Note, transmitted to OAL 6-15-2015 and filed 7-27-2015; amendments effective 7-27-2015 pursuant to Government Code section 11343.4(b)(3) (Register 2015, No. 31).

3174. Standards of Dress for Inmate Visitors.

(a) Visitors are expected to dress appropriately and maintain a standard of conduct during visiting that is not offensive to others. Consistent with the goal of making visiting a safe, positive, constructive time for families and staff, the following standards shall apply:

(1) Visitors shall remain fully clothed at all times in the visiting room.

(2) Appropriate attire includes undergarments; a dress or blouse/shirt with skirt/pants/ or shorts; and shoes or sandals.

(3) For security reasons, no brassiere will have metal underwires.

(b) Prohibited attire consists of:

(1) Clothing that resembles state-issued inmate clothing worn to visiting (blue denim or blue chambray shirts and blue denim pants);

(2) Clothing that resembles law enforcement or military-type clothing, including rain gear, when not legitimately worn by an individual on active duty or in an official capacity.

(3) Clothing or garments that:

(A) Expose the breast/chest area, genitals or buttocks;

(B) By design, the manner worn, or due to the absence of, excessively allows the anatomical detail of body parts or midriff to be clearly viewed;

(C) Are sheer, transparent or excessively tight;

(D) Expose more than two inches above the knee, including slits when standing.

(E) Undergarments shall be worn beneath translucent clothing, under all circumstances.

(4) Clothing or accessories displaying obscene or offensive language, drawings or objects.

(5) Gloves, head coverings (except clear, see-through rain gear), and readily removable wigs or hairpieces. The institution head or designee may grant an exception for a visitor to wear gloves, head coverings, and/or readily removable hairpieces or wigs, based upon verification of need. Written approval shall be required prior to visiting and subject to staff inspection during any visit. The institution head or designee may also grant a general exception allowing visitors to wear gloves and head coverings based upon weather conditions at the institution/facility.

(6) Any other clothing, garment or accessory when worn in a manner that would be prohibited in (b)(1) through (5) above.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.

HISTORY:

1. Amendment of subsection (d) filed 2-24-77; effective thirtieth day thereafter (Register 77, No. 9).
2. Amendment of subsection (e) filed 9-30-77; effective thirtieth day thereafter (Register 77, No. 40).
3. Amendment filed 8-18-78; effective thirtieth day thereafter (Register 78, No. 33).
4. Amendment of subsection (e) filed 8-22-79; effective thirtieth day thereafter (Register 79, No. 34).
5. Amendment of subsection (e) filed 8-23-82; effective thirtieth day thereafter (Register 82, No. 35).
6. New subsection (f) filed 2-16-83; effective thirtieth day thereafter (Register 83, No. 8).
7. Change without regulatory effect amending section filed 10-29-90 pursuant to section 100, title 1, California Code of Regulations (Register 91, No. 6).
8. New subsections (e)(1)–(2) and amendment of Note filed 2-27-95 as an emergency; operative 5-30-95 (Register 95, No. 9). A Certificate of Compliance must be transmitted to OAL by 11-6-95 or emergency language will be repealed by operation of law on the following day.
9. New subsections (e)(1)–(2) and amendment of Note refiled 11-7-95 as an emergency; operative 11-7-95 (Register 95, No. 45). A Certificate of Compliance must be transmitted to OAL by 4-14-96 or emergency language will be repealed by operation of law on the following day.
10. Editorial correction of History 9 (Register 96, No. 21).
11. Repealer of subsections (e)(1) and (e)(2) and reinstatement of Note as it existed prior to emergency amendment filed 5-30-95 pursuant to Government Code section 11349.6(d) (Register 96, No. 21).
12. New subsections (e)(1) and (e)(2) and amendment of Note filed 6-7-96 as an emergency; operative 6-7-96 (Register 96, No. 23). A Certificate of Compliance must be transmitted to OAL by 10-7-96 or emergency language will be repealed by operation of law on the following day.
13. Editorial correction of subsection (e)(2) (Register 96, No. 40).
14. Change without regulatory effect amending Note filed 10-1-96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 40).
15. Certificate of Compliance as to 6-7-96 order transmitted to OAL 10-3-96 and filed 11-18-96 (Register 96, No. 47).
16. Editorial correction of History 9 (Register 99, No. 4).
17. Repealer and new section filed 2-18-2003; operative 3-20-2003 (Register 2003, No. 8).

18. Amendment of subsections (b)(1)–(2) filed 5-16-2013; operative 5-16-2013 pursuant to Government Code section 11343.4(b)(3) (Register 2013, No. 20).

3175. Standards of Conduct for Inmates and Their Visitors.

(a) Inmates and visitors shall comply with all laws, regulations, and institution/facility procedures. Any violation may result in denial, termination, suspension, restriction, or revocation, of visiting as described in section 3176.

(b) Accompanying adults shall ensure that minors remain under their constant control and supervision.

(c) Nursing mothers shall be discreet and covered when breastfeeding their child in the visiting area. Failure to do so shall result in termination of visiting for that day.

(d) Inmates and their visitors may hold hands.

(e) At the beginning and end of each visit, inmates and their visitors may briefly embrace and/or kiss.

(f) An inmate may hold his or her minor children. Inmates may also hold minor children accompanied by an adult.

(g) Except as provided in this section, no other bodily contact shall be permitted.

NOTE: Authority cited: section 5058, Penal Code. Reference: section 5054, Penal Code.

HISTORY:

1. Amendment of subsections (h) and (i) filed 9-30-77; effective thirtieth day thereafter (Register 77, No. 40).
2. Amendment filed 8-23-82; effective thirtieth day thereafter (Register 82, No. 35).
3. Amendment of subsection (g)(1) filed 2-7-83 as an emergency; effective upon filing (Register 83, No. 7).
4. Order of Repeal of 2-7-83 emergency order filed 2-10-83 by OAL pursuant to Government Code section 11349.6 (Register 83, No. 7).
5. Repealer and new section filed 2-18-2003; operative 3-20-2003 (Register 2003, No. 8).

3176. Denial, Restriction, Suspension, Termination or Revocation of Visits and Exclusion of a Person.

The terms "approve," "disapprove" "deny," "restrict," "suspend," "terminate," "revoke," and "reinstate" as used in this article apply to actions which may be taken by the institution head or designee for the administration of visiting. The director or institution head may, for cause, exclude a person from entering institutions/facilities of the Department. All such actions are subject to the provisions set forth in this article.

(a) The official in charge of visiting may deny an approved visitor access to an institution/facility, terminate, or restrict a visit in progress for the following reasons:

(1) The visitor appears to be under the influence of alcohol, drugs or other substance to the extent that his or her presence in the institution/facility would pose an undue threat to his or her safety or the safety of others, or to the security of the institution/facility.

(2) The visitor does not provide the identification and/or documentation required as set forth in these regulations.

(3) The visitor refuses to submit to a search and inspection of his/her person or vehicles and property brought onto the institution/facility grounds.

(A) Visitors who refuse to submit to an unclothed body search, where probable cause exists, shall have their visiting privileges denied for that day. Future visits may be conditioned upon the visitor's willingness to submit to an unclothed body search prior to being allowed to visit. Such searches may be repeated on subsequent visits for as long as institution/facility officials have probable cause to believe that the visitor will attempt to introduce contraband or unauthorized substances or items into the institution/facility.

(B) The willingness or unwillingness of the visitor to submit to a search shall not affect conditions or restrictions placed on an inmate's visiting privileges by a disciplinary or classification committee unless the inmate is found in a subsequent disciplinary hearing to have been a conspirator to smuggle contraband into or out of the institution/facility.

(4) Conduct in violation of institution/facility procedures, including excessive physical contact, refusal to follow staff instructions, disruption of the visiting/processing area, destruction/alteration of visiting documents, or any other behavior that would constitute a misdemeanor or felony or repetition of less serious violations and disregard for a warning about such violations.

(5) The visitor is not appropriately dressed.

(6) The visitor is under 18 years of age and the conditions prescribed in section 3173(b) have not been met.

(7) The visitor has a medically implanted or prosthetic device, cannot clear the contraband or metal detection devices, and does not provide the written verification required in section 3173.2(d).

(8) The visitor requires the use of a wheelchair or other assistive device(s) for mobility impairment, but does not provide the written verification as required in section 3173.2(e), or refuses to temporarily transfer to a designated institution/facility wheelchair while the visitor's personal wheelchair is being inspected.

(9) The maximum capacity of the visiting area has been reached and to allow others to visit it is necessary to terminate the visits of those persons who have been visiting for the longest period of time. Exceptions shall include, but are not limited to the following:

(A) Excessive Distance: The visitor has traveled a distance of 250 miles or more, and has not visited within the last 30 days. This exception applies to two consecutive days of visiting.

(B) Weddings: When an inmate and the visitor's marriage ceremony occurred on that day.

(C) Disabled: A disabled visitor who must rely on special transportation to the institution/facility.

(D) Family Emergencies: When death, serious illness or injury occurs to an inmate's immediate family as defined in Section 3000. Clergy or approved visitors may visit the inmate to offer condolences or inform the inmate of the occurrence.

(E) Infrequent Visits: When the visitor has not visited the inmate in the last six months.

(10) When the overcrowding situation persists, visits of those remaining will be terminated as necessary.

(b) Written notification shall be provided to the visitor when action is taken by the official in charge of visiting to deny, terminate or restrict a visit. The written notification shall contain information instructing the visitor how to appeal the action as outlined in section 3179.

(c) The institution head or designee may revoke or suspend an approved visitor's future visits for a specified period of time for the following reasons:

(1) Information, which would have resulted in disapproval of visits in section 3172.1, becomes known after approval to visit has been granted.

(2) The visitor has been involved in a serious violation or multiple less serious violations of CDCR regulations.

(3) Visitors who participate in Sexual Activity in a visiting room may have their access to the visiting program suspended for up to 6 months. A second violation may result in a suspension of up to one year. A third or subsequent violation may result in exclusion.

(d) The ranking custody officer on duty or the official in charge of visiting may restrict visits, but may not deny visiting, as a temporary security measure when an inmate is scheduled for a hearing on a serious rules violation or for classification on an order for placement in administrative segregation. Subsequent disciplinary

or classification committee action will supersede any such temporary action.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.

HISTORY:
1. Editorial correction of printing error in subsection (c) (Register 92, No. 5).
2. Repealer and new section filed 2-18-2003; operative 3-20-2003 (Register 2003, No. 8).
3. Amendment of subsection (a)(9)(D) filed 10-16-2007; operative 11-15-2007 (Register 2007, No. 42).
4. New subsection (c)(3) filed 10-6-2009; operative 10-6-2009 pursuant to Government Code section 11343.4 (Register 2009, No. 41).
5. Change without regulatory effect amending subsection (c)(2) filed 1-8-2014 pursuant to section 100, title 1, California Code of Regulations (Register 2014, No. 2).

3176.1. Visitor Violation Process.

Any person seeking entry into an institution/facility for the purpose of visiting an inmate shall be subject to all applicable laws, rules and regulations. Any person violating a law, rule or regulation while visiting shall be subject to warning, termination, suspension, and/or revocation of their visiting privileges as described below:

(a) Warning. Visitors may be verbally warned about violations of applicable law, rules, regulations or of local procedures governing visits. When a verbal warning achieves corrective action, a written report of the misconduct or warning is not necessary.

(b) Termination. When verbal warnings and/or restrictions fail to achieve compliance, or fail to deter conduct by a visitor that if committed by an inmate would constitute a serious rules violation, the visit shall be terminated and documented in writing.

(c) Suspension up to six months. For serious or repeated violations of the rules, regulations, or procedures, and/or upon belief of the visitor's involvement in a criminal act and pending the outcome of an investigation, the official in charge of visiting may impose a suspension of the visitor's access to the visiting program for up to 6 months. The length of suspension shall be commensurate with the seriousness of the violation.

(d) Suspension up to 12 months. The institution head or designee may impose a suspension of visiting for up to 12 months when a visitor is involved in criminal activity on institution/facility property, which constitutes a misdemeanor.

(e) Suspension up to 24 months. The director or designee may impose a suspension of visiting privileges up to 24 months when a visitor is involved in criminal activity on institution/facility property, which constitutes a felony.

(f) Revocation. Subsequent discovery of information that would have resulted in disapproval or disqualifying conduct are grounds for revocation of the previously granted permission to visit an inmate.

(g) The visitor and the inmate shall be notified in writing of all formal warnings, terminations, suspensions and revocations. The notice shall clearly state the reason for the action and length of time any sanction will apply. The notification shall also include the signature of the official taking the action and advise the visitor of the right to appeal in accordance with section 3179. The notification shall be provided to the visitor at the time of the action or mailed to the visitor's last known address within five working days of the action.

NOTE: Authority cited: section 5058, Penal Code. Reference: section 5054, Penal Code.

HISTORY:
1. New section filed 2-18-2003; operative 3-20-2003 (Register 2003, No. 8).

3176.2. Violation of State Law on Institution/Facility Property.

Any violation of state law, misdemeanor, or felony committed on institution/facility grounds or property by a visitor may be referred to prosecuting authorities.

(a) Upon determination by the official in charge of visiting that a violation of state law has occurred, the visitor's access to the visiting program shall be suspended pending investigation, prosecution, and service of any sentence by the court.

(1) If the individual is not prosecuted, or upon completion of any court ordered sentence, approval to visit shall be reconsidered upon the visitor's written request.

(2) If a court finds the individual not guilty, a prior approval to visit shall be reinstated upon written request of the visitor.

(b) Regardless of the outcome of any referral to prosecuting authorities, future visits are subject to restrictions as provided in section 3176.1.

NOTE: Authority cited: section 5058, Penal Code. Reference: section 5054, Penal Code.

HISTORY:
1. New section filed 2-18-2003; operative 3-20-2003 (Register 2003, No. 8).

3176.3. Exclusion of a Person from Institutions/Facilities.

(a) The term "exclusion" as used in this article describes an administrative action by the director or institution head to bar, for cause, a person from entering institutions/facilities of the department, when that person would otherwise be permitted to enter. The director may delegate the authority for exclusion no lower than the rank of deputy director. The institution head may delegate the exclusion authority not lower than the chief deputy warden. Any person, including employees of the department, attorneys, attorney representatives, representatives of the news media, and delivery persons, may be excluded. The exclusion of a person is effected by issuance of an exclusion order.

(b) Exclusion orders shall be issued only when the director or institution head determines one or more of the following:

(1) The person's presence in the institution/facility presents a serious threat to security.

(2) The person is charged with a felony.

(3) The person is under investigation for a felony committed on institution/facility property.

(4) The person's purpose for entering an institution/facility is no longer valid or has been lawfully terminated.

(5) The person has committed any offense described in subsection 3178(s)(3) for which exclusion is an appropriate penalty.

(6) The person has violated subsection 3176(c)(3) for which exclusion is an appropriate penalty.

(c) A temporary exclusion may be ordered pending investigation and/or verification of the cause for exclusion.

(d) The director or designee may exclude a person from any or all institutions/facilities. An institution head or designee may issue an order to exclude a person only from the institution/facility within his/her jurisdiction.

(e) When the institution head's exclusion order affects an inmate's attorney, or when the matter may have department wide significance, an immediate telephone report will be made to the director. In all instances of exclusion a written report will be made to the director or designee within two working days of the effective date of the order.

(f) The person excluded shall be provided with written notification of the action taken. The notification shall advise the person that, upon request, a meeting with the official who ordered the exclusion may be arranged at the convenience of both parties, and

that he/she may bring other persons to the meeting, including an attorney, and any information or evidence to support his/her position. Following the meeting, the person shall be provided the official's written decision within 20 working days.

(1) If the exclusion is modified to permit the person's entry only under special conditions, the reasons shall be given.

(2) If an institution head ordered the exclusion, the person shall also be informed that the decision may be appealed to the director.

(3) A copy of the letter to the person shall be forwarded to the director or designee and a copy shall be retained in the institution/facility files.

(4) If the exclusion letter is rescinded in full, notice of the rescission will be given in writing to the person, with a copy to the director or designee.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.

HISTORY:

1. New section filed 2-18-2003; operative 3-20-2003 (Register 2003, No. 8).
2. Change without regulatory effect amending subsection (b)(5) filed 3-27-2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 13).
3. New subsection (b)(6) filed 10-6-2009; operative 10-6-2009 pursuant to Government Code section 11343.4 (Register 2009, No. 41).

3176.4. Restriction, Revocation or Suspension of an Inmate's Visits.

(a) Designated staff, not below the rank of correctional lieutenant or parole agent II, may temporarily impose non-contact visiting restrictions as a necessary security measure for an inmate who is pending a serious disciplinary hearing for the distribution and/or possession/control of a controlled substance, possession of money or other dangerous contraband that has been introduced into the institution/facility, or for other violations related to visiting.

(b) Pursuant to section 3314, a hearing officer conducting an administrative rules violation hearing may restrict an inmate's visiting privileges for up to 30 days when the inmate is found guilty of visiting related misconduct.

(c) Upon a finding of guilt of a drug related offense, as described in subsections 3323(c)(6) and/or 3323(d)(7), the official conducting a disciplinary hearing, shall suspend and restrict an inmate's visiting privileges pursuant to subsections 3315(f)(5)(H) and 3315(f)(5)(I).

(d) Pursuant to section 3315, the official conducting a disciplinary hearing may suspend or restrict an inmate's visiting privileges for up to 90 days, when the inmate is found guilty of any of the following serious rule violations:

(1) Possession of $5.00 or more without authorization.

(2) Visiting related violations presenting a threat as described in section 3315(a)(2).

(3) Serious or repeated violations of visiting regulations or procedures.

(e) Suspension and or restriction of visiting may be imposed by a classification committee for a specific period of time when there is substantial reason(s) to believe that the inmate poses a threat to the security of the institution/facility and or safety of persons.

(1) Separate from the disciplinary authority of the senior hearing officer as provided in section 3315, a classification committee may suspend and restrict the visiting privileges of an inmate found guilty of multiple visiting related violations as described in section 3176.4(d). The committee may impose the following suspensions and restrictions:

(A) Suspension of visiting privileges for up to 90 days, to be followed by non-contact visiting for up to 180 days for any second offense which occurs within two years from the date of a previous offense.

(B) Suspension of visiting privileges for up to 180 days, to be followed by non-contact visiting for up to 180 days for any third offense which occurs within two years from the date of a first offense.

(2) A classification committee may impose a loss of visits for 180 days, to be followed by non-contact visits for 180 days, for escape or attempted escape when the inmate is found guilty by a disciplinary hearing officer or court.

(f) When the inmate's visiting privilege status has been modified or changed, the inmate shall be responsible for promptly notifying his or her visitor(s) of the action taken.

(g) Any suspensions under this section shall not apply to attorney visits including visits by attorney representatives.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 2086, 2772, 2790, 4502, 4535, 4571, 4573, 4573.5, 4573.6 and 5054, Penal Code; and *In re French*, 106 Cal.App.3d 74 (1980).

HISTORY:

1. New section filed 2-18-2003; operative 3-20-2003 (Register 2003, No. 8).
2. Amendment of subsection (c) filed 7-19-2011; operative 8-18-2011 (Register 2011, No. 29).

3177. Family Visiting (Overnight).

Institution heads shall maintain family visiting policies and procedures. Family visits are extended overnight visits, provided for eligible inmates and their immediate family members as defined in Section 3000, commensurate with institution security, space availability, and pursuant to these regulations. Each institution shall provide all necessary accommodations, except for food, at no cost to the inmates and their visitors. Institutions shall require eligible inmates to purchase all food for the family visit through the institution family visiting coordinator. Each institution family visiting menu shall provide a balanced variety of nutritional selections. At all CDCR conservation camps, the visitors shall be required to bring all food for the visit.

Only those immediate family members as defined in Section 3000, including registered domestic partners, are authorized for family visits.

(a) When a bonafide and verified foster relationship exists between an inmate and another person, by virtue of being raised in the same foster family, the person may be approved for family visiting with the prior approval of the institution head or designee.

(b) Family visiting is a privilege. Eligibility for family visiting shall be limited by the assignment of the inmate to a qualifying work/training incentive group as outlined in section 3044.

(1) Family visits shall not be permitted for inmates convicted of a violent offense involving a minor or family member or any sex offense, which includes but is not limited to the following Penal Code sections: 187 (when the victim is a family member as defined in Section 3000 or minor); 192 (when the victim is a family member or minor); 243.4; 261; 261.5, 262; 264.1; 266c; 266j; 273a; 273d; 273.5; 273.6; 285; 286; 288; 288a; 288.2; 288.5; 289; 289.5; 311.1; 311.2; 311.3; 311.4; 313.1; 314; or 647.6.

(A) Inmates may be prohibited from family visiting where substantial documented evidence or information of the misconduct described in section 3177(b)(1) exists, without a criminal conviction. The evidence or information appropriate for the purpose of this regulation shall include rule violation reports as well as the standard described in section 3173.1.

(B) Family visiting shall be restricted as necessary to maintain order, the safety of persons, the security of the institution/facility, and required prison activities and operations, pursuant to section 3170.

(2) Family visits shall not be permitted for inmates who are in any of the following categories: sentenced to life without the possibility of parole; sentenced to life, without a parole date established by the Board of Parole Hearings; designated Close A or Close B custody; designated a condemned inmate; assigned to a reception center; assigned to an administrative segregation unit; assigned to a security housing unit; designated "C" status; guilty of one or more Division A or Division B offense(s) within the last 12 months; or guilty of narcotics distribution while incarcerated in a state prison.

(3) Family visits shall be permitted only in CDCR institutions and conservation camps.

(c) Unescorted minors of the inmate's immediate family shall not participate in family visits. Exceptions include an inmate's legal spouse, the inmate's children or legal stepchildren and the inmate's own brothers or sisters when the institution head or designee approves such unchaperoned visits.

(d) Inmates shall not be eligible for a family visit while any action that restricts, suspends, or denies their contact with a visitor or visitors during regular visiting is in effect. Family visits may be revoked or suspended without such action affecting an inmate's eligibility for contact or non-contact visits.

(e) Each inmate shall be subject to disciplinary action, which may include suspension or exclusion from participation in the family visiting program, for any willful damage of the unit and/or furnishings or for failure to maintain the cleanliness of the family visiting program unit.

(f) Visitors failing to report to the visitor processing area by 11:00 a.m. without the notification and approval of the family visiting coordinator are subject to cancellation of the visit and suspension of family visiting program privileges for six months.

(g) Inmates with a disability requiring an accommodation for family visits shall give 72 hours notice of any request for accommodation.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 297.5, Family Code; and Section 5054, Penal Code.

HISTORY:

1. Amendment filed 5-13-77; effective thirtieth day thereafter (Register 77, No. 20).
2. Amendment of subsection (c) filed 9-30-77; effective thirtieth day thereafter (Register 77, No. 40).
3. Amendment of subsection (c)(4) and new subsection (c)(13) filed 8-22-79; effective thirtieth day thereafter (Register 79, No. 34).
4. Amendment of subsection (c)(11)(C) filed 4-18-80; effective thirtieth day thereafter (Register 80, No 16).
5. Amendment of subsection (c)(10)(C) filed 9-24-81; effective thirtieth day thereafter (Register 81, No. 39).
6. Amendment of subsections (c)(11)(B) and (c)(12) filed 8-23-82; effective thirtieth day thereafter (Register 82, No. 35).
7. Amendment of subsection (c)(3) filed 3-2-83; effective thirtieth day thereafter (Register 83, No. 12).
8. Change without regulatory effect amending subsection (c)(9)(C) filed 9-26-95 pursuant to section 100, title 1, California Code of Regulations (Register 95, No. 39).
9. New subsections (c)(11)(D) and (E) and subsection relettering filed 2-11-98 as an emergency; operative 2-11-98 (Register 98, No. 7). A Certificate of Compliance must be transmitted to OAL by 6-11-98 or emergency language will be repealed by operation of law on the following day.
10. Certificate of Compliance as to 2-11-98 order transmitted to OAL 5-4-98 and filed 6-16-98 (Register 98, No. 25).
11. Repealer and new section filed 2-18-2003; operative 3-20-2003 (Register 2003, No. 8).
12. Change without regulatory effect amending subsection (b)(1) filed 12-4-2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 49).
13. Amendment of first two paragraphs, subsection (b)(1) and Note filed 10-16-2007; operative 11-15-2007 (Register 2007, No. 42).
14. Change without regulatory effect amending subsection (b)(2) filed 3-11-2013 pursuant to section 100, title 1, California Code of Regulations (Register 2013, No. 11).
15. Change without regulatory effect amending first paragraph and subsection (b)(3) filed 1-8-2014 pursuant to section 100, title 1, California Code of Regulations (Register 2014, No. 2).

3178. Attorney Visitations and Consultation.

(a) The provisions of this section apply to any attorney or legal service organization as identified in section 3141(c)(8) authorized to practice law in California, another state, or the District of Columbia.

(b) A private consultation between an inmate and his or her attorney or attorney representative is known as an attorney visit. Attorney visits shall be conducted in a confidential area specified by the institution/facility. Attorney visiting shall normally be accommodated during the institution/facility regularly scheduled visiting days and hours. Where regular visiting is scheduled on both weekdays and weekends, the scheduling preference will be on weekdays because of the personnel and resources needed for the greater volume of weekend visits by friends and relatives.

(1) When an institution/facility visiting schedule only provide(s) for visiting on weekends an attorney visit shall be scheduled during normal weekday business hours upon written request of the attorney or attorney representative.

(2) The institution head or the official in charge of visiting has the discretion to authorize a contact attorney visit for an inmate on non-contact visiting status.

(3) If an attorney, or attorney representative, does not desire private accommodations, the attorney or attorney representative may visit the inmate on any scheduled visiting day and shall be provided the same accommodations including the schedule, as a regular visitor.

(c) An attorney or court may designate other persons to act on their behalf as attorney representatives.

(1) Attorney representatives must be one of the following:

(A) A private investigator licensed by any state and sponsored by the attorney or appointed by the court.

(B) An investigator who is employed by a government agency, public agency or public institution.

(C) A law student sponsored by the attorney.

(D) A legal para-professional sponsored by the attorney or appointed by the court.

(E) An employee of an attorney, legitimate legal service organization, or licensed private investigator who is sponsored by the attorney or licensed private investigator.

(2) Personnel retained by an attorney or attorney representative, including, but not limited to certified sign language interpreters, certified language interpreters and court reporters may accompany the attorney or attorney representative during the private consultation and are required to provide the information requested in (c)(3) below. Licensed mental or medical health care professionals may also serve as attorney representatives and do not have to be accompanied by the attorney.

(3) The designation shall be in writing and signed by the attorney and/or judge, and shall contain the following:

(A) The designee's name and position of employment or title.

(B) The designee's date of birth, driver's license and social security number.

(C) Certification, in the form of a license that the representative is a licensed private investigator retained by the attorney or appointed by the court; or valid identification that the investigator is employed by a government agency, public agency, or public institution; or a letter in the form of a declaration, that the attorney representative is being sponsored by the attorney and that the

attorney accepts responsibility for all actions taken by the attorney representative.

(D) The name and CDC number of the inmate(s) to be visited.

(E) The designation shall be presented by the representative at the time of their visit and shall be subject to verification by institution/facility staff.

(4) Attorney representatives shall be afforded the same accommodations and services and are subject to the same rules and regulations, as an attorney providing all other requirements of this article are met.

(d) An attorney who wishes to consult in person with an inmate shall contact the institution/facility at which the inmate is housed. The request shall be made by calling or writing (including via facsimile) the staff designated (usually the litigation coordinator) in the institution/facility operational supplement. In order to obtain approval/clearance, the attorney shall provide the following personal and professional information in writing (including via facsimile): name; mailing address; date of birth, valid driver's license or state-issued identification card number; proof of current registry and good standing with a governing bar association; and indication of the jurisdiction(s) licensed to practice law. Requesting attorneys must also report any prior felony convictions, explain any prior suspension or exclusion from a correctional facility and declare one or more of the following:

(1) They are the inmate's attorney either by appointment by the court or at the inmate's request;

(2) They have been requested by a judge to interview a named inmate for purposes of possible appointment as counsel by the same court;

(3) They are requesting to visit an inmate who may be a witness directly relevant to a legal process, purpose, or proceeding;

(4) They are seeking to interview a named inmate, at the request of the inmate, for the purpose of representation of the inmate in a legal process, for a legal purpose or in a legal proceeding.

(5) They have been requested by a third party to consult with the inmate when the inmate cannot do so because of a medical condition, disability, or other circumstance.

(e) Any false statement or deliberate misrepresentation of facts specific to the information requested in subsection (d) above shall be grounds for denying the request and/or cause for subsequent suspension or exclusion from all institutions/facilities administered by the department.

(f) Upon receipt of the information specified in (d) above, a California Law Enforcement Telecommunications System check of the attorney through the Department of Justice and verification of the attorney's credential through the governing state bar will be conducted. Once the clearance and state bar verification have been obtained and approved, the attorney shall be contacted to schedule the initial in-person visit with the specified inmate(s). Attorneys and attorney representatives must report any change in personal or professional information, arrest history and declarations made in subsections (c) and (d) above to retain their approval/clearance.

(g) While five days notice to schedule an attorney visit is requested an approved attorney or approved attorney representative shall provide the institution/facility with no less than two business days notice to schedule a private consultation with an inmate. In an emergency, appointment requests may be cleared through the institution head or designee.

(h) Upon arrival at the institution/facility, the approved attorney shall be processed into the institution/facility in the same manner and under the same restrictions as regular visitors. Attorneys shall also be required to present their state bar card or other similar documentation that the attorney is currently registered in good standing with a state bar association.

(i) To follow-up on information obtained during a private consultation with an inmate, attorneys or attorney representatives may request to visit inmates other than those already formally represented. Such requests shall be considered subject to reasonable operational limitations. If the request imposes an unreasonable burden on staffing or unduly disrupts an institutional function, e.g., interferes with count or feeding, it will be deemed unreasonable and the request will be denied.

(j) When there is cause to believe an attorney or a legal service organization is abusing the privilege of private consultation with the inmate, the institution head is authorized to:

(1) Require proof that the inmate and attorney are involved in active litigation or have a legitimate legal reason for contact.

(2) Initiate an investigation of the facts and circumstances of the situation.

(k) An attorney request for the deposition of an inmate shall be made in writing to the institution head. The request shall include:

(1) The name and CDC number of the inmate.

(2) The name and other identifying information of the court reporter.

(3) The specific date and time requested for taking the deposition.

(*l*) Not more than two attorneys or attorney representatives may visit privately with an inmate or witness at the same time. Exceptions may be authorized by the official in charge of visiting commensurate with space and staff availability.

(m) Conversations between an inmate and an attorney and/or attorney representative shall not be listened to or monitored, except for that visual observation by staff, which is necessary for the safety and security of the institution/facility.

(n) All items, including legal documents permitted into the security area, shall be inspected for contraband and/or unauthorized items or substances. The inmate may retain and take from the visiting area any legal documents given to him or her by the attorney or attorney representative, providing the inmate consents to staff examination of the documents for contraband or unauthorized items or substances.

(1) Staff may open and inspect but shall not read any part of written or printed materials without the expressed consent of the attorney/attorney representative and inmate.

(2) Any and all items including written and printed material that an inmate and an attorney wish to exchange during the visit must be presented to the official in charge of visiting for inspection before it is brought into the visiting area. The purpose of this inspection is to ensure the contents pose no threat to the security or safety of the institution/facility, including the introduction of unauthorized drugs, controlled substances, and contraband as defined in section 3006.

(3) If the inmate does not consent to an inspection of the contents of a document given to the inmate by the attorney/attorney representative, it shall be returned to the attorney/attorney representative.

(o) After proper inspection, written and printed material may be exchanged. The attorney or attorney representative may retain and take from the visiting area and from the institution/facility any legal written or printed documents given to them by the inmate and not otherwise prohibited by law or these regulations.

(p) An attorney or attorney representative may be permitted, with the inmate's consent, to audio record the inmate's interview.

(1) The institution/facility shall make audio recording equipment available for such use. The interviewer may use personal recording equipment providing the equipment can be thoroughly inspected by staff before entry into the institution/facility.

(2) The attorney or attorney representative must provide a factory sealed audiotape/compact disc(s).

(q) The institution head or designee may authorize video recording of inmate interviews, with the inmate's consent.

(1) Video recording equipment provided by the attorney shall be thoroughly inspected by staff before entry into the institution/facility and searched for contraband.

(2) If the attorney's or attorney representative's video equipment cannot be thoroughly searched without an undue risk of damage, the equipment shall be permitted only if the attorney or attorney representative agrees to pay for staff to escort and control the equipment while inside the institution/facility. The pay for such staff escorts shall be at the state established hourly wage, including rates for overtime when necessary.

(3) The attorney or attorney representative must provide factory sealed videotape(s).

(r) Attorneys shall not be permitted to attend or participate in any conference or committee meeting of staff and the inmate concerned, except as may be authorized in these regulations.

(s) Administrative action may be taken by the institution/ facility head or designee to restrict, where cause exists, the confidential privileges, including confidential visiting, mail and/or telephone privileges, and/or normal visiting privileges afforded an attorney or attorney representative based upon the schedule contained in this section:

(1) A written warning notifying the attorney or attorney representative that the offender's confidential legal privileges are subject to modification/suspension and that the offender will be subject to exclusion for a minimum of six months. Written warnings are appropriate for minor infraction or violations of the institution/facility regulations, i.e., violations that cannot be prosecuted as either a misdemeanor or felony.

(2) Modification, suspension, or exclusion of visiting privileges for a period of at least six months shall occur in the event that the written warning above fails to deter or correct the offending behavior.

(3) Committing an act that jeopardizes the life of a person, violates the security of the facility, constitutes a misdemeanor or a felony, or is a reoccurrence of previous violations shall result in a one-year to lifetime exclusion depending on the severity of the offense in question. Exclusions shall be made in accordance with section 3176.3 and the appeal process in section 3179.

(t) The director or designee shall be notified in writing within 48 hours when administrative action is taken to restrict visiting privileges of an attorney or attorney representative.

NOTE: Authority cited: section 5058, Penal Code. Reference: Sections 2601, 4570.5 and 5054, Penal Code; and *Procunier* v. *Martinez,* 94 S. Ct. 1800 (1974).

HISTORY:

1. Amendment filed 3-22-78; effective thirtieth day thereafter (Register 78, No. 12).
2. Repealer and new section filed 8-18-78; effective thirtieth day thereafter (Register 78, No. 33).
3. Amendment filed 8-23-82; effective thirtieth day thereafter (Register 82, No. 28).
4. Change without regulatory effect amending subsection(a) filed 1-12-98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 3).
5. Repealer and new section filed 2-18-2003; operative 3-20-2003 (Register 2003, No. 8).

3179. Appeals Relating to Visiting.

(a) Inmates, and approved inmate visitors, and visiting applicants may appeal in writing department policies, staff decisions, and institution/facility procedures relating to visiting.

(1) Inmates shall use the established inmate appeal procedures as provided in section(s) 3084 through 3084.9.

(2) All appeals by approved inmate visitors and visiting applicants related to visiting shall be submitted to the institution head.

(b) Visitor appeals related to institution/facility procedures or staff decisions shall be addressed to the institution head. A written response shall be provided within 15 working days from receipt of the appeal. If dissatisfied with the institution/facility response or action, the appellant may refer the appeal, with a copy of the institution/facility decision, to the director or designee.

(c) Appeals related to visiting shall be addressed to the director. A written response to appeals addressed to the director shall be provided within 20 working days from the date of receipt.

(d) All subsequent decisions made as the result of an appeal and the reasons for the decisions shall be documented with a copy to the appellant and/or inmate. Visiting privileges shall be promptly approved or restored when an investigation concludes that no violation of rules, regulations, or procedures took place.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.

HISTORY:

1. Change without regulatory effect renumbering former section 3182 to section 3179 filed 6-28-95 pursuant to section 100, title 1, California Code of Regulations (Register 95, No. 26).
2. Repealer and new section filed 2-18-2003; operative 3-20-2003 (Register 2003, No. 8).
3. Amendment of subsection (a)(1) filed 12-13-2010 as an emergency; operative 1-28-2011 (Register 2010, No. 51). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 7-7-2011 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 12-13-2010 order transmitted to OAL 6-15-2011 and filed 7-28-2011 (Register 2011, No. 30).

3182. Minimum Visiting Days and Hours.

NOTE: Authority cited: section 5058, Penal Code. Reference: Sections 2600, 2601 and 5054, Penal Code. *In re French,* 164 Cal. Rptr. 800 (1980).

HISTORY:

1. New section filed 1-13-93 as an emergency; operative 1-13-93 (Register 93, No. 3). A Certificate of Compliance must be transmitted to OAL 5-13-93 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5-21-93 as an emergency; operative 5-21-93 (Register 93, No. 21). A Certificate of Compliance must be transmitted to OAL by 9-20-93 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 5-21-93 order transmitted to OAL 9-14-93; disapproved by OAL on 10-13-93 (Register 93, No. 42).
4. New section refiled 10-14-93 as an emergency; operative 10-14-93 (Register 93, No. 42). A Certificate of Compliance must be transmitted to OAL by 2-11-94 or emergency language will be repealed by operation of law on the following day.
5. Editorial correction adding History 2 (Register 93, No. 42).
6. New section refiled 3-9-94; operative 3-9-94 (Register 94, No. 10).
7. Change without regulatory effect renumbering former section 3182 to Section 3179 filed 6-28-95 pursuant to Section 100, Title 1, California Code of Regulations (Register 95, No. 26).

Article 8. Tobacco

3180. General Policy.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 308a and 5054, Penal Code.

HISTORY:

1. Amendment filed 4-18-80; effective thirtieth day thereafter (Register 80, No. 16).
2. Repealer and new section filed 10-7-82; effective thirtieth day thereafter (Register 82, No. 41).

3. Repealer filed 2-6-90; operative 3-8-90 (Register 90, No. 6).

3181. Quantity.

1. Repealer of article 8 and section filed 10-29-90; operative 11-28-90 (Register 91, No. 6).

3187. Smoking Policy.

(a) The terms below are defined for the purposes of this section:

(1) Smoke or Smoking means the inhaling, exhaling, burning, or carrying of any lit cigarette, cigar, pipe, or smoking paraphernalia used for consuming the smoke of tobacco or any other burning product.

(2) Use means the use of any tobacco product.

(3) Residential Space means the private living areas of staff. Residential Space does not include the living areas of inmates or family visiting areas. Residential space includes, but is not limited to, residential areas at institutions, correctional training academies, and conservation camps.

(4) Facility means any building, areas of any building, or group of buildings owned, leased, or utilized by the Department. This shall include, but not be limited to, institutions, conservation camps, community correctional facility, and reentry furlough, and restitution centers.

(b) No person shall smoke within 20 feet of any operative window of, entrance/exit to, or within the interior of any state owned or state occupied building, with the following exceptions:

(1) Residential spaces of staff excluding correctional training academies, Staff Quarters at conservation camps, and designated non-smoking housing on institutional grounds. For these excluded areas, smoking will be permitted for staff in designated areas at designated times.

(2) In areas designated by each institution head for the purpose of approved inmate religious ceremonies as specified.

(c) In addition to (b), no person shall smoke in any area that may pose a safety or security risk, e.g., within any fire hazardous areas.

(d) Signs shall be posted at entrances of all areas designated no smoking and, as necessary, any other outside areas of a facility not designated for smoking, along with a citation of the authority requiring such prohibition.

(e) No person shall smoke in any vehicle that is state-owned or leased by the state.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 5030.1 and 5054, Penal Code; Sections 7596–7598 and 19994.30–19994.32, Government Code.

HISTORY:

1. Renumbering of former section 3188 to new section 3187, including amendment of section and Note, filed 7-7-2005 as an emergency; operative 7-7-2005 (Register 2005, No. 27). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 12-14-2005 or emergency language will be repealed by operation of law on the following day. For prior history of article 8 (sections 3180–3181), see Register 90, No. 6 and Register 91, No. 6.
2. Certificate of Compliance as to 7-7-2005 order transmitted to OAL 12-13-2005 and filed 1-26-2006 (Register 2006, No. 4).
3. Editorial correction of Histories 1 and 2 (Register 2008, No. 21).
4. Change without regulatory effect amending subsection (b)(1) filed 4-11-2012 pursuant to section 100, title 1, California Code of Regulations (Register 2012, No. 15).

3188. Tobacco Products.

(a) The terms below are defined for the purposes of this section:

(1) Advertise means the display or posting of any poster, sign, or other written or visual material that serves to communicate commercial information or images to the public.

(2) Tobacco product means any product that contains tobacco, the prepared leaves of any plant belonging to the nicotiana family, which shall include, but not be limited to, cigarettes, loose tobacco, cigars, snuff, chewing tobacco, or any other preparation of tobacco, tobacco substitutes, smoking paraphernalia, and all other items developed or processed for the primary purpose of facilitating the use or possession of tobacco or tobacco related products as well as packaging material. Packaging material includes, but is not limited to, snuff or cigarette containers.

(b) No tobacco product shall be advertised in any department-owned or -occupied facility with the exception of advertisements contained in a program, leaflet, newspaper, magazine, or other written material lawfully sold, bought, or distributed within a facility.

(c) Staff shall not use or possess tobacco products in the presence of inmates. No person shall possess or use tobacco products on the grounds of any institution/facility that houses or detains inmates, under the jurisdiction of the Department, except for the following:

(1) The use of tobacco products may be departmentally approved in inmate religious ceremonies.

(2) Tobacco products for personal use off facility grounds are permitted when secured in a locked private vehicle.

(3) Tobacco products for personal use are permitted in residential spaces of staff where inmates are not present. Use of tobacco products in residential space at correctional training academies, and in Staff Quarters at conservation camps, will be permitted only in designated areas with designated times to be determined by local operational procedures.

(4) Tobacco cessation products such as a patch, inhaler, or lozenges are permitted for use by staff, and must be for immediate personal use only.

(d) On July 1, 2005 and thereafter, smoking, possession, or use of tobacco products by inmates under the jurisdiction of the Department, or any other persons where inmates are housed or detained, except as provided in (c), is prohibited and tobacco products will be considered contraband in accordance with section 3006.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 5030.1 and 5054, Penal Code; Section 19994.35, Government Code.

HISTORY:

1. New section filed 8-18-94 as an emergency; operative 8-18-94 (Register 94, No. 33). A Certificate of Compliance must be transmitted to OAL by 12-16-94 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 8-18-94 order, including amendment of subsections (b) and (d), and amendment of Note transmitted to OAL 12-16-94 and filed 1-26-95 (Register 95, No. 4).
3. Editorial correction of Reference cite (Register 95, No. 32).
4. Amendment of section and Note filed 1-14-97 as an emergency pursuant to Penal Code section 5058(e); operative 1-14-97 (Register 97, No. 3). A Certificate of Compliance must be transmitted to OAL by 6-23-97 pursuant to Penal Code section 5058(e) or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1-14-97 order transmitted to OAL 4-22-97 and filed 5-27-97 (Register 97, No. 22).
6. Amendment of subsection (a)(3) filed 12-1-98 as an emergency; operative 12-1-98 (Register 98, No. 49). Pursuant to Penal Code 5058(e), a Certificate of Compliance must be transmitted to OAL by 5-10-99 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 12-1-98 order transmitted to OAL 5-7-99 and filed 6-4-99 (Register 99, No. 23).
8. Renumbering of former section 3188 to new section 3187 and renumbering of former section 3189 to section 3188, including amendment of section and Note, filed 7-7-2005 as an emergency; operative 7-7-2005 (Register 2005, No. 27). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 12-14-2005 or emergency language will be repealed by operation of law on the following day.

9. Certificate of Compliance as to 7-7-2005 order transmitted to OAL 12-13-2005 and filed 1-26-2005 (Register 2006, No. 4).
10. Change without regulatory effect amending subsection (c)(3) filed 4-11-2012 pursuant to section 100, title 1, California Code of Regulations (Register 2012, No. 15).

3189. Inmate Violations and Cessation Assistance.

(a) Inmates violating the provisions of sections 3187 and/or 3188 on July 1, 2005 and thereafter shall be subject to the inmate disciplinary methods, administrative and serious rule violation provisions of sections 3312, 3314 and 3315.

(b) Tobacco use cessation assistance may include, but is not limited to the following:

(1) Tobacco use cessation classes,

(2) Distribution of printed tobacco cessation material.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 5030.1 and 5054, Penal Code.

HISTORY:

1. New section filed 8-18-94 as an emergency; operative 8-18-94 (Register 94, No. 33). A Certificate of Compliance must be transmitted to OAL by 12-16-94 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 8-18-94 order transmitted to OAL 12-16-94 and filed 1-26-95 (Register 95, No. 4).
3. Amendment of section heading and new subsection (c) filed 12-1-98 as an emergency; operative 12-1-98 (Register 98, No. 49). Pursuant to Penal Code 5058(e), a Certificate of Compliance must be transmitted to OAL by 5-10-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 12-1-98 order transmitted to OAL 5-7-99 and filed 6-4-99 (Register 99, No. 23).
5. Renumbering of former section 3189 to section 3188 and new section 3189 filed 7-7-2005 as an emergency; operative 7-7-2005 (Register 2005, No. 27). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 12-14-2005 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 7-7-2005 order transmitted to OAL 12-13-2005 and filed 1-26-2005 (Register 2006, No. 4).

Article 9. Personal Property and Religious Personal Property

3190. General Policy.

(a) Inmates shall be permitted to possess in their quarters/living area, state-issued property items, and authorized personal/religious property items based upon privileges in section 3044 and/or assigned security level and/or institution mission, and subject to disciplinary provisions in sections 3314 and 3315.

(b) Specific items of personal and religious property shall be established by a consensus of individual facilities within the Division of Adult Institutions. An Authorized Personal Property Schedule, identifying a list of allowable property, not including religious property, shall be developed and updated no more frequently than twice yearly. Local facility exemptions to the property lists shall also be identified. All changes to the Authorized Personal Property Schedule shall be adopted in accordance with the rulemaking requirements of the Administrative Procedure Act (Government Code Sections 11340 through 11350.3) and, if applicable, Penal Code 5058.3.

The Religious Personal Property Matrix (Revised 6/27/13) identifies a separate list of allowable personal religious property, and is incorporated by reference. The Religious Personal Property Matrix shall be developed and updated by the Wardens Advisory Group/ Religious Review Committee no more frequently than twice yearly. Local exceptions to the Religious Personal Property Matrix shall also be identified. All changes to the Religious Personal Property Matrix shall be adopted in accordance with the rulemaking requirements of the Administrative Procedure Act (Government Code Sections 11340 through 11350.3) and, if applicable, Penal Code 5058.3.

The following five property lists are incorporated by reference:

(1) Authorized Personal Property Schedule—Reception Center Male Inmates (Rev. 4/1/14). This personal property schedule applies to all facilities which operate Male Reception Center Housing.

(2) Authorized Personal Property Schedule—General Population Levels I, II, and III, Male Inmates (Rev. 4/1/14). This personal property schedule applies to all facilities which operate Levels I, II, III Male Inmate Housing.

(3) Authorized Personal Property Schedule—Level IV Male Inmates (Rev. 4/1/14). This personal property schedule applies to all facilities which operate Level IV Male Inmate Housing.

(4) Authorized Personal Property Schedule—Administrative Segregation Units (ASU) / Security Housing Units (SHU) / Psychiatric Services Units (PSU) Male Inmates (Rev. 4/1/14). This personal property schedule applies to all facilities which operate ASU/SHU/PSU Male Inmate Housing.

(5) Authorized Personal Property Schedule—Female Inmates (Rev. 4/1/14). This personal property schedule applies to all facilities which operate Female Inmate Housing.

(c) The Non Disciplinary Segregation (NDS) Personal Property Matrix (12/30/2013) identifies a separate list of allowable personal property afforded to inmates housed in ASU for non disciplinary reasons as affirmed by a classification committee, and is hereby incorporated by reference. The NDS Personal Property Matrix shall be updated by collaboration of all Division of Adult Institutions mission based programs no more frequently than twice yearly. All changes to the NDS Personal Property Matrix shall be adopted in accordance with the rulemaking requirements of the Administrative Procedure Act (Government Code Sections 11340 through 11350.3) and, if applicable, Penal Code 5058.3.

(d) The combined volume of state-issued and allowable personal property items shall not exceed six cubic feet, except as specifically allowed in these regulations.

(e) Upon an inmate's transfer between institutions of the department, the sending institution shall inventory the inmate's property and, pursuant to section 3191 ensure the proper disposition of property not allowed at the receiving institution as a result of privilege group, and/or security level, and/or institution mission changes.

(f) Inmates may acquire authorized inmate packages based upon their privilege group, pursuant to section 3044. Inmate packages shall be ordered by inmates or their correspondents via a departmentally-approved inmate package vendor. All packages shall be shipped to the inmate's institution/facility by the departmentally-approved vendor in a sealed container. Inmate packages, not including special purchases, are limited to a 30-pound maximum weight limit and maximum dimensions of 24″ x 24″ x 24″.

(g) Inmates may possess allowable food and personal care/hygiene items, and personal clothing in their quarters/living areas, subject to section 3190(a), unless otherwise prohibited by these regulations. The total volume of canteen merchandise retained in possession of an inmate shall be pursuant to section 3094. Inmates shall be required to maintain their purchase receipt to verify purchases until such items are expended.

(h) Inmates shall be restricted to only clear (see-through) personal care/hygiene items encased in clear containers or tubing based upon industry availability. An exemption shall be authorized by the institution's health care manager or chief medical officer when an exemption to the clear item and/or clear case requirement is deemed medically necessary by a physician. Such exemption shall not exceed one (1) year. If the condition persists, the inmate shall submit another exemption request.

(i) Inmates shall only be permitted to possess state-issued clothing and authorized personal clothing subject to section 3190(a).

(j) Inmates shall be allowed special purchases of authorized personal property items from either departmentally-approved inmate package vendors or locally-approved special purchase vendors (except as provided for publications (including books and subscriptions to periodicals) in subsections 3190(j)(2) and 3190(j)(7)). The institution head or designated staff shall ensure approved vendor catalogs and order forms are available to inmates who qualify. Special purchases shall only include the following:

(1) Health Care Appliances, subject to prescription by health care staff and approval by designated custody staff, shall be excluded from the six cubic foot limitation of section 3190(c).

(2) Legal Material, including legal reference material, books, and legal pads not available in the institution canteen, pursuant to section 3161. There shall be no "Approved Vendor Lists" for any legal publications. Inmates may receive legal publications from any publisher, book store or book distributor that does mail order business.

(3) Correspondence Courses, subject to approval by supervisor of correctional education programs and designated custody staff.

(4) Religious Items, as listed within the Religious Personal Property Matrix.

(5) Handicraft Material, subject to approval by handicraft manager and designated custody staff.

(6) Entertainment Appliances, Headphones/Earbuds and Musical Instruments, subject to qualifying privilege group and/or security level/institution mission.

(7) All publications, including books and subscriptions to periodicals, subject to section 3006. There shall be no "Approved Vendor Lists" for any publications. Inmates may receive publications from any publisher, book store or book distributor that does mail order business.

(k) Inmates may be allowed to possess appliances and one musical instrument as follows:

(1) Inmates assigned to Privilege Groups A or B may possess up to three approved appliances in their quarters/living area, facility physical plant limitations permitting, and shall not exceed the six cubic feet maximum limitation. One musical instrument with case not exceeding 46″ x 24″ x 12″ may be substituted as one of the three appliances.

(2) Inmates assigned to Privilege Group C may not possess entertainment appliances and/or a musical instrument. Inmates placed on Privilege Group C pursuant to a disciplinary action pursuant to subsection 3315(f)(5)(C), shall have the disallowed property stored until which time the placement is affirmed by a classification committee. Upon placement in Privilege Group C by the classification committee, the inmate shall be afforded the allowable property identified in the APPS for Privilege Group C and will be required to dispose of the non-allowable property in accordance with subsection 3191(c).

(3) Inmates assigned to Administrative Segregation Unit/Security Housing Unit/Psychiatric Services Unit (ASU/SHU/PSU) may possess or acquire one television or one radio or one television/radio combination unit, through the Special Purchase process, facility physical plant limitations permitting, and shall not exceed the six cubic feet maximum limitation. Inmates assigned to ASU are authorized one entertainment appliance. Inmates assigned to SHU/PSU are authorized two entertainment appliances. Eligibility to possess an entertainment appliance commences on the date of Privilege Group D assignment. An inmate who is deemed to be a program failure, as defined in section 3000, based on conduct while in the ASU/SHU/PSU, shall have his or her entertainment appliance disposed of in accordance with subsection 3191(c). An inmate who has not been deemed a program failure, but who is found guilty of any Rules Violation Report based on conduct while in the ASU/SHU/PSU, is subject to temporary loss of the entertainment appliance as follows: (1) thirty days for the first offense; (2) sixty days for the second offense; and (3) ninety days for the third and subsequent offenses. Inmates assigned to Privilege Group D shall not possess a musical instrument.

(4) Inmates assigned to Privilege Group U shall not possess any appliances or musical instruments.

(5) Inmates housed at conservation camps shall not possess a television or television/radio combination.

(*l*) All appliances shall be sealed by staff by covering exterior pieces of the appliance that may be used to access the interior of the appliance with hotglue.

(m) Inmates who break or tamper with the seal of an appliance(s) may be subject to disciplinary action and confiscation of the item.

(n) Inmates ordering new or replacement appliances shall be required to purchase clear-case appliances, as they become available.

(o) Inmate correspondents shall be permitted to purchase appliances for qualifying inmates, including health care appliances, and Entertainment Appliances, Headphones/Earbuds and Musical Instruments, from either a departmentally-approved inmate package vendor or a locally-approved special purchase vendor, pursuant to section 3044.

(p) In addition to the six cubic feet limitation of authorized property, inmates who participate in institution academic or Career Technical Educational programs shall be allowed to possess, in their quarters/living area, state provided textbooks/materials necessary to complete their education requirements. In accordance with section 3011, inmates who do not return state textbooks in serviceable condition, may be charged a replacement fee, as determined by the supervisor of correctional education programs.

(q) Inmates may acquire and possess correspondence course materials, including textbooks, in their quarters/living area as approved by the supervisor of correctional education programs and designated custody staff pursuant to limitations in section 3190(b). Correspondence courses requiring tools, construction kits, or other materials that may pose a threat to the institution's security or the safety of persons shall not be allowed.

(r) The amount charged an inmate for a special purchase or inmate package shall include normal taxes and a 10% service charge based upon the purchase price. Service charges shall be deposited in the inmate welfare fund. Exception: The 10% service charge shall not be added to purchases of health care appliances, correspondence courses, nonfiction books, religious items, and legal materials.

(s) Inmates shall not possess any membership cards, identification cards, or service-type cards other than those issued by the department.

(t) All allowable inmate property shall be inventoried, documented, and stored for inmates transferred Out-to-Medical or Out-to-Court, or placed in segregated housing, a Correctional Treatment Center, or an Outpatient Housing Unit, until the inmate returns.

(u) Privilege Group A or B inmates placed in administrative segregation (AD SEG) shall have their property inventoried and stored pending the outcome of Initial Classification Committee review. If the inmate is released to general population and maintains their Privilege Group A or B assignment, all allowable property shall be returned. If the inmate is retained in AD SEG, all allowable property as determined by current departmental regulations shall be reissued to the inmate. If the inmate received a SHU term, the inmate shall be required to dispose of unallowable property due to privilege group and/or security level and/or institution mission change in accordance with section 3191(c).

NOTE: Authority cited: Sections 5058 and 5058.3, Penal Code. Reference: Sections 2086, 2601, 5006 and 5054, Penal Code; *In re Alcala,* Marin County Superior Court, No. 117925, December 20, 1984 and *Armstrong* v. *Davis* Court Ordered Remedial Plan, Amended January 3, 2001; *In re Armstrong,* N.D. Cal, No. C 94-02307, March 20, 1998.

HISTORY:

1. Amendment filed 3-6-85 as an emergency; effective upon filing (Register 85, No. 12). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 7-3-85. For prior history, see Register 84, No. 47.
2. Order of Repeal of 3-6-85 emergency order filed 8-1-85 by OAL pursuant to Government Code Section 11349.6(b) (Register 85, No. 31).
3. Amendment filed 8-2-85 as an emergency; effective upon filing (Register 85, No. 31). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 12-2-85.
4. Certificate of Compliance transmitted to OAL 12-2-85 and filed 12-23-85 (Register 85, No. 52).
5. Amendment of subsections (a) and (c), new subsection (d), relocation and amendment of former section 3092(a) to section 3190(e), new subsections (e)(1)–(7), relocation and amendment of former section 3092(b) to section 3190(f) and amendment of Note filed 12-30-2003 as an emergency; operative 1-1-2004 (Register 2004, No. 1). Pursuant to Penal Code section 5058.3(a)(1), a Certificate of Compliance must be transmitted to OAL by 6-9-2004 or emergency language will be repealed by operation of law on the following day.
6. Withdrawal and repeal of 12-30-2003 amendments filed 5-27-2004 as an emergency; operative 5-27-2004 (Register 2004, No. 22). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 9-24-2004 or emergency language will be repealed by operation of law on the following day.
7. Amendment of section and Note, including relocation and amendment of former subsection 3092(a) to section 3190(h), relocation and amendment of former section 3044(g)(4)(G) to section 3190(i)(3) and relocation and amendment of former section 3092(b) to section 3190(p), filed 5-27-2004 as an emergency; operative 5-27-2004 (Register 2004, No. 22). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 11-3-2004 or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 5-27-2004 order transmitted to OAL 10-28-2004 and filed 12-14-2004 (Register 2004, No. 51).
9. Amendment of section and Note filed 8-13-2007 as an emergency; operative 8-13-2007 (Register 2007, No. 33). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 1-22-2008 or emergency language will be repealed by operation of law on the following day.
10. Amendment of section and Note refiled 1-23-2008 as an emergency; operative 1-23-2008 (Register 2008, No. 4). A Certificate of Compliance must be transmitted to OAL by 4-22-2008 or emergency language will be repealed by operation of law on the following day.
11. Certificate of Compliance as to 1-23-2008 order, including further amendment of section and Note, transmitted to OAL 4-22-2008 and filed 6-4-2008 (Register 2008, No. 23).
12. Amendment filed 5-12-2009; operative 5-12-2009 (Register 2009, No. 20).
13. Amendment of article heading and subsections (a), (b), (b)(1), (b)(2), (b)(3), (b)(4), (b)(5) and (i)(4) filed 2-21-2013 as an emergency; operative 2-21-2013 (Register 2013, No. 8). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 7-31-2013 or emergency language will be repealed by operation of law on the following day.
14. Amendment of article heading and subsections (a), (b), (b)(1), (b)(2), (b)(3), (b)(4), (b)(5) and (i)(4) refiled 7-29-2013 as an emergency; operative 7-29-2013 (Register 2013, No. 31). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 10-28-2013 or emergency language will be repealed by operation of law on the following day.
15. New subsection (c) and subsection relettering filed 9-24-2013 as an emergency; operative 9-24-2013 (Register 2013, No. 39). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 3-3-2014 or emergency language will be repealed by operation of law on the following day.
16. Amendment of subsection (p) filed 10-29-2013 as an emergency; operative 10-29-2013 (Register 2013, No. 44). A Certificate of Compliance must be transmitted to OAL by 4-7-2014 or emergency language will be repealed by operation of law on the following day.
17. Certificate of Compliance as to 7-29-2013 order, including further amendment of article heading and subsections (b) and (j)(4), transmitted to OAL 10-24-2013 and filed 12-9-2013; amendments operative 12-9-2013 pursuant to Government Code section 11343.4(b)(3) (Register 2013, No. 50).
18. Amendment filed 1-8-2014 as an emergency; operative 1-8-2014 (Register 2014, No. 2). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 6-17-2014 or emergency language will be repealed by operation of law on the following day.
19. Certificate of Compliance as to 9-24-2013 order, including amendment of subsection (c), transmitted to OAL 2-20-2014 and filed 3-24-2014; amendments operative 3-24-2014 pursuant to Government Code section 11343.4(b)(3) (Register 2014, No. 13).
20. Certificate of Compliance as to 10-29-2013 order transmitted to OAL 4-4-2014 and filed 5-14-2014 (Register 2014, No. 20).
21. Certificate of Compliance as to 1-8-2014 order, including further amendment of subsections (b)(1)–(5), (j)(6), (k)(2) and (o), transmitted to OAL 6-16-2014 and filed 7-22-2014; amendments effective 7-22-2014 pursuant to Government Code section 11343.4(b)(3) (Register 2014, No. 30).

3191. Property Registration and Disposition.

(a) Registerable personal property must be registered under the inmate's name and number in the institution's inmate property records.

(b) Inmates are required upon request by institution staff to properly account for all registerable personal property registered in their name and number. An inmate's failure to possess or properly account for personal property registered in the inmate's name and number, or possession of property which is not registered in the inmate's name and number will be cause for disciplinary action, including confiscation of the unregistered property. In all instances of confiscation, every reasonable effort will be made to determine the rightful owner of the property. The property will be returned to its rightful owner unless, as the result of disciplinary action for misuse of property, the inmate's approval to possess the property is rescinded.

(c) Inmate personal property not meeting the criteria in section 3190, shall be disposed of in accordance with this section. An inmate shall select one of the methods listed in sections 3191(c)(1) through 3191(c)(5) below for disposing of non-allowable personal property which is unauthorized pursuant to subsection (b) and section 3190. If the inmate makes no selection or has insufficient funds, staff shall document that fact and determine the method of disposition. Property that is considered contraband pursuant to section 3006(a) or (c) shall be retained by staff as may be required by ongoing investigation or court order. Following the completion of all disciplinary, investigative, or court requirements, the contraband property shall be disposed of according to institutional/facility procedures.

(1) Mail the item to an address of an individual willing to accept the personal property, provided by the inmate, via USPS or common carrier at the inmate's expense. This option is not available for inmates with insufficient trust account funds.

(2) Return the item to the sender via USPS or common carrier at the inmate's expense. This option is not available for inmates with insufficient trust account funds.

(3) Donate the item to a charitable organization as designated by the institution/facility.

(4) Donate the item to the institution/facility.

(5) Render the item useless and dispose of it according to institution/facility procedures.

(d) Inmates shall not send personal property to any state agency or agent of the state. Failure to comply may result in disciplinary action, and confiscation and/or disposal of the property.

NOTE: Authority cited: Sections 5058 and 5058.3, Penal Code. Reference: Sections 2601 and 5054, Penal Code.

HISTORY:

1. Amendment filed 9-30-77; effective thirtieth day thereafter (Register 77, No. 40).
2. Amendment filed 8-18-78; effective thirtieth day thereafter (Register 78, No. 33).
3. New subsection (c) and Note filed 6-26-92; operative 7-27-92 (Register 92, No. 26).
4. Amendment of section and Note filed 5-27-2004 as an emergency; operative 5-27-2004 (Register 2004, No. 22). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 11-3-2004 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 5-27-2004 order transmitted to OAL 10-28-2004 and filed 12-14-2004 (Register 2004, No. 51).
6. Amendment of subsection (c) and amendment of Note filed 8-13-2007 as an emergency; operative 8-13-2007 (Register 2007, No. 33). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 1-22-2008 or emergency language will be repealed by operation of law on the following day.
7. Amendment of subsection (c) and amendment of Note refiled 1-23-2008 as an emergency; operative 1-23-2008 (Register 2008, No. 4). A Certificate of Compliance must be transmitted to OAL by 4-22-2008 or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 1-23-2008 order, including further amendment of subsection (c), transmitted to OAL 4-22-2008 and filed 6-4-2008 (Register 2008, No. 23).

3192. Possession and Exchange.

An inmate's right to inherit, own, sell or convey real and/or personal property does not include the right to possess such property within the institutions/facilities of the department. An inmate may not exchange, borrow, loan, give away or convey personal property to or from other inmates. Violation(s) of this rule may result in disciplinary action, and confiscation and/or disposal of the personal property.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 2601 and 5054, Penal Code.

HISTORY:

1. Amendment filed 9-30-77; effective thirtieth day thereafter (Register 77, No. 40).
2. Amendment of section and new Note filed 5-27-2004 as an emergency; operative 5-27-2004 (Register 2004, No. 22). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 11-3-2004 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 5-27-2004 order transmitted to OAL 10-28-2004 and filed 12-14-2004 (Register 2004, No. 51).

3193. Liability.

(a) In permitting inmates to possess items of personal property while they are incarcerated, the department does not accept liability for the theft, loss, damage or destruction of such property resulting from the intentional or careless act or activities of any inmate. The department does not accept liability for the loss or destruction of personal property in the inmate's possession or control at the time of any willful act by the inmate, such as escape, which exposes such property to loss or theft before it can be recovered and controlled by staff.

(b) The department shall accept liability for the loss or destruction of inmate personal property when it is established that such loss or destruction results from employee action. Inmates shall utilize the inmate appeal process if unable to resolve a personal property claim pursuant to section 3084.1. Upon acceptance of liability, the department shall provide to the inmate similar items of equal or greater value when such items are available via donated property items consistent with sections 3084.9 and 3191(c). If donated items are not available, monetary compensation to the inmate for such loss shall not exceed either the dollar value assigned to the item or items at the time the inmate received authorization to possess the property; the cost of the item, verified by receipt; or the replacement value for the item or a similar item, as determined by the department. Staff recommendations to the Victim Compensation and Government Claims Board regarding monetary reimbursement will be made accordingly.

(c) The department shall not assume responsibility for property abandoned by an escapee until such time as the escape is discovered and the property is inventoried. Inventoried property shall be stored and final disposition of the property shall be pursuant to Penal Code 5062 and 5063.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 2085, 2600, 2601, 5062 and 5063, Penal Code.

HISTORY:

1. New section filed 5-13-77: effective thirtieth day thereafter (Register 77, No. 20).
2. Amendment filed 9-30-77; effective thirtieth day thereafter (Register 77, No. 40).
3. Amendment filed 8-18-78; effective thirtieth day thereafter (Register 78, No. 33).
4. Repealer and new section filed 10-7-82; effective thirtieth day thereafter (Register 82, No. 41).
5. Amendment of section and Note filed 5-27-2004 as an emergency; operative 5-27-2004 (Register 2004, No. 22). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 11-3-2004 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 5-27-2004 order transmitted to OAL 10-28-2004 and filed 12-14-2004 (Register 2004, No. 51).
7. Amendment of subsection (b) filed 12-13-2010 as an emergency; operative 1-28-2011 (Register 2010, No. 51). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 7-7-2011 or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 12-13-2010 order transmitted to OAL 6-15-2011 and filed 7-28-2011 (Register 2011, No. 30).

3194. Extradition Inmate Property.

(a) Inmates or parolees requiring extradition transport from any state or territory of the United States are personally responsible for the disposition of their personal property. Inmates shall arrange with the holding agency for the disposal or storage or mailing of personal property prior to being transported by California state agents. State agents shall not be responsible for personal property remaining at the sending agency/institution. At no time shall inmate personal property be checked onto airplanes or transported in the aircraft's baggage compartment. The only exception shall be wheelchairs or other health care appliances.

(b) Inmates extradited to the custody of the department shall not retain any property on their person except prescribed eyeglasses or health care appliances. Only authorized property that can fit into a 10" x 12" clasp envelope, including, but not limited to prescription medication, jewelry, wallet, watch, family pictures, or printed material, shall be allowed to be transported. Inmate property shall

be inventoried, recorded, and secured in the agent's carry-on baggage or secured compartment in a transportation vehicle. Inmates may wear his/her own clothing and shoes if deemed appropriate for transport purposes by the assigned state agents.

(c) Inmates extradited or transferred from the department to other jurisdictions, states or territories of the United States may be allowed to retain all or a portion of their property as determined by the transporting extradition agent. In cases where the transportation of personal property is not permitted, inmates shall dispose of the property pursuant to subsection 3191(c)(3) through (5) or be provided the opportunity to select from the following options for the disposition of property:

(1) Inmates permanently transferring to the custody of another agency shall be provided the opportunity to send all property to an address of their choosing via USPS or common carrier at the inmate's expense.

(2) Indigent inmates permanently transferring to the custody of another agency may send their personal property to an individual willing to accept the personal property at the expense of the department.

(3) Inmates temporarily transferring out-to-court or other temporary transfers out-of-state shall have property stored at the institution/facility pending their return to custody, parole or discharge. Disposition of unclaimed property shall be in accordance with PC 5062, 5063 and 5064.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 5054, 5062, 5063 and 5064, Penal Code.

HISTORY:

1. New section filed 5-27-2004 as an emergency; operative 5-27-2004 (Register 2004, No. 22). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 11-3-2004 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 5-27-2004 order transmitted to OAL 10-28-2004 and filed 12-14-2004 (Register 2004, No. 51).

3195. Release Clothing.

Inmates scheduled for release and placement to the Alternative Custody Program (ACP), parole or awaiting discharge may receive a release clothing package via U.S. Postal Service or common carrier no earlier than 30 days prior to their scheduled release to ACP, parole or discharge date. Inmate release clothing packages, limited to one set of clothing, shall be retained in a secure location by the department until their release.

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

HISTORY:

1. New section filed 5-27-2004 as an emergency; operative 5-27-2004 (Register 2004, No. 22). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 11-3-2004 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 5-27-2004 order transmitted to OAL 10-28-2004 and filed 12-14-2004 (Register 2004, No. 51).
3. Amendment of section and Note filed 9-27-2011 as an emergency; operative 9-27-2011 (Register 2011, No. 39). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 3-5-2012 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 9-27-2011 order transmitted to OAL 2-3-2012; Certificate of Compliance withdrawn 3-19-2012 (Register 2012, No. 12).
5. Amendment of section and Note refiled 3-19-2012 as an emergency; operative 3-19-2012 (Register 2012, No. 12). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 6-18-2012 or emergency language will be repealed by operation of law on the following day.
6. Reinstatement of section as it existed prior to 3-19-2012 emergency amendment by operation of Government Code section 11346.1(f) (Register 2012, No. 28).
7. Amendment of section and Note filed 9-13-2012 as an emergency; operative 9-13-2012 (Register 2012, No. 37). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 2-20-2012 or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 9-13-2012 order transmitted to OAL 1-11-2013 and filed 2-25-2013 (Register 2013, No. 9).

Article 10. Inmate Privileges

NOTE: Authority cited: section 5058, Penal Code. Reference: section 5054, Penal Code.

HISTORY:

1. New Article 10 (section 3195) filed 8-22-79; effective thirtieth day thereafter (Register 79, No. 34).
2. Amendment of subsections (d)–(f) filed 10-7-82; effective thirtieth day thereafter (Register 82, No. 41).
3. Repealer of Article 10 (section 3195) filed 2-16-83; effective thirtieth day thereafter (Register 83, No. 8).

SUBCHAPTER 3. INMATE ACTIVITIES

3200. General Policy.

HISTORY:

1. Repealer filed 6-29-93; operative 7-29-93 (Register 93, No. 27).

Article 1. Religious Program

3210. Establishment of Religious Programs.

(a) Institution heads shall make every reasonable effort to provide for the religious and spiritual welfare of all interested inmates, including, but not limited to, affording inmates a reasonable accommodation to attend a scheduled Religious Service if they are unable to do so due to conflicting work/education assignments. Reasonable accommodation may include, but is not limited to, modified work schedule, use of accrued time or allowable breaks, granting of a job/assignment change, changes of regular days off, etc. Use of reasonable accommodation shall in no way adversely impact an inmate's credit earning status.

(b) Depending upon the number of inmates of the various faiths, chaplains may be employed or their services may be accepted on a nonpaid volunteer basis. When feasible, separate space for services of the faith groups represented by a substantial number of inmates shall be provided. However, in some facilities, such as camps, it shall be necessary for the various faith groups to share such space as is available for religious services.

(c) Reasonable time and accommodation shall be allowed for religious services in keeping with facility security and other necessary institutional operations and activities. Insofar as possible, other facility activities shall be planned so as not to conflict with or disrupt scheduled religious services.

(d) A request for a religious service accommodation that requires a specific time, location and/or item(s) not otherwise authorized, will be referred to a Religious Review Committee (RRC) for review and consideration. The RRC shall be comprised of designated chaplains, and a correctional captain or their designee. Accommodation for religious services that are not granted, shall be for reason(s) which would impact facility/unit safety and security, and orderly day to day operations of the institution.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 5009 and 5054, Penal Code; and Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA), 42 U.S.C.ss 2000cc, et seq.

HISTORY:
1. Amendment filed 7-12-82; effective thirtieth day thereafter (Register 82, No. 29).
2. Editorial correction of NOTE filed 8-16-82 (Register 82, No. 34).
3. Amendment of article heading, section heading, text, and Note filed 11-1-93; operative 12-1-93 (Register 93, No. 45).
4. Amendment of section and Note filed 1-17-2006 as an emergency; operative 1-17-2006 (Register 2006, No. 3). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 6-26-2006 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1-17-2006 order transmitted to OAL 6-22-2006 and filed 7-27-2006 (Register 2006, No. 30).

3211. Inmate Ministers.

(a) When a chaplain of a particular faith cannot be obtained to conduct services within a facility housing inmates of that faith, the institution head may at their discretion and subject to such controls reasonably required for facility security, designate a qualified inmate to minister to the religious needs of inmates for that specific faith. In determining the qualifications of an inmate to conduct such services, the institution head will, whenever possible, seek the advice and counsel of outside religious leaders of that faith.

(b) An inmate shall not be assigned as a minister on a full-time basis in lieu of a regular inmate work/training incentive program assignment, be considered as a state employee, or be paid by the state for their services.

NOTE: Authority cited: section 5058, Penal Code. Reference: Sections 5009 and 5054, Penal Code.

HISTORY:
1. Amendment filed 7-12-82; effective thirtieth day thereafter (Register 82, No. 29).
2. Editorial correction of Note filed 8-16-82 (Register 82, No. 34).
3. Amendment of section heading, text, and Note filed 11-1-93; operative 12-1-93 (Register 93, No. 45).

3212. Scheduled Services.

Information received by chaplains when performing their duties shall be privileged except when the nondisclosure of such information to facility staff would jeopardize the safety of any person or the security of the facility.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 5009 and 5054, Penal Code; and Sections 912, 917 and 1030–1034, Evidence Code.

HISTORY:
1. Amendment of section heading and text, and addition of Note filed 11-1-93; operative 12-1-93 (Register 93, No. 45).

3213. Stipulations Regarding Ceremonial Drink, Religious Items, and Sanctuaries.

(a) Prior written approval of the institution head or their designee shall be required for any person to bring a ceremonial drink, such as sacramental wine, or any religious item into a facility.

(b) An inmate may possess any religious item authorized in the Religious Personal Property Matrix (RPPM) (Rev. 6/27/13), which is incorporated by reference in subsection 3190(b). As defined in the RPPM, and subject to reasonable search by staff, an inmate may wear or carry at any time, the following: beaded headband, beaded wrist band, beaded choker, religious medallion and chain, religious headgear, medicine bag, prayer beads, and tallit katan/tsitsit.

(c) Medicine bags shall be constructed of soft leather or other natural material without a lining and shall not exceed 2 x 3 inches in diameter. The bag shall be constructed to be closed with a drawstring. During a search of an inmate's medicine bag, the inmate shall empty the medicine bag of its contents in the presence of staff. Staff shall then visually inspect the medicine bag and its contents for contraband. Any contraband items that are found shall be disposed of in accordance with subsection 3191(c). The inmate shall return any non-contraband items into the medicine bag.

(d) Except as specified in subsection 3213(c), all religious items shall be subject to reasonable searches by staff.

(e) The institution head or designee retains the authority to remove or restrict use of an approved religious item in accordance with subsection 3006(d), based on a serious threat to facility security or to the safety of inmates and staff, and to the degree necessary to eliminate the threat. The removal or restriction may continue for a period of up to 30 calendar days and shall be documented on a CDC Form 128-A (Rev. 4/74), Custodial Counseling Chrono, pursuant to section 3312. Removal or restriction of an approved religious item for longer than 30 calendar days shall require approval by the Associate Director of the Statewide Religious Review Committee (SRRC), as defined in section 3000. At the end of the removal or restriction period, either of the following will occur:

(1) If the Associate Director of the SRRC does not approve an extension, the restriction shall be lifted and the item(s) shall be returned to the inmate and documented on the CDC Form 128-A.

(2) If the Associate Director of the SRRC does approve an extension, the restriction will continue, and the issue sent for review to the SRRC to determine the appropriate response or restriction.

(f) Sanctuaries (e.g., chapels), Native American Sweat Lodge Grounds, Outdoor Religious/Spiritual Grounds, and other areas designated for religious/spiritual use shall be subject to reasonable searches by staff.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 5009 and 5054, Penal Code; and Section 1996, Title 42, United States Code.

HISTORY:
1. Amendment of section heading, repealer of text, and new subsections (a)–(d) and Note filed 11-1-93; operative 12-1-93 (Register 93, No. 45).
2. Amendment of section heading and subsections (a)(1)–(c) filed 2-21-2013 as an emergency; operative 2-21-2013 (Register 2013, No. 8). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 7-31-2013 or emergency language will be repealed by operation of law on the following day.
3. Amendment of section heading and subsections (a)(1)–(c) refiled 7-29-2013 as an emergency; operative 7-29-2013 (Register 2013, No. 31). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 10-28-2013 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-2013 order transmitted to OAL 10-24-2013 and filed 12-9-2013 (Register 2013, No. 50).
5. Amendment of section heading and section filed 5-11-2016; operative 7-1-2016 (Register 2016, No. 20).

Article 1.5. Inmate Marriages

3216. Marriages.

(a) Inmate marriages shall be permitted in accordance with the provisions of law and these regulations.

(b) The inmate's marriage request shall be processed by the inmate's caseworker or other staff person designated by the institution head who shall provide all necessary information to the office of the county clerk or clergyperson.

(c) Inmate marriages shall be solemnized at the institution/facility by an individual authorized to solemnize marriages, as designated in Family Code Sections 400 and 402.

(d) For the purpose of this section, a chaplain shall mean those persons defined in section 3000. Institution/facility chaplains may solemnize inmate marriages. Institution/facility chaplains, if

designated, shall be required to process the request or facilitate a marriage. Institution/facility chaplains shall establish religious criteria to be met by the inmates and this criteria shall be provided by the chaplains to their supervisors.

(e) Attendance at a marriage ceremony shall be limited to the bride, groom, two inmate guests, the official solemnizing the ceremony, and ten non-inmate guests. Inmate guests may attend only if their Inmate Work Incentive Program schedules are not interrupted.

NOTE: Authority cited: section 5058, Penal Code. Reference: Sections 2601(f) and 5054, Penal Code; and Sections 300, 350–359, 400–402, and 500, Family Code.

HISTORY:

1. New article 1.5 (section 3216) and section filed 1-11-99; operative 2-10-99 (Register 99, No. 3).

Article 2. Recreational and Physical Education Programs

3220. Recreational and Physical Education Program Participation.

(a) Interested inmates shall be provided an equal opportunity to participate in constructive recreational and physical education programs under safe and secure conditions, consistent with the inmate's custodial classification, work/training assignment, privilege group and security requirements.

(b) The recreation program may operate seven days a week with specific program, gymnasium and/or yard schedules established by the institution head. Notices of tournaments and special events shall be posted in locations accessible to all inmates.

(c) Employees shall not participate in inmate contests, except as a coach, instructor or official, unless authorized to do so by the institution head.

(d) Prizes and trophies may be purchased using inmate welfare funds and awarded to inmates participating in activities and contests. An award, prize, trophy or certificate of participation in a recreation or physical education event shall be delivered to the participant inmate as soon as possible following approval by the coordinator of the activity or event involved.

(e) Competition between outside public teams and inmate teams may be permitted only within the facility and under the direct supervision of staff.

(f) Inmates may voluntarily participate only in those contests, games, and/or athletic activities, which have been specifically authorized by the institution head or the institution head's designee.

(g) Inmate weight lifting programs and equipment shall not be permitted at departmental institution/facilities. Exceptions shall be permitted as specifically authorized by the director, in compliance with Penal Code Section 5010.

NOTE: Authority cited: section 5058, Penal Code. Reference: Sections 5010 and 5054, Penal Code.

HISTORY:

1. Amendment filed 7-12-82; effective thirtieth day thereafter (Register 82, No. 29).
2. Amendment filed 6-29-93; operative 7-29-93 (Register 93, No. 27).
3. Amendment of subsection (b), renumbering and amendment of former section 3220.3 to new subsection 3220(f) and amendment of Note filed 6-30-95 as an emergency; operative 7-1-95 (Register 95, No. 26). A Certificate of Compliance must be transmitted to OAL by 12-7-95 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 6-30-95 order transmitted to OAL 11-22-95 and filed 1-8-96 (Register 96, No. 2).
5. New subsection (g) filed 1-2-98 as an emergency; operative 1-2-98 (Register 98, No. 1). Pursuant to Penal Code section 5058(e), a Certificate of Compliance must be transmitted to OAL by 6-11-98 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 1-2-98 order transmitted to OAL 6-9-98 and filed 7-21-98 (Register 98, No. 30).
7. Amendment of article heading, section heading and subsections (a) and (d) filed 7-24-2002; operative 8-23-2002 (Register 2002, No. 30).

3220.1. Recreation and Physical Education Program Safety.

(a) Grudge fights, games, contests or other recreation or physical education activities, which involve unusual danger or potential for injury, are prohibited.

(b) Inmates shall not be allowed to participate in the boxing program without written medical clearance.

(c) Martial arts may be practiced only with specific approval from the institution head and under the direct supervision of staff.

NOTE: Authority cited: section 5058, Penal Code. Reference: section 5054, Penal Code.

HISTORY:

1. Renumbering and amendment of former section 3221 to section 3220.1 filed 6-29-93; operative 7-29-93 (Register 93, No. 27).
2. Designation of subsections (a)–(c), new subsections (d)–(e) and amendment of Note filed 6-30-95 as an emergency; operative 7-1-95 (Register 95, No. 26). A Certificate of Compliance must be transmitted to OAL by 12-7-95 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 6-30-95 order transmitted to OAL 11-22-95 and filed 1-8-96 (Register 96, No. 2).
4. Repealer of subsections (d) and (e) and amendment of Note filed 1-2-98 as an emergency; operative 1-2-98 (Register 98, No. 1). Pursuant to Penal Code section 5058(e), a Certificate of Compliance must be transmitted to OAL by 6-11-98 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1-2-98 order transmitted to OAL 6-9-98 and filed 7-21-98 (Register 98, No. 30).
6. Amendment of section heading and subsection (a) filed 7-24-2002; operative 8-23-2002 (Register 2002, No. 30).

3220.2. Academic Standards.

All academic recreation, physical education and physical fitness training programs provided at departmental institutions/facilities shall be based upon curriculum frameworks adopted by the Board of Education. Lesson plans, competency testing, standards, course outlines, teacher/inmate enrollment ratios, instructional specialization and all related academic and educational requirements shall be in accordance with the appropriate curriculum framework.

NOTE: Authority cited: section 5058, Penal Code. Reference: Sections 60200–60206, Education Code; section 5054, Penal Code.

HISTORY:

1. New section filed 7-24-2002; operative 8-23-2002 (Register 2002, No. 30). For prior history see Register 98, No. 30.

3220.3. Conservation Camp Programs.

Conservation camps shall provide recreation and physical education program opportunities for their respective inmate populations. These opportunities shall be compatible with camp operations, staffing and the geographic location of the camp.

NOTE: Authority cited: section 5058, Penal Code. Reference: section 5054, Penal Code.

HISTORY:

1. New section filed 7-24-2002; operative 8-23-2002 (Register 2002, No. 30). For prior history, see Register 96, No. 2.

3220.4. Movies/Videos for Inmate Viewing.

(a) Only movies/videos approved by the institution head or his/her designee (reviewer) may be scheduled for viewing by inmates.

(b) Only those movies/videos which have been given a rating of "G," "PG," or "PG-13" by the Motion Picture Association of America (MPAA) or that have been placed on the department's discretionary showing list may be considered for viewing. Movies/videos which have been given a rating of other than "G," "PG," or "PG-13" by the Motion Picture Association of America shall not be approved for general inmate viewing. Regardless of their rating or listing, movies/videos which, in the opinion of the reviewer, glorify violence or sex, or are inflammatory to the climate of the facility shall not be shown.

(c) The selection or exclusion of a movie/video by a facility may be challenged by members of the public by writing to the director, appealed by inmates by following the appeal process as stated in section 3084 et seq., and grieved by staff by pursuing grievance procedures in accordance with their collective bargaining unit's contract and/or memorandum of understanding.

(d) At the discretion of the director, a movie/video review shall be done by the movie review committee, composed of staff named by the director. Movies may be submitted for consideration as follows:

(1) Movies/videos which have not been rated may be submitted to the director for the committee's consideration for general inmate viewing.

(2) Movies/videos which have an MPAA rating of other than "G," "PG," or "PG-13," or have not been rated by the MPAA, may be submitted to the director by the facility reviewer or a contract vendor for the committee's consideration for specified limited inmate viewing purposes (e.g., education or contracted service vendor programs).

(3) Movies which are challenged by the public, appealed by inmates, and grieved by staff pursuant to subsection (c) of this section shall be reviewed by the committee at the director's discretion.

(e) The committee may determine a movie/video to be unacceptable for inmate viewing, acceptable for general inmate viewing, or acceptable for specified limited inmate viewing purposes.

(f) The committee will place movies/videos on a statewide "discretionary showing list" under the category of "approved for all purposes," or under the category of "approved for specified limited inmate viewing purposes" (specifying the limited or special purpose for which the movie is being approved), or under the category of "unacceptable for inmate viewing." A movie/video's placement on the list as approved will not require that it be shown by a facility.

NOTE: Authority cited: Section 5058 and 10006(b), Penal Code. Reference: Sections 2601(c), 5054 and 10006(b), Penal Code.

HISTORY:

1. New section filed 6-29-93; operative 7-29-93 (Register 93, No. 27).
2. Amendment of newly designated subsections (a) and (b), new subsections (c)–(d)(4) and amendment of Note filed 6-28-96 as an emergency; operative 6-28-96 (Register 96, No. 26). A Certificate of Compliance must be transmitted to OAL by 1-6-97 or emergency language will be repealed by operation of law on the following day.
3. Amendment of newly designated subsections (a) and (b), new subsections (c)–(d)(4) and amendment of Note refiled 12-19-96 as an emergency; operative 12-19-96 (Register 96, No. 51). Pursuant to Penal Code section 5058(e), a Certificate of Compliance must be transmitted to OAL by 5-28-97 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 12-19-96 order, including further amendment of section, transmitted to OAL 4-14-97 and filed 5-23-97 (Register 97, No. 21).
5. Amendment of subsection (c) filed 12-13-2010 as an emergency; operative 1-28-2011 (Register 2010, No. 51). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 7-7-2011 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 12-13-2010 order transmitted to OAL 6-15-2011 and filed 7-28-2011 (Register 2011, No. 30).

3220.5. State-Owned Television Sets.

(a) State-owned television sets provided for inmate viewing shall be moved only by designated staff.

(b) Except to change the channel to a scheduled program, television channel changes and receiver adjustments shall be made only by staff.

(c) The viewing schedule for each state-owned television set shall be determined under the supervision of staff by a vote of the inmates using the set. Program viewing schedules shall be displayed next to the television set and shall be removed or changed only by staff.

NOTE: Authority cited: section 5058, Penal Code. Reference: section 5054, Penal Code.

HISTORY:

1. New section filed 6-29-93; operative 7-29-93 (Register 93, No. 27).

3221. Safety.

NOTE: Authority cited: section 5058, Penal Code. Reference: section 5054, Penal Code.

HISTORY:

1. Amendment filed 7-12-82; effective thirtieth day thereafter (Register 82, No. 29).
2. Renumbering and amendment of former section 3221 to section 3220.1 filed 6-29-93; operative 7-29-93 (Register 93, No. 27).

3222. Physical Fitness.

HISTORY:

1. Renumbering and amendment of former section 3222 to section 3220.2 filed 6-29-93; operative 7-29-93 (Register 93, No. 27).

3223. Unauthorized Activity.

NOTE: Authority cited: section 5058, Penal Code. Reference: section 5054, Penal Code.

HISTORY:

1. Amendment filed 7-12-82; effective thirtieth day thereafter (Register 82, No. 29).
2. Renumbering and amendment of former section 3223 to section 3220.3 filed 6-29-93; operative 7-29-93 (Register 93, No. 27).

Article 3. Inmate Councils, Committees, and Activity Groups

3230. Establishment of Inmate Advisory Councils.

(a) Each warden shall establish an inmate advisory council which is representative of that facility's inmate ethnic groups. At the discretion of the warden, subcommittees of the council may also be established to represent subfacilities or specialized segments of the inmate population.

(1) Council members shall serve to advise and communicate with the warden and other staff those matters of common interest and concern to the inmate general population.

(2) The council shall operate only under the constitution and by-laws as prepared by the council's inmate representatives, with the advice and guidance of designated staff and approved by the warden.

(3) Local exceptions to this regulation may be permitted with the approval of the director.

(b) An inmate's eligibility for nomination, election and retention as an inmate advisory council representative shall be limited only

by the inmate's ability to effectively function in that capacity as determined by the warden.

(1) Upon the inmate's request, that inmate shall be provided, in writing, the reasons for the determination of ineligibility.

(2) A disciplinary infraction shall not necessarily bar an inmate from serving as a council representative unless the infraction is determined by the warden to be detrimental to the council's effectiveness.

(3) A representative's misbehavior while conducting council business or acting under the guise of conducting council business shall be cause for disciplinary or other action.

(4) The membership of representatives or the activities of the entire council may be suspended when the warden determines that the representative or council presents a threat to facility security or the safety of persons, or that the representative's or council's actions are counterproductive to the best interest and welfare of the general inmate population. If a council's activities are suspended, the warden shall notify the general inmate population of that action and the reasons therefor.

(c) Only inmates shall nominate and elect inmate advisory council representatives.

(1) Each inmate shall have an equal vote in the election of their council representatives.

(2) When an election is by written ballot, the election shall be conducted under the direct supervision of staff who shall distribute and collect the ballots and tabulate the results.

(3) All written ballots shall be retained for 30 days after the close of the election.

(4) If it is determined that any coercion, duress, threats of reprisal or other irregularities were present in an election, the warden may declare the election invalid and require a new ballot.

(5) Only council representatives shall elect a temporary representative to fill a vacancy for up to a maximum of 30 days.

(d) Inmate advisory council representatives shall not, as a council representative, become involved with inmate appeals unless the matter affects the general inmate population and such involvement is authorized by the warden.

(1) No appeal concerning an employee shall be discussed by representatives with any employee below the level of correctional lieutenant.

(2) Representatives shall not attempt to influence the decisions of staff by threatening to seek review by a higher authority.

(3) Representatives shall not negotiate with nonsupervisory staff who do not have the authority to act on the specific matter.

(4) Representatives shall not attempt to directly enforce staff's compliance with any higher level decisions.

(e) Each inmate advisory council shall maintain a permanent record of formal meetings, whether staff were present or not.

(1) The minutes of meetings shall contain the date and time of the meeting, names and titles of those present and absent, subjects discussed, decisions made and actions taken.

(2) Before being distributed, minutes of meetings and any other council material shall require the approval of the warden or designee.

(f) Inmate advisory council representatives may, through designated staff and with the approval of the wardens of both facilities, correspond and exchange copies of meeting agenda and minutes with councils at other department facilities. The warden denying such exchanges shall provide the originating council chairperson with written reasons for the denial.

(g) The inmate advisory council shall be provided, when available, adequate facilities, equipment and supplies to carry out its approved activities and functions.

(1) Each council shall be provided with the following:

(A) Office space and furniture.

(B) Access to a typewriter and duplicating equipment.

(C) Office supplies and stationery.

(D) Bulletin boards in locations frequented by the represented inmate population.

(E) Copies of Notices of Change to Secretary's Rules, Administrative Bulletins, and other nonconfidential directives and announcements which concern the general inmate population.

(2) A means for distributing approved council materials to the general inmate population shall be established. Wardens may permit such means to include the use of facility publications and radio systems.

(3) The council shall obtain staff's authorization before using any resources which were not specifically provided for the council.

(h) A staff person at the level of a program administrator or higher shall be designated as the inmate advisory council coordinator.

(1) Facility Captains shall be directly involved in council activities within their respective programs and may delegate specific aspects of supervision, direction and responsibilities for council activities within their unit to subordinate unit supervisors.

(2) Other staff may, as deemed necessary by the warden, be involved with the council in resolving issues.

(3) The routine supervision and direction of council activities may be delegated to staff at the level of a correctional lieutenant or higher.

(4) Correctional lieutenants and sergeants in charge of inmate living areas on each watch shall work directly with council representatives on issues and concerns resolvable at their level of authority.

(i) The warden or their designate shall meet with the inmate advisory council representatives at least once each calendar month. Apart from the warden's meeting, coordinators shall also meet with council representatives at least once each calendar month.

(1) Proposed agenda items with a summary of the council's efforts to resolve the items at a lower level shall be submitted by the council to the warden and, when required by the coordinator, to the coordinator one week prior to their scheduled meeting.

(2) Emergency issues may be brought to the attention of the warden or coordinator without a prearranged agenda.

(3) The warden and staff delegated the authority to act on formal agenda items shall provide the council with a timely written response which shall indicate what action (including any referral and no action) was taken, the reasons for the action and, when applicable, the manner and appropriate time of implementing the action.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.

HISTORY:

1. Amendment filed 6-29-93; operative 7-29-93 (Register 93, No. 27).
2. Change without regulatory effect amending subsection (h)(1) filed 8-6-2001 pursuant to section 100, title 1, California Code of Regulations (Register 2001, No. 32).
3. Change without regulatory effect amending subsection (g)(1)(E) filed 3-11-2013 pursuant to section 100, title 1, California Code of Regulations (Register 2013, No. 11).

3231. Special Inmate Committees.

An institution head may appoint committees of inmates or parolees representative of the inmate or parolee population to perform special services or act as a representative group for special purposes and under the conditions specified in the appointment document. Such committees, unless composed exclusively of inmate advisory council representatives, shall not be affiliated with a facility's inmate advisory council.

NOTE: Authority cited: Sections 5058 and 6252, Penal Code. Reference: section 5054, Penal Code.

HISTORY:
1. Amendment filed 7-12-82; effective thirtieth day thereafter (Register 82, No. 29).
2. Editorial correction of Note filed 8-16-82 (Register 82, No. 34).
3. Amendment filed 6-29-93; operative 7-29-93 (Register 93, No. 27).

3232. Inmate Participation in Committees.

Inmate participation as a council representative or special committee member shall be voluntary. Each inmate who volunteers for such an assignment shall comply with all department and facility requirements governing such participation.

NOTE: Authority cited: section 5058, Penal Code. Reference: section 5054, Penal Code.

HISTORY:
1. Amendment filed 6-29-93; operative 7-29-93 (Register 93, No. 27).

3233. Inmate Leisure Time Activity Groups.

Institution heads may permit the formation of inmate leisure time activity groups, which promote educational, social, cultural and recreational interests of participating inmates. Group activities, which violate or advocate violating the law, regulations, or local procedures are prohibited.

NOTE: Authority cited: section 5058, Penal Code. Reference: section 5054, Penal Code.

HISTORY:
1. New section filed 2-24-77; effective thirtieth day thereafter (Register 77, No. 9).
2. Amendment filed 6-29-93; operative 7-29-93 (Register 93, No. 27).

3234. Establishment of Inmate Leisure Time Activity Groups.

(a) Each institution head shall provide for the formation of inmate leisure time activity groups within the facility. No activity group shall be formed or operated without the written approval of the institution head or their designee.

(b) Inmates proposing to form an activity group shall submit a proposed plan of operation for the institution head's or designee's approval. The proposed plan of operation shall include the following:

(1) The proposed name of the group, which shall reflect the general nature and interest of the group.

(2) The purpose of the group with an explanation of the expected benefits to the inmate participants and to the facility, justifying the use of state resources to accommodate the group.

(3) Membership criteria. Membership to an activity group shall not be denied on the basis of an inmate's race, creed, color, age, national origin, ancestry, gender, marital status, disability, religious or political affiliation, sexual orientation, or on the inmate's inability or refusal to pay membership fees, dues or donations to the group.

(4) Frequency and type of meetings.

(5) Limitations on number of members.

(6) Outside affiliations.

(7) Structure of the group's governing body.

(8) Provision for annual update of bylaws for the institution head's or designee's approval.

(9) An agreement signed by an employee volunteer willing to serve as the group's sponsor. Only a permanent full-time employee shall serve as a group sponsor. Cosponsors may be required if the group cannot be controlled by a single volunteer.

(c) When the institution head or designee approves a group's proposed plan of operation, the plan shall constitute the group's bylaws and shall be so titled prior to distribution.

(1) Any change in bylaws shall require the institution head's or designee's written approval prior to implementation.

(2) Continuing operation of a group is contingent upon the institution head's or designee's annual review and reapproval of the bylaws.

(d) No activity group shall meet unless the group's sponsor or cosponsor is present for such meeting.

(e) Each approved group may be allowed one banquet per year subject to security considerations, availability of facilities and resources, and the group's ability to pay any additional costs incurred by the state.

(f) The institution head shall dispose of any undisbursed funds and property of a disbanded activity group and in determining the method of disposal shall consider all written requests by former group members and other interested persons.

(1) Funds shall be disbursed by either of the following methods:

(A) Deposited into the inmate welfare fund account.

(B) Donated to a recognized charitable organization.

(2) Property shall be disposed of by any one or more of the following methods:

(A) Placed on the inmate welfare fund property inventory.

(B) Donated to another inmate activity group.

(C) Sold to another inmate activity group. Proceeds of such sales shall be deposited into the inmate welfare fund account.

(D) Donated to a recognized nonprofit organization.

(E) Used for facility needs.

(g) The bylaws for any approved group shall be accessible to all inmates in the facility. A copy shall be given to any requesting member of the public.

NOTE: Authority cited: Sections 5058 and 6252, Penal Code. Reference: section 5054, Penal Code.

HISTORY:
1. New section filed 2-24-77; effective thirtieth day thereafter (Register 77, No. 9).
2. Amendment filed 7-12-82; effective thirtieth day thereafter (Register 82, No. 29).
3. Editorial correction of Note filed 8-16-82 (Register 82, No. 34).
4. Repealer and new section heading, designation and amendment of subsection (a), new subsections (b)–(f)(2)(E), and redesignation and amendment of former subsection 3235(a) to new subsection (g) filed 10-13-94; operative 11-14-94 (Register 94, No. 41).

3235. Termination of an Inmate Leisure Time Activity Group.

(a) The activities of a group may be temporarily suspended or terminated by the official in charge of the facility, if either of the following conditions exist:

(1) The group's activities threaten facility security or the safety of staff, inmates or the public.

(2) The group is violating these regulations, local procedures or its approved bylaws.

(b) After review and evaluation of the reason for such action, the institution head shall either allow the group to continue or order termination of the group.

NOTE: Authority cited: section 5058, Penal Code. Reference: section 5054, Penal Code.

HISTORY:
1. New section filed 2-24-77; effective thirtieth day thereafter (Register 77, No. 9).
2. Amendment filed 7-12-82; effective thirtieth day thereafter (Register 82, No. 29).
3. Editorial correction of Note filed 8-16-82 (Register 82, No. 34).

4. Editorial correction of printing error in subsection (d)(1) (Register 92, No. 5).
5. Amendment for section heading, redesignation of former subsection (a) to subsection 3234(g), repealer of subsections (b)–(d)(3), redesignation and amendment of subsections, and amendment of Note filed 10-13-94; operative 11-14-94 (Register 94, No. 41).

3236. Attendance at Group Activities.

Attendance at a group's activities by inmates who are not members, by members who are not inmates, or by guests or spectators may be permitted if requested by the group's employee sponsor and approved by the institution head or designee. The number of such persons permitted to attend may be restricted for security reasons or if facility resources cannot accommodate the additional attendance.

NOTE: Authority cited: section 5058, Penal Code. Reference: section 5054, Penal Code.

HISTORY:
1. Renumbering of former section 3236 to section 3237 and renumbering and amendment of former section 3237 to section 3236 filed 10-13-94; operative 11-14-94 (Register 94, No. 41). For prior history, see Register 81, No. 3.

3237. Inmate Membership in Outside Organizations.

(a) Inmates may obtain and retain membership in outside organizations and associations provided such membership does not threaten facility security or the safety of staff, inmates, or the public; and creates no financial burden on the state.

(b) An inmate's membership in an outside organization shall not entitle any member to conduct the organization's activities within a facility, or to represent inmate members in department or facility matters, except as specifically approved by the institution head or the director.

(c) Unless such an act would jeopardize facility security or safety of persons, inmate members of outside organizations shall be permitted to possess membership cards and to wear membership buttons and lapel pins of such organizations. The official denying such items shall provide the affected inmates with written notice of the reasons for the denial.

NOTE: Authority cited: section 5058, Penal Code. Reference: section 5054, Penal Code.

HISTORY:
1. Renumbering of former section 3237 to section 3236 and renumbering and amendment of former section 3236 to section 3237 filed 10-13-94; operative 11-14-94 (Register 94, No. 41). For prior history, see Register 82, No. 29.

Article 4. Inmate Fund Raising Campaigns and the Inmate Welfare Fund

3240. Inmate Fund-Raising Campaigns.

(a) Institution heads may authorize for each approved inmate activity group up to three campaigns annually for one or more of the following:

(1) Generally recognized nonprofit charitable causes.

(2) General fund-raisers.

(b) Each approved inmate group may raise funds by soliciting inmate donations or selling approved products, commodities, or services to general population inmates.

(1) Only inmates shall be solicited for contributions unless the institution head approves solicitation of staff.

(2) Fund-raising activities shall be conducted only during inmate and staff sponsor off-duty time.

(c) No form of coercion shall be used on any inmate or parolee to participate in a campaign or fund-raiser, or to make a nonvoluntary donation.

NOTE: Authority cited: section 5058, Penal Code. Reference: section 5054, Penal Code.

HISTORY:
1. Amendment filed 7-12-82; effective thirtieth day thereafter (Register 82, No. 29).
2. Amendment of article heading, section heading and text filed 10-13-94; operative 11-14-94 (Register 94, No. 41).

3240.1. Donations.

Inmates may with permission of the institution head make voluntary donations from their trust account funds for any approved reason or cause. Permission shall be denied if any of the following exist:

(a) There is evidence of coercion.

(b) The inmate's trust account balance is less than the amount of the proposed donation.

(c) The inmate is mentally incompetent.

(d) The proposed amount of the donation is less than one dollar.

(e) The reason or cause advocated could jeopardize facility security or the safety of persons.

NOTE: Authority cited: section 5058, Penal Code. Reference: section 5054, Penal Code.

HISTORY:
1. Renumbering and amendment of former section 3241 to section 3240.1 filed 10-13-94; operative 11-14-94 (Register 94, No. 41).

3240.2. Inmate Welfare Fund Processing Fees.

(a) Ten percent shall be deducted from inmate donations for deposit in the inmate welfare fund to offset trust office transaction processing costs.

(b) Monies collected from sales of products, commodities, or services shall be subject to the deduction based on gross sales.

NOTE: Authority cited: section 5058, Penal Code. Reference: section 5054, Penal Code.

HISTORY:
1. New section filed 10-13-94; operative 11-14-94 (Register 94, No. 41).

3241. Donations.

NOTE: Authority cited: section 5058, Penal Code. Reference: section 5054, Penal Code.

HISTORY:
1. Amendment filed 2-24-77; effective thirtieth day thereafter (Register 77, No. 9).
2. Amendment filed 7-12-82; effective thirtieth day thereafter (Register 82, No. 29).
3. Renumbering of former section 3241 to section 3240.1 filed 10-13-94; operative 11-14-94 (Register 94, No. 41).

Article 5. Institution Publications

3250. Inmate Publications.

(a) As used in this article, an inmate publication means any journal, magazine, bulletin, newsletter, newspaper, or other material published by inmates.

(b) Inmates may participate in the publication and distribution of an inmate publication only with the institution head's specific approval.

NOTE: Authority cited: section 5058, Penal Code. Reference: section 5054, Penal Code.

HISTORY:
1. Repealer of section 3250 and renumbering and amendment of former section 3251 to section 3250 filed 6-23-93; operative 7-23-93 (Register 93, No. 26).

3250.1. Material Prohibited from Inmate Publications.

(a) Inmate publications shall not contain material the institution head determines to be a threat to facility security or the safety of persons, or determines that it:

(1) Offends any race, gender, nationality, religious faith, or sexual preference.

(2) Is lewd, pornographic, sexually suggestive, libelous, has profane or vulgar terminology, or otherwise is prohibited pursuant to section 3006.

(3) Attacks any individual.

(4) Serves as a conveyance for individual complaints or substitute for the department's appeal process.

(b) The names or photographs of inmates or staff shall not be used without the individual's written permission.

NOTE: Authority cited: section 5058, Penal Code. Reference: section 5054, Penal Code; *In re Williams* (1984) 159 C.A.3d 600, 205 Cal.Rptr. 903; *Bailey* v. *Loggins* (1982) 32 C.3d 907, 187 Cal.Rptr. 575; *Diaz et al.* v. *Watts* (1987) 189 Cal.App.3d 657, 234 Cal.Rptr. 334; and *Miller* v. *California* (1973) 413 U.S. 15, 93 S.Ct. 2607, rehg. den 414 U.S. 881, 94 S.Ct. 26.

HISTORY:

1. New section filed 6-23-93; operative 7-23-93 (Register 93, No. 26).
2. Amendment of subsections (a), (a)(2), (a)(4) and (b) filed 6-6-96; operative 6-6-96 pursuant to Government Code section 11343.4(d) (Register 96, No. 23).

3250.2. Inmate Publication Disclaimer and Editing Authority.

(a) Inmate publications shall include a disclaimer that the opinions expressed therein are the author's and do not necessarily represent the position of the facility or department.

(b) The institution head shall designate an administrative editor and a supervising editor who shall oversee the editorial correctness of the inmate publication and ensure compliance with relevant laws and regulations.

(c) The administrative editor shall be at the level of an associate warden or assistant regional parole administrator, public information officer, or administrative assistant.

(d) The supervising editor shall be an instructor in journalism or other qualified employee appointed by the institution head and shall approve or reject articles, illustrations, and layouts proposed for publication by the inmates.

NOTE: Authority cited: section 5058, Penal Code. Reference: section 5054, Penal Code.

HISTORY:

1. New section filed 6-23-93; operative 7-23-93 (Register 93, No. 26).

3250.3. Resolution of Inmate Publication Editing Disagreements.

Disagreements about language, content, or acceptability of a proposed article or edition shall be resolved as follows:

(a) Any unresolved disagreement between the supervising editor and inmate publication staff shall be referred to the administrative editor for resolution. The administrative editor shall render a decision, which may include reasonable editorial changes, within three working days.

(b) If unable to effect a satisfactory resolution, the administrative editor shall forward the material to the institution head who may either make a decision or transmit the matter to the assistant director, communications, for a decision, within three working days of receipt of the disputed material.

NOTE: Authority cited: section 5058, Penal Code. Reference: section 5054, Penal Code.

HISTORY:

1. New section filed 6-23-93; operative 7-23-93 (Register 93, No. 26).

3250.4. Termination of an Inmate Publication.

The termination of any inmate publication for other than the temporary suspension of publication during a lockdown, modified program or other declared emergency shall require the director's approval.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.

HISTORY:

1. New section filed 6-23-93; operative 7-23-93 (Register 93, No. 26).
2. Amendment filed 6-14-2011; operative 7-14-2011 (Register 2011, No. 24).

3251. Participation.

HISTORY:

1. Renumbering and amendment of former section 3251 to section 3250 filed 6-23-93; operative 7-23-93 (Register 93, No. 26).

SUBCHAPTER 4. GENERAL INSTITUTION REGULATIONS

Article 1. Public Information and Community Relations

3260. Public Access to Facilities and Programs.

Correctional facilities and programs are operated at public expense for the protection of society. The public has a right and a duty to know how such facilities and programs are being conducted. It is the policy of the department to make known to the public, through the news media, through contact with public groups and individuals, and by making its public records available for review by interested persons, all relevant information pertaining to operations of the department and facilities. However, due consideration will be given to all factors which might threaten the safety of the facility in any way, or unnecessarily intrude upon the personal privacy of inmates and staff. The public must be given a true and accurate picture of department institutions and parole operations.

NOTE: Authority cited: section 5058, Penal Code. Reference: section 5054, Penal Code.

HISTORY:

1. Amendment filed 2-24-77; effective thirtieth day thereafter (Register 77, No. 9).
2. Amendment of section filed 12-19-91 as an emergency; operative 12-19-91 (Register 92, No. 4). A Certificate of Compliance must be transmitted to OAL 4-17-92 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 12-19-91 order transmitted to OAL 4-17-92 and filed 6-1-92 (Register 92, No. 24).

3260.1. Public Records Duplication Services.

The Department shall charge a requester a fee of 12 cents per page, plus postage, to duplicate and mail a public record as defined in the California Public Records Act, Government Code Sections 6250, et seq.

NOTE: Authority cited: Sections 5058, Penal Code. Reference: Sections 5054, Penal Code, and section 6250, et seq., Government Code.

HISTORY:

1. New section filed 1-13-2003; operative 2-12-2003 (Register 2003, No. 3).

3261. Moviemakers, Broadcasters, Writers.

HISTORY:

1. Renumbering and amendment of former section 3261 to section 3261.1 filed 12-19-91 as an emergency; operative 12-19-91 (Register 92, No. 4). A Certificate of Compliance must be transmitted to OAL 4-17-92 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 12-19-91 order transmitted to OAL 4-17-92 and filed 6-1-92 (Register 92, No. 24).

3261.1. Media Access to Facilities.

(a) Access to a department facility or contract facility for a news media representative, as defined in subsection 3261.5(a)(1), shall require prior approval of either the institution head or the Assistant Secretary of Communications or designee. Access to a department facility for a non-news media representative, as defined in subsection 3261.5(a)(2), shall require prior approval of both the institution head and the Assistant Secretary of Communications or their designees. For each request for access from a news media representative or a non-news media representative, the institution head or the Office of Public and Employee Communications shall provide an initial response back within two (2) working days. In order to deny an access request for a news media or a non-news media representative, the institution head shall secure advance authorization from the Secretary of the California Department of Corrections and Rehabilitation (CDCR) or designee.

(1) Facilities, on-duty staff, inmates or records under control of the department shall not be used in conjunction with film making, radio or television programs, or the writing of books, magazine articles or syndicated stories without prior approval of the Secretary of the CDCR or designee.

(2) Should any news media or non-news media representative(s) access to a facility constitute an immediate threat to safety and security, or generate serious operational problems, the institution head or designee may impose limitations on or set conditions for such access.

(b) Except as provided by subsection 3261.5(b), news media and non-news media representatives within a facility shall be under the direct supervision of the facility's or regional Public Information Officer or their designee as determined by the institution head.

(c) News media and non-news media representatives shall not enter condemned units, the execution chamber, or any area currently affected by an emergency situation without approval of the Secretary of the CDCR or designee.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code; and sections 1798.20, 1798.30 and 1798.40–42, Civil Code.

HISTORY:

1. Renumbering and amendment of former section 3261 to section 3261.1 filed 12-19-91 as an emergency; operative 12-19-91 (Register 92, No. 4). A Certificate of Compliance must be transmitted to OAL 4-17-92 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 12-19-91 order transmitted to OAL 4-17-92 and filed 6-1-92 (Register 92, No. 24).
3. Editorial correction of Reference cite (Register 95, No. 14).
4. Amendment filed 8-29-2008; operative 9-28-2008 (Register 2008, No. 35).

3261.2. Authorized Release of Information.

(a) Only an employee designated by the institution head shall inform the media regarding a facility incident or newsworthy event.

(b) Except as provided by applicable federal and state law, no person shall disclose any protected health information that identifies an individual without a valid written authorization from the individual.

(c) Information pertaining to a Division of Juvenile Justice ward shall not be released to the media or the public, except as provided in subsection 3261.7(c)(3).

(d) Information derived from a person's Criminal Identification and Investigations Report shall not be provided to the media or to the public.

(e) Including the limitations of (c) and (d) above, the only inmate or parolee data which may be released without a valid written authorization from the inmate/parolee to the media or to the public includes the inmate's or parolee's:

(1) Name.

(2) Age.

(3) Birthplace.

(4) Place of previous residence.

(5) Commitment information obtained from their adult probation officer's report.

(6) Facility assignments and behavior.

(7) General state of health, given in short and non-medical terms such as good, poor, or stable.

(8) Cause of death.

(9) Sentencing and release actions.

(f) The only employee data which may be released to the media or to the public by other than the employee concerning their involvement in a facility incident or newsworthy event includes:

(1) Name.

(2) Civil service classification.

(3) Age.

(4) Work assignment.

(5) Length of service with the department and/or current division or unit.

(6) Past work assignments.

(7) Role or function in a newsworthy event.

(g) Information endangering an employee or concerning an employee who is a crime victim shall not be released to the media.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code; Sections 56.10, 1798.20, 1798.30 and 1798.40–42, Civil Code; Sections 6250–6276.48, Government Code; and Code of Federal Regulations, Title 45, Parts 160 and 164.

HISTORY:

1. New section filed 12-19-91 as an emergency; operative 12-19-91 (Register 92, No. 4). A Certificate of Compliance must be transmitted to OAL 4-17-92 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 12-19-91 order transmitted to OAL 4-17-92 and filed 6-1-92 (Register 92, No. 24).
3. Amendment of section and Note filed 8-29-2008; operative 9-28-2008 (Register 2008, No. 35).

3261.3. Notifying Media of Escapes.

(a) In the event of an actual or suspected escape, the facility or regional public information officer, or off-duty hours designee, shall notify radio and television stations and newspapers in the surrounding communities and the missing inmate's home community.

(1) The missing inmate's physical description, estimated time of disappearance and other pertinent details shall be provided.

(2) The media shall be informed of the facility's search efforts and cooperation with local law enforcement agencies.

(b) When available, the missing inmate's identification photograph or short escape bulletin shall be furnished to the notified television stations and newspapers. If a photograph or short escape bulletin are not available for distribution, the media shall be informed that one is posted at the facility's front entrance where they will be permitted to take a picture of it for their use.

NOTE: Authority cited: section 5058, Penal Code. Reference: section 5054, Penal Code.

HISTORY:

1. New section filed 12-19-91 as an emergency; operative 12-19-91 (Register 92, No. 4). A Certificate of Compliance must be transmitted to OAL 4-17-92 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 12-19-91 order transmitted to OAL 4-17-92 and filed 6-1-92 (Register 92, No. 24).

3261.4. Media Inquiries.

(a) Media inquiries shall be given high priority; facts shall be gathered as quickly as possible and provided to the inquirer. If the requested facts are not known or are otherwise unavailable, the inquirer shall be so informed and the reasons therefore.

(b) No information developed to answer a media person's inquiry nor the fact that an inquiry was made shall be volunteered to another media person.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.

HISTORY:

1. New section filed 12-19-91 as an emergency; operative 12-19-91 (Register 92, No. 4). A Certificate of Compliance must be transmitted to OAL 4-17-92 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 12-19-91 order transmitted to OAL 4-17-92 and filed 6-1-92 (Register 92, No. 24).
3. Amendment of subsection (a) filed 8-29-2008; operative 9-28-2008 (Register 2008, No. 35).

3261.5. Routine Media Interviews.

(a) Definitions.

(1) "News media representative" means a journalist who works for, or is under contract to, a newspaper, magazine, wire service, book publisher, or radio or television program or station or who, through press passes issued by a governmental or police agency, or through similar convincing means, can demonstrate that he or she is a bona fide journalist engaged in the gathering of information for distribution to the public.

(2) "Non-news media representatives" means individuals in the publishing and broadcasting media not included in subsection 3261.5(a)(1), and may include editorial researchers, freelance writers, authors of books and independent film makers involved with the production of broadcast or print endeavors including, but not limited to, features, documentaries, commercials, and pilots for proposed news, or entertainment programs.

(b) News media and non-news media representatives shall be allowed to interview inmates in person in accordance with the visiting requirements of sections 3170 through 3176.3.

(1) No inmate or parolee may have his or her visitation limited or revoked solely because of a visit or potential visit from a news media or non-news media representative, nor may an inmate or parolee be punished, reclassified, disciplined, transferred to another prison against his or her wishes, or otherwise retaliated against, solely for participating in a visit by, or communicating with, a news media or non-news media representative.

(2) During an interview conducted pursuant to subsection 3261.5(b), news media and non-news media representatives shall be allowed to bring up to three (3) pens, three (3) pencils and one (1) pad of paper into the facility. These items shall be searched to protect against an immediate and direct threat to the security of the institution.

(c) Inmate telephone calls to news media and non-news media representatives shall be allowed in accordance with section 3282 and may be recorded by the media representative with the inmate's consent.

(d) Except as provided by subsection 3261.5(b), access by news media and non-news media representatives to department institutions, contract facilities and equipment requires prior approval pursuant to the provisions in subsection 3261.1(a).

(1) Non-news media representatives must provide proof of employment by a bona fide publication or production company, or have evidence that such a company has contracted to purchase the completed project prior to approval.

(2) Non-news media representative requests for access to departmental facilities, on-duty staff or inmates shall include project and production details as necessary to determine security and operational impacts. (3) Non-news media representative film productions require a California Film Commission permit, along with evidence of financial responsibility and liability insurance of at least $1 million indemnifying and defending the State of California, its offices, employees and agents against any lawsuits.

(e) News media and non-news media representatives may be allowed access to security housing units and administrative segregation with the prior approval of the institution head.

(1) Access to any secured area where lethal weapons are maintained requires the prior approval of the institution head.

(2) The institution head may allow access to an area outside the secure perimeter of a facility to news media representatives.

(f) News media and non-news media representatives may be permitted random face-to-face interviews with inmates or parolees housed in facilities under the jurisdiction of the department, and random or specific-person face-to-face interviews with staff. Such interviews shall be conducted as stipulated by the institution head, including restricting the time, place and duration of interviews, and size of technical crews.

(1) Random interviews of individuals involved in a specific activity or program, or encountered while covering a facility activity or event shall be limited to the time, areas and segments of the facility population designated by the institution head.

(2) Inmates may not participate in specific-person face-to-face interviews except as provided in subsection 3261.5(b).

(g) Use of cameras or recording equipment shall require prior approval of the institution head or designee. Photographs, films or video recording of inmates shall be allowed in accordance with section 3261.7.

(h) The news media and non-news media representatives or their organization(s) may be required to pay the security or escort costs provided for the interview.

(i) No inmate, parolee or staff shall be interviewed against their will.

(j) CDCR Form 146 (Rev. 06/08), Inmate Declaration To News Media Contact, shall be completed whenever an inmate is the subject of an interview, still photograph, motion picture or other recording intended for use by a television or radio station, or newspaper, magazine or other publication.

(k) One employee shall witness the inmate's signature on the completed CDCR Form 146.

(*l*) Inmates under 18 years of age shall not be photographed, filmed or video recorded.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 2601 and 5054, Penal Code, and *Pell* v. *Procunier*, 94 S.Ct. 2800 (1974).

HISTORY:

1. New section filed 12-19-91 as an emergency; operative 12-19-91 (Register 92, No. 4). A Certificate of Compliance must be transmitted to OAL 4-17-92 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 12-19-91 order transmitted to OAL 4-17-92 and filed 6-1-92 (Register 92, No. 24).
3. Amendment of subsection (a), repealer and new subsection (a)(2), amendment of subsection (d), repealer of subsection (e)(1) and subsection relettering, new subsection (f) and amendment of

Note filed 4-8-96 as an emergency; operative 4-8-96 (Register 96, No. 15). Pursuant to Penal Code section 5058(e), a Certificate of Compliance must be transmitted to OAL by 9-15-96 or emergency language will be repealed by operation of law on the following day.

4. Certificate of Compliance as to 4-8-96 order transmitted to OAL 9-13-96 and disapproved 10-28-96 (Register 96, No. 44).
5. Amendment of subsection (a), repealer and new subsection (a)(2), amendment of subsection (d), repealer of subsection (e)(1) and subsection relettering, new subsection (g) and amendment of Note filed 10-28-96 as an emergency; operative 10-28-96 (Register 96, No. 44). Pursuant to Penal Code section 5058(e), a Certificate of Compliance must be transmitted to OAL by 4-6-97 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 10-28-96 order transmitted to OAL 3-3-97 and filed 4-14-97 (Register 97, No. 16).
7. Amendment filed 8-29-2008; operative 9-28-2008 (Register 2008, No. 35).

3261.6. Seriously or Terminally Ill Inmate Media Interviews.

(a) Media interviews shall not be permitted with an inmate suffering from a mental illness when, in the opinion of a psychiatrist or psychologist, the inmate is not capable of giving informed consent or their condition may be worsened by such an interview.

(b) Controlled access may be permitted to seriously or terminally ill patients and their housing areas. Random interviews in such unit shall be closely monitored and shall be terminated if a majority of the unit's inmates object.

(c) No more than two visits per calendar month to a unit housing seriously or terminally ill inmates shall be allowed. Visits shall be on a first-come, first-served basis with a waiting list to be maintained by the facility's public information officer. A "pool" of no more than ten media persons per visit shall be permitted.

NOTE: Authority cited: section 5058, Penal Code. Reference: section 5054, Penal Code; and Sections 1798.41 and 1798.42, Civil Code.

HISTORY:

1. New section filed 12-19-91 as an emergency; operative 12-19-91 (Register 92, No. 4). A Certificate of Compliance must be transmitted to OAL 4-17-92 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 12-19-91 order transmitted to OAL 4-17-92 and filed 6-1-92 (Register 92, No. 24).

3261.7. Cameras and Other Audio or Visual Recording Devices.

(a) Staff cannot prohibit a person who is not on facility property from photographing, filming, videotaping or otherwise recording any department facilities, employees, inmates, parolees or equipment.

(b) Persons are prohibited from interrupting, interfering or communicating with an inmate being transported or working off facility grounds without prior authorization of the staff person in charge or institution head.

(c) Photographs, films or videotapes for other than department purposes which reveal an inmate's identity may be taken within a facility subject to the following conditions:

(1) A CDCR Form 146 (Rev. 06/08) shall be completed for each inmate before a photograph, film or videotape identifying the inmate may be taken.

(2) An inmate's consent is not required where individuals in such settings as an exercise yard or dining hall are not singled out or where the inmate's identity is not revealed; however, before such shots are taken, inmates shall be advised so those who do not want to be recognized may turn away or leave the area.

(3) Photographs, films or videotapes revealing the identity of an inmate committed to the Division of Juvenile Justice shall not be made available other than for official purposes such as an escape.

(d) Unless there is a specified threat of imminent danger to an inmate or parolee by releasing their departmental identification photograph, news media representatives as defined in subsection 3261.5(a)(1) and non-news media representatives as defined in subsection 3261.5(a)(2) shall be permitted access to photographs without the inmate's or parolee's consent.

(1) News media and non-news media representatives shall pay for the facility's cost to provide such requested departmental identification photographs.

(2) Current departmental identification photographs of escaped inmates and parolees at large shall be provided without charge.

(e) Possession of any camera or other recording device within a facility is prohibited unless specifically authorized by the institution head.

(f) No camera or other recording device shall be permitted within the execution chamber area.

(1) Photographs or any other audio or visual recordings of an execution are prohibited.

(2) Media photography, filming or videotaping of the execution chamber is prohibited; however, stock department photographs and videotapes of the area are available upon request.

(g) Before photographers and camera operators enter a facility, they shall be informed of any restrictions, including that photographs or recordings are prohibited of: persons without their consent; and procedures, equipment or structures which will comprise security.

(h) Any photographs, film, video tape or other recording taken within facilities in violation of these regulations shall be seized and placed undamaged, undeveloped and unviewed in a secure area. The news media or non-news media representative's supplies and equipment shall not be damaged.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 4570, 4570.1 and 5054, Penal Code.

HISTORY:

1. New section filed 12-19-91 as an emergency; operative 12-19-91 (Register 92, No. 4). A Certificate of Compliance must be transmitted to OAL 4-17-92 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 12-19-91 order transmitted to OAL 4-17-92 and filed 6-1-92 (Register 92, No. 24).
3. Amendment filed 8-29-2008; operative 9-28-2008 (Register 2008, No. 35).

3262. Public Events.

Visitors may be permitted to attend athletic games and other types of entertainment held at facilities only under conditions that will not jeopardize facility security and the visitor's safety. Visitor attendance shall be by invitation only. Attendance of visitors shall not deprive inmates of attendance or adequate seating at such events. Admission fees shall not be charged.

NOTE: Authority cited: section 5058, Penal Code. Reference: section 5054, Penal Code.

HISTORY:

1. Amendment of section filed 12-19-91 as an emergency; operative 12-19-91 (Register 92, No. 4). A Certificate of Compliance must be transmitted to OAL 4-17-92 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 12-19-91 ordered transmitted to OAL 4-17-92 and filed 6-1-92 (Register 92, No. 24).

3263. Group Visits.

Visits to a facility by interested groups may be permitted under conditions not jeopardizing facility security or the safety of persons. Visitors shall be escorted through the facility as specified by the institution head. Tours shall be conducted in a manner avoiding embarrassment of inmates or visitors, and disruption of normal activities.

NOTE: Authority cited: section 5058, Penal Code. Reference: section 5054, Penal Code.

HISTORY:

1. Amendment of section filed 12-18-91 as an emergency; operative 12-18-91 (Register 92, No. 4). A Certificate of Compliance must be transmitted to OAL 4-16-92 or emergency language will be repealed by operation of law on the following day.
2. Editorial correction of printing error (Register 92, No. 4).
3. Editorial correction of printing error (Register 92, No. 5).
4. Certificate of Compliance as to 12-18-91 order transmitted to OAL 4-15-92 and filed 5-26-92 (Register 92, No. 22).

3264. Employee Guests.

Employees requesting to bring visitors into a facility shall first obtain authorization from the institution head.

NOTE: Authority cited: section 5058, Penal Code. Reference: section 5054, Penal Code.

HISTORY:

1. Amendment of section filed 12-19-91 as an emergency; operative 12-19-91 (Register 92, No. 4). A Certificate of Compliance must be transmitted to OAL 4-17-92 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 12-19-91 order transmitted to OAL 4-17-92 and filed 6-1-92 (Register 92, No. 24).

3265. Arts and Crafts Exhibits.

(a) The public may be permitted to attend displays of inmate-made articles provided:

(1) Facility security shall not be jeopardized.

(2) Adequate facilities and staff are available to control against unauthorized visiting and introduction of contraband.

(3) The activity does not interfere with the normal facility operation.

NOTE: Authority cited: section 5058, Penal Code. Reference: section 5054, Penal Code.

HISTORY:

1. Order of Repeal of subsection (b) filed 6-3-85 by OAL pursuant to Government Code section 11349.7; effective thirtieth day thereafter (Register 85, No. 26).
2. Amendment of section filed 12-19-91 as an emergency; operative 12-19-91 (Register 92, No. 4). A Certificate of Compliance must be transmitted to OAL 4-17-92 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 12-19-91 order transmitted to OAL 4-17-92 and filed 6-1-92 (Register 92, No. 24).

3266. Inmate Contacts with the Public.

Inmates shall not initiate any personal contact with the public except as specifically authorized. This does not preclude an inmate's courteous and appropriate response when contact is initiated by a member of the public.

NOTE: Authority cited: section 5058, Penal Code. Reference: Sections 4570 and 5054, Penal Code.

HISTORY:

1. Renumbering of former section 3072 to new section 3266, including amendment of section heading and text, and new Note filed 10-27-93; operative 11-26-93 (Register 93, No. 44).

3267. Access of Public Officials to Facilities.

(a) A public official, except as provided in (b) below, of another governmental department or agency who needs to interview staff or inmates or to conduct an inspection shall request permission of the institution head at least 24 hours before the date and time of their desired arrival, stating the purpose of the proposed visit. Upon their arrival, the official's access shall be subject to the following requirements:

(1) The official shall be required to produce their picture identification and consent to a search.

(2) The official shall be escorted by staff at all times within the facility's security area.

(3) Any equipment required by the official shall be searched and under the control of staff while it is within the facility's security area.

(b) An elected state official's access may be denied only during an emergency with the approval of the Secretary of the California Department of Corrections and Rehabilitation. Access by the guests or staff of such officials may be denied when they have not been previously approved by the institution head.

(c) In cases of immediate need, and upon notification by the Secretary in writing, any prohibitions regarding access to inmates by public officials, their guests or staff may be suspended to assist in the interest of public understanding of departmental operations and responsibilities.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.

HISTORY:

1. New section filed 11-5-92; operative 12-7-92 (Register 92, No. 45).
2. Amendment of subsection (b) and new subsection (c) filed 8-29-2008; operative 9-28-2008 (Register 2008, No. 35).

Article 1.5. Use of Force and Restraining Devices

3268. Use of Force.

The purpose of this Section is to set forth Department of Corrections and Rehabilitation (CDCR) policy governing the use of force. The policy has its foundation in California Penal Code statutes and relevant case decisions.

(a) Definitions.

(1) Reasonable Force:

The force that an objective, trained and competent correctional employee, faced with similar facts and circumstances, would consider necessary and reasonable to subdue an attacker, overcome resistance, effect custody, or gain compliance with a lawful order.

(2) Unnecessary Force:

The use of force when none is required or appropriate.

(3) Excessive Force:

The use of more force than is objectively reasonable to accomplish a lawful purpose.

(4) Immediate Use of Force:

The force used to respond without delay to a situation or circumstance that constitutes an imminent threat to institution/facility security or the safety of persons. Immediate force may be necessary to subdue an attacker, overcome resistance, or effect custody. If it is necessary to use force solely to gain compliance with a lawful order, controlled force shall be used.

(5) Imminent Threat:

An imminent threat is any situation or circumstance that jeopardizes the safety of persons or compromises the security of the institution and requires immediate action to stop the threat. Some examples include, but are not limited to: an attempt to escape, ongoing physical harm, or active physical resistance.

(6) Controlled Use of Force:

The force used in an institution/facility setting, when an inmate's presence or conduct poses a threat to safety or security and the inmate is located in an area that can be controlled or isolated.

(7) Non-Conventional Force:

Force that utilizes techniques or instruments that are not specifically authorized in policy, procedures, or training. Depending on the circumstances, non-conventional force can be necessary and reasonable; it can also be unnecessary or excessive.

(8) Non-Deadly Force:

Any use of force that is not likely to result in death.

(9) Deadly Force:

Any use of force that is likely to result in death. Any discharge of a firearm other than the lawful discharge during weapons qualifications, firearms training, or other legal recreational use of a firearm, is deadly force.

(10) Response Supervisor:

The Response Supervisor is the first line supervisor in an institution/facility responsible for the area where an incident occurs.

(11) Responding Supervisor:

The Responding Supervisor is the first line supervisor responsible for the employee involved in an incident.

(12) Incident Commander:

The Incident Commander is the second line supervisor in an institution/facility responsible for the area where an incident occurs or an allegation of excessive or unnecessary force is received.

(13) First Level Manager:

A First Level Manager in an institution/facility is a Facility Captain/Correctional Captain.

(14) First Line Manager:

A First Line Manager is a Parole Administrator, District Administrator, Special Agent-In-Charge, or Senior Special Agent.

(15) Second Level Manager:

A Second Level Manager in an institution/facility is an Associate Warden.

(16) Second Line Manager:

A Second Line Manager is a Deputy Regional Parole Administrator or Chief.

(17) Deadly Force Review Board (DFRB) means the board responsible for conducting a full and complete review of all incidents involving a use of deadly force (except those meeting the criteria set forth in 3268(a)(21)) and every death or great bodily injury that could have been caused by a staff use of force, regardless of whether the incident occurs in an institutional or community setting. The DFRB shall be composed of at least four members. Three shall be non-departmental law enforcement professionals. One shall be a Division, Parole Region, or Institution/Facility Manager (i.e. Associate Director, Division of Juvenile Justice (DJJ) Superintendent, Chief or designee) from outside the chain of command of the involved employee(s). Additional members may be designated by the Secretary or designee.

(18) Institutional Executive Review Committee (IERC):

The IERC is a committee of institution staff chaired by the respective Institution Head tasked with reviewing all uses of force and every allegation of excessive or unnecessary force.

(19) Department Executive Review Committee (DERC):

Department Executive Review Committee (DERC) is a committee of staff selected by, and including, the Associate Director who oversees the respective institution/facility Mission-based group. The DERC shall review all incidents involving deadly force, serious injury, great bodily injury or death. The DERC shall also review those incidents referred to the DERC by the IERC Chairperson or otherwise requested by the DERC.

(20) Field Executive Review Committee (FERC):

The FERC is a committee of field staff chaired by the respective Regional Parole Administrator, Assistant Secretary, or Chief tasked with reviewing all uses of force and every allegation of excessive or unnecessary force.

(21) Deadly Force Investigation Teams (DFIT):

DFIT is a team of trained department investigators that shall conduct criminal and administrative investigations into every use of deadly force and every death or great bodily injury that could have been caused by a staff use of force, except the lawful discharge of a firearm during weapons qualifications or firearms training, or other legal recreational uses of a firearm. Although defined as deadly force DFIT need not investigate the discharge of a warning shot inside an institution/facility if an Investigative Services Unit Sergeant or above, or an uninvolved Correctional Lieutenant or above confirms that the discharge of deadly force was a warning shot and that no injuries were caused by the shot. All warning shots shall be reported to the Office of Internal Affairs/DFIT and the Bureau of Independent Review (BIR).

(22) Joint Use Committee (JUC):

The JUC is a committee of field staff from the department tasked with reviewing and evaluating recommended revisions to the department's Use of Force Regulations and Procedures.

(23) Holding Cells:

A holding cell is a secure structure located within a building or sheltered area that is without running water, a toilet, or sleeping facilities, and is designed for the interim placement of one or more offenders.

(b) It is the policy of the Department of Corrections and Rehabilitation (CDCR) to accomplish the departmental functions with minimal reliance on the use of force. Employees may use reasonable force as required in the performance of their duties, but unnecessary or excessive force shall not be used.

(c) Use of Force Options. Use of Force options do not have to be utilized in any particular sequence, but should be the force option staff reasonably believes is sufficient. Whenever possible, verbal persuasion or orders shall be issued prior to resorting to force and are required to be provided before controlled force is used. The unresisted searching or escorting of a person and the unresisted application of authorized restraint equipment is not a use of force. Use of force options include but are not limited to:

(1) Chemical agents.

(2) Hand-held batons.

(3) Physical strength and holds. A choke hold or any other physical restraint which prevents the person from swallowing or breathing shall not be used unless the use of deadly force would be authorized.

(4) Less-lethal weapons: A less-lethal weapon is any weapon that is not likely to cause death. A 37mm or 40mm launcher and any other weapon used to fire less-lethal projectiles is a less-lethal weapon.

(5) Lethal weapons: A lethal weapon is any weapon that is likely to result in death. A firearm is a lethal weapon because it is used to fire lethal projectiles.

(d) The CDCR recognizes the sanctity of human life. Therefore, deadly force will only be used when it is reasonably necessary to:

(1) Defend the employee or other persons from an imminent threat of death or great bodily injury.

(2) Prevent an escape from custody.

(3) Stop acts such as riots or arson that constitute an immediate jeopardy to institutional security and, because of their magnitude, are likely to result in escapes, great bodily injury, or the death of other persons.

(4) Dispose of seriously injured or dangerous animals when no other disposition is practical.

(e) In facilities contracted to house CDCR inmates outside of California, the use of deadly force shall only be applied in accordance with applicable law in the state where the facility is located.

(f) A firearm shall not be discharged if there is reason to believe that persons other than the intended target will be injured.

(g) Firearms may be discharged as a warning only in an institutional/facility setting and only when deadly force is permitted under Section 3268(d).

(h) Immediate Use of Force. A verbal warning shall be given before force is used unless the circumstances requiring the immediate force preclude such a verbal warning.

(i) Controlled Use of Force. In an institution/facility setting, controlled use of force may be used when time and circumstances permit advance planning, staffing and organization. A controlled use of force requires authorization and the presence of a First or Second Level Manager, or during non-business hours, an AOD, and must be documented on a CDCR Form 837-C (Rev. 10/15), Crime/Incident Report Part C - Staff Report, which is hereby incorporated by reference.

(j) Tactical Use of Force. In a field or community setting, the tactical use of force is part of an operation plan at a predetermined location with intended targets. All use of force options available shall be considered. The Tactical Use of Force shall require prior supervisory approval during the operation planning.

(k) Chemical Agents. Departmentally approved chemical agents include, but are not limited to the following: oleoresin capsicum (OC), chloroacetophenone (CN), and orthochlorobenzalmalononitrile (CS).

(*l*) Decontamination from Chemical Agents. Any person exposed to a chemical agent shall be afforded an opportunity to decontaminate as soon as practical. If the person refuses to decontaminate, no other action is necessary. If an inmate was exposed in a cell and not removed from the cell where the exposure occurred, in-cell decontamination shall be afforded to the inmate, to include but not be limited to:

(A) Health care staff advising the inmate how to self decontaminate in the cell.

(B) Health care staff monitoring the in-cell inmate at least every 15 minutes for a period not less than 45 minutes.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 196, 835a, 2651, 2652 and 5054, Penal Code; Section 50, Civil Code; *Whitley* v. *Albers* (1985) 475 U.S. 312, 106 S.Ct. 1078; and *Madrid* v. *Cate* (U.S.D.C. N.D. Cal. C90-3094 TEH).

HISTORY:

1. New article 1.5 (sections 3268-3268.2) and section filed 3-12-99 as an emergency; operative 4-1-99 (Register 99, No. 11). A Certificate of Compliance must be transmitted to OAL by 9-8-99 or emergency language will be repealed by operation of law on the following day pursuant to Penal Code section 5058(e)(1).
2. Editorial correction of History 1 (Register 99, No. 24).
3. Certificate of Compliance as to 4-1-99 order, including amendment of first paragraph, transmitted to OAL 9-8-99 and filed 10-20-99 (Register 99, No. 43).
4. Amendment of section and Note filed 8-19-2010; operative 8-19-2010 pursuant to Government Code section 11343.4 (Register 2010, No. 34).
5. Amendment of subsection (a)(4), new subsection (a)(5), subsection renumbering, amendment of newly designated subsection (a)(17) and subsections (d)(1) and (i) filed 6-17-2015 as an emergency; operative 6-17-2015 (Register 2015, No. 25). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 11-24-2015 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 6-17-2015 order, including further amendment of subsection (i), transmitted to OAL 11-17-2015 and filed 12-30-2015; amendments operative 12-30-2015 pursuant to Government Code section 11343.4(b)(3) (Register 2016, No. 1).

3268.1. Reporting and Investigating the Use of Force for Institution/Facility Staff.

(a) Use of Force-Reporting Requirements. Every staff use of force is an incident that shall be reported.

(1) Any employee who uses force or observes a staff use of force shall report it to a supervisor as soon as practical and submit the appropriate documentation, prior to being relieved from duty. In an institution/facility setting the documentation shall be on a CDCR Form 837-A (Rev. 10/15), Crime/Incident Report Part A-Cover Sheet, CDCR Form 837-A1 (Rev. 10/15), Crime/Incident Report Part A1-Supplement, CDCR Form 837-B1 (Rev. 10/15), Crime/Incident Report Part B1-Inmate, CDCR Form 837-B2 (Rev. 10/15), Crime/Incident Report Part B2-Staff, CDCR Form 837-B3 (Rev. 10/15), Crime/Incident Report Part B3-Visitor, Other, CDCR Form 837-C (Rev. 10/15), Crime/Incident Report Part C-Staff Report, CDCR Form 837-C1 (Rev. 10/15), Crime/Incident Report Part C1-Supplement, or a CDCR Form 837-C2 (Rev. 10/15), Crime/Incident Report Part C2-Review Notice, which are hereby incorporated by reference.

(2) The supervisor shall document his or her review on a CDCR Form 3010 (Rev. 10/15), Incident Commander's Review/Critique Use of Force Incidents, which is hereby incorporated by reference, and forward it with the employee's document through the designated chain of command, to the institution head for approval or follow-up action.

(b) Additional Reporting Requirements for Use of Deadly Force.

(1) An employee who intentionally or accidentally uses deadly force, whether on or off duty, shall ensure that a supervisory employee is notified of the incident without delay. This reporting is not required for the lawful discharge of a firearm during weapons qualifications, firearms training, or other legal recreational use of a firearm.

(2) The response supervisor shall ensure that the chain of command is notified and all necessary health and safety, medical and security measures are initiated.

(A) If the incident is in an institution/facility, the response supervisor shall obtain a public safety statement(s) (oral statement) from the staff employing deadly force and shall document the essence of the oral statement in writing and submit it to the incident commander. Providing a public safety statement does not relieve the staff of the responsibility to submit a written report in accordance with 3268.1(a), or within 24 hours after the incident.

(B) For incidents occurring in a community setting, the on-duty supervisor shall ensure local law enforcement is contacted.

(3) The incident commander shall notify the Office of Internal Affairs (OIA) and the Bureau of Independent Review (BIR) as soon as possible, but no later than one hour from the time the incident is discovered, of any use of deadly force and every death or GBI that could have been caused by a staff use of force.

(c) Any employee who observes a use of force that is unnecessary or excessive shall attempt to stop the violation. Any employee who becomes aware of an allegation of unnecessary or excessive use of force, whether it occurs during a reportable incident or not, shall verbally report the allegation to a custody supervisor as soon as possible, followed by the submission of the appropriate documentation.

(d) Video Recording Requirements.

(1) A video recording is required for all Controlled Uses of Force occurrences. A video recording of the inmate is also required following a use of force occurrence resulting in SBI or GBI to the inmate and shall be documented on a CDCR Form 3013-1 (Rev. 10/15), Inmate Interview for GBI and SBI Worksheet and a CDCR Form 3014 (Rev. 10/15), Report of Findings—Inmate Interview, which are hereby incorporated by reference.

(2) A video recording of the inmate shall be made when the inmate has made an allegation of an unnecessary or excessive use of force and shall be documented on a CDCR Form 3013-2 (Rev. 10/15), Inmate Interview for Allegation Worksheet and a CDCR Form 3014 (Rev. 10/15), Report of Findings—Inmate Interview, which are hereby incorporated by reference.

(e) Reviewing Use of Force Requirements.

(1) For reported incidents, a good faith effort must be made at all levels of review in order to reach a judgment whether the staff's actions prior to, during, and subsequent to the force used was in compliance with regulations, procedure and applicable law and determine if follow-up action is necessary.

(2) Use of Force levels of review include the following:

(A) Incident Commander Review, CDCR Form 3010 (Rev. 10/15), Incident Commander's Review/Critique Use of Force Incidents.

(B) First Level Manager Review, CDCR Form 3011 (Rev. 10/15), Manager's Review—First Level Use of Force Incidents, which is hereby incorporated by reference.

(C) Second Level Manager Review, CDCR Form 3012 (Rev. 10/15), Manager's Review—Second Level Use of Force Incidents, which is hereby incorporated by reference.

(D) Use of Force Coordinator Review. The Use of Force Coordinator shall normally schedule all logged use of force cases for review within 30 days of their logged occurrence. The Use of Force Coordinator shall document their review on a CDCR Form 3034 (Rev. 10/15), IERC Allegation Review, and a CDCR Form 3036 (Rev. 10/15), IERC Critique and Qualitative Evaluation, which are hereby incorporated by reference.

(E) Institutional Executive Review Committee (IERC). Normally, the IERC is comprised of the following staff:

1. Institution Head or Chief Deputy Warden, as chairperson and final decision maker.
2. At least one other manager assigned on a rotational basis.
3. In-Service Training Manager.
4. One health care practitioner or clinician.
5. A Use of Force Coordinator.
6. Other designated supervisors and rank and file staff may also attend, as determined by the Institution Head. A representative of the BIR may also attend and monitor IERC meetings.
7. The IERC shall meet to review its cases on at least a monthly basis, or on a schedule to ensure all cases are reviewed within 30 days. The IERC shall document their review on a CDCR Form 3035 (Rev. 10/15), IERC Use of Force Review & Further Action Recommendation, which is hereby incorporated by reference.

(F) Department Executive Review Committee (DERC).

(f) Investigating Deadly Force and Any Use of Force that could have caused Death or Great Bodily Injury.

(1) Every use of deadly force (except those meeting the criteria set forth in 3268(a)(20)) and every death or great bodily injury that could have been caused by a staff use of force will be investigated by the Deadly Force Investigation Team (DFIT) and reviewed by the Deadly Force Review Board (DFRB).

(2) DFIT shall conduct criminal and administrative investigations of every death or great bodily injury that could have been caused by a staff use of force and every use of deadly force, except those meeting the criteria set forth in 3268(a)(20), the lawful discharge of a firearm during weapons qualifications or firearms training, or other legal recreational uses of a firearm.

(3) DFRB shall conduct a full and complete review of all incidents involving a use of deadly force (except those meeting the criteria set forth in 3268(a)(20)) and every death or great bodily injury that could have been caused by a staff use of force, regardless of whether the incident occurs in an institutional or community setting.

(g) Use of Force Joint Use Committee (JUC). The Use of Force JUC shall review and evaluate recommended revisions to the CDCR's Use of Force Regulations and Procedures. The JUC shall be comprised of the following field staff:

(1) At least one Institution Head, as chairperson,

(2) At least one staff member from each DAI mission based region, at the level of Lieutenant or Captain,

(3) At least one Use of Force Coordinator,

(4) At least three representatives from the California Correctional Peace Officer Association (CCPOA), as designated by the CCPOA,

(5) The Chief of BIR, or designee, and

(6) Others as needed and assigned by the Deputy Director, DAI.

The JUC shall meet quarterly as necessary, but not less than annually, to review recommended revisions.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 196, 835a, 2651, 2652 and 5054, Penal Code; Section 50, Civil Code; and *Madrid* v. *Cate* (U.S.D.C. N.D. Cal. C90-3094 TEH).

HISTORY:

1. New section filed 3-12-99 as an emergency; operative 4-1-99 (Register 99, No. 11). A Certificate of Compliance must be transmitted to OAL by 9-8-99 or emergency language will be repealed by operation of law on the following day pursuant to Penal Code section 5058(e)(1).
2. Editorial correction of History 1 (Register 99, No. 24).
3. Certificate of Compliance as to 4-1-99 order, including amendment of subsections (a)(1) and (b)(2), transmitted to OAL 9-8-99 and filed 10-20-99 (Register 99, No. 43).
4. Amendment of section heading, section and Note filed 8-19-2010; operative 8-19-2010 pursuant to Government Code section 11343.4 (Register 2010, No. 34).
5. Amendment of subsections (a)(1)–(2), (d)(1)–(2), (e)(2)(A)–(e)(2)(E)4. and (e)(2)(E)7. filed 6-17-2015 as an emergency; operative 6-17-2015 (Register 2015, No. 25). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 11-24-2015 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 6-17-2015 order, including further amendment of section, transmitted to OAL 11-17-2015 and filed 12-30-2015; amendments operative 12-30-2015 pursuant to Government Code section 11343.4(b)(3) (Register 2016, No. 1).

3268.2. Use of Restraints.

(a) Only state issued restraint gear and equipment that has been authorized by the CDCR for use at the discretion of staff shall be issued/assigned to an employee or carried/used by an employee while on duty. Any use of unauthorized restraint gear or equipment or use of approved restraint gear or equipment in a manner other than specified in (b) shall require a pre-approval in writing by the Hiring Authority of the institution/facility/unit that is making the request.

(b) Mechanical means of physical restraint may be used only under the following circumstances:

(1) When transporting a person between locations.

(2) When a person's history, present behavior, apparent emotional state, or other conditions present a reasonable likelihood that he or she may become violent or attempt to escape.

(3) When directed by licensed health care clinicians, to prevent a person from attempting suicide or inflicting injury to himself or herself.

(c) Mechanical restraints shall not be:

(1) Used as punishment.

(2) Placed around a person's neck.

(3) Applied in a way likely to cause undue physical discomfort or restrict blood flow or breathing. e.g., hog-tying.

(4) Used to secure a person to a fixed object, except as a temporary emergency measure or if using a Security Module as defined in section 3000. However, a person who is being transported shall not be locked in any manner to any part of the transporting vehicle.

(5) Placed on an inmate during labor, including during transport to a hospital, during delivery, and while in recovery after giving birth, unless circumstances exist that require the immediate application of mechanical restraints to avoid the imminent threat of death, escape, or great bodily injury, and only for the period during which such threat exists.

(d) When mechanical restraint is required, handcuffs, alone or attached to a waist chain, will be the means of restraint normally used. However, additional mechanical restraint, including leg restraints, additional chains, straight jackets, leather cuffs, or other specialized restraint equipment may be used when the circumstances indicate the need for the level of control that such devices will provide. The unresisted application of authorized restraint equipment is not a use of force.

(e) Use of mechanical restraints on persons confirmed, or suspected by health care staff to be pregnant shall be subject to the following requirements:

(1) No leg restraints or waist chains shall be applied.

(2) If handcuffs are applied, the person's arms shall be brought to the front of her body for application.

(3) When transporting a pregnant inmate off institutional grounds, the application of restraint gear shall be restricted to handcuffs to the front of the inmate only. If the pregnant inmate is in labor, the rules provided in subsection 3268.2(c)(5) shall also be followed.

(f) Use of restraint equipment by direction of licensed health care clinicians shall be fully documented in the medical file of the restrained inmate parolee.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 196, 835a, 2650, 2651, 2652, 2652.5, 3423, 5007.7 and 5054, Penal Code; and *Madrid* v. *Cate* (U.S.D.C. N.D. Cal. C90-3094 TEH).

HISTORY:

1. Renumbering of former section 3280 to new section 3268.2, including amendment of section heading, section and Note, filed 3-12-99 as an emergency; operative 4-1-99 (Register 99, No. 11). A Certificate of Compliance must be transmitted to OAL by 9-8-99 or emergency language will be repealed by operation of law on the following day pursuant to Penal Code section 5058(e)(1).
2. Editorial correction of History 1 (Register 99, No. 24).
3. Certificate of Compliance as to 4-1-99 order transmitted to OAL 9-8-99 and filed 10-20-99 (Register 99, No. 43).
4. New subsections (b)(5) and (d)(1)–(3), subsection relettering and amendment of Note filed 3-6-2008; operative 4-5-2008 (Register 2008, No. 10).
5. Amendment of section and Note filed 8-19-2010; operative 8-19-2010 pursuant to Government Code section 11343.4 (Register 2010, No. 34).
6. Amendment of subsection (d) filed 6-17-2015 as an emergency; operative 6-17-2015 (Register 2015, No. 25). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 11-24-2015 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 6-17-2015 order transmitted to OAL 11-17-2015 and filed 12-30-2015 (Register 2016, No. 1).
8. Amendment of subsection (c)(4) filed 3-10-2016; operative 3-10-2016 pursuant to Government Code section 11343.4(b)(3) (Register 2016, No. 11).

3268.3. Reporting and Investigating the Use of Force for Field Staff.

(a) Use of Force-Reporting Requirements. Every staff use of force is an incident that shall be reported.

(1) Any employee who uses force or observes CDCR staff use of force in a community or field setting shall report it to a supervisor as soon as practical and submit the appropriate documentation, prior to being relieved from duty. The documentation shall be on a CDCR Form 1662-A (Rev. 9/09), Field Incident Report Part A-Cover Sheet, CDCR Form 1662-B (Rev. 9/09), Field Incident Report Part B-Summary Information, CDCR Form 1662-C (Rev. 9/09), Field Incident Report Part C-Employee Report, CDCR Form 1662-C1 (Rev. 9/09), Field Incident Report Part C1-Supplement Page, which are hereby incorporated by reference.

(2) Any employee not assigned to an institution/facility who uses force or observes CDCR staff use of force in an institution/facility environment, shall report it to a supervisor as soon as practical and follow up with appropriate documentation as required in section 3268.1(a)(1). A copy of the report shall be provided to the employee's supervisor and the original shall be retained by the institution/facility Incident Commander.

(3) The supervisor shall document his or her review on a CDCR Form 3010-A (Rev. 9/09), Field: Use of Force Incident—Supervisor Review/Critique, which is hereby incorporated by reference, and forward it with the employee's document through the designated chain of command, to the regional parole administrator for approval or follow-up action.

(b) Additional Reporting Requirements for Use of Deadly Force.

(1) An employee who intentionally or accidentally uses deadly force, whether on or off duty, shall ensure that a supervisory employee is notified of the incident without delay. This reporting is not required for the lawful discharge of a firearm during weapons qualifications, firearms training, or other legal recreational use of a firearm.

(2) A supervisor shall ensure that the chain of command is notified and all necessary health and safety, medical and security measures are initiated.

(A) The responding supervisor shall obtain a public safety statement(s) (oral statement) from the staff employing deadly force and shall document the essence of the oral statement in writing and submit it to the incident commander. Providing a public safety statement does not relieve the staff of the responsibility to submit a written report in accordance with 3268.3(a), or within 24 hours after the incident.

(B) The responding supervisor shall ensure local law enforcement is contacted.

(3) The incident commander or responding supervisor shall notify the Office of Internal Affairs (OIA) and the Bureau of Independent Review (BIR) as soon as possible, but no later than one hour from the time the incident is discovered, of any use of deadly force and every death or GBI that could have been caused by a staff use of force.

(c) Any employee who observes a use of force that is unnecessary or excessive shall attempt to stop the violation. Any employee who becomes aware of an allegation of unnecessary or excessive use of force, shall report the allegation verbally to a supervisor as soon as possible, followed by the submission of the appropriate documentation.

(d) Video Recording Requirements.

(1) A video recording is required for Uses of Force which result in serious bodily injury or great bodily injury, except when video recording is prohibited in a local jail or custody location.

(2) A video recording of a person shall be made when the person has made an allegation of an unnecessary or excessive use of force, except when video recording is prohibited in a local jail or custody location. All allegations shall be documented on a CDCR Form 3013-A (Rev. 02/10), Field: Supervisory Use of Force Interview Guide and a CDCR Form 3014-A (Rev. 9/09), Field: Supervisory

Use of Force Interview Findings Report, which are hereby incorporated by reference.

(e) Reviewing Use of Force Requirements.

(1) For reported incidents, a good faith effort must be made at all levels of review in order to reach a judgment whether the staff's actions prior to, during, and subsequent to the force used was in compliance with regulations, procedure and applicable law and determine if follow-up action is necessary.

(2) Use of Force levels of review include the following:

(A) Incident Commander Review, CDCR Form 3010-A (Rev. 9/09), Field: Use of Force Incident—Supervisor Review/Critique.

(B) First Line Manager Review, CDCR Form 3011-A (Rev. 9/09), Field: Use of Force Incident—Manager Review/Critique, which is hereby incorporated by reference.

(C) Second Line Manager Review, CDCR Form 3012-A (Rev. 9/09), Field: Executive Review of Use of Force Critique and Qualitative Evaluation/Analysis, which is hereby incorporated by reference.

(D) Regional Use of Force Coordinator Review. The Use of Force Coordinator shall normally schedule all logged use of force cases for review within 30 days of their logged occurrence. The Regional Use of Force Coordinator shall document their review on a CDCR Form 3034-A (9/09), Field: Executive Review Committee—Use of Force/Misconduct Allegation, and a CDCR Form 3036-A (9/09), Field: Executive Review Committee Critique and Qualitative Evaluation/Analysis, which are hereby incorporated by reference.

(E) Field Executive Review Committee (FERC). Normally, the FERC is comprised of the following staff:

1. Regional Parole Administrator, Chief, or Assistant Secretary as chairperson and final decision maker,

2. At least one other manager,

3. Supervising Regional Training Coordinator,

4. A Use of Force Coordinator.

5. Other designated supervisors and rank and file staff may also attend, as determined by the Regional Parole Administrator. A representative of the BIR may also attend and monitor FERC meetings.

6. The FERC shall meet to review its cases on at least a monthly basis, or on a schedule to ensure all cases are reviewed within 30 days. The FERC shall document their review on a CDCR Form 3035-A (9/09), Field: Executive Review Committee/Further Action Recommendation-Use of Force/Misconduct Allegation, which is hereby incorporated by reference.

(F) Department Executive Review Committee (DERC).

(f) Investigating Deadly Force and Any Use of Force that could have caused Death or Great Bodily Injury

(1) Deadly Force Investigation Team (DFIT). The following instances shall be referred to the DFIT for investigation:

(A) Every use of deadly force; except the lawful discharge of a firearm during weapons qualifications or firearms training, or other legal recreational uses of a firearm.

(B) Every use of force incident that resulted in death.

(C) Every incident resulting in great bodily injury that could have been caused by a staff use of force.

(2) The Deadly Force Review board (DFRB) is responsible for conducting a full and complete review of all incidents involving a use of deadly force and every death or great bodily injury that could have been caused by a staff use of force, regardless of whether the incident occurs in an institutional or community setting.

(3) Every use of deadly force and every death or great bodily injury that could have been caused by a staff use of force will be investigated by the DFIT and reviewed by the DFRB.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 196, 835a, 2651, 2652 and 5054 Penal Code; and Section 50, Civil Code.

HISTORY:

1. New section filed 8-19-2010; operative 8-19-2010 pursuant to Government Code section 11343.4 (Register 2010, No. 34).

Article 1.6. Inmate Housing

3269. Inmate Housing Assignments.

Inmates shall accept Inmate Housing Assignments (IHAs) as directed by staff. It is the expectation that all inmates double cell, whether being housed in a Reception Center, General Population (GP), an Administrative Segregation Unit (ASU), a Security Housing Unit (SHU), or specialty housing unit. If staff determines an inmate is suitable for double celling, based on the criteria as set forth in this section, the inmate shall accept the housing assignment or be subject to disciplinary action for refusing. IHAs shall be made on the basis of available documentation and individual case factors. Inmates are not entitled to single cell assignment, housing location of choice, or to a cellmate of their choice.

(a) Upon arrival at an institution, facility, or program reception center, a designated custody supervisor shall screen an inmate for an appropriate housing assignment. The screening authority involved in the review and approval of an inmate's housing assignment must evaluate all factors to be considered when completing the Initial Housing Review, including but not limited to:

• Inmate name, CDC number, and Personal Identification number.

• Personal factors such as race, date of birth, age, weight, height, birth place, and whether the inmate is a foreign national.

• Receiving Institution.

• County of commitment.

• Out to court return and escape history.

• Length of sentence.

• Enemies and victimization history.

• Criminal influence demonstrated over other inmates.

• Previous housing status.

• Reason(s) for prior segregation.

• History of "S" suffix determination pursuant to CCR subsection 3377.1(c).

• History of in-cell assaults and/or violence.

• Security Threat Group affiliation.

• Involvement in a race based incident(s).

• Nature of commitment offense.

• Documented reports from prior cellmate(s) that the inmate intimidated, threatened, forced, and/or harassed him or her for sex.

• Documentation that the cellmate(s) refused to return to a cell occupied by the inmate because of fear, threats, or abuse perpetrated by the inmate.

• Documentation that the inmate has been the victim of a sexual assault or was previously single celled.

• Adjudicated Department Rules Violations Reports (RVR) where the inmate was found guilty as a perpetrator in an act of physical abuse, sexual abuse, sodomy, or other act of force against a cellmate.

(b) The screening authority shall complete the Initial Housing Review stating if the inmate is suitable for dorm/cell housing with or without special restrictions. Restrictions are any case factors which may limit the inmate's housing placement options such as, but not limited to:

• Security issues including ASU and SHU placement.

• Request for Protective Custody.

• Medical or mental health issues.

• Personal factors such as age, weight, and height.

• Integrated Housing Code.

Staff shall ensure that the housing policies regarding special category inmates covered under specific litigation remain in place during the housing assignment.

(c) Upon placement in an ASU or SHU, inmates shall be screened for an appropriate cell assignment using the same criteria as inmates being screened for housing in the general population. The reason for ASU or SHU placement shall also be taken into consideration.

Based on available information and the inmate interview, the screening authority shall determine if the inmate is suitable for single or double celled housing, and shall complete a CDC Form 114-A1 (rev. 10/98), Inmate Segregation Profile. Unless approved for single cell assignment, an inmate in ASU or SHU is expected to share a cell with another inmate.

(d) Single cell status shall be considered for those inmates who demonstrate a history of in-cell abuse, significant in-cell violence towards a cell partner, verification of predatory behavior towards a cell partner, or who have been victimized in-cell by another inmate. Staff shall consider the inmate's pattern of behavior, not just an isolated incident. An act of mutual combat in itself does not warrant single cell status. The following factors must be considered when evaluating single cell status, noting these factors are not exclusive of other considerations:

(1) Predatory behavior is characterized by aggressive, repeated attempts to physically or sexually abuse another inmate.

(2) Documented and verified instances of being a victim of in-cell physical or sexual abuse by another inmate.

(e) Should the screening authority determine that single cell designation is appropriate, the inmate's case factors shall be reviewed by a classification committee for determination of appropriate housing and designation for an "S" suffix. A classification committee may consider whether an inmate with single cell designation has since proven capable of being double-celled.

(f) In cases where single cell status is recommended by clinical staff due to mental health or medical concerns, a classification committee shall make the final determination of an inmate's cell assignment. The classification committee shall consider the clinical recommendations made by the evaluating clinician with assistance from the clinician who participates in the committee and review the inmate's case factors when determining the housing assignment. Single cell status based upon clinical recommendation is usually a temporary short-term measure and must be periodically reviewed, minimally at an inmate's annual review or more frequently at the inmate's/clinician's request.

(g) If an inmate refuses to be housed as determined to be appropriate to this section, the inmate shall be subject to the disciplinary process. Refusal to participate will result in the issuance of a Rules Violation Report (RVR) for Conduct, subsection 3005(c), Refusing to Accept Assigned Housing, for the Specific Act of Willfully Resisting, Delaying, or Obstructing any Peace Officer in the performance of Duty (CCR subsection 3323(f)(6)). Subsequent acts of the above listed offense will result in the issuance of additional disciplinary reports.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.

HISTORY:

1. New section filed 3-18-2008 as an emergency; operative 3-18-2008 (Register 2008, No. 12). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 8-25-2008 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 3-18-2008 order, including amendment of subsection (f), transmitted to OAL 8-18-2008 and filed 9-15-2008 (Register 2008, No. 38).
3. Change without regulatory effect amending subsection (a) filed 3-28-2011 pursuant to section 100, title 1, California Code of Regulations (Register 2011, No. 13).
4. Amendment of subsections (a)–(b) filed 6-2-2014; operative 6-2-2014 pursuant to Government Code section 11343.4(b)(3) (Register 2014, No. 23).
5. Amendment of subsection (a) filed 10-17-2014; operative 10-17-2014 pursuant to Government Code section 11343.4(b)(3) (Register 2014, No. 42).
6. Amendment of subsection (g) filed 6-1-2015 as an emergency; operative 6-1-2015 (Register 2015, No. 23). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 11-9-2015 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 6-1-2015 order transmitted to OAL 10-19-2015 and filed 12-3-2015 (Register 2015, No. 49).

3269.1. Integrated Housing.

An inmate's race will not be used as a primary determining factor in housing an institution's inmate population. Inmate housing assignments shall be made on the basis of available documentation and individual case factors to implement an Integrated Housing Policy (IHP). Individual case factors include, but are not limited to, such factors as:

(1) History of racial violence.

(2) Commitment offense/time to serve.

(3) Classification score.

(4) Custody level.

(5) Education.

(6) Disciplinary history.

The IHP is set forth in these regulations. Housing assignments will be determined in a manner that will ensure that the safety, security, treatment, and rehabilitative needs of the inmate are considered, as well as the safety and security of the public, staff and institutions. Upon adoption of these regulations in 2007, the department will begin to update a computer tracking system to include the assignment of an Integrated Housing Code (IHC) as set forth in subsection (b) that will be used to identify each inmate's ability to integrate. On January 1, 2008, actual implementation of the IHP will commence at designated facilities. On January 1, 2009, the IHP will begin to be implemented at all remaining institutions.

(a) The department's housing protocol will require male inmates to be housed in an appropriate bed, based on each inmate's Integrated Housing Code (IHC) and/or individual case factors. The department will utilize a computer tracking system to identify, track, and monitor an inmate's eligibility to integrate when being housed.

(b) Based on a review of an inmate's individual case factors and a personal interview with an inmate, an IHC will be assigned. The appropriateness of an inmate's IHC will be assessed at least at an inmate's Annual Review, or as case factors may change, and adjusted as necessary. An IHC that may be assigned are detailed as follows:

(1) RE, Racially Eligible. An inmate that has not been a victim or perpetrator of a racially motivated crime and can live with members of any race. It is the expectation of the department that all inmates will be coded RE, unless certain case factors dictate otherwise.

(2) RP, Restricted Partially. An inmate that may be considered ineligible to live with inmates of a particular race. Ineligibility to live with someone of another race could be based on a racially motivated incident, where racial beliefs or attitudes were the cause of the incident.

(3) RO, Restricted to Own (Race). An inmate that has been the victim and/or perpetrator of a racially motivated crime. Inmates who are coded RO Restricted to Own will not be precluded from

integration in other aspects of institutional operation, such as a school or work assignment. Inmates coded as RO are not precluded from racially integrated housing for the entire duration of their sentence.

(4) RT, Restricted Temporarily by Custody. Inmates with insufficient information or documentation for the designated custody supervisor to make an objective determination shall be coded RT for Restricted Temporarily Restricted by Custody. This code may be used when conflicting information arrives with the inmate or when questionable statements or behavior by the inmate are observed that are not consistent with the inmate's claim of eligibility.

(5) RR, Restricted by Refusal. Inmate is otherwise eligible for integrated housing but refuses to participate. Refusal to accept an integrated housing assignment, when all available documentation and information does not preclude such, shall result in disciplinary action.

(c) Inmates arriving in a facility Receiving and Release will be interviewed in accordance with the established process for intake. The designated custody supervisor will use the information provided during the interview as well as the supporting documents received to determine the inmate's eligibility for an integrated housing assignment.

(d) New arrivals at a facility or inmates who require a bed assignment change will be housed in the first available and appropriate bed, taking into consideration all relevant case factors. Staff will also consider other available information that would indicate or present an immediate risk or safety concern for the inmate such as, but not limited to:

(1) Security issues including ASU placement.
(2) SHU.
(3) Request for Protective Custody.
(4) Security Threat Group affiliation.
(5) Medical or mental health issues.
(6) Length of term.
(7) Height, weight, and age.

Staff will continue to ensure that current housing policies regarding special category inmates covered under specific litigation remain in place during the housing process.

(e) If an inmate refuses to be housed in appropriately determined housing, he shall be subject to the disciplinary process. Refusal to participate will result in the issuance of a Rules Violation Report (RVR) for Conduct, section 3005(c), Refusing to Accept Assigned Housing, for the Specific Act of Willfully Resisting, Delaying, or Obstructing any Peace Officer in the Performance of Duty (CCR subsection 3323(f)(7)). At any time during this process the inmate may elect to participate in the IHP.

(f) Disciplinary restrictions will be applied as a result of a disciplinary process where inmates are afforded due process. The suspension of privileges based on a finding of guilt in a disciplinary hearing shall be assessed as set forth in CCR subsections 3315(f)(5)(M)1 and (M)2.

(g) In the event that facility management determines that a temporary suspension of assignments within a unit to integrated beds is warranted, the Warden or designee shall request approval from their mission based Associate Director for a temporary suspension of integrated housing assignments consistent with the lockdown or modified program. Regular housing assignment procedures shall be resumed in accordance with the Integrated Housing policy upon resolution of the incident.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code; *Johnson* v. *California* (2005) 543 U.S. 499 [125 S. Ct. 1141], remand of *Johnson* v. *California*, (9th Cir. 2007) [Dock. No. CV 95-1192 CBM(BQR)].

HISTORY:

1. New article 1.6 (section 3269.1) and section filed 12-28-2007; operative 12-28-2007 pursuant to Government Code section 11343.4 (Register 2007, No. 52).
2. Amendment of subsection (g) filed 6-14-2011; operative 7-14-2011 (Register 2011, No. 24).
3. Amendment of subsection (d)(4) filed 10-17-2014; operative 10-17-2014 pursuant to Government Code section 11343.4(b)(3) (Register 2014, No. 42).
4. Amendment of subsections (b)(5) and (e) filed 6-1-2015 as an emergency; operative 6-1-2015 (Register 2015, No. 23). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 11-9-2015 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 6-1-2015 order transmitted to OAL 10-19-2015 and filed 12-3-2015 (Register 2015, No. 49).

Article 2. Security

3270. General Policy.

The primary objectives of the correctional institutions are to protect the public by safely keeping persons committed to the custody of the Secretary of Corrections and Rehabilitation, and to afford such persons with every reasonable opportunity and encouragement to participate in rehabilitative activities. Consistent effort will be made to insure the security of the institution and the effectiveness of the treatment programs within the framework of security and safety. Each employee must be trained to understand how physical facilities, degree of custody classification, personnel, and operative procedures affect the maintenance of inmate custody and security. The requirement of custodial security and of staff, inmate and public safety must take precedence over all other considerations in the operation of all the programs and activities of the institutions of the department.

Comment: Former DP-4201, policy, general.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.

HISTORY:

1. Change without regulatory effect amending section and adding Note filed 3-11-2013 pursuant to section 100, title 1, California Code of Regulations (Register 2013, No. 11).

3270.1. Lethal Electrified Fences.

(a) For the purposes of this section, a lethal electrified fence is a high voltage fence installed for the lethal infliction of injury to escaping inmates.

(b) Safety precautions shall be instituted to prevent accidental electrocution. These precautions shall include, but are not limited to, the following:

(1) The posting of warning signs on the inner and outer perimeters of the facility informing staff, inmates, and the public of the presence of a lethal electrified fence.

(2) A visual inspection of the lethal electrified fence area at least once per shift.

(3) Regular inspections by an outside patrol of the perimeter areas.

(4) The presence of a staff person trained in energizing and deenergizing the fence prior to any authorized person entering the lethal electrified fence area.

(5) Inspections of lethal electrified fences as specified by a routine maintenance schedule.

(6) The insulation of lethal electrified fences between two security fences.

NOTE: Authority cited: section 5058, Penal Code. Reference: Sections 2052 and 5054, Penal Code.

HISTORY:

1. New section filed 12-15-93 as an emergency; operative 12-15-93 (Register 93, No. 51). A Certificate of Compliance must be transmitted to OAL by 4-25-94 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 4-15-94 as an emergency; operative 4-25-94 (Register 94, No. 15). A Certificate of Compliance must be transmitted to OAL by 8-23-94 or emergency language will be repealed by operation of law on the following day.
3. Repealed by operation of Government Code section 11346.1(g) (Register 94, No. 37).
4. New section including amendments, refiled 9-15-94; operative 9-15-94 (Register 94, No. 37).

3271. Responsibility of Employees.

Every employee, regardless of his or her assignment, is responsible for the safe custody of the inmates confined in the institutions of the department.

Comment: Former DP-4202, responsibility of employees.

3272. Custody Classification.

The classification committee at each institution must assign a custodial classification to each inmate, in accordance with the custodial classifications prescribed by the department. The senior custodial officer on duty may temporarily increase the custodial classification of an inmate at any time he or she believes such action is necessary to protect the security and good order of the institution. Such action is subject to classification committee review at the next regular meeting. Any reduction of an inmate's custody classification must be by classification committee action.

Comment: Former DP-4203, custody classification.

3273. Acceptance and Surrender of Custody.

Wardens and superintendents must not accept or surrender custody of any prisoner under any circumstances, except by valid court order or other due process of law.

Comment: Former DP-4204, acceptance and surrender of custody.

3274. Inmate Count and Movement.

(a) Inmate count. Every institution head shall maintain a system to account at all times for inmates under their jurisdiction. A physical count of all inmates shall be taken at least four times during each calendar day unless otherwise authorized in writing by the director. No inmate activity shall be scheduled at a time which would disrupt a facility count.

(1) Standing count. At least one daily count shall be a standing count wherein inmates shall stand at their cell door or, in a dormitory, shall sit on their assigned bed during the designated count time.

(2) Emergency count. If staff determines an inmate may be missing, an emergency count shall be conducted to determine whether an escape has occurred and, if so, the identity of the escapee. When an emergency count is announced, inmates shall return to their assigned housing, except in a medical emergency or other exception specifically authorized by the official in charge.

(b) Inmate movement. Each facility shall establish a schedule of routine inmate movement to and from the facility's activities and assignments such as work and education, and the gym or exercise yard.

(1) Appointments. A CDC Form 129 (Rev. 7/88), Inmate Pass, shall be issued to an inmate approved for movement to a scheduled non-routine appointment. Medical service and case work appointments shall not be scheduled during an inmate's work or program hours unless an inmate cannot otherwise obtain the service or case work.

(2) Unscheduled movement. If unscheduled movement of an inmate is necessary, such movement shall not take place unless the inmate is escorted by staff, or a pass has been issued by staff authorizing the movement.

(3) Routine movement. A gate pass shall be maintained for each inmate assigned to work outside a facility's security area. The gate pass shall:

(A) Not be handled by any inmate.

(B) Include the inmate's identification photo, name, CDC number, housing assignment, custody designation, assignment requiring the gate pass, effective date of the pass, times the inmate is authorized to pass through the gate, and the signature of a facility official authorized to approve gate passes.

(C) Be rescinded by staff at the level of correctional lieutenant or higher, pending a classification committee review whenever:

1. A hold or detainer against an inmate's release, or notice thereof, is received by the facility.

2. Staff determines from the inmate's behavior that the inmate may require increased supervision.

3. Staff receives information indicating an inmate's increased escape potential.

(c) Lockdown or Modified Program. Facility procedures governing the restriction of inmate movement during a lockdown or modified program shall be established and updated daily during any lockdown or modified program.

(d) Limited visibility. When visibility at a facility is severely restricted or a state of emergency is declared, inmates shall be confined to their housing units, except as otherwise authorized by the official in charge. In such circumstances, all inmate movement shall be under the direct and constant supervision of staff.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 2079 and 5054, Penal Code.

HISTORY:

1. Amendment filed 7-29-76; effective thirtieth day thereafter (Register 76, No. 31).
2. Amendment of section filed 12-20-91 as an emergency; operative 12-20-91 (Register 92, No. 4). A Certificate of Compliance must be transmitted to OAL 4-20-92 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 12-20-91 order transmitted to OAL 4-17-92 and filed 6-1-92 (Register 92, No. 23).
4. Amendment of subsection (c) filed 6-14-2011; operative 7-14-2011 (Register 2011, No. 24).

3275. Weapons.

(a) Only such weaponry as has been approved by the Secretary for department-wide use, or for use only by designated jurisdictions of the department, shall be issued/assigned to an employee or carried/used by an employee while on duty. For the purpose of this section, weaponry includes any offensive or defensive lethal or less lethal device. Employees assigned to facilities or work locations where inmates/parolees are located, or in the supervision of inmates/parolees in the community, shall not have accessible, carry or use any privately owned weaponry while on duty, except as authorized by the Secretary.

(b) No weaponry of any kind shall be taken into the security areas of an institution where inmates/parolees are located except for emergency use as ordered by the official in charge, or for use in regularly armed posts as prescribed in local procedures or post orders.

(c) All necessary precautions shall be taken in the storage, use and movement of weaponry to prevent it from falling into the hands of inmates, parolees or other unauthorized persons.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 803.5, 5054, 4574, Penal Code.

HISTORY:

1. Amendment filed 9-24-81; effective thirtieth day thereafter (Register 81, No. 39).
2. Amendment filed 1-3-95 as an emergency; operative 1-3-95 (Register 95, No. 1). A Certificate of Compliance must be transmitted to OAL 6-12-95 or emergency language will be repealed by operation of law on the following day.
3. Amendment of subsection (a) filed 3-28-95 as an emergency; operative 3-28-95 for 160 days pursuant to Penal Code § 5058(e) (Register 95, No. 13). A Certificate of Compliance must be transmitted to OAL by 9-4-95 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to orders of 1-3-95 and 3-28-95 including amendment of subsection (a) and Note transmitted to OAL 6-12-95 and filed 7-24-95 (Register 95, No. 30).
5. Change without regulatory effect amending subsection (a) filed 3-11-2013 pursuant to section 100, title 1, California Code of Regulations (Register 2013, No. 11).

3276. Firearms.

(a) Only peace officers who have satisfactorily completed firearms training and who are currently qualified in the firing of departmental firearms shall be assigned to armed posts or otherwise be authorized to possess, carry or use a departmental firearm. Exceptions are only authorized in extreme emergencies when peace officers are not available in sufficient numbers or in time to stop or control a situation which warrants the immediate use of force, as described in section 3268.

(b) An employee appointed to a peace officer position wherein the specifications of the position include the carrying and use of firearms shall be given a reasonable time to complete firearms training and to qualify in the firing of departmental firearms. Persistent failure or refusal to satisfactorily complete firearms training and to qualify in the firing of departmental firearms shall be cause for dismissal from employment as a peace officer.

(c) Employees shall not have accessible, carry or use privately owned firearms or ammunition while on duty, except as authorized by the director or his/her designee. For the purpose of this section "on duty" means any time which is compensable as actual time worked.

(d) Employees who are ordered to carry a concealable firearm while on duty away from facilities where inmates/parolees are located shall keep the firearm concealed at all times except when use of the firearm is necessary. Employees on duty on the grounds of, and in, facilities where inmates/parolees are located shall not carry a concealed firearm unless ordered to do so by the official in charge.

(e) Each facility where inmates/parolees are located which maintains an unissued supply of firearms and ammunition, as described in Section 3275, shall provide for its long-term storage in a physically secure armory. Armories shall be located so as to be under 24-hour-a-day coverage of an armed post and away from areas that are open to traffic by unsupervised inmates/parolees and the public. Community Correctional Facility armories shall be exempt from the armed coverage requirement, but they shall be under 24-hour-a-day observation by staff directly, or by video surveillance, and shall be equipped with audible electronic alarms.

(f) Each facility where inmates/parolees are located shall provide a physically secure locked container, located outside the security areas, for the temporary storage of firearms, ammunition and other weaponry of employees and officials who must come on the grounds or enter the facility in the course of their employment or official business.

(g) Employees and others who live on the grounds of facilities where inmates/parolees are located, and any guests or visitors of such persons, shall not bring to, maintain, store or keep any firearms or ammunition in such residences at any time. Arrangements shall be made for the use of storage facilities described in subsections (e) and (f).

(h) Firearms and ammunition shall not be left in an unattended vehicle at any time upon the grounds of facilities where inmates/parolees are located. Exceptions are authorized only when the vehicle is securely locked and under the direct observation of staff who are aware that the vehicle contains firearms or ammunition, or when the vehicle is equipped with a departmentally approved secure container for such equipment. Merely out of sight storage such as in the spare tire well, trunk or glove box does not meet the requirements for a secure container.

(i) The loss or theft of departmentally issued/authorized firearms/duty weapons or related equipment shall be immediately reported to the responsible employee's supervisor, and through the supervisor to the administrator of the jurisdiction of employment, and/or to the attention of the administrator in which the loss or theft occurred, if in a different jurisdiction. Local law enforcement agencies shall be notified, and a written report shall be made to the deputy director/assistant director within whose jurisdiction the loss or theft occurred.

NOTE: Authority cited: section 5058, Penal Code. Reference: Sections 830, 830.5, 4574, and 5054, Penal Code.

HISTORY:

1. Repealer and new section filed 9-24-81; effective thirtieth day thereafter (Register 81, No. 39).
2. Amendment of subsection (a)(6) filed 7-12-82; effective thirtieth day thereafter (Register 82, No. 29).
3. Amendment filed 1-3-95 as an emergency; operative 1-3-95 (Register 95, No. 1). A Certificate of Compliance must be transmitted to OAL 6-12-95 or emergency language will be repealed by operation of law on the following day.
4. Amendment of subsections (b) and (b)(5) filed 3-28-95 as an emergency; operative 3-28-95 for 160 days pursuant to Penal Code s 5058(e) (Register 95, No. 13). A Certificate of Compliance must be transmitted to OAL by 9-4-95 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to orders of 1-3-95 and 3-28-95 including amendment of section and Note transmitted to OAL 6-12-95 and filed 7-24-95 (Register 95, No. 30).
6. Amendment filed 3-12-99 as an emergency; operative 4-1-99 (Register 99, No. 11). A Certificate of Compliance must be transmitted to OAL by 9-8-99 or emergency language will be repealed by operation of law on the following day pursuant to Penal Code section 5058(e)(1).
7. Editorial correction amending History 6 (Register 99, No. 26).
8. Certificate of Compliance as to 4-1-99 order transmitted to OAL 9-8-99 and filed 10-20-99 (Register 99, No. 43).
9. Amendment of subsections (c) and (i) filed 4-17-2002; operative 5-17-2002 (Register 2002, No. 16).
10. Amendment of subsection (e) filed 5-2-2007; operative 6-1-2007 (Register 2007, No. 18).

3277. Use of Tear Gas.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.

HISTORY:

1. Amendment of Subsection (a) filed 5-28-76 as an emergency; designated effective 7-1-76 (Register 76, No. 19).
2. Certificate of Compliance filed 7-29-76 (Register 76, No. 31).
3. Amendment filed 3-22-78; effective thirtieth day thereafter (Register 78, No. 12).
4. Amendment of subsection (a) filed 8-7-80 as an emergency; effective upon filing (Register 80, No. 32). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 12-7-80.
5. Certificate of Compliance filed 12-5-80 (Register 80, No. 49).

6. Amendment of subsections (a)(1) and (a)(3), repealer of subsections (a)(4)–(a)(4)(F)5, amendment of subsections (b), (b)(1) and (b)(3)–(4), and repealer of subsection (c) filed 1-3-95 as an emergency; operative 1-3-95 (Register 95, No. 1). A Certificate of Compliance must be transmitted to OAL 6-12-95 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 1-3-95 order including amendment of subsections (a)(3), (b)(1), (b)(3), and (b)(4) transmitted to OAL 6-12-95 and filed 7-24-95 (Register 95, No. 0).
8. Repealer filed 3-12-99 as an emergency; operative 4-1-99 (Register 99, No. 11). A Certificate of Compliance must be transmitted to OAL by 9-8-99 or emergency language will be repealed by operation of law on the following day pursuant to Penal Code section 5058(e)(1).
9. Editorial correction amending History 8 (Register 99, No 26).
10. Certificate of Compliance as to 4-1-99 order transmitted to OAL 9-8-99 and filed 10-20-99 (Register 99, No. 43).

3278. Control of Inmates and Parolees.

Employees who supervise inmates or parolees must have training in physical controls, use of restraint equipment, and keep themselves in good physical condition. In addition, all employees who supervise inmates must have training designed to give them knowledge of emotional disturbances common to inmates and parolees, and understanding of their own feelings, and the use of such knowledge in ways which will minimize the need for the use of physical force. Batons may be carried only as specifically authorized by the Secretary.

Comment: Former DP-4209, control of inmates.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.

HISTORY:
1. Change without regulatory effect amending section and adding Note filed 3-11-2013 pursuant to section 100, title 1, California Code of Regulations (Register 2013, No. 11).

3279. Use of Force.

HISTORY:
1. Repealer filed 3-12-99 as an emergency; operative 4-1-99 (Register 99, No. 11). A Certificate of Compliance must be transmitted to OAL by 9-8-99 or emergency language will be repealed by operation of law on the following day pursuant to Penal Code section 5058(e)(1).
2. Editorial correction amending History 1 (Register 99, No. 26).
3. Certificate of Compliance as to 4-1-99 order transmitted to OAL 9-8-99 and filed 10-20-99 (Register 99, No. 43).

3280. Mechanical Restraint.

NOTE: Authority cited: section 5058, Penal Code. Reference: Sections 2650, 2652 and 5054, Penal Code.

HISTORY:
1. Amendment of subsections (a)(2) and (c) filed 5-28-76 as an emergency; designated effective 7-1-76 (Register 76, No. 19).
2. Certificate of Compliance filed 7-29-76 (Register 76, No. 31).
3. Amendment of subsection (b) filed 3-22-78; effective thirtieth day thereafter (Register 78, No. 12).
4. Amendment filed 2-8-88; operative 3-9-88 (Register 88, No. 7).
5. Editorial correction of printing errors in subsections (b) and (c) and History (Register 92, No. 5).
6. Change without regulatory effect amending subsection (a)(2) filed 1-20-93 pursuant to section 100, title 1, California Code of Regulations (Register 93, No. 4).
7. Renumbering of former section 3280 to new section 3268.2 filed 3-12-99 as an emergency; operative 4-1-99 (Register 99, No. 11). A Certificate of Compliance must be transmitted to OAL by 9-8-99 or emergency language will be repealed by operation of law on the following day pursuant to Penal Code section 5058(e)(1).
8. Editorial correction amending History 7 (Register 99, No. 26).
9. Certificate of Compliance as to 4-1-99 order transmitted to OAL 9-8-99 and filed 10-20-99 (Register 99, No. 43).

3281. Corporal Punishment.

HISTORY:
1. Repealer filed 3-12-99 as an emergency; operative 4-1-99 (Register 99, No. 11). A Certificate of Compliance must be transmitted to OAL by 9-8-99 or emergency language will be repealed by operation of law on the following day pursuant to Penal Code section 5058(e)(1).
2. Editorial correction amending History 1 (Register 99, No. 26).
3. Certificate of Compliance as to 4-1-99 order transmitted to OAL 9-8-99 and filed 10-20-99 (Register 99, No. 43).

3282. Use of Telephones by Inmates.

(a) For purposes of this section:

(1) An "emergency call" means a telephone call regarding the serious illness or injury, or the death of an inmate's immediate family member.

(2) A "confidential call" means a telephone call between an inmate and his/her attorney which both parties intend to be private.

(3) An "inmate telephone" means a telephone designated solely to accommodate inmate-originated nonconfidential personal calls.

(4) An "intrafacility telephone" means a telephone which is not capable of direct-dial connections to telephones outside of the facility.

(5) A "prison telephone" means a telephone that is capable of outside access and is not monitored or recorded.

(b) Facilities shall provide inmate telephones for use by inmates consistent with their assigned privilege group. Inmates may place collect telephone calls to persons outside the facility at designated times and on designated telephones, as set forth in local procedures. Limitations may be placed on the frequency and length of such calls based on the inmate's privilege group as outlined in section 3044, and to ensure equal access. Telephone calls requiring the use of a Telecommunication Device for the Deaf (TDD) or voice relay service shall have extended time scheduled due to the time delay which results from the TDD relay process.

(c) An inmate shall not:

(1) Use an intrafacility telephone except as specifically required or authorized by staff.

(2) Use a telephone capable of direct-dial connection with a public telephone system, except as authorized by staff.

(3) Charge a call to a credit card.

(4) Place a third party call.

(5) Ask the operator for an emergency interruption.

(6) Place a call to an "800," "900," "976," "911," "411," or other special service number. Inmates that have a verified need to utilize the (1-800) TDD or relay service shall notify the correctional staff to facilitate the (1-800) TDD call.

(7) Place a call to an inmate at any other facility.

(8) Place calls to victims, peace officers, or other persons who have made an official written request not to receive telephone calls.

(9) Knowingly participate in a forwarded, transferred, or three-party call on an inmate telephone.

(d) Except as provided in this section, no limitation shall be placed on the identities or relationships of persons to whom an inmate may place a collect call.

(e) All inmate calls placed on intrafacility and inmate telephones may be subject to monitoring and recording at any time by institution staff.

(f) A conspicuous notice in English and Spanish shall be posted at each inmate telephone capable of recording and monitoring stating in both languages: All numbers dialed and conversations on this telephone may be recorded and may be monitored without any

further notice. By using this telephone, you agree to the monitoring and recording. It is your responsibility to notify the person called that their conversation and telephone number may be monitored and will be recorded." Staff who authorize an inmate to use an unposted telephone for a nonconfidential call shall inform that inmate before the call is made regarding the notice of monitoring/recording requirement.

(g) If staff designated by the institution head determine that an incoming call concerns an emergency or confidential matter, the caller's name and telephone number shall be obtained and the inmate promptly notified of the situation. The inmate shall be permitted to place an emergency or confidential call either collect or by providing for the toll to be deducted from the inmate's trust account. A confidential call shall not be made on an inmate telephone and shall not be monitored or recorded. If a call is determined to be an attorney/inmate confidential phone call, in order for the inmate to place or receive the call it must have already received approval/clearance in accordance with subsections (g)(1), (g)(2) and (g)(4).

(1) Confidential calls may be approved on a case-by-case basis by the institution head or designee, upon written request from an attorney on the attorney's office letterhead stationery. The request shall be made by written request via U. S. Postal Service or facsimile to the Institution Litigation Coordinator or designee. To obtain approval/clearance, the attorney shall provide in writing the following personal and professional information:

(A) Name,

(B) Mailing address,

(C) Date of Birth,

(D) Valid driver's license or state-issued identification card number.

(E) Proof of current registry and good standing with a governing bar association, and

(F) Indication of the jurisdiction(s) licensed to practice law. If the requesting attorney wishes to have a representative conduct the confidential phone call, the attorney representative must provide all applicable information listed above in addition to the attorney submitting their information. Refer to Title 15, subsection 3178(c)(1) for attorney representative criteria.

(2) Requesting attorney/attorney representative shall report any prior felony convictions or pending arrest dispositions, describe and explain any prior suspension or exclusion from a correctional facility, and declare under penalty of perjury one or more of the following:

(A) They are the named inmate's attorney either by appointment by the court or at the inmate's request,

(B) They have been requested by a judge to interview a named inmate for purposes of possible appointment as counsel by the same court,

(C) They are requesting to call a named inmate who may be a witness directly relevant to a legal process, purpose, or proceeding,

(D) They are seeking to interview a named inmate, at the request of the inmate, for the purpose of representation of the inmate in a legal process, for a legal purpose or in a legal proceeding, and

(E) They have been requested by a third party to consult with the named inmate when the inmate cannot do so because of a medical condition, disability or other circumstance.

(3) Any false statement or deliberate misrepresentation of facts specific to the information required in subsection (g)(2) shall be grounds for denying the request or cause for subsequent suspension or exclusion from all institutions/facilities administered by the department.

(4) Upon receipt of the information specified in (g)(1), a California law enforcement telecommunications system (CLETS) check of the attorney/attorney representative through the Department of Justice and verification of the attorney's credential through the governing state bar will be conducted. Once the clearance and state bar verification have been obtained and approved the attorney shall be contacted to schedule the confidential telephone call with the specified inmate. Attorneys and attorney representatives shall immediately report to the Institution Litigation Coordinator any change in personal or professional information, arrest history and or pending dispositions and declarations made in subsections (g)(1) and (g)(2) to retain their approval/clearance. In addition, a CLETS check will be conducted at least annually and as needed based on changes provided to the above listed information or information from any source that such changes had occurred.

(5) The date, time, duration, and place where the inmate will make or receive the call, and manner of the call are within the discretion of the institution head, except as restricted herein. A confidential call from an inmate shall be placed as a collect call or by providing for the toll to be deducted from the inmate's trust account and made from a prison telephone or, with appropriate authentication of the caller, may be received from an attorney.

(6) It is within the discretion of the institution head, or his/her designee, to approve or deny a confidential call. As long as the attorney/client communication privilege is not violated, a confidential call may be denied where the institution head, or his/her designee, determines that normal legal mail or attorney visits were appropriate means of communication and were not reasonably utilized by the inmate or attorney. Where demand for confidential calls seriously burdens institutional operations, the institution head, or his/her designee, shall prioritize confidential calls.

(7) Emergency calls on prison telephones between an inmate and clergy, other religious advisors, or health care professionals shall be approved or denied on a case-by-case basis by staff designated by the institution head.

(8) Inmates, approved attorneys/attorney representatives and pending approval confidential phone call applicants may appeal any departmental policies, staff decisions and institution/facility procedures related to confidential phone calls by following the appeals process as contained in Title 15, Section 3179. Appeals Related to Visiting. Title 15, Section 3179 applies in its entirety.

(h) Telecommunication Device for the Deaf (TDD) telephones shall be made available to inmates with a documented severe hearing impairment for personal, emergency, and confidential calls, which shall be subject to the provisions of this section.

(1) Assistive device telephones and additional time on telephones may be necessary to provide accommodations for inmates and their callers with disabilities.

(2) The facility shall provide for the procedures necessary to ensure effective telephone communications for inmates with disabilities and/or the disabled person(s) with whom they are communicating.

(i) All calls made on inmate telephones shall have an announcement before and at random intervals during the calls stating that the call is from an inmate at a California state correctional facility and is being recorded.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.

HISTORY:

1. Amendment of subsection (d) filed 7-29-76; effective thirtieth day thereafter (Register 76, No. 31).
2. Amendment of subsection (c) filed 2-16-83; effective thirtieth day thereafter (Register 83, No. 8).
3. Amendment filed 7-8-93; operative 8-9-93 (Register 93, No. 28).
4. New subsection (k) filed 6-17-94 as an emergency; operative 6-17-94 (Register 94, No. 24). A Certificate of Compliance must be transmitted to OAL by 10-15-94 or emergency language will be repealed by operation of law on the following day.

5. Certificate of Compliance as to 6-17-94 order transmitted with amendments to OAL 10-17-94 and filed 12-1-94 (Register 94, No. 48).
6. Amendment filed 7-28-97 as an emergency; operative 7-28-97 (Register 97, No. 31). Pursuant to Penal Code section 5058(e), a Certificate of Compliance must be transmitted to OAL by 1-5-98 or emergency language will be repealed by operation of law on the following day.
7. Editorial correction of subsection (c)(6) (Register 98, No. 6).
8. Certificate of Compliance as to 7-28-97 order, including further amendments, transmitted to OAL 12-17-97 and filed 2-2-98 (Register 98, No. 6).
9. Amendment of subsections (g)–(g)(1), including renumbering of portion of subsection (g)(1) to new subsection (g)(5), new subsections (g)(1)(A)–(F), renumbering of former subsections (g)(2)–(3) to new subsections (g)(6)–(7) and new subsections (g)(2)–(4) and (g)(8) filed 1-8-2008; operative 2-7-2008 (Register 2008, No. 2).
10. Amendment of subsection (b) filed 9-24-2013 as an emergency; operative 9-24-2013 (Register 2013, No. 39). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 3-3-2014 or emergency language will be repealed by operation of law on the following day.
11. Certificate of Compliance as to 9-24-2013 order transmitted to OAL 2-20-2014 and filed 3-24-2014 (Register 2014, No. 13).

3283. Unauthorized Persons.

Persons must not be permitted to be on institution grounds or in community correctional centers without a legitimate purpose for being there, nor shall persons be allowed to contact inmates without authorization to do so.

Comment: Former DP-4214, unauthorized persons.

3284. Unattended Vehicles.

Ignition switches must be locked and keys must not be left in any unattended vehicle on institution or community correctional center grounds. Under no circumstances may alcoholic beverages, drugs, firearms, toy guns, ammunition, or other items, which are illegal or threaten the security of the institution be left in any unattended vehicle on institution or community correctional center grounds.

Comment: Former DP-4215, unattended vehicles.

3285. Association with Inmates.

Persons who are not department employees, but who work with or near inmates are to be informed of the laws and regulations governing association with prison inmates. Such persons will be given, and be asked to read and acknowledge receipt of, Primary Laws, Rules, and Regulations Regarding Conduct and Association with State Prison Inmates, CDC Form 181.

NOTE: Authority cited: section 5058, Penal Code. Reference: section 5054, Penal Code.

HISTORY:

1. Amendment filed 2-24-77; effective thirtieth day thereafter (Register 77, No. 9).
2. Change without regulatory effect amending section and adding Note filed 5-7-98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 19).

3286. Controlling and Reporting Fights.

When inmates fight, the participants must be separated at once. The participants will be placed in detention, unless in the judgment of a superior officer circumstances do not warrant such action. Employees who observe the fight will prepare a written report stating clearly everything they observed, and will submit this report to the disciplinary officer. The employee who renders the report should, if possible, state who was the aggressor. The report will include the time, place, names of participants, name(s) of aggressor(s), the reason for the fight if it can be ascertained, weapons used if any, names of witnesses, action taken if any, and recommendations to prevent further recurrences.

Comment: Former DP-4217, controlling and reporting fights.

3287. Cell, Property and Body Inspections.

(a) Insofar as possible, a cell, room, or dormitory bed area and locker will be thoroughly inspected immediately upon its vacancy and again, if there is a significant time lapse, before another inmate is assigned to the same cell, room or dormitory bed and locker. Such inspections are required and must be recorded for segregation, isolation and security housing unit cells. The purpose of such inspections is to fix responsibility or the absence of responsibility for security and safety hazards and serious contraband found in the cell, room or dormitory area.

(1) Occupied cells, rooms and dormitory areas, including fixtures and lockers, and any personal and state-issued property of the occupant will be inspected on an infrequent and unscheduled basis. More frequent inspections will be conducted in specialized housing units, depending upon the security requirements of the unit and the risk an individual inmate presents to that security.

(2) Cell and property inspections are necessary in order to detect and control serious contraband and to maintain institution security. Such inspections will not be used as a punitive measure nor to harass an inmate. Every reasonable precaution will be taken to avoid damage to personal property and to leave the inmate's quarters and property in good order upon completion of the inspection.

(3) An inmate's presence is not required during routine inspections of living quarters and property when the inmate is not or would not otherwise be present. During special inspections or searches initiated because the inmate is suspected of having a specific item or items of contraband in his or her quarters or property, the inmate should be permitted to observe the search when it is reasonably possible and safe to do so.

(4) The inmate will be given a written notice for any item(s) of personal and authorized state-issued property removed from his or her quarters during an inspection and the disposition made of such property. The notice will also list any contraband picked up or any breach of security noted during the inspection, and the follow-up action intended by the inspecting officer.

(b) An inmate is subject to an inspection of his or her person, either clothed or unclothed, when there is a reasonable suspicion to believe the inmate may have unauthorized or dangerous items concealed on his or her person, or that he or she may have been involved in an altercation of any kind. Such inspections may also be a routine requirement for inmate movement into or out of high security risk areas. Random or spot-check inspections of inmates may also be authorized by the institution head to prevent possession and movement of unauthorized or dangerous items and substances into, out of, or within the institution. Visual daily inspections of inmates shall be made to ensure compliance with departmental grooming standards. All such inspections shall be conducted in a professional manner which avoids embarrassment or indignity to the inmate. Whenever possible, unclothed body inspections of inmates shall be conducted outside the view of others.

(1) Correctional employees, other than qualified medical staff, shall not conduct unclothed body inspections of inmates of the opposite sex except under emergency conditions with life or death consequences.

(2) Routine inspections of clothed male inmates may be performed by employees of either sex.

(3) Body inspection of clothed female inmates shall be conducted by female correctional employees only, except in emergency situations requiring the immediate search of inmates to avoid the threat of death, escape, or great bodily injury. In such emergency situations, male correctional employees may conduct clothed body

inspections only until sufficient numbers of female correctional employees are available to assume critical body search duties.

(4) Male correctional employees shall not, under any circumstances, perform non-emergency body searches of female inmates.

(5) Any inspection of body cavities, other than visual or metal detector inspections, will be conducted in a medical setting under the direct supervision of a physician. Any physical intrusion into body cavities must be performed by a physician, and then only after all less obtrusive methods have failed to bring the inspection to a conclusion.

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

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

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

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

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

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

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

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

(d) A written record shall be maintained of the disposition of contraband and stolen or missing property confiscated as the result of cell, property, or body inspections.

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

HISTORY:

1. Amendment filed 5-13-77; effective thirtieth day thereafter (Register 77, No. 20).
2. Amendment of subsection (a)(3) filed 2-22-79; effective thirtieth day thereafter (Register 79, No. 8).
3. Amendment of subsection (b)(1) filed 8-22-79; effective thirtieth day thereafter (Register 79, No. 34).
4. Amendment of subsection (b) and new subsection (c) and (d) filed 2-8-88; operative 3-9-88 (Register 88, No. 7).
5. Editorial correction of printing error in subsection (b) (Register 92, No. 5).
6. Amendment of subsections (b) and (c) filed 10-16-97 as an emergency; operative 10-16-97 (Register 97, No. 42). Pursuant to Penal Code section 5058(e), a Certificate of Compliance must be transmitted to OAL by 3-25-97 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 10-16-97 order transmitted to OAL 3-23-98 and filed 5-4-98 (Register 98, No. 19).
8. Amendment of subsection (b)(1), new subsections (b)(2)–(4), subsection renumbering and amendment of Note filed 5-26-2005 as an emergency; operative 5-26-2005 (Register 2005, No. 21). Pursuant to Penal Code section 5058(e), a Certificate of Compliance must be transmitted to OAL by 11-2-2005 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 5-26-2005 order transmitted to OAL 9-28-2005 and filed 11-1-2005 (Register 2005, No. 44).
10. Amendment of subsection (b) filed 12-21-2009; operative 1-20-2010 (Register 2009, No. 52).
11. Amendment of section heading and new subsections (c)(1)–(c)(3)(B) filed 10-8-2014 as an emergency; operative 10-8-2014 (Register 2014, No. 41). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 3-17-2015 or emergency language will be repealed by operation of law on the following day.
12. Amendment of section heading and new subsections (c)(1)–(c)(3)(B) refiled 3-17-2015 as an emergency; operative 3-17-2015 (Register 2015, No. 12). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 6-15-2015 or emergency language will be repealed by operation of law on the following day.
13. Certificate of Compliance as to 3-17-2015 order, including amendment of Note, transmitted to OAL 6-15-2015 and filed 7-27-2015; amendments effective 7-27-2015 pursuant to Government Code section 11343.4(b)(3) (Register 2015, No. 31).

3288. Notice to Public.

(a) Warning signs will be posted at the entrance to all public and business roadways onto the grounds of institutions, camps and other department facilities where inmates or parolees are housed, and at all sallyports and pedestrian entrances into such facilities. The signs will be in both English and Spanish and will, at a minimum, display the following information:

(1) The name of the institution, camp or facility, and the fact that it is a facility of the California Department of Corrections and Rehabilitation.

(2) The items that cannot be brought onto institution grounds. Model language: It is unlawful to bring alcohol, drugs, weapons, explosives, tear gas or tear gas weapons onto prison property.

(3) A warning that entrance on the property constitutes consent to be searched. Model language: By entering these grounds you consent to the search of your person, property and vehicle.

(b) Entrance roadway signs and the lettering will be of sufficient size to attract attention and be easily read by passing motorists. Smaller but conspicuous signs will be posted at sallyports and pedestrian entrances.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.

HISTORY:

1. New section filed 3-22-78; effective thirtieth day thereafter (Register 78, No. 12).
2. Amendment of subsection (a)(2) filed 4-18-80; effective thirtieth day thereafter (Register 80, No. 16).
3. Change without regulatory effect amending subsection (a)(1) filed 3-11-2013 pursuant to section 100, title 1, California Code of Regulations (Register 2013, No. 11).

3289. Trespass.

(a) All areas of institutions including buildings and grounds are closed to the general public, including employees of the department during their off-duty hours, at all times except for the purpose of conducting lawful business and engaging in activities authorized in advance by the warden, superintendent or official in charge. Entry on institution property for unauthorized purposes will be considered trespass as provided in section 602(j) of the Penal Code.

(b) Without regard for the reasons an individual or group may have entered institution property, refusal or failure to leave the property when requested to do so by the warden, superintendent, official in charge or by an official authorized to act for the warden, superintendent or official in charge, will be considered trespass as provided in section 602(p) of the Penal Code.

NOTE: Authority cited: section 5058, Penal Code. Reference: section 5054, Penal Code.

HISTORY:

1. New section filed 8-1-78 as an emergency; effective upon filing (Register 78, No. 31).
2. Certificate of Compliance filed 11-21-78 (Register 78, No. 47).

3290. Methods for Testing of Controlled Substances or for Use of Alcohol.

(a) The department shall prescribe the products, equipment, and methods for testing suspected controlled substances or for the use of alcohol. "Field" or on-site testing shall be conducted only by trained personnel.

(b) Field tests may be performed on any suspected substance found on institution property or in the possession or under the control of any inmate, or in the possession or under the control of persons other than inmates who come on institution property. Field tests of urine samples may be performed as a screening process prior to laboratory testing.

(c) The securing of a urine sample from an inmate, for the purpose of testing for the presence of controlled substances or for use of alcohol may be done for the following reasons:

(1) When there is reasonable suspicion to believe the inmate has possessed, distributed, used, or is under the influence of a controlled substance or alcohol.

(2) When mandatory random testing is known to the inmate to be a condition for the inmate's participation in a specific program, assignment, or activity.

(3) As part of an authorized disposition of a disciplinary hearing.

(4) The inmate is selected by the department's mandatory standardized random drug testing selection process.

(A) A small percentage of inmates will be randomly selected at predetermined regular intervals (e.g. weekly) from a data file produced from the department's Strategic Offender Management System.

(B) Inmates shall be tested each time they are selected; however, shall not be subject to additional disciplinary action for a positive test if that positive test is cumulative evidence of a previously charged disciplinary action.

(d) Inmates must provide a urine sample when ordered to do so pursuant to these regulations, for the purpose of testing for the presence of controlled substances or the use of alcohol.

(e) On-site testing of urine samples are presumptive in nature; however, the results may be used to charge an inmate with a serious rules violation. Disciplinary action for possession of a controlled substance or use of a controlled substance based solely on the field test shall not include the loss of work/behavior credits or pay, or loss of a paid work assignment unless a laboratory has confirmed the results of a positive field test or the inmate has admitted to possessing the controlled substance, accepts the results of a positive field test, waives the requirement of testing by a laboratory, and has signed a CDCR 128-B, General Chrono to that effect.

(f) Field testing of seized substances that are suspected of being a controlled substance are presumptive, however the results may be used to charge an inmate with a serious rules violation. Disciplinary action for possession of a controlled substance based solely on a field or on-site test shall not include the loss of work/behavior credits, or pay, or loss of paid work assignment unless a laboratory has confirmed that the suspected substance is in fact a controlled substance, or the inmate has admitted to possessing the controlled substance, accepts the results of a field test, and waives the requirement of testing by a laboratory, and has signed a document to that effect.

(g) The positive test results from a urine sample submitted for testing for the presence of an unauthorized controlled substance or alcohol that has been confirmed as positive by a departmentally approved testing method may be considered as sufficient evidence to support a guilty finding for use of the controlled substance or alcohol.

(h) When evidence remaining after a field test or resulting from a field test is not suitable or sufficient for submission to a laboratory for confirmation of the field test, the field test results may be considered in a disciplinary hearing for possession of a controlled substance. Under such circumstances, a finding of guilty shall be based upon the preponderance of all evidence presented at the disciplinary hearing. Although no credit loss action may be taken when the only evidence being considered by the hearing official is the result from a field test, other authorized disciplinary actions may be taken pursuant to section 3315 for violations of 3016(a).

(i) The identification of unauthorized medication, to include any medication considered to be a controlled substance as described in section 3000, must be confirmed by a licensed pharmacist and that confirmation may be used as evidence in a disciplinary hearing. There shall be no requirement for laboratory testing of intact medications when identification of the controlled medication has been confirmed by a pharmacist. The pharmacist will indicate whether the medication contains any of the substances listed in Health and Safety Code (H&SC) section 11007 to enable the determination of the appropriate classification level pursuant to section 3323 relative to a disciplinary violation for unauthorized possession or distribution of the medication.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 2932, 4573.6 and 5054, Penal Code.

HISTORY:

1. Renumbering of former Section 3290 to Section 3295 and new Section 3290 filed 8-18-78; effective thirtieth day thereafter (Register 78, No. 33).
2. Amendment of subsections (a) and (e) and new subsection (h) filed 8-7-87 as an emergency; operative 8-7-87 (Register 87, No. 34). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 12-7-87.
3. Certificate of Compliance as to 8-7-87 order transmitted to OAL 12-4-87; disapproved by OAL (Register 88, No. 16).
4. Amendment of subsections (a) and (e) and new subsection (h) filed 1-4-88 as an emergency; operative 1-4-88 (Register 88, No. 16). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 5-3-88.
5. Certificate of Compliance as to 1-4-88 order transmitted to OAL 5-3-88; disapproved by OAL (Register 88, No. 24).
6. Amendment of subsections (a) and (e) and new subsection (h) filed 6-2-88 as an emergency; operative 6-2-88 (Register 88, No. 24). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 9-30-88.
7. Certificate of Compliance transmitted to OAL 9-26-88 and filed 10-26-88 (Register 88, No. 50).
8. Amendment of subsections (c), (g), and (h) filed 6-2-95 as an emergency; operative 6-5-95 (Register 95, No. 22). A Certificate of Compliance must be transmitted to OAL by 11-12-95 pursuant to Penal Code section 5058(e)(1) or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 6-2-95 order transmitted to OAL 10-2-95 and filed 10-17-95 (Register 95, No. 42).
10. Amendment filed 8-27-98 as an emergency; operative 8-27-98 (Register 98, No. 35). A Certificate of Compliance must be transmitted to OAL by 2-3-99 or emergency language will be repealed by operation of law on the following day.
11. Amendment refiled 2-3-99 as an emergency, including further amendment of subsection (g); operative 2-3-99 (Register 99, No. 6). Pursuant to Penal Code section 5058(e), a Certificate of Compliance must be transmitted to OAL by 7-13-99 or emergency language will be repealed by operation of law on the following day.

12. Certificate of Compliance as to 2-3-99 order transmitted to OAL 5-12-99 and filed 6-24-99 (Register 99, No. 26).
13. Amendment of section heading and section filed 8-4-2008; operative 8-4-2008 pursuant to Government Code section 11343.4 (Register 2008, No. 32).
14. Amendment of subsection (c)(1) filed 12-21-2009; operative 1-20-2010 (Register 2009, No. 52).
15. Amendment of subsections (b) and (c)(4), new subsections (c)(4)(A)–(B) and (e), subsection relettering and amendment of newly designated subsection (f) filed 3-18-2014 as an emergency; operative 3-18-2014 (Register 2014, No. 12). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 8-25-2014 or emergency language will be repealed by operation of law on the following day.
16. Certificate of Compliance as to 3-18-2014 order transmitted to OAL 8-21-2014 and filed 9-18-2014 (Register 2014, No. 38).

3291. Employee Law Enforcement and Peace Officer Personnel.

(a) Law Enforcement Responsibility. All employees of the Department shall be responsible to enforce laws, regulations and procedures which govern the actions and activities of inmates, parolees and of persons who come into contact with inmates and parolees. Employees who are not designated as peace officers, whose normal assigned job duties do not require custody and supervision of inmates or parolees, or in situations where it would be inappropriate or unsafe to intervene in unauthorized actions or activities, shall notify or seek the assistance of other employees, including peace officer employees. In an emergency, all employees shall respond as directed by proper authority.

(b) Peace Officer Personnel. Peace officers are departmental employees holding peace officer positions as defined by law or as designated by the Secretary of the California Department of Corrections and Rehabilitation (CDCR). Non-peace officer employees temporarily assigned to perform only the administrative duties of positions held by peace officers shall not be designated as peace officers.

(c) The peace officer authority of employees is outlined in Penal Code (PC) sections 830.2(d)(1) and (2) and PC section 830.5. During state emergencies and activations of state mutual aid agreements, CDCR peace officer authority is provided in Government Code sections 8597, 8598 and 8698.

(d) In addition to being designated peace officers as described in subsections 3291(b) and (c), parole agents' peace officer authority extends to the enforcement of conditions of parole imposed upon persons on parole in this state and to violations of any penal provisions of law which is discovered in the course of their employment.

(e) In addition to being designated peace officers as described in subsections 3291(b) and (c), the peace officer authority of agents of the Office of Correctional Safety peace officers extends throughout the state while performing their primary job duties, including the investigation and apprehension of parole violators and the investigation of the violation of any penal provisions of law which is discovered in the course of their employment, and to coordination of the Department's law enforcement activities with those of other law enforcement and criminal justice agencies.

(f) In addition to being designated peace officers as described in subsections 3291(b) and (c), the authority of peace officer members of the Office of Internal Affairs, who meet the training standards described in PC Section 830.2(d)(2), extends throughout the state while they are performing their primary job duties, including criminal investigations of departmental personnel and the coordination of those activities with other criminal justice agencies.

NOTE: Authority cited: Sections 830.5(f) and 5058, Penal Code. Reference: Sections 830.2(d), 830.5(a), 830.5(b) and 5054, Penal Code; and Sections 8597, 8598 and 8698, Government Code.

HISTORY:

1. New section filed 8-22-79; effective thirtieth day thereafter (Register 79, No. 34).
2. Amendment of subsection (b) filed 12-18-80 as an emergency; effective upon filing (Register 80, No. 51). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 4-17-81.
3. Order of Repeal of 12-18-80 order filed 12-26-80 by OAL pursuant to Government Code Section 11349.6 (Register 80, No. 52).
4. Amendment of subsection (b) filed 9-24-81; effective thirtieth day thereafter (Register 81, No. 39).
5. Amendment of subsection (b) filed 10-27-82; effective thirtieth day thereafter (Register 82, No. 44).
6. Amendment of section heading, section and Note filed 2-14-2001; operative 3-16-2001 (Register 2001, No. 7).
7. Change without regulatory effect amending subsections (a)–(c) and (e) filed 4-18-2008 pursuant to section 100, title 1, California Code of Regulations (Register 2008, No. 16).
8. Amendment of subsections (b) and (c) and Note filed 5-26-2011; operative 6-25-2011 (Register 2011, No. 21)

3292. Arrest and Detention.

(a) It is the policy of the department to arrest and detain civilians only when their unlawful actions or activities present an immediate and significant threat to the custody and control of inmates, parolees, employees and the public.

(b) It is the policy of the department to only effect the arrest and detention of a civilian when there is sufficient cause to believe that the individual's unlawful action or activity is deliberate and intended for a purpose described in (a). Suspicion of unlawful actions or activities will not be cause for the arrest and detention of an individual, but may be cause for ordering or escorting the individual off departmental property or institution grounds, and for referral to local authorities.

(c) Wardens, superintendents and administrators of institutions and facilities which house inmates or parolees will establish and maintain up-to-date local procedures reflecting the policies set forth in this section. Such local procedures will include provisions for informing individuals of their rights and for referral of cases to local authorities. Such procedures will be reviewed annually by the administrator, and will be made available for departmental audit and for inspection as a public record when requested.

NOTE: Authority cited: section 5058, Penal Code. Reference: section 5054, Penal Code.

HISTORY:

1. New section filed 8-22-79; effective thirtieth day thereafter (Register 79, No. 34).

3293. Polygraph Examinations.

(a) Polygraph examinations may be administered by departmental staff to inmates, parolees, and employees in the course of an investigation of official matters, under the following conditions:

(1) The examinee has, without coercion, signed a written statement of consent to the examination.

(2) The polygraph examiner is a Office of Correctional Safety staff member.

(3) The Assistant Secretary or designee, Office of Correctional Safety, has approved the examination.

(b) Polygraph examinations shall not be used as an alternative to regulatory requirements for determining a person's guilt or innocence of charges in disciplinary matters.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 3307, Government Code; Section 5054, Penal Code; and *Long Beach City Employee's Association* v. *City of Long Beach* (1986) 41 Cal.3rd 937, 227 Cal.Rptr. 90.

HISTORY:

1. New section filed 2-27-89; operative 3-29-89 (Register 89, No. 10).
2. Change without regulatory effect of subsections (a) and (b) pursuant to section 100, title 1, California Code of Regulations filed 2-21-90 (Register 90, No. 11).
3. Change without regulatory effect amending section filed 10-29-90 pursuant to section 100, title 1, California Code of Regulations (Register 91, No. 6).
4. Change without regulatory effect amending subsections (a)(2) and (a)(3) filed 4-18-2008 pursuant to section 100, title 1, California Code of Regulations (Register 2008, No. 16).

3294.1. Inmate Operation of a Motor Vehicle.

Notwithstanding provisions of the Vehicle Code, inmates shall not drive any vehicle on a public road except in extreme emergency, when taking a Department of Motor Vehicles' Driver's test, or when their use of a personal vehicle is specifically authorized. Inmates may drive a state vehicle on off highway work projects or on facility grounds only when specifically authorized by staff or by the inmate's work supervisor.

NOTE: Authority cited: section 5058, Penal Code. Reference: Sections 4570 and 5054, Penal Code.

HISTORY:

1. Renumbering of former section 3073 to new section 3294.1, including amendment of section and section heading filed 10-27-93; operative 11-26-93 (Register 93, No. 44).

3294.5. Inmate Name Change.

(a) All inmate or parolee requests for a legal name change shall initially be reviewed by the Warden or Regional Parole Administrator who shall either recommend approval for a legal name change or deny the request for a legal name change.

(b) If the request is denied, the Warden or Regional Parole Administrator shall respond to the inmate or parolee in writing with the reasons for denial. A copy of the denial shall be placed in the miscellaneous section of the inmate/parolee's central file.

(c) If the Warden finds reasons that exist to warrant an inmate's request for a name change, then the Warden shall forward the request to the Institutions Division Regional Administrator, along with a memorandum listing the reasons for recommending approval. A copy of the memorandum shall be placed in the miscellaneous section of the inmate's central file.

(d) If the regional parole administrator finds reasons that exist to warrant a parolee's request for a name change, then the regional parole administrator shall forward the request to the deputy director, Division of Adult Parole Operations (DAPO), along with a memorandum listing the reasons for recommending approval. A copy of the memorandum shall be placed in the miscellaneous section of the parolee's central file.

(e) If the Division of Adult Institutions regional administrator or the deputy director, DAPO, agrees with the recommendation to approve the request for a name change of an inmate or parolee, a letter shall be forwarded to the court explaining why the Department is recommending approval for a name change, along with the inmate/parolee's request. A copy of the letter shall be placed in the miscellaneous section of the inmate/parolee's central file.

(f) If the Division of Adult Institutions regional administrator or the deputy director, DAPO, denies the request for a name change of an inmate or parolee, a letter shall be forwarded to the inmate or parolee with the reasons for denial. A copy of the letter shall be placed in the miscellaneous section of the inmate/parolee's central file.

(g) Upon receiving final approval from the court with the ordered name change and receiving departmental approval, the Correctional Case Records Manager shall notify the facility mailroom and visiting room of the name change if the offender is incarcerated; or shall notify the agent of record if the offender is on parole. The court order shall be placed in the miscellaneous section of the inmate/parolee's central file, along with other documents related to the request for a name change.

(h) The mailroom and visiting room staff of the facility shall update their records to reflect the additional name of the inmate.

(i) The original commitment name of the inmate or parolee shall remain on all departmental records and shall continue to be used on all departmental records.

(j) The new legal name change shall be entered into the Offender Based Information System (OBIS) under the section "Also Committed As."

(k) The inmate shall be notified to inform all persons who may visit or write him/her that they must use the inmate's departmental identification number when using the inmate's new name.

(*l*) If the court ordered name change is received without departmental approval, this clearly indicates that the inmate/parolee has not followed proper procedure to legally change his/her name. In this case, the warden or regional parole administrator shall notify the issuing court in writing that the name change cannot legally be changed without the Secretary's approval pursuant to the Code of Civil Procedure, Section 1279.5. A copy of the letter shall be placed in the miscellaneous section of the inmate/parolee's central file and a copy shall be provided to the inmate/parolee.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code; and Section 1279.5, Code of Civil Procedure.

HISTORY:

1. New section filed 1-3-95 as an emergency; operative 1-3-95 (Register 95, No. 1). A Certificate of Compliance must be transmitted to OAL 6-12-95 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 1-3-95 order including amendment of subsection (*l*) transmitted to OAL 5-3-95 and filed 6-14-95 (Register 95, No. 24).
3. Amendment of subsections (d)–(f) and (*l*) filed 12-9-2008; operative 1-8-2009 (Register 2008, No. 50).
4. Change without regulatory effect amending subsections (e) and (f) filed 1-8-2014 pursuant to section 100, title 1, California Code of Regulations (Register 2014, No. 2).

Article 3. Escapes

3295. Duty of Employees to Prevent Escapes.

It is the duty of every employee to do everything possible to prevent the escape of an inmate.

Comment: Former DP-4301, duty of employees to prevent escapes.

HISTORY:

1. Renumbering of section 3290 to section 3295 filed 8-18-78; effective thirtieth day thereafter (Register 78, No. 33).

3296. Escape Pursuit Plan.

Each warden must have in effect at all times a plan of operations for the reporting of escapes, and for the pursuit and apprehension of escapees. Each employee must be instructed in the general and special procedures that he or she is to follow. Such plans must be in writing and be reviewed annually by the warden.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.

HISTORY:

1. Renumbering of Section 3291 to Section 3296 filed 8-18-78; effective thirtieth day thereafter (Register 78, No. 33).
2. Amendment of section and new Note filed 5-26-2011; operative 6-25-2011 (Register 2011, No. 21).

3297. Air Space Management.

(a) Staff and inmates shall be notified and warning signs posted to indicate that any inmate who without authorization moves toward an aircraft on or near facility property may be fired upon to prevent an escape.

(b) If an aircraft enters a facility's air space for an apparent escape attempt, staff shall act to prevent any escape.

(1) Firearms shall not be used to bring down or disable an aircraft in flight.

(2) If the aircraft is on the ground on or near facility property, staff shall take any action necessary, including use of firearms, to disable the aircraft.

(3) Return fire may be directed at an attacker within an aircraft if no other means is available to save the lives of innocent or uninvolved persons.

(4) Inmate failure to comply with orders to move away from any grounded aircraft shall be considered an attempt to escape.

NOTE: Authority cited: section 5058, Penal Code. Reference: Sections 835a and 5054, Penal Code.

HISTORY:

1. New section filed 12-20-91 as an emergency; operative 12-20-91 (Register 92, No. 4). A Certificate of Compliance must be transmitted to OAL 4-20-92 or emergency language will be repealed by operation of law on the following day.

Article 4. Disorders and Emergencies

3300. Prevention of Disorders.

It is the duty of every employee to do everything possible to prevent disorders. Each employee must be trained to be familiar with the procedures for handling disorders. Disorders and other emergencies must be reported to supervisory staff at the earliest possible moment. Whenever a disorder occurs, a prompt investigation will be made by the warden.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.

HISTORY:

1. Amendment of section and new Note filed 5-26-2011; operative 6-25-2011 (Register 2011, No. 21).

3301. Emergency Operations Plan.

Each warden must have in effect at all times an Emergency Operations Plan, approved by the Emergency Planning and Management Unit, to assist in the preparation for response to and recovery from "All Hazards" incidents. All hazards incidents are defined as any natural or manmade disasters or accidents that may significantly disrupt institutional operations or programs.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.

HISTORY:

1. Amendment of section heading and section and new Note filed 5-26-2011; operative 6-25-2011 (Register 2011, No. 21).

3302. (Reserved).

HISTORY:

1. Amendment filed 3-22-78; effective thirtieth day thereafter (Register 78, No. 12).
2. Repealer filed 5-26-2011; operative 6-25-2011 (Register 2011, No. 21).

3303. Safety and Security.

Institution heads shall maintain procedures for controlling the following safety and security hazards within facilities:

(a) Fire prevention and suppression.

(1) Mattresses, cushions, and pads shall not be used in the living areas of departmental facilities unless they are certified by the manufacturer as meeting the bureau of home furnishings' Technical Information Bulletin Number 121.

(2) Noncombustible receptacles shall be provided in inmate living areas for disposal of such forms of refuse as cans, paper, and dust, and the disposal of flammable liquids and rags shall be in accordance with the uniform fire code.

(3) Facilities with female inmates shall have a complement of female firefighters assigned to its fire department.

(4) Staff and inmates shall be familiar with fire evacuation routes, exits, and procedures. An evacuation drill shall be conducted quarterly on each watch. Where such drill would jeopardize personal safety or facility security, staff shall conduct a walk-through of the procedures.

(5) A facility's mutual aid participation shall not jeopardize the facility or violate minimum safety standards.

(b) Control of harmful physical agents and toxic or hazardous substances.

(1) No staff member or inmate shall use or handle harmful physical agents and toxic or hazardous substances as defined in 8 CCR, subchapter 7, Sections 3204(c)(13) and 5194(c), until trained in the safe handling of and emergency procedures for the use and handling of such agents or substances.

(2) Except for authorized use of gasoline, inmates shall not, without direct staff supervision, have access to harmful physical agents and hazardous or toxic substances, or the inventories of such agents or substances.

(c) Control of tools.

(d) Control of armory and armaments, including firearms, ammunition, chemical agents, and any explosives under the institution's control.

(e) Control of keys and security locking devices.

NOTE: Authority cited: section 5058, Penal Code. Reference: section 5054, Penal Code.

HISTORY:

1. Amendment filed 2-24-77; effective thirtieth day thereafter (Register 77, No. 9).
2. Amendment of subsection (b) and new subsections (b)(1)–(2) and Note filed 8-21-92; operative 9-21-92 (Register 92, No. 34).
3. Amendment of first paragraph and adoption of subsections (a)(1)–(5) and form filed 11-10-93; operative 12-22-93 (Register 93, No. 46).

DEPARTMENT OF CONSUMER AFFAIRS
BUREAU OF HOME FURNISHINGS

TECHNICAL BULLETIN NO. 121

FLAMMABILITY TEST PROCEDURE FOR MATTRESSES FOR USE IN HIGH RISK OCCUPANCIES

I. Scope

1. This test procedure is designed to test mattresses for use in occupancies that are identified as high risk. Such facilities might include, but are not limited to, jails, prisons, penal institutions, correctional facilities, juvenile detention centers, nursing homes, and health care facilities.

2. This test procedure is not intended to be used for the evaluation of residential mattresses.

II. Test Facility

(a) The described test procedure is a full-scale fire test. Small-scale fire test methods cannot be substituted for the described procedure.
(b) The test burn room shall be 12 x 10 feet or a close approximation with an 8 foot ceiling height. The room shall have no openings other than a doorway opening approximately 38 x 81 inches, located as indicated in Figure 1.
(c) The test burn room shall be instrumented to monitor temperature, carbon monoxide concentration, and mattress weight loss.
(d) The test room shall be unfurnished except for a mattress support that shall closely resemble a penal institution mattress spring unit, approximately 31 x 77 inches.
(e) The mattress spring unit shall be positioned as indicated in Figure 1.

III. Test Sample

The test sample shall consist of a typical institutional mattress, complete with cover, with approximate dimensions 30 x 76 inches and with thickness appropriate to the application.

IV. Test Conditioning

The test mattress and newsprint shall be conditioned for at least 48 hours prior to test at 70 ± 5°F and a relative humidity of less than 55%. Test materials shall be tested within 10 minutes of removal from such condition if test room conditions differ from the above.

V. Test Ignition Source

(a) The test ignition source shall be a galvanized metal container with ten (10) double sheets of loosely wadded newspaper.
(b) The dimensions of the metal container shall be approximately 10 inches high, 12-1/2 inches top diameter, and 9 inches bottom diameter.
(c) Each newsprint double sheet shall have the dimensions of 23 x 28 inches and an approximate weight of 18.5 ± 0.5 grams.
(d) The newsprint shall be positioned in the container so that it is approximately level with the top of the container.

VI. Test Procedure

(a) Place a weighed, conditioned, complete mattress on the spring support in a flat horizontal position as indicated in Figure 1.
(b) The entire mattress and support system shall be assembled on a device capable of monitoring the weight loss of the mattress during combustion.
(c) Position a thermocouple directly over the geometric center of the horizontal mattress surface and 1 inch below the ceiling.
(d) Place the newsprint filled metal container beneath the mattress and support such that the center of the container is at the geometric center of the bottom mattress surface.
(e) The height of the mattress support shall be adjusted so that the bottom surface of the mattress is 3 ± 1/4 inches above the top of the metal container.
(f) Start monitoring instrumentation. Ignite the newsprint with a match and allow combustion to continue until either:

1. All combustion has ceased; or
2. At least ten percent by weight of the mattress has been consumed.

VII. Test Criteria

A mattress fails to meet the requirements of this test procedure if any of the following criteria are exceeded:

1. Greater than ten (10) percent weight loss in the first ten (10) minutes of the test.
2. A temperature of 500°F or greater at the thermocouple above the test mattress at any time during the test.
3. Carbon monoxide concentration in excess of 1,000 p.p.m. at any point in the test room at any time during the test.

VIII. Caution

Full-scale fire tests can be dangerous. All tests should be supervised by experienced test personnel. Adequate fire suppression equipment and self-contained breathing devices must be available for test personnel. Products of combustion can be irritating and dangerous, therefore, test personnel must avoid exposure to smoke and gases produced during testing as much as possible. Full-scale fire tests should never be left unattended. Test personnel must be certain upon completion of the test that combustion is totally suppressed.

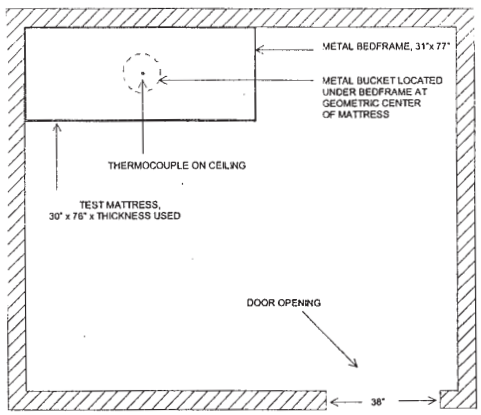

Figure 1

BURN ROOM FOR TESTING MATTRESSES FOR HIGH RISK OCCUPANCIES

3304. Hostages.

Employees must not permit inmates or others to use hostages to escape from custody or otherwise interfere with orderly institutional operations. Hostages will not be recognized for bargaining purposes. All inmates, visitors and staff will be informed of this regulation.

Comment: Former DP-4405, hostages.

Article 5. Inmate Discipline

3310. Definitions.

The following terms are defined for the purposes of this article:

(a) Camp means the type of subfacility of an institution which is normally located in a rural area and which has no secure (fenced or walled) perimeter. Camp inmates are generally assigned to conservation and/or road details.

(b) Community-access facility means a facility located in the community, administered by the Division of Adult Parole Operations, where inmates have access to the community for work or training and which has no secure (fenced or walled) perimeter.

(c) Community correctional facility means a facility located in the community, administered by the Parole and Community Services Division, where inmates do not have unsupervised access to the community and which has a secure (fenced) perimeter.

(d) Experienced means a permanent employee at the designated level, certified by the Chief Disciplinary Officer (CDO) or designee as competent to serve as a senior hearing officer or hearing officer, as specified. Requirements for certification shall include in-service or on-the-job training in disciplinary procedures, mental health assessment requirements, and observation of five serious/administrative disciplinary hearings. A probationary, limited term, or training and development employee at the designated staff level may be certified as experienced. Acting staff whose permanent position is at a level lower than that required shall not be assigned senior hearing officer/hearing officer responsibility.

(e) Facility means any institution; community-access facility or community correctional facility; or any camp or other subfacility of an institution under the jurisdiction of the department.

(f) Institution means a large facility or complex of subfacilities with a secure (fenced or walled) perimeter headed by a warden.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 5054, 6252 and 6260, Penal Code.

HISTORY:

1. Amendment of article 5 heading, repealer and new section filed 5-5-95; operative 6-5-95 (Register 95, No. 18).
2. Amendment of subsection (d) filed 8-4-2008; operative 8-4-2008 pursuant to Government Code section 11343.4 (Register 2008, No. 32).
3. Change without regulatory effect amending subsection (b) filed 1-8-2014 pursuant to section 100, title 1, California Code of Regulations (Register 2014, No. 2).
4. Amendment of subsection (d) filed 11-17-2015 as an emergency; operative 11-17-2015 (Register 2015, No. 47). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 4-25-2016 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 11-17-2015 order transmitted to OAL 4-20-2016 and filed 5-24-2016 (Register 2016, No. 22).

3311. Reporting Rule Violations.

NOTE: Authority cited: section 5058, Penal Code. Reference: section 5054, Penal Code.

HISTORY:

1. Amendment filed 2-15-80; effective thirtieth day thereafter (Register 80, No. 7).
2. Repealer filed 5-5-95; operative 6-5-95 (Register 95, No. 18).

3312. Disciplinary Methods.

(a) Inmate misconduct shall be handled by:

(1) Verbal Counseling. Staff may respond to minor misconduct by verbal counseling. When verbal counseling achieves corrective action, a written report of the misconduct or counseling is unnecessary.

(2) Counseling Only Rules Violation Report. When similar minor misconduct reoccurs after verbal counseling or if documentation of minor misconduct is needed, a description of the misconduct and counseling provided shall be documented on a Counseling Only Rules Violation Report. This Counseling Only Rules Violation Report is meant for documenting an event or misconduct on the part of the inmate; the Chrono is auto populated with the inmate's name number and date. A copy of the completed Counseling Only Rules Violation Report shall be provided to the inmate. Disposition of any contraband involved shall also be documented in the Counseling Only Rules Violation Report.

(3) Rules Violation Report. When misconduct is believed to be a violation of law or is not minor in nature, it shall be reported on a Rules Violation Report (RVR). The RVR is a computer generated standard form with information inputted by staff. The RVR will be digitally signed by the reporting employee. The RVR shall contain, at a minimum, the following elements: The charged inmates name, number, release date, facility, housing assignment, violation date, violation time, (Violation date and time means discovery date and time) whether or not the misconduct was related to Security Threat Group activity, circumstances surrounding the misconduct, the reporting employee's; name, and title, RVR log number, the violated CCR, Title 15 rule number, specific act, level, division, whether or not the charge will be referred for prosecution, reviewing supervisors name and title, and the classifying official's name and title. The RVR shall include; a section for the inmate to indicate whether or not they wish to postpone the RVR process if felony prosecution is likely, a section to indicate if they wish to request or waive an assignment of a Staff Assistant or Investigative Employee. A summary of disciplinary procedures and inmate rights is also provided to the inmate explaining the administrative hearing time frames, the roles of both the staff assistant and the investigative employee, and the referral for prosecution is explained. The inmate's appeal rights are also explained.

(A) Unless an inmate charged with serious misconduct requires temporary administrative segregation pursuant to section 3335(b) pending adjudication of the disciplinary charges, the inmate may be retained in regularly assigned housing, work, and program assignments.

(B) If the inmate is placed in segregated housing pending the disciplinary proceedings, the official making the housing decision shall ensure compliance with the provisions of article 7 of this subchapter.

(b) Chief Disciplinary Officer Review of Disciplinary Actions. All disciplinary methods and actions shall be reviewed by the chief disciplinary officer, who shall be the institution head or a designee not below the level of correctional administrator or parole administrator I.

(1) The chief disciplinary officer shall affirm, reverse or modify the disciplinary action and/or credit forfeiture. The chief disciplinary officer may order a different action, order a different method of discipline, dismiss a charge, order a rehearing of the charge, or combine any of these actions.

(2) Except upon discovery of information or evidence not available or reasonably discoverable at the time of a disciplinary action, an order for a different method of discipline or for rehearing of the

charges shall not result in greater penalty or more severe action than that originally taken.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 2932 and 5054, Penal Code.

HISTORY:

1. Amendment filed 5-13-77; effective thirtieth day thereafter (Register 77, No. 20).
2. Amendment of subsection (c) filed 2-15-80; effective thirtieth day thereafter (Register 80, No. 7).
3. Repealer of subsections (c) and (d) and new subsections (c), (d), (e), and (f) filed 4-18-80; effective thirtieth day thereafter (Register 80, No. 16).
4. Amendment of subsection (d) filed 5-4-83; designated effective 6-1-83 pursuant to Government Code section 11346.2(d) (Register 83, No. 19).
5. Amendment of subsection (b) filed 2-8-88; operative 3-9-88 (Register 88, No. 7).
6. Editorial correction of printing errors in CDC Forms 115 and 115–A and descriptive text (Register 92, No. 5).
7. Amendment including relocation of former subsections 3317(a)–(b)(2) to subsections 3312(a)(3)(A)–(B) filed 5-5-95; operative 6-5-95 (Register 95, No. 18).
8. Amendment of subsections (a)(2)–(3), new subsections (a)(3)(A)–(H) and subsection relettering filed 6-2-2016 as an emergency; operative 6-2-2016 (Register 2016, No. 23). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 11-9-2016 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 6-2-2016 order, including amendment of subsections (a)(2)–(3), repealer of subsections (a)(3)(A)–(H) and subsection relettering, transmitted to OAL 11-7-2016 and filed 12-22-2016; amendments effective 12-22-2016 pursuant to Government Code section 11343.4(b)(3) (Register 2016, No. 52).

3313. Classification of Rules Violation Report and Notice of Pending Charges.

(a) Each RVR shall be classified by designated staff not below the level required to conduct serious disciplinary hearings. Exception: In facilities with only one individual at the rank of correctional lieutenant or higher, an experienced correctional sergeant may classify rule violations.

Reports shall be classified as administrative or serious pursuant to sections 3314 and 3315.

(1) A CDC Form 804 (Rev. 08/00), Notice of Pending CDC-115, shall be completed by the classifying official and forwarded to Case Records within 48 hours of the inmate being charged with a serious level offense (Division "F" through "A-1").

(A) For parole violators who are charged with any Division "A", "B", or "C" offense, or any inmate who refuses to sign general and/or special conditions of parole or any form required by the Department of Justice explaining his/her responsibility to register under Penal Code section 290, Case Records staff shall ensure that the CDC Form 804 is expedited to the Classification and Parole Representative to ensure revocation or revocation extension processes are initiated.

(b) Staff who review or classify a RVR shall not serve as the disciplinary hearing official for that rule violation.

(c) The classification of a RVR may be changed as follows:

(1) Before the disciplinary hearing, the official who initially classified the RVR or a staff member at a higher level may change the classification of the RVR.

(2) During the disciplinary hearing, the official conducting the hearing may reduce a serious classification to administrative as a finding of the hearing if the reduced charge meets the criteria of an administrative violation as described in section 3314.

(3) After the disciplinary hearing, the chief disciplinary officer may reduce a serious classification to administrative if the reduced charge meets the criteria of an administrative violation as described in section 3314.

(4) After the disciplinary hearing, an administrative classification shall not be changed to serious unless the chief disciplinary officer or director orders a rehearing of the charges as a serious rule violation.

(A) When a rehearing is ordered by the chief disciplinary officer or director, the inmate shall be provided all rights and procedural safeguards of a serious rule violation hearing.

(B) An order for a rehearing shall be in writing and shall include the reasons for the order. A copy of the order shall be provided to the inmate.

(C) Time limitations relative to the re-issued RVR shall commence on the date the chief disciplinary officer issues the order to re-hear pursuant to section 3320(a). Credit forfeiture will not be allowed if the time limitations were violated on the original RVR that was ordered re-issued/re-heard.

(5) If the RVR is reclassified from administrative to serious, the inmate shall receive written notice and shall be subject to the provisions of Section 3315 of these regulations.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 2079, 2932 and 5054, Penal Code; *In re Hamilton* (1991) 230 Cal. App.3d 1592, 281 Cal. Rptr. 900.

HISTORY:

1. Amendment filed 2-24-77; effective thirtieth day thereafter (Register 77, No. 9).
2. Amendment filed 5-13-77; effective thirtieth day thereafter (Register 77, No. 20).
3. Repealer and new section filed 4-18-80; effective thirtieth day thereafter (Register 80, No. 16).
4. Amendment of subsection (c) filed 5-4-83; designated effective 6-1-83 pursuant to Government Code Section 11346.2(d) (Register 83, No. 19).
5. Amendment of section heading, section and Note filed 5-5-95; operative 6-5-95 (Register 95, No. 18).
6. Change without regulatory effect amending Note filed 11-10-97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 46).
7. Editorial correction establishing correct hierarchy for subsection designators (Register 2000, No. 23).
8. Amendment of subsection (b) filed 1-9-2004 as an emergency; operative 1-9-2004 (Register 2004, No. 2). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 6-17-2004 or emergency language will be repealed by operation of law on the following day.
9. Amendment of subsection (b) refiled 6-17-2004 as an emergency; operative 6-17-2004 (Register 2004, No. 25). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 11-24-2004 or emergency language will be repealed by operation of law on the following day.
10. Certificate of Compliance as to 6-17-2004 order transmitted to OAL 11-16-2004 and filed 12-29-2004 (Register 2004, No. 53).
11. New subsections (a)(1) and (a)(1)(A), amendment of subsections (c)(2)–(3) and new subsection (c)(4)(C) filed 8-4-2008; operative 8-4-2008 pursuant to Government Code section 11343.4 (Register 2008, No. 32).
12. Amendment of section and repealer of forms CDC 115 and CDC 115A filed 6-2-2016 as an emergency; operative 6-2-2016 (Register 2016, No. 23). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 11-9-2016 or emergency language will be repealed by operation of law on the following day.
13. Certificate of Compliance as to 6-2-2016 order, including amendment of subsections (a)(1)–(a)(1)(A) and (c)(1), transmitted to OAL 11-7-2016 and filed 12-22-2016; amendments effective 12-22-2016 pursuant to Government Code section 11343.4(b)(3) (Register 2016, No. 52).

3314. Administrative Rule Violations.

(a) Inmate misconduct reported on a RVR shall be classified administrative if:

(1) The misconduct does not constitute a misdemeanor offense, except as provided in (3) below.

(2) It does not involve any of the following circumstances:

(A) The use or threat of force or violence against another person.

(B) A breach of or hazard to facility security.

(C) A serious disruption of facility operations.

(D) The introduction, use, or possession of controlled substances or alcohol.

(E) Possession of dangerous contraband.

(F) Continued failure to meet program expectations.

(G) Any felony offense.

(3) Administrative rule violations include but are not limited to:

(A) Possession of property, materials, items, or substances in excess of authorized limits, or possession of contraband other than controlled substances or dangerous contraband.

(B) Misuse of food.

(C) Out-of-bounds presenting no threat to facility security.

(D) Misuse of telephone privileges presenting no threat to facility security.

(E) Mail or visiting violations presenting no threat to facility security.

(F) Failure to meet work or program expectations within the inmate's abilities.

(G) Late for or absent without authorization from a work or program assignment.

(H) Use of vulgar or obscene language.

(I) Failure to follow an itinerary when on temporary community leave from a community-access facility.

(J) Under the influence (use) of alcoholic beverages, drugs, or intoxicants in a community-access facility.

(K) Failure to comply with departmental grooming standards.

(L) Security Threat Group (STG) Contraband: Possessing or displaying any distinctive materials, certified symbols, clothing, signs, artwork, photographs, or other paraphernalia associated with any Security Threat Group as defined in Section 3000. Examples of these materials are identified in Section 3378.4.

(M) Security Threat Group (STG) Behavior: Demonstrating or exhibiting any unique behaviors clearly associated with a STG that promotes, furthers or assists any Security Threat Group; as defined in Section 3000. Examples of these behaviors are identified in section 3378.4.

(b) Administrative rule violations shall be heard by a disciplinary hearing official not below the level of a correctional lieutenant, or an experienced correctional counselor I, parole agent I or correctional sergeant.

(c) The inmate does not have the right to call witnesses or to have an investigative employee assigned.

(d) If deemed necessary by the hearing official, the hearing shall be suspended and the inmate shall be provided staff assistance pursuant to section 3318(b).

(e) The hearing official may find the inmate guilty and order one or more of the following dispositions:

(1) Counseling, with or without a reprimand.

(2) Suspension of privileges specified by the hearing official for no more than a 30-day period starting the date the rule violation report was adjudicated, except as authorized in section 3314(e)(10).

(3) Placement into privilege group B or C for no more than a 30-day period starting the date the rule violation report was adjudicated.

(4) Confinement to quarters pursuant to section 3333 for one or more weekends and/or holidays, not to exceed ten days and not to be imposed with subsection (6) or suspended confinement.

(5) Assignment to no more than 40 hours of extra duty.

(6) Confinement to quarters for a period not to exceed five consecutive days. Inmates serving confinement to quarters shall be released to attend work and program assignments.

(7) Placement of a restriction or hold on the inmate's trust account for rule violations involving state or personal property as described in section 3190 when the inmate refuses to pay for the repair or replacement of such property or canteen.

(8) Suspension of all or part of any disposition for up to 90 days based on the inmate's acceptance of and compliance with conditions specified for suspension of the disposition.

(9) Imposition of all or part of an existing suspended disposition when the current rule violation is also a violation of conditions imposed at the time of the suspension.

(10) Inmates placed in ASU, SHU, PSU, Privilege Group D, who are found guilty of any RVR deemed administrative per this section are subject to temporary loss of entertainment appliances as follows:

A. Thirty days for the first offense.

B. Sixty days for the second offense.

C. Ninety days for the third offense.

(f) The hearing official may find the inmate guilty of the charge but, in the interest of justice or because of extenuating circumstances, dismiss the formal rule violation charge and report the misconduct as a custodial counseling on a Counseling Only Rules Violation Report pursuant to section 3312. In such cases the RVR shall be processed pursuant to section 3326.

(g) The hearing official may find the inmate not guilty and dismiss the charges.

(h) The hearing official may designate the rule violation serious if it is determined in the fact-finding phase of an administrative violation hearing that the misconduct is a serious rule violation. The disciplinary hearing official shall terminate the hearing and issue a serious RVR to the inmate.

(i) Classification Committee Review. When the hearing official determines that an inmate is a program failure, as defined in section 3000, the hearing official shall refer the administrative disciplinary action for possible review by a classification committee to affirm or modify the inmates program, work/privilege group, or housing assignment.

(j) If the hearing official finds the inmate guilty of a rule violation which includes a nexus to a STG, a copy of the completed Rules Violation Report shall be forwarded to the STG Lieutenant.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.

HISTORY:

1. Amendment filed 2-24-77; effective thirtieth day thereafter (Register 77, No. 9).
2. Amendment filed 5-13-77; effective thirtieth day thereafter (Register 77, No. 20).
3. Amendment of subsection (d)(2) filed 8-22-79; effective thirtieth day thereafter (Register 79, No. 34).
4. Amendment of subsections (a) and (d)(5) filed 5-4-83; designated effective 6-1-83 pursuant to Government Code Section 11346.2(d) (Register 83, No. 19).
5. Amendment filed 5-5-95; operative 6-5-95 (Register 95, No. 18).
6. New subsection (a)(3)(L) filed 10-16-97 as an emergency; operative 10-16-97 (Register 97, No. 42). Pursuant to Penal Code section 5058(e), a Certificate of Compliance must be transmitted to OAL by 3-25-97 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 10-16-97 order transmitted to OAL 3-23-98 and filed 5-4-98 (Register 98, No. 19).

8. Amendment filed 1-9-2004 as an emergency; operative 1-9-2004 (Register 2004, No. 2). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 6-17-2004 or emergency language will be repealed by operation of law on the following day.
9. Amendment of section, including futher amendment of subsection (e)(4), refiled 6-17-2004 as an emergency; operative 6-17-2004 (Register 2004, No. 25). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 11-24-2004 or emergency language will be repealed by operation of law on the following day.
10. Certificate of Compliance as to 6-17-2004 order transmitted to OAL 11-16-2004 and filed 12-29-2004 (Register 2004, No. 53).
11. Amendment of subsections (c)(2)(D)–(E), new subsections (c)(2)(F)–(G), repealer of subsection (c)(3)(A), subsection relettering, amendment of subsection (e)(2) and new subsections (e)(10)–(e)(10)C. filed 8-4-2008; operative 8-4-2008 pursuant to Government Code section 11343.4 (Register 2008, No. 32).
12. New subsections (a)(3)(L)–(M) and (j) filed 10-17-2014; operative 10-17-2014 pursuant to Government Code section 11343.4(b)(3) (Register 2014, No. 42).
13. Amendment of subsections (a), (f) and (h) filed 6-2-2016 as an emergency; operative 6-2-2016 (Register 2016, No. 23). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 11-9-2016 or emergency language will be repealed by operation of law on the following day.
14. Certificate of Compliance as to 6-2-2016 order, including amendment of subsection (f), transmitted to OAL 11-7-2016 and filed 12-22-2016; amendments effective 12-22-2016 pursuant to Government Code section 11343.4(b)(3) (Register 2016, No. 52).

3315. Serious Rule Violations.

(a) Inmate misconduct reported on a RVR shall be classified serious if:

(1) It is a serious disciplinary offense not specified as administrative in section 3314(a)(3), an offense punishable as a misdemeanor, whether or not prosecution in undertaken, or is a felony, whether or not prosecution is undertaken.

(2) It involves any one or more of the following circumstances:

(A) Use of force or violence against another person.

(B) A breach of or hazard to facility security.

(C) A serious disruption of facility operations.

(D) The introduction, distribution, possession, or use of controlled substances, alcohol, or dangerous contraband.

(E) An attempt or threat to commit any act listed in (A) through (D), coupled with a present ability to carry out the threat or attempt if not prevented from doing so.

(3) Serious rule violations include but are not limited to:

(A) Misconduct reportable to the inmate's releasing authority.

(B) Theft, embezzlement, destruction, or damage to another's personal property, state funds, or state property.

(C) Hideout, preparation to escape, or possession of escape paraphernalia.

(D) Tattooing or possession of tattoo paraphernalia.

(E) Manufacture of alcohol or possession of any controlled substance, unauthorized drug, intoxicant, or illegal substance.

(F) Being under the influence or use of alcoholic beverages, controlled substances, unauthorized drugs or intoxicants in an institution, community correctional facility, or camp.

(G) Possession of five dollars or more without authorization.

(H) Acts of disobedience or disrespect which by reason of intensity or context create a potential for violence or mass disruptive conduct.

(I) Willfully inciting others to commit an act of force or violence.

(J) Refusal to perform work or participate in a program as ordered or assigned.

(K) Recurring failure to meet work or program expectations within the inmate's abilities when lesser disciplinary methods failed to correct the misconduct.

(L) Participation in a strike or work stoppage.

(M) A repeated pattern of administrative rule violations for the same offense.

(N) Mail or visiting violations presenting a threat as described in (2) above.

(O) Harassment of another person, group, or entity either directly or indirectly through the use of the mail or by any other means.

(P) Throwing any liquid or solid substance on a nonprisoner.

(Q) Unauthorized possession of departmental records or documents which could affect any inmate's release status.

(R) Refusal to submit to a test for controlled substances or alcohol.

(S) Refusal to provide blood specimens, a saliva sample, and palm and thumb print impressions pursuant to Penal Code, Part 1, Title 9, Chapter 6, Articles 1 through 7 (sections 295 et seq.), after receiving written notification that such specimens and samples must be provided.

(T) Participation in gambling.

(U) Late return or failure to return from a temporary community release or leave.

(V) Unauthorized possession of materials or substances which have been modified or altered from their original manufactured state or purpose with their potential to be made, or in the process of being made, into a weapon; explosive or explosive-making materials; poison, caustic substance; or any destructive device.

(W) Self mutilation or attempted suicide for the purpose of manipulation.

(X) Possession and/or constructive possession of a cell phone or wireless communication device or any component thereof including, but not limited to, a subscriber identity module (SIM card), memory storage devices or cellular telephone chargers.

(Y) Involvement in a conspiracy or attempt to do any of the above.

(Z) Security Threat Group (STG) Directing or Controlling Behavior: Demonstrating activity, behavior or status as a recognized member and/or leader of an STG, which jeopardizes the safety of the public, staff or other inmate(s), and/or the security and orderly operation of the institution.

(AA) Security Threat Group (STG) Disruptive or Violent Behavior: Demonstrating involvement in activities or an event associated with a STG, which jeopardizes the safety of the public, staff or other inmate(s), and/or the security and orderly operation of the institution.

(b) In addition to the disciplinary hearing, the inmate may be subject to segregation from the general population pursuant to sections 3312 and 3335 through 3345; and referral for prosecution when the misconduct is a criminal offense.

(c) Hearing. Serious rule violations shall be heard at the Senior Hearing Officer (SHO) or higher level. A SHO shall not be below the level of a facility captain, correctional captain, correctional counselor III, parole agent III, or an experienced correctional lieutenant, correctional counselor II, or parole agent II.

(d) An inmate shall be assigned an employee to assist in the investigation of matters pertaining to a disciplinary action when the chief disciplinary officer or designee determines the necessity based on the following criteria.

(1) Investigative Employee.

(A) An investigative employee, as described in section 3318(a), shall be assigned when the staff designated to classify the serious rule violation determines that:

1. The complexity of the issues require further investigation.

2. The housing status makes it unlikely the charged inmate can collect and present the evidence necessary for an adequate presentation of a defense.

3. A determination has been made that additional information is necessary for a fair hearing.

4. The behavior may present a nexus with a Security Threat Group.

(B) The inmate may choose to waive the assignment of an investigative employee as required by subsection (2) above. The inmate's request to waive assistance of an investigative employee under this subsection will be indicated in the "waived by inmate" checkbox on the RVR (formerly noted on the CDC Form 115-A and signed and dated by the inmate. The classifying official may choose to un-assign the investigative employee based on the inmate's signed waiver on the RVR.

(C) Staff who witnessed or who will serve as a hearing official for a rule violation shall not serve as the investigative employee for that violation.

(D) The inmate may not select the investigative employee, but may object to the one assigned and provide, in writing to the classifying official, the reasons for the objection. The classifying official shall evaluate the inmate's objection(s) and, if determined to be reasonable, assign an alternate investigative employee to complete the investigation. If the classifying official determines that the inmate's objections are not reasonable, the original investigative employee shall complete the investigation. The inmate's objection must be expressed prior to the beginning of the investigation. The classifying official shall document within an Informative Chrono his/her decision to deny or approve a request for an alternate investigative employee, and if denied, explain the reason(s) for denial. The Informative Chrono shall be included in the Rules Violation Report documents.

(E) Assignment of an investigative employee shall not preclude the assignment of a staff assistant.

(2) Staff Assistant.

(A) The inmate shall be assigned a staff assistant, as described in section 3318(b), to assist in the preparation, and presentation of a defense at the disciplinary hearing if the classifying official determines:

1. The inmate is illiterate or non-English speaking.

2. The complexity of the issues are such that assistance is necessary so the inmate comprehends the nature of the charges or the disciplinary process.

3. The inmate's disability is such that staff assistance would be necessary for the inmate to participate in the disciplinary process.

(B) At any point prior to the disciplinary hearing, if it is discovered that the inmate may need a staff assistant, the classifying official or staff at an equal or higher rank, shall be advised in writing of the need, and if appropriate per section 3315(d)(2)(A), order the assignment of the staff assistant. If the need for staff assistance is discovered by the hearing official at the time of the disciplinary hearing, the hearing official shall postpone the hearing and order the assignment of the staff assistant. In either instance, the inmate shall be provided at least a 24 hour time period to allow for preparation with the assigned staff assistant prior to participating in the disciplinary hearing.

(C) An inmate may refuse to accept the first staff assistant at the time of assignment or at any time during the disciplinary process.

(D) If the inmate refuses the staff assistant at the time of initial assignment, a second staff assistant shall be assigned.

(E) If the inmate refuses to accept the second staff assistant or withdraws acceptance of an assigned staff assistant, the assignment of another staff assistant shall not be required unless the chief disciplinary officer or designee determines that a fair hearing cannot be held without staff assistance.

(1) Inmate participants in the Mental Health Services Delivery System at the level of Enhanced Outpatient Program, Mental Health Crisis Bed, Department of State Hospitals, or Developmentally Disabled Program participants at the level of DD1-DD3, are ineligible to waive or refuse the assignment of a staff assistant. The staff assistant shall perform his/her required duties to the extent possible despite a waiver or refusal by the ineligible inmate to cooperate.

(F) Assignment of a staff assistant shall not preclude assignment of an investigative employee.

(1) When an inmate has been assigned a staff assistant and an investigative employee, the staff assistant must be present during any questioning by the investigative employee.

(e) Witnesses. An inmate may request that friendly and adverse witnesses attend the hearing.

(1) Requested witnesses shall be called unless the official conducting the hearing denies the request for one of the following reasons:

(A) The appearance would endanger the witness.

(B) The official determines that the witness has no relevant or additional information.

(C) The witness is unavailable.

(2) If an inmate's request for a witness is denied, the reasons shall be documented on the RVR.

(3) Whether or not the inmate requests a witness, witnesses may be called if the official conducting the hearing determines the witnesses may have information necessary to the finding of fact.

(4) The reporting employee shall attend the disciplinary hearing or be available for questioning via speakerphone if requested by the inmate.

(5) Under the direction of the official conducting the disciplinary hearing, the inmate has the right to ask questions of all witnesses called. The SHO will screen all questions to ensure they are relevant to the violation charged.

(6) Nothing in this section shall preclude making a witness available by speaker phone for a disciplinary hearing.

(f) Disposition. Upon completion of the fact-finding portion of the disciplinary hearing, the inmate may be found:

(1) Not guilty and the charges dismissed.

(2) Guilty of an administrative rather than a serious rule violation. In such case, the RVR shall be reduced to an administrative level offense and the inmate may be assessed only a disposition authorized in section 3314.

(3) Guilty as charged or guilty of an included serious rule violation and assessed a credit forfeiture pursuant to section 3323.

(4) If the violation included an act related to the use, possession, or distribution of controlled substances, controlled medication, drugs or drug paraphernalia; or if the inmate refused to submit to a test for controlled substances or drugs, the disposition shall include an order for the inmate to submit to mandatory random drug testing for one year from the date of the order.

(A) For the first offense, the inmate must provide a minimum of one random drug test per month for one year.

(B) For the second offense, the inmate must provide a minimum of two random drug tests per month for one year.

(C) For the third and all subsequent offenses, the inmate must provide a minimum of four random drug tests per month for one year.

(D) The inmate shall be informed that refusal to submit to a random test or any positive test result during the mandatory random drug testing period shall result in the issuance of a RVR and a new mandatory drug testing order.

(5) The disposition may or when mandated shall include assessment of one or more of the following:

(A) Any combination of penalties authorized for administrative rule violations in section 3314(e).

(B) Suspension of privileges specified by the hearing official for no more than a 90-day period starting the date the rule violation report was adjudicated. The suspension of privileges for violations of subsections 3016(a), 3016(c), and 3290(d) shall be assessed as follows:

1. Thirty days for the first offense.

2. Sixty days for the second offense.

3. Ninety days for the third offense.

(C) Placement into privilege group B or C for no more than a 90-day period starting from the date the rule violation report was adjudicated.

(D) Disciplinary detention or confinement to quarters as provided in sections 3330 and 3333 for not more than a ten-day period. If facility security will not be jeopardized, the inmate shall be released to attend work and program assignments.

1. Second offense violations of subsections 3016(a), 3016(c), and 3290(d) shall result in confinement to quarters for five days.

2. Third and all subsequent offense violations of subsections 3016(a), 3016(c), and 3290(d) shall result in confinement to quarters for 10 days.

(E) Referral to a classification committee for consideration of placement in Work Group C.

(F) Suspension of all or part of dispositions other than credit forfeitures, ordered random drug testing and classification committee referrals, for up to six months based on the inmate's compliance with the conditions specified for suspension.

(G) Imposition of all or part of an existing suspended disposition when the current rule violation is a violation of conditions specified in a suspended disposition. Imposition of a suspended disposition shall not include confinement to quarters or disciplinary detention for a period exceeding ten days except as provided in section 3322.

(H) For a violation of subsection 3016(c), there shall be a loss of visits for one year to be followed by non-contact visits for two years.

(I) Loss of visits to be followed by non-contact visits for violations of subsection 3016(a) (with the exception of alcohol violations), or 3290(d) shall be as follows:

1. Loss of visits for 90 days, to be followed by non-contact visits for 90 days for the first offense.

2. Loss of visits for 90 days, to be followed by non-contact visits for 180 days for the second offense.

3. Loss of visits for 180 days, to be followed by non-contact visits for 180 days for the third offense.

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

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

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

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

(K) Violation of Indecent Exposure or Sexual Disorderly Conduct of sections 3007, 3323(d)(9), 3323(f)(5), and 3323(g)(7) shall result in:

1. First offense violation shall result in loss of any or all of the following for up to 90 days: canteen, appliances, inmate packages, telephone privileges, and personal property.

2. Second offense and subsequent offense violation(s) shall result in loss of any or all of the following for up to 180 days: canteen, appliances, inmate packages, telephone privileges, and personal property.

(L) Inmates placed in ASU, SHU, PSU, Privilege Group D, who are deemed to be program failures, as defined in section 3000, based on conduct while in the ASU/SHU/PSU, shall have their entertainment appliance disposed of in accordance with subsection 3191(c). Inmates who are not deemed to be program failures, but who are found guilty of any RVR per this section based on their conduct while in the ASU/SHU/PSU, are subject to temporary loss of their entertainment appliances as follows:

1. Thirty days for the first offense.

2. Sixty days for the second offense.

3. Ninety days for the third and subsequent offenses.

(M) Violation of Refusing to Accept Assigned Housing of sections 3005(c) and 3269.1 shall result in:

1. First offense violation shall result in loss of any or all of the following for up to 90 days: canteen, appliances, inmate packages, telephone privileges, and personal property.

2. Second offense and subsequent offense violation(s) shall result in loss of any or all of the following for up to 180 days: canteen, appliances, inmate packages, telephone privileges, and personal property.

(N) Violation of Refusing to Accept an Inmate Housing Assignment of subsection 3005(c) shall result in:

1. First offense violation shall result in loss of any or all of the following for up to 90 days: canteen, appliances, inmate packages, telephone privileges, and personal property.

2. Second offense and subsequent offense violation(s) shall result in loss of any or all of the following for up to 180 days: canteen, appliances, inmate packages, telephone privileges, and personal property, and referral to a classification committee for review and determination for program failure. An inmate who is deemed a program failure by a classification committee is subject to having his/her personal property/appliances disposed of in accordance with departmental procedure.

(O) Violation of subsection 3323(d)(8) shall result in a loss of visits for 180 days followed by non-contact visits permanently.

(P) Violation of subsection 3323(f)(6) shall result in:

1. Loss of visits for 90 days, to be followed by non-contact visits for 90 days for the first offense.

2. Loss of visits for 90 days, to be followed by non-contact visits for 180 days for the second offense.

3. Loss of visits for 180 days, to be followed by non-contact visits permanently for the third offense.

(g) Classification Committee Review. Any serious disciplinary action requiring reconsideration of an inmate's program, work group, or housing assignment, shall be referred to the next reasonably scheduled classification committee for review. This review shall not occur until the chief disciplinary officer's audit of the RVR has been concluded. The classification committee shall affirm or modify the inmate's program, work group, or housing assignment.

(h) If the hearing official finds the inmate guilty of a rule violation which includes a nexus to a STG, a copy of the completed Rules Violation Report shall be forwarded to the STG Lieutenant.

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

HISTORY:

1. Amendment filed 2-24-77; effective thirtieth day thereafter (Register 77, No. 9).
2. Amendment filed 5-13-77; effective thirtieth day thereafter (Register 77, No. 20).
3. New subsection (g) filed 9-30-77; effective thirtieth day thereafter (Register 77, No. 40).
4. Amendment of subsection (a)(3), renumbering of subsections (a)(16)–(a)(19) to (a)(18)–(a)(21) and new subsections (a)(16)–(a)(17) filed 3-22-78; effective thirtieth day thereafter (Register 78, No. 12).
5. Amendment of subsections (a)(3), (b)(4) and (b)(5) filed 8-22-79; effective thirtieth day thereafter (Register 79, No. 34).
6. Amendment of subsection (d) filed 2-15-80; effective thirtieth day thereafter (Register 80, No. 7).
7. Amendment of subsection (b)(1) filed 9-24-81; effective thirtieth day thereafter (Register 81, No. 39).
8. Amendment of subsection (a)(19) filed 2-16-83; effective thirtieth day thereafter (Register 83, No. 8).
9. Amendment of subsections (a), (b)(4), (f)(4) and repealer and new subsection (d) filed 5-4-83; designated effective 6-1-83 pursuant to Government Code Section 11346.2(d) (Register 83, No. 19).
10. Editorial correction of subsections (b) and (c) filed 2-19-85 (Register 85, No. 8).
11. Amendment of subsections (b), (c), (e) and (g) filed 8-7-87 as an emergency; operative 8-7-87 (Register 87, No. 34). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 12-7-87.
12. Certificate of Compliance as to 8-7-87 order transmitted to OAL 12-4-87; disapproved by OAL (Register 88, No. 16).
13. Amendment of subsections (b), (c), (e) and (g) filed 1-4-88 as an emergency; operative 1-4-88 (Register 88, No. 16). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 5-3-88.
14. Certificate of Compliance as to 1-4-88 order transmitted to OAL 5-30-88; disapproved by OAL (Register 88, No. 24).
15. Amendment filed 6-2-88 as an emergency; operative 6-2-88 (Register 88, No. 24). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 9-30-88.
16. Certificate of Compliance transmitted to OAL 9-26-88 and filed 10-26-88 (Register 88, No. 50).
17. New subsection (a)(14), subsection renumbering, and amendment of Note filed 7-29-93 as an emergency; operative 7-29-93 (Register 93, No. 31). A Certificate of Compliance must be transmitted to OAL 11-26-93, or emergency language will be repealed by operation of law on the following day.
18. Certificate of Compliance as to 7-29-93 order transmitted to OAL 11-18-93 and filed 12-31-93 (Register 94, No. 1).
19. Amendment of section and Note filed 5-5-95; operative 6-5-95 (Register 95, No. 18).
20. Amendment of subsection (f)(4) filed 7-1-96 as an emergency; operative 7-1-96 (Register 96, No. 27). A Certificate of Compliance must be transmitted to OAL by 12-8-96 or emergency language will be repealed by operation of law on the following day.
21. Certificate of Compliance as to 7-1-96 order transmitted to OAL 9-23-96 and filed 11-4-96 (Register 96, No. 45).
22. Change without regulatory effect amending subsection (f)(5)(A) filed 12-2-96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 49).
23. Amendment of subsections (c), (f)(5)(D) and (g) filed 10-16-97 as an emergency; operative 10-16-97 (Register 97, No. 42). Pursuant to Penal Code section 5058(e), a Certificate of Compliance must be transmitted to OAL by 3-25-97 or emergency language will be repealed by operation of law on the following day.
24. Certificate of Compliance as to 10-16-97 order transmitted to OAL 3-23-98 and filed 5-4-98 (Register 98, No. 19).
25. Amendment filed 8-27-98 as an emergency; operative 8-27-98 (Register 98, No. 35). A Certificate of Compliance must be transmitted to OAL by 2-3-99 or emergency language will be repealed by operation of law on the following day,
26. Amendment of subsection (a)(3)(M) filed 12-1-98 as an emergency; operative 12-1-98 (Register 98, No. 49). Pursuant to Penal Code 5058(e), a Certificate of Compliance must be transmitted to OAL by 5-10-99 or emergency language will be repealed by operation of law on the following day.
27. Amendment refiled 2-3-99 as an emergency, including further amendment redesignating former subsections (f)(5)(I)(1)–(3) as subsections (f)(5)(I)1.–3.; operative 2-3-99 (Register 99, No. 6). Pursuant to Penal Code section 5058(e), a Certificate of Compliance must be transmitted to OAL by 7-13-99 or emergency language will be repealed by operation of law on the following day.
28. Certificate of Compliance as to 12-1-98 order transmitted to OAL 5-7-99 and filed 6-4-99 (Register 99, No. 23).
29. Certificate of Compliance as to 2-3-99 order, including new subsection (f)(5)(H), subsection relettering and amendment of newly designated subsection (f)(5)(I), transmitted to OAL 5-12-99 and filed 6-24-99 (Register 99, No. 26).
30. New subsection (a)(3)(S), subsection relettering and amendment of Note filed 9-20-99 as an emergency; operative 9-20-99 (Register 99, No. 39). Pursuant to Penal Code section 5058(e) a Certificate of Compliance must be transmitted to OAL by 2-28-2000 or emergency language will be repealed by operation of law on the following day.
31. Certificate of Compliance as to 9-20-99 order transmitted to OAL 1-14-2000 and filed 2-22-2000 (Register 2000, No. 8).
32. Amendment of subsection (a)(3)(S) filed 10-4-2002 as an emergency pursuant to a certificate of operational necessity under Penal Code section 5058.3; operative 10-4-2002 (Register 2002, No. 40). Pursuant to Penal Code section 5058.3, this filing is deemed an emergency and a Certificate of Compliance must be transmitted to OAL by 3-13-2003 or emergency language will be repealed by operation of law on the following day.
33. Certificate of Compliance as to 10-4-2002 order, including further amendment of subsection (a)(3)(S), transmitted to OAL 3-12-2003 and filed 4-8-2003 (Register 2003, No. 15).
34. Amendment of subsection (f)(5)(B), new subsection (f)(5)(C) and subsection relettering filed 1-9-2004 as an emergency; operative 1-9-2004 (Register 2004, No. 2). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 6-17-2004 or emergency language will be repealed by operation of law on the following day.
35. Amendment of subsection (f)(5)(B), new subsection (f)(5)(C) and subsection relettering refiled 6-17-2004 as an emergency; operative 6-17-2004 (Register 2004, No. 25). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 11-24-2004 or emergency language will be repealed by operation of law on the following day.
36. Certificate of Compliance as to 6-17-2004 order transmitted to OAL 11-16-2004 and filed 12-29-2004 (Register 2004, No. 53).
37. New subsections (f)(5)(L)–(f)(5)(L)2. and amendment of Note filed 2-23-2007 as an emergency; operative 2-23-2007 (Register 2007, No. 8). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 8-2-2007 or emergency language will be repealed by operation of law on the following day.
38. Certificate of Compliance as to 2-23-2007 order transmitted to OAL 7-27-2007 and filed 9-5-2007 (Register 2007, No. 36).
39. New subsections (f)(5)(M)–(f)(5)(M)2. filed 12-28-2007; operative 12-28-2007 pursuant to Government Code section 11343.4 (Register 2007, No. 52).
40. New subsections (f)(5)(N)–(f)(5)(N)2. filed 3-18-2008 as an emergency; operative 3-18-2008 (Register 2008, No. 12). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 8-25-2008 or emergency language will be repealed by operation of law on the following day.
41. Amendment filed 8-4-2008; operative 8-4-2008 pursuant to Government Code section 11343.4 (Register 2008, No. 32).
42. Certificate of Compliance as to 3-18-2008 order transmitted to OAL 8-18-2008 and filed 9-15-2008 (Register 2008, No. 38).

43. New subsections (f)(5)(O)–(f)(5)(P)3. filed 10-6-2009; operative 10-6-2009 pursuant to Government Code section 11343.4 (Register 2009, No. 41).
44. Editorial correction restoring placement of subsections (f)(5)(N)1.–2. (Register 2010, No. 15).
45. Amendment of subsections (a)(3)(B) and (f)(5)(K) filed 7-19-2011; operative 8-18-2011 (Register 2011, No. 29).
46. New subsection (a)(3)(X) and amendment of Note filed 12-9-2011 as an emergency; operative 12-9-2011 (Register 2011, No. 49). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 5-17-2012 or emergency language will be repealed by operation of law on the following day.
47. Change without regulatory effect amending Note filed 3-8-2012 pursuant to section 100, title 1, California Code of Regulations (Register 2012, No. 10).
48. Certificate of Compliance as to 12-9-2011 order transmitted to OAL 5-3-2012 and filed 6-6-2012 (Register 2012, No. 23).
49. Change without regulatory effect amending subsection (f)(5)(L)1. filed 1-8-2014 pursuant to section 100, title 1, California Code of Regulations (Register 2014, No. 2).
50. Amendment of subsections (f)(5)(K)(1)–(f)(5)(L), (f)(5)(L)(3), (f)(5)(M)1.–2. and (f)(5)(N)1.–2. filed 1-8-2014 as an emergency; operative 1-8-2014 (Register 2014, No. 2). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 6-17-2014 or emergency language will be repealed by operation of law on the following day.
51. Amendment of subsections (f)(5)(J)1.–3. filed 3-18-2014 as an emergency; operative 3-18-2014 (Register 2014, No. 12). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 8-25-2014 or emergency language will be repealed by operation of law on the following day.
52. Certificate of Compliance as to 1-8-2014 order transmitted to OAL 6-16-2014 and filed 7-22-2014 (Register 2014, No. 30).
53. Certificate of Compliance as to 3-18-2014 order transmitted to OAL 8-21-2014 and filed 9-18-2014 (Register 2014, No. 38).
54. New subsections (a)(3)(Z)–(AA), (d)(1)(A)4. and (h) filed 10-17-2014; operative 10-17-2014 pursuant to Government Code section 11343.4(b)(3) (Register 2014, No. 42).
55. New subsection (i) filed 11-17-2015 as an emergency; operative 11-17-2015 (Register 2015, No. 47). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 4-25-2016 or emergency language will be repealed by operation of law on the following day.
56. Amendment of subsections (f)(5)(J)2.–3. filed 3-29-2016 as an emergency; operative 3-29-2016 (Register 2016, No. 14). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 9-6-2016 or emergency language will be repealed by operation of law on the following day.
57. Reinstatement of section as it existed prior to 11-17-2015 emergency amendment by operation of Government Code section 11346.1(f) (Register 2016, No. 22).
58. Amendment of subsections (a), (d) and (d)(1)(B), new subsections (d)(1)(B)1.–8., and amendment of subsections (d)(1)(D), (d)(2)(E)–(d)(2)(E)(1), (e)(2), (f)(2), (f)(4)(D) and (g) filed 6-2-2016 as an emergency; operative 6-2-2016 (Register 2016, No. 23). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 11-9-2016 or emergency language will be repealed by operation of law on the following day.
59. Reinstatement of subsections (f)(5)(J)2.–3. as they existed prior to 3-29-2016 emergency amendment by operation of Government Code section 11346.1(f) (Register 2016, No. 37).
60. Certificate of Compliance as to 6-2-2016 order, including amendment of subsection (d), repealer of subsections (d)(1)(B)1.–8. and amendment of subsections (d)(2)(E)–(d)(2)(E)(1), transmitted to OAL 11-7-2016 and filed 12-22-2016; amendments effective 12-22-2016 pursuant to Government Code section 11343.4(b)(3) (Register 2016, No. 52).

3316. Referral for Criminal Prosecution.

(a) Except as provided in subsection (b), all criminal misconduct by persons under the jurisdiction of the department or occurring on facility property shall be referred by the institution head or designee to appropriate authorities for possible investigation and prosecution when there is evidence substantiating each of the elements of the crime to be charged.

(1) Referrals for investigation of inmate criminal misconduct shall be accompanied by a JUS Form 8715 (Rev. 6/88) Department of Justice Disposition of Arrest and Court Action.

(2) The authority to whom a case is referred shall be asked to provide the institution head or designee with written notification within ten working days advising if prosecution shall be initiated.

(3) Inmates shall be notified in writing when misconduct is referred for possible prosecution.

(b) Notwithstanding evidence substantiating each of the elements of the crime to be charged, criminal misconduct shall not be referred to the local district attorney if the local district attorney has submitted written notification to the institution head including criteria determining that specified crimes shall not be prosecuted if the crime involved meets such criteria.

(c) Referral of an inmate's misconduct for prosecution shall not stay the time limits for a disciplinary hearing unless the inmate submits a written request to the chief disciplinary officer or signs and dates the RVR, Serious Rules Violation Report, requesting postponement of the hearing pending the outcome of the referral.

(1) A postponed disciplinary hearing shall be held within 30 days after any one of the following events:

(A) The inmate has revoked a postponement request; an inmate may revoke a postponement request any time until the prosecuting criminal authority has filed an accusatory pleading against the inmate. The request shall be submitted in writing to the chief disciplinary officer or designee who shall enter a "Revoked Postponement" action in SOMS revoking the postponement request.

(B) Written notice is received from the institution head or designee that the inmate's misconduct will not be referred for prosecution pursuant to subsection (b).

(C) Written notice is received that the prosecuting authority does not intend to prosecute.

(D) Written notice is received that the criminal proceedings are terminated without an acquittal.

(2) A decision to not prosecute or a court's dismissal of criminal charges without acquittal shall not prohibit or alter a departmental disciplinary hearing on the rule violation charges.

(3) A court verdict of guilty or not guilty, resulting from a trial, shall be accepted as the finding of fact on the same charges in a disciplinary hearing. Should the court accept a plea agreement or negotiated settlement resulting in a conviction for a lesser offense than was originally charged, or if a court dismisses a charge prior to trial, the Department shall not be precluded from taking appropriate administrative action based on the facts contained in the original charge. If a court finds the inmate not guilty after a finding of guilty in a disciplinary hearing, the rule violation charges shall be dismissed.

(4) Any verdict of the court shall not prohibit or reverse the actions of a disciplinary hearing on any lesser offenses included in the criminal charge.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 2932 and 5054, Penal Code.

HISTORY:

1. Amendment filed 5-13-77; effective thirtieth day thereafter (Register 77, No. 20).
2. Amendment filed 6-30-77 as an emergency; effective upon filing (Register 77, No. 27).
3. Amendment of subsection (d) filed 9-29-77 as an emergency; effective upon filing. Certificate of Compliance included (Register 77, No. 40).
4. Amendment of subsection (b) filed 8-22-79; effective thirtieth day thereafter (Register 79, No. 34).

5. Amendment filed 11-1-79 as an emergency; effective upon filing (Register 79, No. 44). A Certificate of Compliance must be filed within 120 days or emergency language will be repealed on 3-1-80.
6. Certificate of Compliance including amendment of subsection (c) filed 2-15-80 (Register 80, No. 7).
7. Amendment filed 12-1-80 as an emergency; designated effective 1-1-81 (Register 80, No. 49).
8. Order of Repeal of 12-1-80 order filed 12-5-80 by OAL pursuant to Government Code Section 11349.6 (Register 80, No. 49).
9. Amendment filed 9-24-81; effective thirtieth day thereafter (Register 81, No. 39).
10. Amendment of subsection (e)(2) and (e)(3) filed 5-4-83; designated effective 6-1-83 pursuant to Government Code Section 11346-2(d) (Register 83, No. 19).
11. Amendment filed 10-24-88; operative 11-23-88 (Register 88, No. 45).
12. Amendment filed 5-5-95; operative 6-5-95 (Register 95, No. 18).
13. Amendment of subsection (c)(3) filed 11-3-97 as an operational emergency pursuant to Penal Code section 5058(e); operative 11-3-97 (Register 97, No. 45). A Certificate of Compliance must be transmitted to OAL by 4-13-98 or emergency language will be repealed by operation of law on the following day.
14. Certificate of Compliance as to 11-3-97 order transmitted to OAL 2-3-98 and filed 3-12-98 (Register 98, No. 11).
15. Amendment of subsections (c) and (c)(1)(A) filed 6-2-2016 as an emergency; operative 6-2-2016 (Register 2016, No. 23). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 11-9-2016 or emergency language will be repealed by operation of law on the following day.
16. Certificate of Compliance as to 6-2-2016 order, including amendment of subsection (c)(1)(A), transmitted to OAL 11-7-2016 and filed 12-22-2016; amendments effective 12-22-2016 pursuant to Government Code section 11343.4(b)(3) (Register 2016, No. 52).

3317. Mental Health Assessments for Disciplinary Hearings.

(a) A Mental Health Assessment is a means to incorporate clinical input into the disciplinary process when mental illness or developmental disability/cognitive or adaptive functioning deficits may have contributed to behavior resulting in a Rules Violation Report. Mental Health Assessments shall be considered by the hearing officer or senior hearing officer during disciplinary proceedings when determining whether an inmate shall be disciplined and when determining the appropriate method of discipline.

(b) Inmates who are alleged to have committed a Rules Violation shall receive a Mental Health Assessment, via completion of CDCR Form 115-MH-A (12/15), Rules Violation Report: Mental Health Assessment, which is incorporated by reference, for any of the following reasons:

(1) Inmate is a participant in the Mental Health Services Delivery System (MHSDS) at the Enhanced Outpatient Program (EOP) level of care.

(2) Inmate is a participant in the MHSDS at the Mental Health Crisis Bed (MHCB) level of care.

(3) Inmate is a participant in the MHSDS at the Psychiatric Inpatient Program, Acute Psychiatric Program or Intermediate Care Facility level of care.

(4) Inmate is a participant in the MHSDS at the Correctional Clinical Case Management System (CCCMS) level of care and has been charged with a Division A, B or C offense or any other rules violation which may result in the assessment of a Security Housing Unit term as defined in Section 3341.9, subsection (e).

(5) Inmate is a participant in the Developmental Disability Program (DDP) designated as DD1, DD2 or DD3.

(6) Inmate engaged in Indecent Exposure or Sexual Disorderly Conduct.

(7) Inmate displayed behavior that was bizarre or unusual for any inmate or uncharacteristic for the particular inmate at the time of the offense.

(c) Mental Health Services shall be contacted immediately for any inmate who is suspected of committing self-mutilation or attempted suicide. The emergency referral shall be documented via CDCR Form 128-MH5 (Rev. 05/14), Mental Health Referral Chrono, which is incorporated by reference, identifying the specific reason(s) for the referral. If Mental Health Services determines the behavior was an act of self-mutilation or attempted suicide or a clear determination could not be made, a Rules Violation Report, shall not be issued. The behavior shall be documented on a CDC Form 128B (Rev. 04/74), General Chrono, for inclusion in the inmate's Central File.

(d) If the mental health clinician determines the inmate's actions were an attempt to manipulate staff, and were not an act of self-mutilation or attempted suicide, RVR shall be issued pursuant to Section 3315, subsection (a)(3)(W).

(e) A CDCR Form 128-MH5 shall be completed for any inmate who displayed behavior that was bizarre or unusual for any inmate or uncharacteristic for the particular inmate at the time of the offense.

(f) When a mental health assessment is required, the reviewing custody supervisor shall request an assessment by completing a CDCR Form 115-MH-A and delivering it to the institution's mental health program within two calendar days of the information leading to the charges being discovered by staff. The mental health program shall complete the assessment and return it to the reviewing supervisor within eight calendar days of receipt.

(g) The hearing officer or senior hearing officer shall consider mental health staff's assessment, as documented on the CDCR Form 115-MH-A, and any other relevant information, when determining whether the inmate should be disciplined or the appropriate method of discipline when mental illness or developmental disability/cognitive or adaptive functioning deficits contributed to the inmate's behavior. If an inmate is found guilty of the charge, the hearing officer or senior hearing officer shall consider any dispositional recommendations provided by mental health staff as documented on CDCR Form 115-MH-A or any other relevant information regarding the relationship between the inmate's mental illness and/or developmental disability/cognitive or adaptive functioning deficits, and his or her misconduct, when assessing penalties.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.

HISTORY:

1. Amendment filed 2-24-77; effective thirtieth day thereafter (Register 77, No. 9).
2. Repealer and new section filed 3-24-78 as an emergency; effective upon filing (Register 78, No. 12).
3. Certificate of Compliance filed 6-15-78 (Register 78, No. 24).
4. Repealer and new section filed 9-24-81; effective thirtieth day thereafter (Register 81, No. 39).
5. Relocation and amendment of former subsections 3317(a)–(b)(2) to subsections 3312(a)(3)(A)–(B) and new section filed 5-5-95; operative 6-5-95 (Register 95, No. 18).
6. Editorial correction deleting formerly relocated text (Register 95, No. 34).
7. Amendment of section heading and subsection (a), and repealer of subsections (b)–(b)(2) filed 8-23-95 as an emergency; operative 8-23-95 (Register 95, No. 34). A Certificate of Compliance must be transmitted to OAL by 1-30-96 or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 8-23-95 order transmitted to OAL 1-8-96 and filed 2-16-96 (Register 96, No. 7).
9. Amendment filed 8-4-2008; operative 8-4-2008 pursuant to Government Code section 11343.4 (Register 2008, No. 32).

10. Amendment of section heading and repealer and new section filed 11-17-2015 as an emergency; operative 11-17-2015 (Register 2015, No. 47). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 4-25-2016 or emergency language will be repealed by operation of law on the following day.
11. Certificate of Compliance as to 11-17-2015 order, including further amendment of subsections (a), (b) and (g), transmitted to OAL 4-20-2016 and filed 5-24-2016; amendments operative 5-24-2016 pursuant to Government Code section 11343.4(b)(3) (Register 2016, No. 22).
12. Amendment of subsections (c) and (d) filed 6-2-2016 as an emergency; operative 6-2-2016 (Register 2016, No. 23). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 11-9-2016 or emergency language will be repealed by operation of law on the following day.
13. Certificate of Compliance as to 6-2-2016 order transmitted to OAL 11-7-2016 and filed 12-22-2016 (Register 2016, No. 52).

3317.1 Documenting Rules Violations in an Alternate Manner for Inmates in the Mental Health Services Delivery System or the Developmental Disability Program.

(a) If the inmate's behavior was so strongly influenced by symptoms of mental illness or developmental disability/cognitive or adaptive functioning deficits at the time the rules violation occurred, mental health staff may recommend via the CDCR Form 115-MH-A that the inmate would be better served by having the behavior documented in an alternate manner. The Captain shall review the Rules Violation Report (RVR) and all other documents and information relevant to the charge, as well as the recommendation offered by the clinician on the CDCR Form 115-MH-A.

(b) Based on his or her review, the Captain shall do one of the following:

(1) If the Captain does not agree with the clinician's recommendation, the Captain shall document his or her reasoning for proceeding with the disciplinary hearing on a CDC Form 128-B. The hearing officer shall proceed with hearing the Rules Violation Report as serious or administrative based on the nature of the specific charge(s). A copy of the CDC Form 128-B shall be attached to the RVR and forwarded to the hearing officer for adjudication. A copy of the CDC Form 128-B shall be issued to the inmate no less than 24 hours prior to a hearing.

(2) If the Captain agrees with the clinician's recommendation, the Captain shall either; reduce the level of the RVR on a Counseling Only Rules Violation Report for minor misconduct, or void the RVR and document the behavior via a CDC Form 128-B.

(c) If the Captain elects to void the RVR the hearing officer shall document the decision via a memorandum and attach a copy to the CDCR Form 1154 (Rev. 03/08), Disciplinary Action Log, which is incorporated by reference.

(d) The Captain shall provide his or her decision and return the RVR and supporting documentation to the hearing officer as soon as possible, but no later than five calendar days from the date of receipt.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.

HISTORY:

1. New section filed 11-17-2015 as an emergency; operative 11-17-2015 (Register 2015, No. 47). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 4-25-2016 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 11-17-2015 order, including amendment of subsection (a) and repealer of subsection (d), transmitted to OAL 4-20-2016 and filed 5-24-2016; amendments operative 5-24-2016 pursuant to Government Code section 11343.4(b)(3) (Register 2016, No. 22).
3. Amendment filed 6-2-2016 as an emergency; operative 6-2-2016 (Register 2016, No. 23). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 11-9-2016 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 6-2-2016 order, including amendment of subsection (b)(2), transmitted to OAL 11-7-2016 and filed 12-22-2016; amendments effective 12-22-2016 pursuant to Government Code section 11343.4(b)(3) (Register 2016, No. 52).

3317.2. Behaviors Related to Mental Illness or Developmental Disability/Cognitive or Adaptive Functioning Deficits Excluded from Rules Violation Reports.

(a) Inmates shall not be issued a Rules Violation Report for behavior that constitutes a Rule Violation under the circumstances described in subsections (1)–(4) below.

(1) The behavior occurred in connection with a cell extraction for the administration of involuntary medication, as defined in Penal Code Section 2602, or involuntary medical treatment, as defined in Probate Code section 3200, et seq.

(2) The behavior occurred in connection with a cell extraction for transfer of the inmate to a mental health inpatient unit or between mental health inpatient units.

(3) The behavior occurred in connection with being placed in mental health restraints and/or seclusion.

(4) The behavior is determined to be an act of self-mutilation or attempted suicide.

(b) The inmate's conduct shall be documented on a CDC Form 128-B for inclusion in the inmate's central file.

(c) If the inmate commits a Serious Rules Violation pursuant to Section 3315 while participating in the behavior noted above, which constitutes a Division A-1 offense as defined in Section 3323, subsection (b), an assault or battery as defined in Section 3323, subsections (d)(1), (d)(2), and (d)(3), or an assault on a peace officer or non-prisoner as defined in Section 3323, subsections (f)(11) and (f)(12), a Rules Violation Report shall be completed and processed in accordance in accordance with this Article.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.

HISTORY:

1. New section filed 11-17-2015 as an emergency; operative 11-17-2015 (Register 2015, No. 47). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 4-25-2016 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 11-17-2015 order transmitted to OAL 4-20-2016 and filed 5-24-2016 (Register 2016, No. 22).
3. Amendment of subsection (c) filed 6-2-2016 as an emergency; operative 6-2-2016 (Register 2016, No. 23). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 11-9-2016 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 6-2-2016 order transmitted to OAL 11-7-2016 and filed 12-22-2016 (Register 2016, No. 52).

3318. Assistance to Inmates for Serious Rule Violations.

(a) Investigative employee. The investigative employee is designated to gather information for the senior hearing officer or disciplinary hearing committee as described in section 3315(d)(1)(A).

(1) The investigative employee shall:

(A) Interview the charged inmate.

(B) Gather information.

(C) Question all staff and inmates who may have relevant information.

(D) Screen prospective witnesses.

(E) Submit a written report to the senior hearing officer or disciplinary committee chairperson to include witness statements and a summary of the information collected specific to the violation charged.

(2) A copy of the investigative employee's report shall be provided to the inmate no less than 24 hours before a disciplinary hearing is held.

(3) When an investigative employee provides assistance to an inmate, in lieu of or in addition to that provided by a staff assistant, the investigative employee shall do so as a representative of the official who will conduct the disciplinary hearing rather than as a representative of the inmate.

(4) An investigative employee is not subject to the confidentiality provisions of subsection (b)(2)(A) and shall not withhold any information received from the inmate.

(b) Staff Assistant.

(1) The assigned staff assistant shall:

(A) Inform inmates of their rights and of the disciplinary hearing procedures.

(B) Advise and assist in the inmate's preparation for a disciplinary hearing, represent the inmate's position at the hearing, ensure that the inmate's position is understood, and that the inmate understands the decisions reached.

(C) Refrain from giving legal counsel or specifying the position the inmate should take in any disciplinary, classification or criminal proceeding.

(2) The inmate shall be informed that:

(A) The staff assistant shall keep confidential any information the inmate may disclose concerning the charges for which the staff assistant was assigned.

(B) All evidence and information obtained and considered or developed in the disciplinary process may be used in court if the violation has been or is to be referred for criminal prosecution.

(3) If the staff assistant becomes aware that the inmate is contemplating future criminal conduct, the staff assistant shall disclose this information if necessary to protect potential victims and prevent the contemplated crime.

(4) The staff assistant shall inform the inmate that all evidence and information obtained and considered or developed in the disciplinary process may be used in court if the same charges have been or are to be referred to the district attorney for possible criminal prosecution.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 2932 and 5054, Penal Code.

HISTORY:

1. Amendment filed 2-24-77; effective thirtieth day thereafter (Register 77, No. 9).
2. Amendment filed 8-17-79 as an emergency; effective upon filing (Register 79, No. 33). A Certificate of Compliance must be filed within 120 days or emergency language will be repealed on 12-15-79.
3. New subsection (e) filed 11-1-79 as an emergency; effective upon filing (Register 79, No. 44). A Certificate of Compliance must be filed within 120 days or emergency language will be repealed on 3-1-80.
4. Certificate of Compliance as to 8-17-79 order filed 12-14-79 (Register 79, No. 50).
5. Certificate of Compliance as to 11-1-79 order filed 2-15-80 (Register 80, No. 7).
6. Amendment filed 2-15-80; effective thirtieth day thereafter (Register 80, No. 7).
7. Amendment filed 5-4-83; designated effective 6-1-83 pursuant to Government Code Section 11346.2(d) (Register 83, No. 19).
8. Amendment of section heading and section filed 5-5-95; operative 6-5-95 (Register 95, No. 18).
9. Amendment of subsections (a), (a)(1)(E) and (b)(2)(A)–(B) filed 8-4-2008; operative 8-4-2008 pursuant to Government Code section 11343.4 (Register 2008, No. 32).

3319. Investigative Employees.

HISTORY:

1. Amendment of subsection (a) filed 5-13-77; effective thirtieth day thereafter (Register 77, No. 20).
2. Amendment filed 8-18-78; effective thirtieth day thereafter (Register 78, No. 33).
3. Repealer filed 5-4-83; designated effective 6-1-83 pursuant to Government Code section 11346.2(d) (Register 83, No. 19).

3320. Hearing Procedures and Time Limitations.

(a) A classified copy of the RVR and any additional/supplemental information (formerly documented on the CDC Form 115-C) detailing any elements of the violation charged shall normally be provided to the inmate within 15 days from the date the information leading to the charges is discovered by staff or, in the case of an escapee, within 15 days after the escapee's return to the department's custody, or in the case of an ACP Participant's removal from the community, within 15 days of the participant's return to an institution.

(1) Any additional SOMS generated supplemental reports shall contain the standard auto populated information such as the inmate's name and number, housing, RVR log number, date of the RVR, violation rule number and title, and incident type. The purpose of the supplemental reports is to provide a continuation of the RVR circumstances, hearing, IE report, or other.

(2) Providing the inmate with a copy of the classified RVR may be delayed beyond 15 days, but no more than an additional 30 days for a total of 45 days, and shall not prohibit forfeiture of credits as a penalty for the misconduct when all of the following criteria are met:

(A) The misconduct could be prosecuted as murder, attempted murder, or battery on staff.

(B) An investigation is continuing to identify others involved in the misconduct.

(C) Within 15 days of discovering the misconduct, a written request to delay the inmate's notification, including the reasons for the delay, is approved by the chief disciplinary officer.

(3) Time limitations for a re-issued RVR shall commence on the date the chief disciplinary officer orders the re-hearing pursuant to Subsection 3320(a)(1) above.

(b) The charges shall be heard within 30 days from the date the inmate is provided a classified copy of the RVR unless the charges were referred for possible prosecution and the inmate has been granted a request for postponement of the disciplinary proceedings pending the outcome of the referral, if exceptional circumstances exist pursuant to section 3000, or the inmate is transferred out of the custody of the department.

(1) The Hearing for a RVR ordered re-issued/re-heard shall be conducted pursuant to Subsection 3320(b) above relative to the re-issued copy.

(c) A disciplinary hearing shall not be held until the inmate has been provided:

(1) A classified copy of the RVR and all non-confidential reports containing information relative to the charge, including the investigative employee's report.

(2) At least 24 hours to review the material and prepare for the hearing. The hearing may be held earlier if the inmate waives the 24-hour period.

(d) A hearing may be postponed up to 30 days upon receipt of the inmate's written request to the CDO showing a reasonable need

for postponement. The CDO will evaluate the request and approve or deny it based on its credibility. Postponement shall not bar any credit forfeiture.

(e) If a hearing is postponed for any reason, such reason shall be documented in the findings section of the RVR.

(f) The following events shall preclude denial or forfeiture of credits:

(1) The inmate was not provided a copy of the RVR within 15 days after the discovery of information leading to the charges except as other provided in (a).

(2) The official conducting the hearing did not establish that the information or evidence was not reasonably discoverable within 30 days or sooner or when the inmate is not provided a copy of the RVR within 15 days of the misconduct, unless (a) is applicable.

(3) The disciplinary hearing was not held within 30 days of the date the inmate was provided a classified copy of the RVR, unless the inmate requested and was granted a postponement of the hearing pending outcome of the referral pursuant to section 3316, exceptional circumstances as defined in Section 3000 exist, or if the inmate is transferred out of the custody of the department.

(4) A disciplinary hearing was not held within 30 days after the chief disciplinary officer was notified of the outcome of a prosecution referral or within 30 days of the inmate's revoked request for postponement of the hearing, if an accusatory pleading was not filed against the inmate.

(5) The inmate was not provided a written explanation of the exceptional circumstances preventing a hearing within 30 days after the inmate was provided a copy of the RVR and the official conducting the hearing did not establish in the findings of the hearing that the delay did not prejudice the inmate.

(g) The inmate shall normally be present at a disciplinary hearing. When a disciplinary hearing is held without the inmate present, the reason for the absence shall be documented during the hearing on the RVR. The inmate shall be present at a disciplinary hearing unless:

(1) A psychiatrist has determined that the inmate suffers from a serious mental disorder preventing the inmate's understanding of or participation in the hearing, and there is a compelling reason or need to proceed with the hearing.

(2) The inmate was convicted of escape in court and has not been returned to the facility or jurisdiction from which the escape occurred.

(3) The inmate has waived the right to be present in writing, or in the case of a refusal to sign a waiver, the refusal was witnessed by a custody officer, documented on a CDC Form 128-B (Rev. 4/74), and attached to the RVR for review by the Senior Hearing Officer at the disciplinary hearing and by the Chief Disciplinary Officer following adjudication of the rules violation report.

(h) Staff who observed, reported, classified, supplied supplemental reports to, or investigated the alleged rule violation; who assisted the inmate in preparing for the hearing; or for any other reason have a predetermined belief of the inmate's guilt or innocence shall not hear the charges or be present during deliberations to determine guilt or innocence and disposition of the charges.

(i) An inmate witness shall not be transferred between facilities to testify at a hearing unless the chief disciplinary officer of the facility hearing the charges determines a fair and impartial hearing cannot be conducted unless the witness is present. When a witness is not available, the chief disciplinary officer of the facility where the witness is located shall be notified of the need to appoint an investigative employee to discuss the case with the investigative employee of the facility conducting the disciplinary hearing; to interview the witness, prepare a written investigative report, and forward the report to the facility where the hearing will be conducted.

(j) When an inmate whose rule violation charges are being adjudicated is ordered to leave the hearing room, all witnesses, including staff witnesses, shall also leave the room. The inmate has a right to be present when any witness is present at the hearing.

(k) When a serious rule violation occurs during transportation of an inmate, transporting staff witnesses shall be present at the hearing if requested, or shall be available for questioning by telephone during the disciplinary hearing.

(*l*) The inmate may present documentary evidence in defense or mitigation of the charges. Any finding of guilt shall be based upon determination by the official(s) conducting the disciplinary hearing that a preponderance of evidence submitted at the hearing substantiates the charge. At the conclusion of the disciplinary hearing, the inmate shall be informed of the findings and disposition of the charge and of the right to and procedure for appeal of the action. Within five working days following review of the RVR by the chief disciplinary officer, the inmate shall be provided a copy of the completed Hearing Results containing the findings, disposition, and evidence relied upon in reaching the conclusions.

(m) When an inmate is charged with possession of unauthorized or dangerous items or substances, or when unauthorized or dangerous items or substances are associated with commission of the charged rule violation, the hearing official shall record the disposition of the item or substance in the disposition section of the RVR.

NOTE: Authority cited: Sections 5058, 5058.3 and 1170.05, Penal Code. Reference: Sections 1170.05, 2932 and 5054, Penal Code.

HISTORY:

1. Amendment of subsection (b) filed 12-1-80 as an emergency; designated effective 1-1-81 (Register 80, No. 49). For prior history, see Register 80, No. 16.
2. Order of Repeal of 12-1-80 order filed 12-5-80 by OAL pursuant to Government Code Section 11349.6 (Register 80, No. 49).
3. Amendment of subsection (c) filed 12-8-80; effective thirtieth day thereafter (Register 80, No. 50).
4. Amendment of subsection (b) filed 9-24-81; effective thirtieth day thereafter (Register 81, No. 39).
5. Amendment of subsections (a)–(d) filed 5-4-83; designated effective 6-1-83 pursuant to Government Code Section 11346.2(d) (Register 83, No. 19).
6. Amendment filed 8-7-87 as an emergency; operative 8-7-87 (Register 87, No. 34). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 12-7-87.
7. New subsection (*l*) filed 2-8-88; operative 3-9-88 (Register 88, No. 7).
8. Certificate of Compliance as to 8-7-87 order transmitted to OAL 12-4-87; disapproved by OAL (Register 88, No. 16).
9. Amendment filed 1-4-88 as an emergency; operative 1-4-88 (Register 88, No. 16). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 5-3-88.
10. Certificate of Compliance as to 1-4-88 order transmitted to OAL 5-3-88; disapproved by OAL (Register 88, No. 24).
11. Amendment filed 6-2-88 as an emergency; operative 6-2-88 (Register 88, No. 24) A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 9-30-88.
12. Certificate of Compliance transmitted to OAL 9-26-88 and filed 10-26-88 (Register 88, No. 50).
13. Amendment filed 5-5-95; operative 6-5-95 (Register 95, No. 18).
14. Change without regulatory effect amending subsection (a)(1)(A) filed 5-7-96; operative 6-6-96 (Register 96, No. 19).
15. Amendment filed 8-4-2008; operative 8-4-2008 pursuant to Government Code section 11343.4 (Register 2008, No. 32).
16. Amendment of subsection (a) and Note filed 9-27-2011 as an emergency; operative 9-27-2011 (Register 2011, No. 39). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be

transmitted to OAL by 3-5-2012 or emergency language will be repealed by operation of law on the following day.

17. Certificate of Compliance as to 9-27-2011 order transmitted to OAL 2-3-2012; Certificate of Compliance withdrawn 3-19-2012 (Register 2012, No. 12).
18. Amendment of subsection (a) and Note refiled 3-19-2012 as an emergency; operative 3-19-2012 (Register 2012, No. 12). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 6-18-2012 or emergency language will be repealed by operation of law on the following day.
19. Reinstatement of section as it existed prior to 3-19-2012 emergency amendment by operation of Government Code section 11346.1(f) (Register 2012, No. 28).
20. Amendment of subsection (a) and Note filed 9-13-2012 as an emergency; operative 9-13-2012 (Register 2012, No. 37). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 2-20-2012 or emergency language will be repealed by operation of law on the following day.
21. Certificate of Compliance as to 9-13-2012 order transmitted to OAL 1-11-2013 and filed 2-25-2013 (Register 2013, No. 9).
22. Amendment filed 6-2-2016 as an emergency; operative 6-2-2016 (Register 2016, No. 23). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 11-9-2016 or emergency language will be repealed by operation of law on the following day.
23. Certificate of Compliance as to 6-2-2016 order, including amendment of subsection (a), transmitted to OAL 11-7-2016 and filed 12-22-2016; amendments effective 12-22-2016 pursuant to Government Code section 11343.4(b)(3) (Register 2016, No. 52).

3320.1. Hearings for Transferred Inmates.

(a) An inmate's pending disciplinary hearing shall be conducted before the inmate is transferred to another facility unless any one of the following circumstances apply:

(1) An emergency transfer to a higher security level is necessary based on charges of involvement in a major disturbance or serious incident.

(2) The inmate is charged with escape from a Level I or II facility and will not be returned to the facility from which the inmate escaped.

(3) The inmate requires emergency medical or psychiatric treatment.

(b) When an inmate is transferred before a disciplinary hearing or a rehearing is ordered on the rule violation charges after the inmate's transfer, one of the following methods shall be used to facilitate the disciplinary hearing process:

(1) The inmate may be returned to the facility where the violation occurred.

(2) The institution head at the facility where the violation occurred may request the hearing be conducted by staff where the inmate is currently housed or staff from the facility where the violation occurred may conduct the hearing at the facility where the inmate is housed.

(A) Facility staff where the rule violation occurred may appoint an investigative employee to conduct an investigation and prepare a report as outlined in section 3318.

(B) If a staff assistant is appointed, the staff assistant shall be present at the disciplinary hearing.

NOTE: Authority cited: section 5058, Penal Code. Reference: Sections 2932, 5054 and 5068, Penal Code.

HISTORY:

1. New section filed 8-7-87 as an emergency; operative 8-7-87 (Register 87, No. 34). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 12-7-87.
2. Certificate of Compliance as to 8-7-87 order transmitted to OAL 12-4-87; disapproved by OAL (Register 88, No. 16).
3. New section filed 1-4-88 as an emergency; operative 1-4-88 (Register 88, No. 16). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 5-3-88.
4. Certificate of Compliance as to 1-4-88 order transmitted to OAL 5-3-88; disapproved by OAL (Register 88, No. 24).
5. New section filed 6-2-88 as an emergency; operative 6-2-88 (Register 88, No. 24). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 9-30-88.
6. Certificate of Compliance transmitted to OAL 9-26-88 and filed 10-26-88 (Register 88, No. 50).
7. Amendment filed 5-5-95; operative 6-5-95 (Register 95, No. 18).

3321. Confidential Material.

(a) The following types of information shall be classified as confidential:

(1) Information which, if known to the inmate, would endanger the safety of any person.

(2) Information which would jeopardize the security of the institution.

(3) Specific medical or psychological information which, if known to the inmate, would be medically or psychologically detrimental to the inmate.

(4) Information provided and classified confidential by another governmental agency.

(5) A Security Threat Group debrief report, reviewed and approved by the debriefing subject, for placement in the confidential section of the central file.

(b) Uses of specific confidential material.

(1) No decision shall be based upon information from a confidential source, unless other documentation corroborates information from the source, or unless other circumstantial evidence surrounding the event and the documented reliability of the source satisfies the decision maker(s) that the information is true.

(2) Any document containing information from a confidential source shall include an evaluation of the source's reliability, a brief statement of the reason for the conclusion reached, and a statement of reason why the information or source is not disclosed.

(3) The documentation given to the inmate shall include:

(A) The fact that the information came from a confidential source.

(B) As much of the information as can be disclosed without identifying its source including an evaluation of the source's reliability; a brief statement of the reason for the conclusion reached; and, a statement of reason why the information or source is not disclosed.

(c) A confidential source's reliability may be established by one or more of the following criteria:

(1) The confidential source has previously provided information which proved to be true.

(2) Other confidential source have independently provided the same information.

(3) The information provided by the confidential source is self-incriminating.

(4) Part of the information provided is corroborated through investigation or by information provided by non-confidential sources.

(5) The confidential source is the victim.

(6) This source successfully completed a polygraph examination.

(d) Filing confidential material.

(1) Only case information meeting the criteria for confidentiality shall be filed in the confidential section of an inmate's/parolee's central file.

(2) Proposed confidential documents shall be reviewed, signed, and dated by a staff person at the correctional counselor III, parole agent III, correctional captain, or higher staff level to indicate

approval of the confidential designation and placement in the confidential section of the central file.

(3) Classification committees shall review the material filed in the confidential folder of each case considered. Any material not approved but designated confidential shall be removed from the folder and submitted to the designated staff person for review and determination.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 1798.34, 1798.40, 1798.41 and 1798.42, Civil Code; Section 6255, Government Code; Sections 2081.5, 2600, 2601, 2932, 5054 and 5068, Penal Code; and *Illinois* v. *Gates*, 462 U.S. 213 (1983).

HISTORY:

1. Repealer and new section filed 8-7-87 as an emergency; operative 8-7-87 (Register 87, No. 34). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 12-7-87.
2. Certificate of Compliance as to 8-7-87 order transmitted to OAL 12-4-87; disapproved by OAL (Register 88, No. 16).
3. Repealer and new section filed 1-4-88 as an emergency; operative 1-4-88 (Register 88, No. 16). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 5-3-88.
4. Certificate of Compliance as to 1-4-88 order transmitted to OAL 5-3-88; disapproved by OAL (Register 88, No. 24).
5. Repealer and new section filed 6-2-88 as an emergency; operative 6-2-88 (Register 88, No. 24). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 9-30-88.
6. Certificate of Compliance transmitted to OAL 9-26-88 and filed 10-26-88 (Register 88, No. 50).
7. Amendment of subsection (c)(4) and Note filed 8-30-99 as an emergency; operative 8-30-99 (Register 99, No. 36). Pursuant to Penal Code section 5058(e), a Certificate of Compliance must be transmitted to OAL by 2-8-2000 or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 8-30-99 order transmitted to OAL 2-7-2000 and filed 3-21-2000 (Register 2000, No. 12).
9. New subsection (a)(5), amendment of subsection (b)(1) and new subsection (c)(6) filed 10-17-2014; operative 10-17-2014 pursuant to Government Code section 11343.4(b)(3) (Register 2014, No. 42).

3322. Length of Confinement.

(a) No inmate shall be kept in disciplinary detention or confined to quarters more than ten days. The chief disciplinary officer may shorten time spent in disciplinary detention or confined to quarters if the inmate appears ready to conform and the facility disciplinary process will benefit by such an action. When the disciplinary detention or confined to quarters disposition has expired and continued segregation is deemed necessary, the inmate shall be processed pursuant to section 3335.

(b) Time spent in segregation pending a disciplinary hearing shall normally be credited toward any disciplinary detention or confined to quarters sentence imposed. Reasons for not granting such credit shall be explained in the disposition section of the RVR.

(c) No inmate shall be confined to quarters or otherwise deprived of exercise as a disciplinary disposition longer than ten days unless, in the opinion of the institution head, the inmate poses such an extreme management problem or threat to the safety of others that longer confinement is necessary. The director's written approval is required for such extended confinement.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.

HISTORY:

1. Amendment of section and new Note filed 5-5-95; operative 6-5-95 (Register 95, No. 18).
2. Amendment of subsection (b) filed 6-2-2016 as an emergency; operative 6-2-2016 (Register 2016, No. 23). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 11-9-2016 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 6-2-2016 order transmitted to OAL 11-7-2016 and filed 12-22-2016 (Register 2016, No. 52).

3323. Disciplinary Credit Forfeiture Schedule.

(a) Upon a finding of guilt of a serious rule violation, a credit forfeiture against any determinate term of imprisonment or any minimum eligible parole date for an inmate sentenced to an indeterminate sentence, as defined in section 3000 Indeterminate Sentence Law (ISL), shall be assessed within the ranges specified in (b) through (h) below:

(b) Division "A-1" offenses; credit forfeiture of 181–360 days.

(1) Murder, attempted murder, and solicitation of murder. Solicitation of murder shall be proven by the testimony of two witnesses, or of one witness and corroborating circumstances.

(2) Manslaughter.

(3) Battery, including sexual battery, causing serious injury.

(4) Assault or battery with a deadly weapon or caustic substance.

(5) Rape, attempted rape, sodomy, attempted sodomy, oral copulation, and attempted oral copulation against the victim's will.

(6) Taking a hostage.

(7) Escape with force or violence.

(8) Possession, manufacture, or attempted manufacture of a deadly weapon or explosive device.

(9) Solicitation to commit an offense listed in subsections (b)(3), (b)(4) or (b)(5) above.

(10) Behavior or activities defined as a division "A-1" offense that promotes, furthers, or assists a STG or demonstrates a nexus to the STG.

(c) Division "A-2" offenses; credit forfeiture of 151–180 days.

(1) Arson involving damage to a structure or causing serious bodily injury.

(2) Possession of flammable, explosive, or combustible material with intent to burn any structure or property.

(3) Destruction of state property valued in excess of $400 during a riot or disturbance.

(4) Any other felony involving violence or injury to a victim not specifically listed in this schedule.

(5) Attempted escape with force or violence.

(6) Introduction or distribution of any controlled substance, as defined in section 3000, in an institution/facility or contract health facility.

(7) Extortion by means of force or threat.

(8) Conspiracy to commit any Division "A-1" or "A-2" offense.

(9) Solicitation to commit an offense listed in subsections (c)(1), (c)(3), or (c)(8) above.

(10) Behavior or activities defined as a division "A-2" offense that promotes, furthers, or assists a STG or demonstrates a nexus to the STG.

(d) Division "B" Offenses; credit forfeiture of 121–150 days.

(1) Battery on a peace officer not involving the use of a weapon.

(2) Assault on a peace officer by any means likely to cause great bodily injury.

(3) Battery on a non-prisoner.

(4) Threatening to kill or cause serious bodily injury to a public official, their immediate family, their staff, or their staff's immediate family.

(5) Escape from any institution or community correctional facility other than a camp or community-access facility.

(6) Theft, embezzlement, destruction, or damage to another's personal property, state funds, or state property valued in excess of $400.

(7) Unauthorized possession of any controlled substance as defined in section 3000, including marijuana, in an institution/facility or contract health facility.

(A) Progressive disciplinary credit forfeiture for violations described in (7) above are as follows:

1. Credit forfeiture of 121–130 days for the first offense.

2. Credit forfeiture of 131–140 days for the second offense.

3. Credit forfeiture of 141–150 days for the third offense.

(8) Sexual Activity in a visiting room involving physical contact with a minor.

(9) Indecent Exposure with prior court conviction under PC 314 or PC 288.

(10) Any felony not involving violence or the use of a weapon not listed in this schedule.

(11) Conspiracy to commit any Division "B" offense.

(12) Solicitation to commit an offense as listed in subsections (d)(1) or (d)(2) above.

(13) Behavior or activities defined as a division "B" offense that promotes, furthers, or assists a STG or demonstrates a nexus to the STG.

(e) Division "C" offenses; credit forfeiture of 91–120 days.

(1) Escape without force from a camp, community-access facility, or any Alternative Custody Program placement, as provided in Chapter 1, Article 6.8.

(2) Attempted escape without force from an institution or community correctional facility other than a camp or community-access facility.

(3) Furnishing equipment for or aiding and abetting an escape or escape attempt.

(4) Attempted extortion by means of threat.

(5) Bribery.

(6) Arson.

(7) Forgery, falsification, or alteration of any official record or document prepared or maintained by the department which could affect a term of imprisonment.

(8) Possession of any narcotic, drug, or controlled substance in a community-access facility or any Alternative Custody Program placement.

(9) Unauthorized possession of drug paraphernalia as defined in Section 3000.

(10) The physical possession of alcohol in an institution/facility or contract health facility.

(11) Accessory to any felony offense.

(12) Conspiracy to commit any Division "C" offense.

(13) Solicitation to commit an offense listed in subsections (e)(5), (e)(6), or (e)(7) above.

(14) Behavior or activities defined as a division "C" offense that promotes, furthers, or assists a STG or demonstrates a nexus to the STG.

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

(1) Use of a controlled substance (except marijuana or Barbiturates), as identified in H&SC 11007, based solely on a positive test result from an approved departmental testing method.

(2) Being under the influence of alcohol, any drug, controlled substance, or other intoxicant, as defined in section 3000 and unable to exercise care for personal safety or the safety of others.

(3) Participating in a riot, rout, or unlawful assembly.

(4) Inciting a riot.

(5) Indecent Exposure without a prior court conviction under PC 314 or PC 288.

(6) Sexual Activity in a visiting room with an adult.

(7) Willfully resisting, delaying, or obstructing any peace officer in the performance of duty.

(8) Late return from a temporary community leave.

(9) Assault or battery, including sexual assault or battery, on a prisoner with no serious injury.

(10) Fighting.

(11) Assault of a peace officer by any means not likely to cause great bodily injury.

(12) Assault on a non-prisoner.

(13) Conspiracy to commit any Division "D" offense.

(14) Solicitation to possess, distribute or introduce a controlled substance into an institution, contract health facility, or any Alternative Custody Program placement.

(15) Possession and/or constructive possession of a cellular telephone or wireless communication device capable of making or receiving wireless communications.

(16) Acting in a STG Leadership Role displaying behavior to organize and control other offenders.

(17) Behavior or activities defined as a division "D" offense that promotes, furthers, or assists a STG or demonstrates a nexus to the STG.

(g) Division "E" offenses; credit forfeiture of 31–60 days.

(1) Theft, embezzlement, destruction, or damage to another's personal property, state funds or state property valued at less than $400.

(2) Possession of alcoholic beverages or intoxicating substances in a community-access facility under the jurisdiction of CDCR.

(3) Consensual participation in sodomy or oral copulation.

(4) Forgery or falsification or alteration of any government document or record not affecting an inmate's term of imprisonment.

(5) Gambling in an institution, community correctional facility, or camp other than a community-access facility.

(6) Refusal to provide blood specimens, a saliva sample, or palm and thumb print impressions pursuant to Penal Code sections 295 through 300.3, after receiving written notification in accordance with PC section 298.1 that they must be provided.

(7) Sexual Disorderly Conduct.

(8) Commission of any misdemeanor offense not listed in this schedule.

(9) Conspiracy to commit any Division "E" offense.

(10) Solicitation to commit an offense listed in subsections (g)(4) or (g)(7) above.

(11) Behavior or activities defined as a division "E" offense that promotes, furthers, or assists a STG or demonstrates a nexus to the STG.

(h) Division "F" offenses; credit forfeiture of 0–30 days.

(1) Gambling in a community-access facility or any Alternative Custody Program placement.

(2) Late return to a community-access facility or any Alternative Custody Program placement.

(3) Use of marijuana, barbiturates or alcohol based solely on a positive test result from an approved departmental testing method.

(4) Misuse, alteration, unauthorized acquisition, or exchange of personal property, state funds, or state property.

(5) Refusing to provide a urine specimen for the purpose of testing for the presence of controlled substance(s) or alcohol.

(6) The fermentation or distillation of materials in a manner consistent with the production of alcohol.

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

(8) Unauthorized possession or distribution of medication (not identified as a controlled substance in section 3000).

(9) Work related offenses:

(A) Refusal to work or perform assigned duties;

(B) Continued failure to perform assigned work or participate in a work/training program.

(10) Any other serious rule violation meeting the criteria listed in section 3315, not a crime, and not identified as administrative in section 3314.

(11) Harassment of another person, group, or entity either directly or indirectly through the use of the mail, telephone, or other means.

(12) Security Threat Group Behavior or Activity.

(A) Recording/documentation of conversations evidencing STG behavior;

(B) Communication between offenders/others in support or furtherance of STG behavior or activities;

(C) Leading STG Roll Call;

(D) Directing Cadence for STG Group Exercise;

(E) In personal possession of STG related written material including membership or enemy list, roll call lists, constitution, organizational structures, codes, training material, etc.;

(F) In personal possession of mail, notes, greeting cards, or other communications which include coded or explicit messages evidencing STG behavior.

(13) Behavior or activities defined as a division "F" offense that promotes, furthers, or assists a STG or demonstrates a nexus to the STG.

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

(i) Nothing in this section shall prevent the department from seeking criminal prosecution for any conduct constituting a violation of the law or from imposing one or more of the authorized punitive, preventative, or control measures described in these regulations, in addition to forfeiture of credits.

(j) Inmates shall be provided written notice of any credit forfeited by disciplinary action, of anticipated release date changes based on credit forfeiture set aside through the departmental appeal process, or a Board of Parole Hearings review.

(k) If an inmate is held beyond an established parole date because of a disciplinary or prosecution action, the number of days the inmate is overdue when released shall be deducted from their parole period when one or more of the following apply:

(1) The inmate is found not guilty of the charges.

(2) No credit is forfeited as a result of the disciplinary hearing.

(3) An inmate appeal results in reduction of the credit forfeiture ordered in the disciplinary hearing.

(4) A Board of Parole Hearings review results in restoration of all or part of the credit forfeiture ordered in the disciplinary hearing.

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

HISTORY:

1. Amendment of subsection (a)(3) and new subsection (a)(3)(E) filed 12-1-78 as an emergency; designated effective 1-1-79. For prior history, see Register 77, No. 40.
2. Certificate of Compliance filed 2-22-79 (Register 79, No. 8).
3. Amendment of subsection (a) filed 8-22-79; effective thirtieth day thereafter (Register 79, No. 34).
4. Amendment filed 11-20-79 as an emergency; designated effective 1-1-80 (Register 79, No. 47). A Certificate of Compliance must be filed within 120 days or emergency language will be repealed on 3-20-80.
5. Certificate of Compliance filed 2-15-80 (Register 80, No. 7).
6. Amendment filed 5-4-83; designated effective 6-1-83 pursuant to Government Code Section 11346.2(d) (Register 83, No. 19).
7. Amendment filed 8-7-87 as an emergency; operative 8-7-87 (Register 87, No. 34). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 12-7-87.
8. Certificate of Compliance as to 8-7-87 order transmitted to OAL 12-4-87; disapproved by OAL (Register 88, No. 16).
9. Amendment filed 1-4-88 as an emergency; operative 1-4-88 (Register 88, No. 16). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 5-3-88.
10. Certificate of Compliance as to 1-4-88 order transmitted to OAL 5-3-88; disapproved by OAL (Register 88, No. 24).
11. Amendment filed 6-2-88 as an emergency; operative 6-2-88 (Register 88, No. 24). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 9-30-88.
12. Certificate of Compliance including amendment transmitted to OAL 9-26-88 and filed 10-26-88 (Register 88, No. 50).
13. Amendment of section heading, section and Note filed 5-5-95; operative 6-5-95 (Register 95, No. 18).
14. New subsection (c)(7), subsection renumbering, amendment of subsection (d)(6), new subsections (d)(6)(A)–(d)(6)(A)3., repealer of subsection (d)(7), subsection renumbering, and amendment of subsections (e)(11) and (f)(1) filed 8-27-98 as an emergency; operative 8-27-98 (Register 98, No. 35). A Certificate of Compliance must be transmitted to OAL by 2-3-99 or emergency language will be repealed by operation of law on the following day,
15. New subsection (c)(7), subsection renumbering, amendment of subsection (d)(6), new subsections (d)(6)(A)–(d)(6)(A)3., repealer of subsection (d)(7), subsection renumbering, and amendment of subsections (e)(11) and (f)(1) refiled 2-3-99 as an emergency; operative 2-3-99 (Register 99, No. 6). Pursuant to Penal Code section 5058(e), a Certificate of Compliance must be transmitted to OAL by 7-13-99 or emergency language will be repealed by operation of law on the following day.
16. Certificate of Compliance as to 2-3-99 order transmitted to OAL 5-12-99 and filed 6-24-99 (Register 99, No. 26).
17. New subsection (g)(6), subsection renumbering and amendment of Note filed 9-20-99 as an emergency; operative 9-20-99 (Register 99, No. 39). Pursuant to Penal Code section 5058(e) a Certificate of Compliance must be transmitted to OAL by 2-28-2000 or emergency language will be repealed by operation of law on the following day.
18. Certificate of Compliance as to 9-20-99 order transmitted to OAL 1-14-2000 and filed 2-22-2000 (Register 2000, No. 8).
19. New subsections (g)(7)–(g)(7)(C) and subsection renumbering filed 1-9-2004 as an emergency; operative 1-9-2004 (Register 2004, No. 2). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 6-17-2004 or emergency language will be repealed by operation of law on the following day.
20. New subsections (g)(7)–(g)(7)(C) and subsection renumbering refiled 6-17-2004 as an emergency; operative 6-17-2004 (Register 2004, No. 25). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 11-24-2004 or emergency language will be repealed by operation of law on the following day.
21. Certificate of Compliance as to 6-17-2004 order transmitted to OAL 11-16-2004 and filed 12-29-2004 (Register 2004, No. 53).
22. New subsections (d)(7) and (g)(8), subsection renumbering, amendment of subsection (f)(5), and amendment of Note filed 2-23-2007 as an emergency; operative 2-23-2007 (Register 2007, No. 8). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 8-2-2007 or emergency language will be repealed by operation of law on the following day.
23. Certificate of Compliance as to 2-23-2007 order transmitted to OAL 7-27-2007 and filed 9-5-2007 (Register 2007, No. 36).
24. Amendment filed 8-4-2008; operative 8-4-2008 pursuant to Government Code section 11343.4 (Register 2008, No. 32).
25. Change without regulatory effect amending subsection (d)(7)(A) filed 12-11-2008 pursuant to section 100, title 1, California Code of Regulations (Register 2008, No. 50).

26. New subsections (d)(8) and (f)(6) and subsection renumbering filed 10-6-2009; operative 10-6-2009 pursuant to Government Code section 11343.4 (Register 2009, No. 41).
27. New subsection (f)(12), subsection renumbering and amendment of Note filed 7-19-2011; operative 8-18-2011 (Register 2011, No. 29).
28. Amendment of subsections (e)(1), (e)(8), (f)(14) and (h)(2) and amendment of Note filed 9-27-2011 as an emergency; operative 9-27-2011 (Register 2011, No. 39). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 3-5-2012 or emergency language will be repealed by operation of law on the following day.
29. Amendment of subsection (a), new subsection (f)(15), amendment of subsections (h)(7), (j) and (k)(4) and amendment of Note filed 12-9-2011 as an emergency; operative 12-9-2011 (Register 2011, No. 49). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 5-17-2012 or emergency language will be repealed by operation of law on the following day.
30. Change without regulatory effect amending Note filed 3-8-2012 pursuant to section 100, title 1, California Code of Regulations (Register 2012, No. 10).
31. Certificate of Compliance as to 9-27-2011 order transmitted to OAL 2-3-2012; Certificate of Compliance withdrawn 3-19-2012 (Register 2012, No. 12).
32. Amendment of subsections (e)(1), (e)(8), (f)(14) and (h)(2) and amendment of Note refiled 3-19-2012 as an emergency; operative 3-19-2012 (Register 2012, No. 12). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 6-18-2012 or emergency language will be repealed by operation of law on the following day.
33. Certificate of Compliance as to 12-9-2011 order transmitted to OAL 5-3-2012 and filed 6-6-2012 (Register 2012, No. 23).
34. Reinstatement of section as it existed prior to 3-19-2012 emergency amendment by operation of Government Code section 11346.1(f) (Register 2012, No. 28).
35. Amendment of subsections (e)(1), (e)(8), (f)(14) and (h)(2) and amendment of Note filed 9-13-2012 as an emergency; operative 9-13-2012 (Register 2012, No. 37). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 2-20-2012 or emergency language will be repealed by operation of law on the following day.
36. Certificate of Compliance as to 9-13-2012 order transmitted to OAL 1-11-2013 and filed 2-25-2013 (Register 2013, No. 9).
37. New subsections (b)(10), (c)(10), (d)(13), (e)(14), (f)(16)–(17), (g)(11) and (h)(11)–(13) filed 10-17-2014; operative 10-17-2014 pursuant to Government Code section 11343.4(b)(3) (Register 2014, No. 42).
38. Amendment of subsections (f)(15) and (h)(7) and new subsection (h)(14) filed 8-17-2016; operative 8-17-2016 pursuant to Government Code section 11343.4(b)(3) (Register 2016, No. 34).
39. Amendment of subsections (b)(3) and (f)(9) filed 10-20-2016; operative 10-20-2016 pursuant to Government Code section 11343.4(b)(3) (Register 2016, No. 43).

3324. Conduct Reportable to the Releasing Authority.

(a) Rules of the Board of Parole Hearings and those of the Narcotic Addict Evaluation Authority require that specific acts of inmate conduct be reported to the appropriate releasing authority when the inmate has an established or anticipated release date on an indeterminate term or period of confinement. The applicable Board of Parole Hearings and Narcotic Addict Evaluation Authority rules are set forth in Divisions 2 and 5 of Title 15, California Administrative Code, and are hereby incorporated by reference in the rules of the Secretary of Corrections and Rehabilitation.

(b) At the discretion of the appropriate releasing authority, a hearing for reconsideration of release may be held in conjunction with a disciplinary hearing for misconduct that is also reportable to the releasing authority.

(c) Releasing authority members and representatives may sit in the factfinding and disposition phase of a disciplinary hearing held in conjunction with a hearing by the releasing authority for release reconsideration. Releasing authority members and representatives will not act as factfinders or decision makers in the disposition of disciplinary charges against an inmate. However, the members and representatives of the releasing authority may participate in the factfinding phase of the disciplinary hearing as deemed necessary to bring out information which will aid in determining appropriate action relative to the inmate's scheduled or anticipated release.

(d) The scheduling of a combined departmental disciplinary hearing and a releasing authority hearing for reconsideration of an established or anticipated release date on an indeterminate term or period of confinement does not stay the time limits for a disciplinary hearing in which good time credit may be denied on a determinate term of imprisonment.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 2931, 3060 and 5054, Penal Code; Section 3051, Welfare and Institutions Code.

HISTORY:

1. Repealer and new section filed 5-13-77; effective thirtieth day thereafter (Register 77, No. 20).
2. Repealer and new section filed 3-22-78; effective thirtieth day thereafter (Register 78, No. 12).
3. Amendment filed 8-22-79; effective thirtieth day thereafter (Register 79, No. 34).
4. Editorial correction of subsection (a) filed 2-19-85 (Register 85, No. 8).
5. Editorial correction of printing errors in subsection (c) (Register 92, No. 5).
6. Change without regulatory effect amending subsection (a) filed 3-11-2013 pursuant to section 100, title 1, California Code of Regulations (Register 2013, No. 11).

3325. Appeal of Disciplinary Actions.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 2932, 5054 and 5077, Penal Code.

HISTORY:

1. Amendment filed 2-24-77; effective thirtieth day thereafter (Register 77, No. 9).
2. Repealer and new section filed 5-13-77; effective thirtieth day thereafter (Register 77, No. 20).
3. Amendment of subsection (c) filed 9-30-77; effective thirtieth day thereafter (Register 77, No. 40).
4. Amendment of subsection (b) filed 2-22-79; effective thirtieth day thereafter (Register 79, No. 8).
5. Amendment of subsections (a) and (c) filed 4-18-80; effective thirtieth day thereafter (Register 80, No. 16).
6. Repealer of section 3325(a) and (b), and renumbering and amendment of former section 3325(c) to section 3084.7(c) filed 5-18-89 as an emergency; operative 5-18-89 (Register 89, No. 21). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 9-15-89.
7. Certificate of Compliance as to 5-18-89 order transmitted to OAL 9-7-89 and filed 10-10-89 (Register 89, No. 41).

3326. Records of Disciplinary Matters.

(a) Upon conclusion of disciplinary proceedings, all documents relating to the disciplinary process, findings, and disposition shall be disposed of in the following manner:

(1) When an inmate is held responsible for the act charged, copies of all documents prepared for and used in the disciplinary proceedings shall be placed in the inmate's central file. A copy of the completed RVR shall be provided to the inmate.

(2) When the inmate is found not guilty of the act charged or when the charge is dismissed for any reason, a copy of the action taken shall be provided to the inmate. All electronic copies of documents prepared for and used in the disciplinary process shall be

removed from general view and stored in SOMS, serving as the Register of Institutional Violations.

(3) Unless information developed through the disciplinary process, such as enemy information, needs to be considered in future classification committee determinations affecting an inmate found not guilty of a rule violation or whose charges were dismissed, no other recording or document relating to the rule violation charge or disciplinary proceedings shall be placed in files pertaining to the inmate.

(b) Information developed through the disciplinary process, classification committee determinations affecting the inmate, or events requiring explanation shall be recorded by the disciplinary hearing officer on a CDC Form 128-B, Informative Chrono, and referred to the classification committee. Such information shall include but not be limited to the following:

(1) The reason for an inmate's placement in restricted housing prior to adjudication of the charges if that information has not been previously considered in a classification committee hearing;

(2) Any reason for retaining the inmate in restricted housing after a finding of not guilty or dismissal of charges; or

(3) Any program assignment or placement change which needs to be considered in view of other inmate or employee animosity toward the individual.

(4) The CDC Form 128-B shall be placed in the inmate's central file and a copy shall be provided to the inmate.

(c) Provisions of this section shall also apply when a finding of guilt on disciplinary charges is reversed or dismissed on appeal, or when information reported on a Counseling Only Rules Violation Report, is found on appeal to be incorrect or inappropriate.

(d) A finding of not guilty, dismissal, or reversal of a previous finding of guilt shall require an audit and updating of any documentation in the inmate's file reflecting a prehearing assumption of guilt or the original finding of guilt. Such documentation shall not be removed from the inmate's file, but shall be annotated with a cross-reference to the CDC Form 128-B documenting the most recent findings and action on the charge.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 5054 and 2081, Penal Code.

HISTORY:

1. New section filed 5-13-77; effective thirtieth day thereafter (Register 77, No. 20).
2. Amendment of subsection (a) filed 3-22-78; effective thirtieth day thereafter (Register 78, No. 12).
3. Amendment of section and new Note filed 5-5-95; operative 6-5-95 (Register 95, No. 18).
4. Amendment of subsections (a)(1)–(2) and (c) filed 6-2-2016 as an emergency; operative 6-2-2016 (Register 2016, No. 23). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 11-9-2016 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 6-2-2016 order, including amendment of subsections (a)(2) and (c), transmitted to OAL 11-7-2016 and filed 12-22-2016; amendments effective 12-22-2016 pursuant to Government Code section 11343.4(b)(3) (Register 2016, No. 52).

Article 5.5. Restoration of Forfeited Worktime Credits

3327. Restoration of Forfeited Credits.

(a) Forfeited credits shall at no time be restored as specified below:

(1) No credit shall be restored for any serious disciplinary offense punishable by a credit loss of more than 90 days. These offenses include Divisions A-1, A-2, B and C.

(2) No credit shall be restored if the inmate is found guilty of any subsequent rule violation that occurred within the required disciplinary-free periods provided in Section 3328.

(3) No credit shall be restored if the worktime credit denial or loss was ordered by court judgment unless the court rescinds or overturns the order.

(4) No credit shall be restored for the following disciplinary offenses:

(A) The inmate was found guilty of use of a controlled substance, marijuana, or alcohol, based on a positive test result from a departmentally approved testing method;

(B) The inmate was ordered to submit to a drug test pursuant to section 3290(c) and refused the test;

(C) The inmate was found guilty of fermentation or distillation of materials in a manner consistent with the production of alcohol in a prison or community access facility;

(D) The inmate was found guilty of unauthorized possession of dangerous contraband as defined in section 3000.

(b) Upon completion of a disciplinary-free period for Division D, E, and F offenses as provided in section 3328, an eligible inmate may apply to their caseworker for credit restoration by submitting a CDC Form 958 (Rev. 8/87), Application for Inmate's Restoration of Credits. A restoration hearing shall be conducted within 30 days of the inmate's application. The inmate has a right to be present at the hearing and to a written decision of the committee.

(1) A classification action resulting in restoration of worktime credit shall be documented and forwarded to the facility's case records staff for recalculation of the inmate's release date.

(2) When an inmate does not meet the criteria for a credit restoration hearing, the caseworker shall note the reasons on the CDC Form 958 and return it to the inmate.

(c) Credit shall be restored at the consideration hearing unless it is determined that the inmate has, since the disciplinary infraction leading to the credit forfeiture, refused or failed to perform in a work, training, or educational assignment during the required disciplinary-free period, or under extraordinary circumstances, as described in section 3329.

(1) Credit shall not be restored in an amount rendering the inmate overdue for release.

(2) An inmate who is a violent offender as defined in Penal Code (PC) Section 667.5(c), or who is serving a term upon conviction of child abuse pursuant to PC Sections 273a, 273ab, 273d, or any sex offense identified in statutes as being perpetrated against a minor victim, or who is an offender for whom such notification has been ordered by any court shall not be eligible for credit restoration which would result in a notification being provided to local law enforcement in less than 45 days prior to the inmate's scheduled release date.

(3) The inmate shall be informed at the hearing that case records staff shall determine the actual release date which shall include a minimum of ten working days for release processing. However, if the inmate is a violent offender as defined in PC Section 667.5(c) or is serving a term upon conviction of child abuse pursuant to PC Section 273a, 273ab, 273d, or any sex offense identified in statutes as being perpetrated against a minor victim, or for whom such notification has been court ordered, the number of working days for release processing shall be sufficient to ensure that local law enforcement officials will be notified of the inmate's release in not less than the 45-day time frame required by law. A copy of the new legal status sheet reflecting the credit restoration shall be provided to the inmate.

(d) If less than 100 percent of restorable credits forfeited are restored by the classification committee, the inmate may make additional applications for restoration upon completion of additional

disciplinary-free periods until all restorable credit is restored or the inmate is released from custody.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 273a, 273ab, 273d, 667.5, 2932, 2932.5, 2933, 3058.6, 3058.9 and 5054, Penal Code.

HISTORY:

1. New article 5.5 (sections 3327–3329) filed 5-4-83; designated effective 6-1-83 pursuant to Government Code section 1136.2(d) (Register 83, No. 19).
2. Amendment filed 8-7-87 as an emergency; operative 8-7-87 (Register 87, No. 34). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 12-7-87.
3. Certificate of Compliance as to 8-7-87 order transmitted to OAL 12-4-87; disapproved by OAL (Register 88, No. 16).
4. Amendment filed 1-4-88 as an emergency; operative 1-4-88 (Register 88, No. 16). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 5-3-88.
5. Certificate of Compliance as to 1-4-88 order transmitted to OAL 5-3-88; disapproved by OAL (Register 88, No. 24).
6. Amendment filed 6-2-88 as an emergency; operative 6-2-88 (Register 88, No. 24). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 9-30-88.
7. Certificate of Compliance transmitted to OAL 9-26-88 and filed 10-26-88 (Register 88, No. 50).
8. Amendment of subsections (b) and (c) filed 12-20-91 as an emergency; operative 12-20-91 (Register 92, No. 4). A Certificate of Compliance must be transmitted to OAL 4-20-92 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 12-20-91 order transmitted to OAL 4-20-92 and filed 5-28-92 (Register 92, No. 24).
10. Amendment of section heading, section and Note filed 5-5-95; operative 6-5-95 (Register 95, No. 18).
11. Amendment of section pursuant to Penal Code section 5058(e) filed 3-20-96 as an emergency; operative 3-20-96 (Register 96, No. 12). A Certificate of Compliance must be transmitted to OAL by 8-27-96 or emergency language will be repealed by operation of law on the following day.
12. Certificate of Compliance as to 3-20-96 order transmitted to OAL 7-25-96 and filed 9-5-96 (Register 96, No. 36).
13. New subsection (a)(3) and amendment of Note filed 11-12-97 as an emergency; operative 11-12-97 (Register 97, No. 46). A Certificate of Compliance must be transmitted to OAL by 3-13-98 or emergency language will be repealed by operation of law on the following day.
14. Editorial correction of History 13 (Register 98, No. 18).
15. New subsection (a)(3) and amendment of Note refiled 4-29-98 as an emergency; operative 4-29-98 (Register 98, No. 18). A Certificate of Compliance must be transmitted to OAL by 10-6-98 or emergency language will be repealed by operation of law on the following day.
16. Certificate of Compliance as to 4-29-98 order transmitted to OAL 6-12-98 and filed 7-21-98 (Register 98, No. 30).
17. Amendment of subsection (a)(3) filed 8-27-98 as an emergency; operative 8-27-98 (Register 98, No. 35). A Certificate of Compliance must be transmitted to OAL by 2-3-99 or emergency language will be repealed by operation of law on the following day,
18. Amendment of subsection (a)(3) refiled 2-3-99 as an emergency; operative 2-3-99 (Register 99, No. 6). Pursuant to Penal Code section 5058(e), a Certificate of Compliance must be transmitted to OAL by 7-13-99 or emergency language will be repealed by operation of law on the following day.
19. Certificate of Compliance as to 2-3-99 order, including further amendment of subsection (a)(3) and new subsection (a)(4), transmitted to OAL 5-12-99 and filed 6-24-99 (Register 99, No. 26).
20. Amendment of subsections (a)(2) and (c), new subsection (c)(2), subsection renumbering and amendment of newly designated subsection (c)(3) and Note filed 5-22-2006; operative 5-22-2006 pursuant to Government Code section 11343.4 (Register 2006, No. 21).
21. Amendment of subsections (a)(2) and (a)(4) and new subsections (a)(4)(A)–(D) filed 8-4-2008; operative 8-4-2008 pursuant to Government Code section 11343.4 (Register 2008, No. 32).

3328. Disciplinary-Free Periods.

(a) A disciplinary-free period shall commence immediately following the date and time an inmate is identified (date of discovery of information leading to the charge) as committing a rules violation.

(b) An inmate may apply for restoration of 100 percent of any credit forfeited for a Division "D" or "E" offense, not identified in section 3327, after remaining disciplinary free for 180 days.

(1) If less than 180 days remain before the inmate's established release date, a one-time application may be made within 90 days of the established release date when the inmate has remained disciplinary free for a minimum of 60 days.

(2) Violent offenders as defined in PC Section 667.5(c) and offenders serving a term upon conviction of child abuse pursuant to PC Sections 273a, 273ab, 273d, or any sex offense identified in statutes as being perpetrated against a minor victim, or for whom such notification has been ordered by any court, shall be eligible for the one-time credit restoration application only if local law enforcement officials can be notified of the inmate's release in not less than the 45-day time frame required by law.

(c) An inmate may apply for restoration of 100 percent of any credit forfeited for a Division "F" offense, not identified in section 3327, after remaining disciplinary free for 90 days.

(1) If less than 90 days remain before the inmate's established release date, a one-time application may be made within 60 days of the established release date when the inmate has remained disciplinary free for a minimum of 30 days.

(2) Violent offenders as defined in PC Section 667.5(c) and offenders serving a term upon conviction of child abuse pursuant to PC Sections 273a, 273ab, 273d, or any sex offense identified in statutes as being perpetrated against a minor victim, or for whom such notification has been ordered by any court, shall be eligible for the one-time credit restoration application only if local law enforcement officials can be notified of the inmate's release in not less than the 45-day time frame required by law.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 273a, 273ab, 273d, 667.5(c), 2932, 2933, 3058.6, 3058.9 and 5054, Penal Code.

HISTORY:

1. Amendment of section heading, section and Note filed 5-5-95; operative 6-5-95 (Register 95, No. 18).
2. Repealer of subsections (b) and (c) and subsection relettering pursuant to Penal Code section 5058(e) filed 3-20-96 as an emergency; operative 3-20-96 (Register 96, No. 12). A Certificate of Compliance must be transmitted to OAL by 8-27-96 or emergency language will be repealed by operation of law on the following day.
3. Editorial correction of second Exception (Register 96, No. 36).
4. Certificate of Compliance as to 3-20-96 order transmitted to OAL 7-25-96 and filed 9-5-96 (Register 96, No. 36).
5. Amendment filed 5-22-2006; operative 5-22-2006 pursuant to Government Code section 11343.4 (Register 2006, No. 21).
6. Amendment of subsections (a), (b), (b)(1), (c) and (c)(1) filed 8-4-2008; operative 8-4-2008 pursuant to Government Code section 11343.4 (Register 2008, No. 32).

3329. Extraordinary Circumstances.

(a) Extraordinary circumstances are significant factors which aggravate the seriousness of a rule violation. A finding of factors in aggravation shall be cause to postpone restoration for one additional disciplinary-free period.

(b) Extraordinary circumstances include:

(1) The victim was particularly vulnerable.

(2) Multiple victims were involved.

(3) The inmate induced others to participate in the act or occupied a position of leadership or dominance over the other participants.

(4) The inmate threatened witnesses, prevented or dissuaded witnesses from testifying, induced others to perjure themselves or in any way interfered in the investigation or adjudication of the act.

(5) The inmate's misconduct included other acts which could have resulted in the forfeiture of additional credits.

(6) The plan, sophistication, or professionalism with which the act was carried out, or other facts indicating premeditation.

(7) The inmate involved nonprisoners in the act.

(8) The act involved a large quantity of contraband.

(9) The inmate took advantage of a position of trust or confidence.

(10) The inmate engaged in a pattern of violent conduct.

(11) The inmate's record documents numerous acts of and/or increasingly serious misconduct.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 2933, 4573.6, and 5054, Penal Code.

HISTORY:

1. New subsection (c)(13) filed 12-20-91 as an emergency; operative 12-20-91 (Register 92, No. 4). A Certificate of Compliance must be transmitted to OAL 4-20-92 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 12-20-91 order transmitted to OAL 4-20-92 and filed 5-28-92 (Register 92, No. 24).
3. Amendment of section and Note filed 5-5-95; operative 6-5-95 (Register 95, No. 18).
4. Repealer of subsections (b)(1)–(2), (b)(10) and (b)(13), subsection renumbering, and amendment of newly designated subsection (b)(10) pursuant to Penal Code section 5058(e) filed 3-20-96 as an emergency; operative 3-20-96 (Register 96, No. 12). A Certificate of Compliance must be transmitted to OAL by 8-27-96 or emergency language will be repealed by operation of law on the following day.
5. Editorial correction of subsection (b)(7) (Register 96, No. 36).
6. Certificate of Compliance as to 3-20-96 order transmitted to OAL 7-25-96 and filed 9-5-96 (Register 96, No. 36).
7. Repealer of subsection (b)(10) and subsection renumbering filed 8-27-98 as an emergency; operative 8-27-98 (Register 98, No. 35). A Certificate of Compliance must be transmitted to OAL by 2-3-99 or emergency language will be repealed by operation of law on the following day.
8. Repealer of subsection (b)(10) and subsection renumbering refiled 2-3-99 as an emergency; operative 2-3-99 (Register 99, No. 6). Pursuant to Penal Code section 5058(e), a Certificate of Compliance must be transmitted to OAL by 7-13-99 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 2-3-99 order transmitted to OAL 5-12-99 and filed 6-24-99 (Register 99, No. 26).

Article 6. Disciplinary Detention

3330. Disciplinary Detention.

(a) An inmate may not be assigned to disciplinary detention as defined in section 3000 except on the order of a disciplinary committee or senior disciplinary hearing officer.

(b) Disciplinary detention may be ordered in a housing unit or section of a housing unit specifically designed for that purpose or in any room or cell which provides the necessary security, control, and restriction of the inmate's actions. When disciplinary detention is ordered in a housing unit other than a designed disciplinary detention unit, the conditions of detention will be the same as prescribed for disciplinary detention units.

(c) Disciplinary detention may be ordered as a continuous period of confinement or as intermittent confinement on holidays, weekends or days off from assigned work and program activities. When ordered as intermittent confinement, confinement shall not exceed 10 days during a 35-day period. The chief disciplinary officer shall review the treatment of an inmate confined in disciplinary detention and consider a modification of sentence when evidence indicates the inmate is ready to conform to the rules.

(d) Time served in disciplinary detention will be computed on the basis of full days in detention. The day of placement and the day of release will not count as a day of time served. Intermittent detention may extend from the end of the workday before the first full day of detention to the beginning of the workday following the last full day of detention.

(e) Continuous disciplinary detention of an inmate shall not exceed 10 full days without approval of the director or deputy director, institutions.

(f) If an extension beyond 10 days is approved, the warden/superintendent shall note that fact in the disposition section of the rule violation report stating the reasons for the extension and the additional amount of time the inmate shall be confined, and shall sign and date the notation.

(g) A request for the director's approval to retain an inmate in disciplinary detention for longer than 30 days shall be accompanied by a current psychological evaluation of the inmate's mental health. Such evaluation shall include a personal interview with the inmate.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 2932 and 5054, Penal Code.

HISTORY:

1. Repealer of Article 6 (sections 3330–3337) and new Article 6 (sections 3330–3333) filed 4-18-80; effective thirtieth day thereafter (Register 80, No. 16). For prior history see Registers 77, No. 20, 78, No. 12, 78, Nos. 24 and 25, 79, Nos. 18 and 31.
2. Amendment filed 8-7-87 as an emergency; operative 8-7-87 (Register 87, No. 34). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 12-7-87.
3. Certificate of Compliance as to 8-7-87 order transmitted to OAL 12-4-87; disapproved by OAL (Register 88, No. 16).
4. Amendment filed 1-4-88 as an emergency; operative 1-4-88 (Register 88, No. 16). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 5-3-88.
5. Certificate of Compliance as to 1-4-88 order transmitted to OAL 5-3-88; disapproved by OAL (Register 88, No. 24).
6. Amendment filed 6-2-88 as an emergency; operative 6-2-88 (Register 88, No. 24). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 9-30-88.
7. Certificate of Compliance transmitted to OAL 9-26-88 and filed 10-26-88 (Register 88, No. 50).
8. Change without regulatory effect amending section filed 10-29-90 pursuant to section 100, title 1, California Code of Regulations (Register 91, No. 6).
9. Editorial correction of printing error in History 1. (Register 92, No. 5).

3331. Conditions of Detention.

(a) Insofar as the safety and security of institution and for persons will permit, the physical facilities of designated disciplinary detention units will approximate those housing general population inmates.

(b) Quarters. Where adequate and secure facilities are available and the number of inmates assigned to designated disciplinary detention units permit, inmates so assigned will be housed in single occupancy quarters. When the use of multiple occupancy quarters is necessary, the number of inmates so assigned will not exceed the capacity of beds for which such quarters are equipped except as a temporary emergency measure. The office of the deputy

director-institutions or the departmental duty officer will be notified when such an emergency exists for longer than 24 hours. Institution and department efforts will be coordinated as necessary to resolve the overcrowding situation as quickly as possible.

(c) Personal Items.

(1) Inmates will not be permitted to use or possess items of personally owned property, such as radios, television sets, tape players, musical instruments, and typewriters while undergoing disciplinary detention. Personal items necessary for health and hygiene may be used if such items are not available for issue by the institution.

(2) Inmates will not be permitted to purchase, use or possess edible or consumable canteen items while undergoing disciplinary detention.

(3) Inmates may be deprived of the use of personally owned clothing and footwear while undergoing disciplinary detention when adequate state clothing and footwear are issued. No inmate in disciplinary detention will be required to wear clothing that significantly differs from that worn by other inmates in the unit, except that temporary adjustments may be made for security reasons and for protection from self inflicted harm. No inmate will be clothed in any manner intended to degrade the inmate.

(d) Meals. Inmates in disciplinary detention shall be fed the same meal and ration as is provided for general population inmates. Meals served shall supply approximately 2500 calories per day.

(e) Mail. The sending and receiving of first class mail will not be restricted while an inmate is undergoing disciplinary detention. Delivery or issue of packages, publications and newspapers will be withheld during disciplinary detention.

(f) Visits. Inmates undergoing disciplinary detention retain the right to have personal visits. Privileges and amenities associated with visiting including physical contact with visitors may be suspended during the disciplinary detention period. When the number, length or frequency of visits are limited, the inmate will be permitted to choose who will visit from among persons approved to visit before the detention period began.

(g) Personal Cleanliness. Inmates undergoing disciplinary detention will be provided the means to keep themselves clean and well-groomed. Haircuts will be provided as needed. Showering and shaving will be permitted at least three times a week.

(h) Exercise. Inmates undergoing disciplinary detention will be permitted a minimum of one hour per day, five days per week, of exercise outside their cells unless security and safety considerations preclude such activity.

(i) Reading Material. State supplied reading material will be provided for inmates undergoing disciplinary detention. Such material may be assigned to disciplinary detention units from the inmate library and will represent a cross section of material available to the general population. At the discretion of the warden or superintendent, inmates enrolled in educational programs who have textbooks in their personal property may be permitted to study such material while undergoing disciplinary detention.

(j) Legal Material. Inmates undergoing disciplinary detention will not be limited in their access to the courts. Legal resources may be limited to pencil and paper, which will be provided upon request, for correspondence with an attorney or preparation of legal documents for the courts. Other legal material in an inmate's personal property may be issued to an inmate in disciplinary detention if litigation was in progress before detention commenced and legal due dates are imminent.

(k) Privileges. All privileges generally associated with the inmate's work/training incentive groups status will be suspended during a period of disciplinary detention. This includes but is not limited to: personal nonemergency telephone calls, handicraft activities, use of recreational equipment, and the viewing of television, and other privileges.

(*l*) Restrictions. A written report by the administrator or supervisor in charge of a disciplinary detention unit will be submitted to the chief disciplinary officer whenever an inmate undergoing disciplinary detention is deprived of any usually authorized item, activity or privilege. A special report to the chief disciplinary officer and to a classification committee will be made when an inmate's circumstances indicate a continuing need for separation from general population or from specific persons.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 5030.1 and 5054, Penal Code.

HISTORY:

1. Amendment of subsection (k) filed 2-16-83; effective thirtieth day thereafter (Register 83, No. 8).
2. Amendment of subsection (d) filed 2-8-88; operative 3-9-88 (Register 88, No. 7).
3. Amendment of subsection (c)(2) and amendment of Note filed 7-7-2005 as an emergency; operative 7-7-2005 (Register 2005, No. 27). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 12-14-2005 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-7-2005 order transmitted to OAL 12-13-2005 and filed 1-26-2005 (Register 2006, No. 4).

3332. Administration and Supervision of Detention Units.

(a) Plan of Operation. Each warden and superintendent will establish and maintain a plan of operations for the disciplinary detention of inmates, whether in a unit or section of a unit designated for this specific purpose or in conjunction with other special purpose housing of inmates. Such plans will conform to the provisions of this article and will be updated as necessary to reflect current procedures and practices. A copy of the plan will be submitted to the director for review and approval annually, as scheduled for required plans.

(b) Administration and Supervision. The administration of disciplinary detention units may be delegated to a staff member at not less than the level of correctional captain. The supervision of disciplinary detention units may be assigned to a staff member at not less than the level of correctional sergeant.

(c) Visitation. Inmates assigned to disciplinary detention units will be visited daily by the supervisor in charge of the unit and by an institution physician, registered nurse or a medical technical assistant. An inmate's request to be visited by other staff will be promptly referred to the staff member. A timely response should be given to such requests whenever reasonably possible.

(d) Supervisor's Responsibilities. The supervisor in charge of a disciplinary detention unit is responsible for the physical security of the unit, the control of contraband within the unit, and for safe, sanitary and decent working and living conditions within the unit. When any condition within the unit or the behavior, conduct or appearance of any inmate confined therein appears to warrant the attention of specific or specialized staff, the matter will be promptly brought to the attention of appropriate staff.

(e) Suicide Risks. Inmates undergoing disciplinary detention who are diagnosed by qualified medical staff as a suicide risk will be moved to a hospital setting, and medical staff will assume responsibility for such placement and for observation and supervision of the inmate. Such movement and supervision will be in cooperation and coordination with custody staff.

(f) Management Cases. An inmate who persists in unduly disruptive, destructive or dangerous behavior and who will not heed or respond to orders and warnings to desist from such activity, may be placed in a management cell on an order of the unit's administrator

or, in his or her absence, an order of the watch commander. In addition to any necessary incident or disciplinary reports, the matter will be reported to the warden, superintendent, chief disciplinary officer or administrative officer of the day, one of whom will review management cell resident status daily. An inmate who requires management cell placement for longer than 24 hours will be considered for transfer to a psychiatric management unit or other housing appropriate to the inmate's disturbed state.

(g) Disciplinary Detention Records.

(1) A Disciplinary Detention Log, CDC Form 114, will be maintained in each designated disciplinary detention unit. Specific information required in this log will be kept current on a daily and shift or watch basis. A completed log book will be retained in the unit for as long as any inmate recorded on the last page of that log remains in the unit. Storage and purging of log books will be in accordance with department schedules. One disciplinary detention/segregation log may serve a disciplinary detention unit and other special purpose segregation units, which are combined and are administered and supervised by the same staff members.

(2) A separate record will be maintained on each inmate undergoing disciplinary detention. This record will be compiled on CDC Form 114-A, Detention/Segregation Record. In addition to the identifying information required on the form, all significant information relating to the inmate during the course of detention, from reception to release, will be entered on the form in chronological order.

NOTE: Authority cited: section 5058, Penal Code. Reference: Section 5054, Penal Code.

3333. Confinement to Quarters.

(a) Confinement to quarters may be ordered as a continuous period of confinement or as intermittent confinement on holidays, weekends or days off from assigned work and classified program activities. When ordered as intermittent confinement, confinement may not exceed 10 ten days during a 35-day period.

(b) Confinement to quarters may extend from the first full day of confinement to the beginning of the day following the last full day of confinement. Such partial days will not reduce the total number of full days of ordered confinement.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.

HISTORY:

1. Change without regulatory effect amending section filed 10-29-90 pursuant to section 100, title 1, California Code of Regulations (Register 91, No. 6).

Article 6.5. Behavior Management Unit

3334. Behavior Management Unit.

(a) An inmate may not be assigned to a Behavior Management Unit (BMU), as defined in section 3000, except on the order of a Classification Committee.

(b) Inmates may be referred to a Classification Committee for placement into the BMU for one or more of the following reasons:

(1) Program Failure. The inmate is deemed a Program failure as defined by section 3000.

(2) Security Housing Unit (SHU) Offense as defined in section 3341.5(c)(9).

(A) If an inmate has been found guilty of an offense for which a determinate term of confinement has been assessed, whether imposed or suspended, and whose in-custody behavior reflects a propensity towards disruptive behavior, the inmate may be referred to a classification committee for placement in the BMU.

(B) Inmates currently serving a determinate SHU term whose in-custody behavior reflects a propensity towards disruptive behavior, which otherwise would not be eligible for additional SHU term assessment, shall be considered by the Institutional Classification Committee (ICC) for placement in a BMU upon completion or suspension of the SHU term.

(C) Inmates that have reached the Minimum Eligible Release Date (MERD) and have demonstrated an unwillingness to program in the general population may be reviewed by the Classification Committee for BMU placement consideration.

(3) Security Threat Group Related Activity. STG related behavior which does not otherwise warrant placement into the STG Step Down Program (SDP). STG related activities and behaviors meeting criteria for consideration of placement into the SDP are identified in Section 3378.4(a), STG Disciplinary Matrix.

(c) Inmates who meet the criteria for placement in the BMU program per section 3334(b) shall be reviewed by a Classification Committee after initial placement in the BMU program as outlined in section 3334(c)(3) below. The Classification Committee shall review, determine and assess the appropriate step, and if applicable approve a step change as outlined in section 3334(e) for each BMU inmate as recommended by BMU staff not less than every 30 days.

(1) Initial placement into the BMU shall be for a minimum of 90 days beginning on the date of reception into the BMU.

(2) Subsequent BMU placements shall be for a minimum of 180 days beginning on the date of reception into the BMU. Inmates who require subsequent placement will be monitored by BMU staff to ensure program compliance. If an inmate refuses to participate as required, the Classification Committee will review for possible program rejection.

(3) The Classification Committee will complete an initial assessment and develop an Individualized Training Plan (ITP) within 14 days of placement into BMU. The ITP will be based on each inmate's reason(s) for placement as outlined in section 3334(b).

(4) Inmates shall be expected to meet the requirements established by the Classification Committee as outlined in the ITP.

(5) Inmates must remain disciplinary free and complete the ITP as directed by the Classification Committee before being released from the BMU. The ITP may include, but is not limited to, participation in departmentally approved cognitive behavior programs, and/or participation in self help groups.

(6) The Classification Committee shall be responsible for providing the inmate with notification of the rules and intent of the BMU program. The CDC 128-G, Classification Chrono (Rev. 10/89), shall clearly state that the inmate was informed of the reason for placement, the length of placement, and any additional action the inmate must take to successfully complete the BMU program.

(d) In each case of BMU placement, release from the BMU is based upon completion of the ITP established by the Classification Committee.

(1) The Classification Committee will determine if the inmate has successfully completed their ITP requirements or failed to meet their requirements. Inmates who have met their ITP requirements shall be eligible to advance to the next step of the BMU program. Inmates who have not met their ITP requirements shall be reviewed for appropriate step placement.

(e) BMU Step Process: Work Group/Privilege Group designations.

(1) All inmates placed into the BMU will be designated a Work Group (WG), consistent with section 3044, and as determined by the Classification Committee effective the date of placement. Regardless of the WG, the designated Privilege Group (PG), consistent with section 3044, for Step 1 and Step 2 shall be C. The designated PG for Step 3 shall be B. All Work/Program assignments for BMU inmates shall be restricted to and located in the BMU.

(A) Step 1: Initial Placement—WG A1, A2, B or C and PG C. If the inmate meets the goals of the ITP, he will advance to Step 2.

(B) Step 2: WG A1, A2, B, or C and PG C. If the inmate meets the goals of the ITP, he will advance to Step 3.

(C) Step 3: WG A1, A2, B and PG B. If the inmate meets the goals of the ITP, he will advance to Step 4.

(D) Step 4: Upon completion of the ITP, inmates will be returned to traditional general population housing.

(f) Failure to progress in the stepped process shall be grounds for rejection from the BMU program and a review by the Classification Committee for placement on WG C PG C status. Inmates who have been rejected from the program shall not be placed in any other general population work or program assignment until they have successfully completed their ITP in the BMU. Inmates who have been rejected from the BMU program must submit a written request to their Correctional Counselor I for readmission to the program and shall be reviewed by the Classification Committee.

(g) Authorized BMU Property.

(1) Inmates shall possess only the listed items of personal property while assigned to the BMU:

(A) Ring (Wedding band, yellow or white metal only. Not to exceed $100 maximum declared value, and may not contain a set or stone), one.

(B) Religious Medal and Chain, as identified within the Religious Personal Property Matrix.

(C) Religious Items, as identified within the Religious Personal Property Matrix.

(D) Books, Magazines, and Newspapers (paperback or hardback with cover removed only. Limit does not apply to legal materials), ten.

(E) Prescription eyeglasses, clear lens only, one (as prescribed by a physician) pair.

(F) Tennis Shoes (no shades of red or blue, low, mid, or high tops are permitted. Must be predominantly white in color. Shoe laces white only. Not to exceed $75.00. No hidden compartments, zippers, or laces that are covered or concealed. No metal components including eyelets), one pair.

(G) Shower shoes (foam or soft rubber, single layer construction, not exceeding 1″ in thickness), one pair.

(H) Briefs (white only), ten pairs.

(I) Gloves (cold weather gloves upon approval of Warden, no zippers, pockets, or metal), one pair.

(J) Watch Cap (no black, cold weather watch caps upon approval of Warden), one.

(K) Rain Coat/Poncho (transparent only), one.

(L) Socks (white only, any combination of short to knee-high), seven pairs.

(M) Under Shirts (white only, any combination of crew neck, v-neck, long sleeve or sleeveless athletic tank-top. Turtle neck and mock turtle neck are not permitted), five pairs.

(N) Dental Adhesive (for approved denture wearers only), two.

(O) Dental Flossers/Gliders (no more than 3″ in length, amount allowed in possession to be determined by local institutional procedure).

(P) Dental Cleanser, one box.

(Q) Deodorant/Antiperspirant (stick or roll-on, must be clear and in clear container only), four.

(R) Medications, Over-The-Counter (OTC) (only those OTC medications permitted by the Division of Correctional Health Care Services shall be stocked by institution canteens, OTC medications are not approved for inmate packages).

(S) Mouthwash (non-alcoholic only), one.

(T) Palm Brush/Comb (no handle, plastic only), one.

(U) Razor, Disposable (not permitted in Level IV 180 design housing), five.

(V) Shampoo, one.

(W) Shaving Cream (non-aerosol), one.

(X) Soap, Bar, six.

(Y) Soap Dish (non-metal), one.

(Z) Toothbrush (subject to local determination of maximum length, local facility is required to shorten if necessary, to meet local requirements), one.

(AA) Toothbrush Holder (plastic only, may only cover head of toothbrush), one.

(AB) Toothpaste/Powder (toothpaste must be clear and in clear container), one.

(AC) Washcloths (white only), two.

(AD) Address Book (paperback only, 3″ x 5″ maximum), one.

(AE) Ballpoint Pens (non-metal, clear plastic only), one.

(AF) Bowl (construction material to be approved by Division of Adult Institution (DAI), maximum of 8″ in diameter), one.

(AG) Can Opener (restricted from Level IV housing), one.

(AH) Legal Pads/Tablets and Notebooks (no spiral bound), one.

(AI) Envelopes, Blank and/or Pre-Stamped, forty.

(AJ) Envelopes, Metered (indigent inmates only), five.

(AK) Legal material, as authorized per section 3161.

(AL) Photos/Portraits (maximum of 8″ x 10″), fifteen.

(AM) Reading Glasses-Non Prescription (magnifying glasses), one pair.

(AN) Stamps (U.S. Postal only), forty.

(AO) Stationary (for written correspondence, may be decorated and have matching envelopes), fifteen sheets.

(AP) Tumbler (construction material to be approved by DAI, 16 ounce or less), one.

(AQ) Health Care Appliance (Dr. Rx. Only. Not subject to the six-cubic foot limit).

(AR) Canteen items, not to exceed one month's draw of assigned privilege group.

(2) Inmates in the BMU shall possess personal property as authorized in section 3190(c) and 3334(g)(1).

(3) Inmates assigned to the BMU upon the initial placement will have their personal property, not identified as authorized BMU property outlined in 3334(g)(1) and 3334(g)(2) stored, provided:

(A) Initial BMU placement is for no more than 90 days.

(B) Inmate participates in the BMU program and progresses to the next step at each 30 day review as outlined in section 3334(e).

(C) Inmate does not receive any property related disciplinary violations while in the BMU program.

(4) Should the inmate fail to comply with the provisions above, all unallowed personal property not identified as authorized BMU property outlined in 3334(g)(1) and 3334(g)(2) shall be disposed of as provided in section 3191(c).

(5) Inmates assigned to the BMU upon the second or subsequent placements shall have all personal property, not outlined in 3334(g)(1) and 3334(g)(2), disposed of as provided in section 3191(c).

(h) Canteen. BMU inmates will be allowed only one (1) draw per month. Canteen privileges shall be established by the Classification Committee as follows:

Step 1—One fourth the maximum monthly canteen draw as authorized in section 3044(f).

Step 2—One fourth the maximum monthly canteen draw as authorized in section 3044(f).

Step 3—One half the maximum monthly canteen draw as authorized in section 3044(e).

(i) Vendor packages are authorized for receipt by inmates housed within the BMU in accordance with their privilege group status as provided in section 3044(c).

(j) Mental Health Services. BMU inmates will be seen by the Mental Health Department in accordance with normal GP treatment expectations as outlined within the Mental Health Services Delivery System (MHSDS). A Mental Health clinician shall attend the Classification Committee for all initial reviews in order to assess

the appropriateness of BMU placement for an inmate included in the MHSDS. Inmate's currently at the Enhanced Out Patient (EOP) level of care are not eligible for BMU placement.

(k) Visits. BMU inmates are permitted visits with their approved visitors. All visits for inmates at Step 1 and 2 will be non-contact, this includes attorney visits. Inmates at Step 3 will be afforded contact visits.

NOTE: Authority cited: Sections 5058 and 5058.3, Penal Code. Reference: Section 5054, Penal Code.

HISTORY:

1. New article 6.5 (section 3334) and section filed 7-8-2008 as an emergency; operative 7-8-2008 (Register 2008, No. 28). Pursuant to Penal Code section 5058.3(a)(1), a Certificate of Compliance must be transmitted to OAL by 12-15-2008 or emergency language will be repealed by operation of law on the following day.
2. New article 6.5 (section 3334) and section refiled 12-15-2008 as an emergency; operative 12-15-2008 (Register 2008, No. 51). Pursuant to Penal Code section 5058.3(a)(1), a Certificate of Compliance must be transmitted to OAL by 3-16-2009 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 12-15-2008 order, including amendment of section, transmitted to OAL 2-23-2009 and filed 4-2-2009 (Register 2009, No. 14).
4. Amendment of subsections (g)(1)(B)–(C) filed 2-21-2013 as an emergency; operative 2-21-2013 (Register 2013, No. 8). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 7-31-2013 or emergency language will be repealed by operation of law on the following day.
5. Amendment of subsections (g)(1)(B)–(C) refiled 7-29-2013 as an emergency; operative 7-29-2013 (Register 2013, No. 31). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 10-28-2013 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 7-29-2013 order, including further amendment of subsections (g)(1)(B) and (g)(1)(C), transmitted to OAL 10-24-2013 and filed 12-9-2013; amendments operative 12-9-2013 pursuant to Government Code section 11343.4(b)(3) (Register 2013, No. 50).
7. Amendment of subsection (b)(3) and repealer of subsection (b)(3)(A) filed 10-17-2014; operative 10-17-2014 pursuant to Government Code section 11343.4(b)(3) (Register 2014, No. 42).

Article 7. Segregation Housing

3335. Administrative Segregation.

When an inmate's presence in an institution's General Population (GP) presents an immediate threat to the safety of the inmate or others, endangers institution security or jeopardizes the integrity of an investigation of an alleged serious misconduct, criminal activity, or the safety of any person, the inmate shall be immediately removed from the GP and placed in administrative segregation. Administrative segregation may be accomplished by confinement in a designated Administrative Segregation Unit (ASU) or, in an emergency, to any single cell unit capable of providing secure segregation.

(a) Non Disciplinary Segregation.

(1) Non Disciplinary Segregation (NDS) means segregated housing placement for administrative reasons to include but are not limited to:

(A) ASU placement for safety concerns not resulting from misconduct warranting a Rules Violation Report.

(B) Investigation not related to misconduct or criminal activity.

(C) Being a relative or an associate of a prison staff member.

(D) Investigation related to being the victim of a Prison Rape Elimination Act (PREA) incident

1. If the placement in NDS is related to being the victim of a PREA incident, the inmate will be afforded all programs, privileges, and education in accordance with section 3044 and subsection 3190(b)(5)(C), of Title 15 of the CCR. If these are restricted, assigned staff shall document: 1) the opportunities that have been limited; 2) the duration of the limitation; and 3) the reasons for such limitations.

2. The facility shall assign such inmates to NDS only until an alternative means of separation from likely abusers can be arranged, and such an assignment shall not ordinarily exceed a period of 30 days. If the period of segregation exceeds 30 days, reasoning shall be documented on a CDC Form 128-G (Rev. 10/89), Classification Chrono.

3. Every 30 days, the facility shall afford each such inmate with a review by the assigned custody supervisor to determine whether there is a continuing need for segregation from the general population. The review shall be documented on the CDC Form 128-B (Rev. 4/74), General Chrono. If the custody supervisor determines the need for continued segregation no longer exists, the inmate shall be referred to the Institution Classification Committee for a program review.

(2) Designation as NDS shall be made by ICC.

(A) Any case designated as NDS, and included in the MHSDS, shall be transferred to an appropriate institution within 72 hours of initial designation.

(b) The reasons for ordering an inmate's placement in administrative segregation shall be clearly articulated on an CDC Form 114-D (Order and Hearing on Segregated Housing), by the initial segregating authority.

(1) The CDC Form 114-D shall include sufficient information and detail to allow the inmate to present a written or verbal defense to the stated reason(s) and circumstances for segregation during the classification hearing.

(2) The authority to order an inmate's initial placement in segregated housing shall not be delegated below the staff level of Correctional Lieutenant or Correctional Counselor II (CCII), except when a lower level staff member is the highest ranking official on duty.

(3) A copy of the CDC Form 114-D shall be issued to the inmate at the time of placement in administrative segregation by the official ordering placement or by staff at the level of Correctional Lieutenant, CCII or higher.

(A) When necessary, the official ordering administrative segregation placement shall document whether there is a need for an accommodation to ensure effective communication as defined in section 3000, and if necessary, how it was provided, how it was achieved, and how they were satisfied effective communication was accomplished.

(4) Administratively segregated inmate's returning to their endorsed institution from out-to-court or out-to-medical shall not require an updated CDC Form 114-D unless the inmate's next scheduled ICC hearing was missed or the circumstances for segregation have changed.

(c) In addition to the CDC Form 114-D, the initial segregation authority or designee shall prepare a CDCR Form 114-A1 (Rev. 10/98), Inmate Segregation Profile, which is hereby incorporated by reference, for each inmate being placed on administrative segregation status.

(d) A staff member at the rank of Captain, Correctional Counselor III (CCIII) or higher may rescind the placement and order the release of an inmate in administrative segregation at any time prior to the initial Institution Classification Committee (ICC).

(e) All classification committee actions shall be documented, including a specific record of the inmate's participation, an explanation of the reason(s), and the information and evidence relied upon for the action taken. The inmate shall be provided copies of

the completed forms relied upon in making the decisions affecting the inmate.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 5054 and 5068, Penal Code; 28 CFR Sections 115.42 and 115.43; *Wright* v. *Enomoto*, (1976) 462 F Supp 397; and *Toussaint* v. *McCarthy* (9th Cir. 1986) 801 F2d 1080, cert. denied, 481 U.S. 1069.

HISTORY:

1. Repealer of Article 7 (Sections 3340-3357) and new Article 7 (Sections 3335-3345) filed 4-18-80; effective thirtieth day thereafter (Register 80 No. 16). For prior history see Registers 76, No. 31; 77, No. 9; 78, No. 25; and 79, No. 34.
2. Amendment of subsection (b) filed 9-24-81; effective thirtieth day thereafter (Register 81, No. 39).
3. Amendment filed 8-7-87 as an emergency; operative 8-7-87 (Register 87, No. 34). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 12-7-87.
4. Certificate of Compliance as to 8-7-87 order transmitted to OAL 12-4-87; disapproved by OAL (Register 88, No. 16).
5. Amendment filed 1-4-88 as an emergency; operative 1-4-88 (Register 88, No. 16). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 5-3-88.
6. Certificate of Compliance as to 1-4-88 order transmitted to OAL 5-3-88; disapproved by OAL (Register 88, No. 24).
7. Amendment filed 6-2-88 as an emergency; operative 6-2-88 (Register 88, No. 24). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 9-30-88.
8. Certificate of Compliance transmitted to OAL 9-26-88 and filed 10-26-88 (Register 88, No. 50).
9. Amendment of article heading and subsection (c), repealer of subsections (c)(1)–(c)(1)(B), new subsections (d)–(i) and amendment of Note filed 6-15-2005 as an emergency pursuant to Penal Code section 5058.3; operative 6-15-2005 (Register 2005, No. 24). A Certificate of Compliance must be transmitted to OAL by 11-22-2005 or emergency language will be repealed by operation of law on the following day.
10. Editorial correction of subsection (d)(3) and History 9 (Register 2005, No. 50).
11. Certificate of Compliance as to 6-15-2005 order transmitted to OAL 10-31-2005 and filed 12-15-2005 (Register 2005, No. 50).
12. Change without regulatory effect amending subsection (d)(3) filed 5-4-2009 pursuant to section 100, title 1, California Code of Regulations (Register 2009, No. 19).
13. Change without regulatory effect amending subsection (g) filed 5-11-2011 pursuant to section 100, title 1, California Code of Regulations (Register 2011, No. 19).
14. New subsections (b)–(b)(3) and subsection relettering filed 9-24-2013 as an emergency; operative 9-24-2013 (Register 2013, No. 39). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 3-3-2014 or emergency language will be repealed by operation of law on the following day.
15. Certificate of Compliance as to 9-24-2013 order, including further amendment of subsections (b)–(b)(1), transmitted to OAL 2-20-2014 and filed 3-24-2014; amendments operative 3-24-2014 pursuant to Government Code section 11343.4(b)(3) (Register 2014, No. 13).
16. Amendment of subsections (e)(2)–(3) and (h) filed 10-17-2014; operative 10-17-2014 pursuant to Government Code section 11343.4(b)(3) (Register 2014, No. 42).
17. Amendment of article heading, repealer of subsections (a)–(i), new first paragraph, new subsections (a)–(d) and subsection relettering filed 6-1-2015 as an emergency; operative 6-1-2015 (Register 2015, No. 23). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 11-9-2015 or emergency language will be repealed by operation of law on the following day.
18. Certificate of Compliance as to 6-1-2015 order, including further amendment of subsections (b) and (c), transmitted to OAL 10-19-2015 and filed 12-3-2015; amendments effective 12-3-2015 pursuant to Government Code section 11343.4(b)(3) (Register 2015, No. 49).
19. New subsections (a)(1)(D)–(a)(1)(D)3. and amendment of Note filed 10-20-2016; operative 10-20-2016 pursuant to Government Code section 11343.4(b)(3) (Register 2016, No. 43).

3335.5. Exclusions.

Removal of an inmate from the General Population (GP) for the reasons described in this section is not considered administrative segregation and is specifically excluded from the other provisions of this article.

(a) Medical. When an inmate is removed from the GP for medical or psychiatric reasons by order of healthcare staff and the inmate's placement is in a medical setting or in other housing as a medical quarantine, the inmate will not be deemed as segregated for the purpose of this article. Administratively segregated inmates with healthcare concerns shall remain on administrative segregation status, regardless of housing.

(b) Lay-Over. Newly received inmates in transit or lay-over status may be restricted to assigned quarters for that purpose. Such restrictions should not be more confining than is required for institution security and the safety of persons, nor for a period longer than the minimum time required to evaluate the safety and security factors and reassignment to more appropriate housing. If administrative segregation is used for this purpose, such placement shall be in accordance with the provisions of Subchapter 4, Article 7.

(c) Orientation. Newly received inmates may be restricted to assigned quarters for that purpose. Such restrictions should not be more confining than is required for institution security and the safety of persons, nor for a period longer than the minimum time required to evaluate the safety and security factors and reassignment to more appropriate housing. If administrative segregation is used for this purpose, such placement shall be in accordance with the provisions of Subchapter 4, Article 7.

(d) Disciplinary Detention. Placement in disciplinary detention as an ordered action of a disciplinary hearing is not subject to the provisions of this article.

(e) Confinement to Quarters. Confinement to quarters as an ordered action of a disciplinary hearing is not subject to the provisions of this article.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.

HISTORY:

1. Renumbering and amendment of former section 3340 to new section 3335.5 filed 6-1-2015 as an emergency; operative 6-1-2015 (Register 2015, No. 23). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 11-9-2015 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 6-1-2015 order transmitted to OAL 10-19-2015 and filed 12-3-2015 (Register 2015, No. 49).

3336. Administrative Review of Administrative Segregation Unit Placement.

(a) The purpose of the administrative review is to determine if the reason(s) for administrative segregation placement is appropriate and whether continued administrative segregation status retention is necessary, in accordance with the provisions of this article.

(b) An inmate's administrative segregation placement shall be reviewed for retention or release by staff at the level of Captain, CCIII or higher, on the first business day following such placement. The review shall include: the inmate's case factors, reason(s) for segregation, and an interview with the inmate unless the inmate refuses to participate.

(1) Administrative reviews shall not be conducted by the staff member who authorized initial administrative segregation placement.

(2) An acting Captain may conduct an administrative review; however, in this case, an Associate Warden (AW) shall conduct a subsequent review that same day. If the reviewing AW is also in an acting capacity, their permanent rank shall be no lower than Captain or CCIII.

(3) When required, the Administrative Reviewer shall document the need for effective communication accommodation, how it was provided, how it was achieved, and how they were satisfied effective communication was accomplished.

(4) The inmate shall be released to the GP if the Administrative Reviewer deems continued administrative segregation placement unnecessary.

(5) If administrative segregation placement is deemed appropriate, the Administrative Reviewer shall retain the inmate in administrative segregation and address the appropriate cell status pending the ICC hearing.

(6) The decision rendered shall be documented on the CDC Form 114-D.

(c) The Administrative Reviewer shall ensure the following procedural safeguards are afforded to the inmate in anticipation of the ICC hearing and that any necessary efforts to ensure effective communication are provided and documented.

(1) Staff Assistance. The Administrative Reviewer shall determine the need for a Staff Assistant (SA) in accordance with section 3340 and document on the CDC Form 114-D.

(2) Investigative Employee (IE). If an inmate requests witnesses and/or the assistance of an IE, the Administrative Reviewer may assign an IE in accordance with section 3340 and document on the CDC Form 114-D.

(3) Inmate Waiver. An inmate may waive their right to the 72-hour preparation time in writing by signing and acknowledging the waiver on the CDC Form 114-D, pursuant to subsection 3337(a)(2).

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.

HISTORY:

1. Change without regulatory effect amending first paragraph filed 3-22-2001 pursuant to section 100, title 1, California Code of Regulations (Register 2001, No. 12).
2. Amendment of section heading and repealer and new section filed 6-1-2015 as an emergency; operative 6-1-2015 (Register 2015, No. 23). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 11-9-2015 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 6-1-2015 order transmitted to OAL 10-19-2015 and filed 12-3-2015 (Register 2015, No. 49).

3337. Classification Hearing of Administrative Segregation Placements.

(a) The need to retain an inmate in administrative segregation shall be determined by the ICC.

(1) The initial ICC hearing shall be held within 10 calendar days after the date the inmate was initially placed in administrative segregation. Voluntary extension of this time frame by the inmate is not permitted.

(2) The inmate shall be allowed at least 72 hours to prepare for the ICC classification hearing. However, the inmate may waive this procedural safeguard, after the Administrative Reviewer considers the need for SA and the inmate does not require a SA.

(3) In addition to a copy of the CDC Form 114-D, provided to the inmate at the time of placement in administrative segregation in accordance with subsection 3335(b)(3), the inmate shall be provided copies of all additional documentation concerning the reasons for administrative segregation placement at least 24 hours prior to the ICC hearing. Confidential information pertaining to the case shall be afforded to the inmate in accordance with subsection 3321(b)(3).

(4) Inmates not requiring a staff assistant, in accordance with section 3340, may waive the 24-hour period for documentation review. Waivers shall be formally noted in the CDC Form 128-G (Rev. 10/89).

(5) Exceptions to the inmate's physical presence at the hearing shall be permitted in accordance with subsections 3320(g) or 3375(f)(3). The reasons for any hearing conducted without the presence of the inmate shall be recorded within the CDC Form 128-G (Rev. 10/89).

(6) If the inmate refuses or is unable to attend the hearing, a staff member shall query the inmate on behalf of the classification committee and convey all relevant information to the committee to consider in making their decision and shall be recorded within the CDC Form 128-G (Rev. 10/89).

(7) The SA, if one is assigned, shall be at the hearing even if the inmate is not present.

(b) The primary purpose of the initial ICC hearing is to determine the need for continued segregation. Consistent with the criteria set forth in section 3335, the ICC review shall be based on the documented case-specific circumstances of the CDC Form 114-D and any other disciplinary, IE report or other available information that may impact placement. The classification committee shall ensure that all applicable procedural safeguards are uniformly applied to each inmate placed in administrative segregation and record their findings on a CDC Form 128-G (Rev. 10/89) in accordance with subsection 3375(g), including any evidence or documentation relied upon, with a copy issued to the inmate.

(1) The classification committee shall consider all available information, including inmate comments, when determining the appropriate exercise yard group and any housing restrictions.

(2) The inmate's yard assignment and housing status shall be reviewed at each ICC appearance and modified as necessary.

(c) Any inmate retained in administrative segregation at the initial ICC hearing shall be presented to a CSR within 30 days of the hearing date for review and approval. Subsequent ICC reviews shall proceed in accordance with the following timelines, considering any applicable projected Minimum Eligible Release Date (MERD) as defined in Section 3000, until the inmate is released to the GP:

(1) At intervals of not more than 180-days: when a pending Security Housing Unit (SHU) assessable Rules Violation Report (RVR) is postponed pending a court proceeding, a referral to the District Attorney (DA) for possible prosecution, or pending completion of Security Threat Group (STG) validation investigation process pursuant to subsection 3341.3(a)(1)(D) & (E). Administrative segregation extension requests specific to pending disciplinary matters shall identify the inmate's intent to postpone the disciplinary hearing, as well as, the status of the pending DA referral. Upon resolution of such matters, an ICC shall review the inmate's case within 14 calendar days. Inmates who have postponed their RVR pending a court proceeding or a referral to the DA shall not be retained in ASU past the anticipated projected MERD unless ICC has reason to believe based on the inmate's disciplinary history, that administrative SHU status would be necessary for the safety and security of the institution or persons, following the adjudication of the RVR. In these cases a new CDC Form 114-D shall be immediately prepared and issued, clearly articulating the reasons for continued retention, in accordance with section 3335.

(2) At intervals of not more than 90 days: when an administrative segregation inmate is pending a GP transfer.

(3) At intervals of not more than 90 days: until a SHU assessable RVR is adjudicated and the matter is not pending referral for prosecution. Upon resolution of such matters, an ICC shall review the inmate's case within 14 calendar days.

(4) At intervals of not more than 90 days: pending completion of an investigation into the safety of any person, institutional security, serious misconduct or criminal activity, excluding STG validation. Should the completed investigation result in the issuance of a RVR and/or referral to the DA for criminal prosecution, the ICC shall review the case in accordance with the schedule set forth in subsections (1) or (3) above. Upon resolution of such matters, an ICC shall review the inmate's case within 14 calendar days.

(d) Subsequent ICC reviews shall be in accordance with subsection (c) of this section. All cases shall be presented to the CSR prior to the expiration of a previously approved CSR extension.

(e) Inmates in administrative segregation who have an approved SHU term, but are pending other unresolved case considerations, shall be reviewed by the ICC in accordance with subsection 3341.8, Security Housing Unit/Psychiatric Services Unit Classification Hearings.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code; *Wright* v. *Enomoto*, (1976) 462 F Supp 397; and *Toussaint* v. *McCarthy* (9th Cir. 1986) 801 F2d 1080, cert. denied, 481 U.S. 1069).

HISTORY:

1. Amendment of section heading, repealer and new section and amendment of Note filed 6-1-2015 as an emergency; operative 6-1-2015 (Register 2015, No. 23). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 11-9-2015 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 6-1-2015 order, including further amendment of subsections (a)(4)–(6) and (b), transmitted to OAL 10-19-2015 and filed 12-3-2015; amendments effective 12-3-2015 pursuant to Government Code section 11343.4(b)(3) (Register 2015, No. 49).

3338. Amendment to Reasons for Segregation.

(a) When the initial reason(s) for segregation has been resolved, but additional circumstances exist warranting continued administrative segregation placement, a new CDC Form 114-D shall be immediately prepared and issued, clearly articulating the reasons for continued retention, in accordance with section 3335.

(1) An CDC Form 114-D issued for purposes of retaining an inmate in segregated housing (ASU/SHU/Psychiatric Services Unit (PSU)) shall not require an Administrative Review.

(2) The official ordering retention shall ensure all procedural safeguards have been provided, in accordance with subsection 3336(c).

(3) The ICC shall be the sole authority permitted to effect a placement decision under the provisions of this section.

(b) For retention purposes, the CDC Form 114-D shall include:

(1) The current reason(s) for segregation, and any resolution of such placement.

(2) The new reason(s) for retention in segregated housing in accordance with section 3335.

(3) When necessary, the official issuing the CDC Form 114-D for administrative segregation retention shall document the need for effective communication accommodation if any, as defined in section 3000, how it was provided, how it was achieved and how they were satisfied effective communication was accomplished.

(c) ICC hearings on CDC Form 114-D's, retaining inmates in ASU/SHU/PSU shall be in accordance with section 3337.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code; and *Taylor* v. *Rushen* (N.D. Cal.) L-80-0139 SAW.

HISTORY:

1. Amendment of subsections (a)(2) and (a) (3) filed 3-2-83; effective thirtieth day thereafter (Register 83, No. 12).
2. Change without regulatory effect amending subsections (c) and (g) filed 5-7-96; operative 6-6-96 (Register 96, No. 19).
3. Change without regulatory effect amending subsection (b) filed 7-30-2001 pursuant to section 100, title 1, California Code of Regulations (Register 2001, No. 31).
4. Change without regulatory effect amending subsection (b) filed 8-6-2001 pursuant to section 100, title 1, California Code of Regulations (Register 2001, No. 32).
5. Change without regulatory effect amending subsections (c) and (g) filed 3-11-2013 pursuant to section 100, title 1, California Code of Regulations (Register 2013, No. 11).
6. Amendment of section heading, repealer and new section and amendment of Note filed 6-1-2015 as an emergency; operative 6-1-2015 (Register 2015, No. 23). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 11-9-2015 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 6-1-2015 order transmitted to OAL 10-19-2015 and filed 12-3-2015 (Register 2015, No. 49).

3339. Release from Administrative Segregation.

(a) Release from administrative segregation shall occur at the earliest possible time in keeping with the inmate's case factors and reasons for the inmate's placement in administrative segregation.

(b) When releasing or rescinding an initial administrative segregation placement prior to the initial ICC, prior to release, the releasing authority shall:

(1) Consult with the Captain or designee from the facility where the inmate is to be housed.

(2) Explain the basis and reasoning for the decision on the CDC Form 114-D.

(3) Provide the inmate a copy of the CDC Form 114-D.

(c) Inmates released from administrative segregation are considered GP inmates and are no longer subject to the requirements of this article. If immediate release to the GP is impractical for reasons identified in section 3335, a new CDC Form 114-D shall be issued and addressed in accordance with sections 3335, 3336 and 3337.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code; and *Taylor* v. *Rushen* (N.D. Cal.) L-80-0139 SAW.

HISTORY:

1. Repealer and new section filed 3-2-83; effective thirtieth day thereafter (Register 83, No. 12).
2. Editorial correction of printing error in subsection (b)(2) (Register 92, No. 5).
3. Amendment of section heading and repealer and new section filed 6-1-2015 as an emergency; operative 6-1-2015 (Register 2015, No. 23). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 11-9-2015 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 6-1-2015 order transmitted to OAL 10-19-2015 and filed 12-3-2015 (Register 2015, No. 49).

3340. Assistance to Inmates for Administrative Segregation Classification Hearings.

The Administrative Reviewer of the CDC Form 114-D, or official ordering an inmate retained in administrative segregation, shall determine the need for providing assistance to inmates placed or retained in administrative segregation. Such assistance may be in the form of a Staff Assistant (SA) or an Investigative Employee (IE). Only staff trained in the role and responsibilities of a SA or IE may be assigned. The duties and functions of a staff member assigned to assist an inmate in a classification hearing based upon a CDC Form 114-D will be separate from those described in section 3318 for a disciplinary hearing.

(a) A SA shall be assigned if:

(1) The inmate is illiterate.

(2) The inmate has difficulty reading, writing or speaking English. If a SA is necessary for the purpose of language interpretation, but is not fluent in the inmate's language, a certified interpreter shall also be provided.

(3) The issues are sufficiently complex to make it unlikely that the inmate can understand the issues or the ICC hearing process.

(4) The inmate is included in the Mental Health Services Delivery System (MHSDS), is Developmentally Disabled, or the circumstances surrounding administrative segregation placement involve behavior of a bizarre or unusual nature.

(A) The ICC shall assess the ongoing appropriateness for a SA assigned to inmates in the MHSDS Correctional Clinical Case Management System (CCCMS) level of care while housed in administrative segregation. In such cases the ICC shall determine whether the inmate is capable of comprehending the issues being presented based upon a clinical assessment in accordance with subsection 3375(g)(3), and presented at the time of the hearing.

(b) An inmate may refuse to accept the first SA at the time of assignment. If the inmate refuses the SA at the time of initial assignment, a second staff assistant shall be assigned. Any decision to substitute the assigned SA subsequent to the administrative review shall require notification to the inmate in writing.

(c) Inmates may refuse to accept the assignment of a second SA or waive a previous SA assignment unless:

(1) It is determined by the Administrative Reviewer that a fair hearing cannot otherwise be held.

(2) The inmate meets criteria in accordance with subsection (a)(4) of this section.

(d) The assigned SA shall:

(1) Meet with the inmate at least 24 hours prior to the classification hearing, inform the inmate of the role of the SA, explain their rights and the purpose and procedure of the classification hearing.

(2) Address the need for effective communication, how it was provided, how it was achieved and how the SA was satisfied effective communication was accomplished, which shall be documented within the CDC Form 128-G (Rev. 10/89) in accordance to subsection 3375(g)(1)(E).

(3) Provide assistance to the inmate by being present during the IE's interview of the inmate.

(4) Inform the inmate of the following due process rights afforded during the classification hearing process:

A. The right to 72 hours time to prepare response for the ICC hearing;

B. The right to a fair and impartial hearing;

C. The right to request witnesses and documentary evidence;

D. The right to a written decision documenting the evidence or information relied upon for the decision.

(5) Advise and assist in the inmate's preparation for a classification hearing. However, the SA shall refrain from giving legal counsel or specifying the position the inmate should take in the classification hearing.

(6) Keep confidential any information the inmate may disclose concerning the charges for which the SA was assigned.

(7) Inform the inmate that all evidence and information obtained and considered or developed in the classification process may be used in court if the same charges have been or are to be referred to the district attorney for possible criminal prosecution.

(8) If the SA becomes aware that the inmate is contemplating future criminal conduct, the SA shall disclose this information if necessary to protect potential victims and prevent the contemplated crime.

(9) Assist the inmate in presenting the inmate's position, in person, at the hearing.

(10) Make reasonable effort to ensure that the inmate's position is understood.

(11) Make reasonable effort to ensure the inmate understands and comprehends the decision reached.

(12) Perform the above duties for inmates in conjunction with all classification reviews.

(e) The SA assigned and assisting the inmate in the manner described above shall be the same staff member who appears with the inmate at the classification hearing.

(f) Assignment of a SA shall not preclude assignment of an IE.

(g) An IE may be assigned if:

(1) The reasoning for an inmate's placement in administrative segregation is for non-disciplinary reasons and the inmate requests in writing the presence of witnesses or submission of documentary evidence at a classification hearing on the reason or need for retention in segregated housing.

(A) When an inmate's administrative segregation placement is for non-disciplinary reasons, the Administrative Reviewer will consider all available evidence or information relating to the validity of the reasons documented for administrative segregation placement. Denial of an IE, witnesses or evidence requested by the inmate shall be on the basis of legitimate penalogical interest and documented on the CDC Form 114-D.

(B) The reason for an inmate's placement in administrative segregation is a serious disciplinary matter resulting in the issuance of a Rules Violation Report and/or a referral to the district attorney for criminal prosecution, the classification committee will assume the alleged misconduct or criminal activity to be factual as documented. In such cases, the services of an IE, witnesses or additional evidence shall be reserved for the disciplinary hearing, but denied for purposes of the initial ICC.

(h) Based upon the findings of the investigative employee, the initial hearing shall permit the inmate to present witnesses and documentary evidence unless the chairperson of the committee determines in good faith that permitting such evidence will be unduly hazardous to the safety and/or security of the institution.

(i) Assignment of an IE shall not preclude assignment of a SA.

(j) The inmate may not select the investigative employee, but may object to the one assigned and provide, in writing to the Administrative Reviewer, the reasons for the objection. The Administrative Reviewer shall evaluate the inmate's objection(s) and, if determined to be reasonable, assign an alternate investigative employee to complete the investigation. If the Administrative Reviewer determines that the inmate's objections are not reasonable, the original investigative employee shall complete the investigation. The inmate's objection must be provided prior to the beginning of the investigation. The Administrative Reviewer shall note on the CDC Form 114-D the decision to deny or approve a request, and if denied, explain the reason(s) for denial.

(k) The assigned IE shall:

(1) If applicable, coordinate with the inmate's assigned SA to ensure the SA is present during any questioning by the IE.

(2) Document all effective communication efforts, as necessary; including the need for effective communication, how it was provided, how it was achieved and how they were satisfied effective communication was accomplished.

(3) Interview the inmate, to include the inmate's statement and any relevant questions for witnesses with first-hand knowledge of the circumstances warranting the inmate's segregation. An IE is not subject to the confidentiality provisions of the SA in accordance with subsection 3340(d)(6) and shall not withhold any information received from the inmate. The inmate's submission of questions

for witnesses does not preclude the IE from asking other relevant questions of the witnesses that may be of assistance to the classification committee in making decisions regarding the reason(s) for segregation.

(4) It is the inmate's responsibility to provide information to the IE in order to assist in identifying any relevant witness(es) the inmate requests to be interviewed.

(5) Immediately document the investigative findings in a report, including the name of the SA and, if applicable, an interpreter present during interviews; and forward the completed report to the ICC.

(6) Provide the inmate a copy of the IE report, any non-confidential reports and information relevant to the segregation decision and/or administrative segregation placement, within 24 hours prior to the ICC.

(7) Witnesses and Evidence. The authority to grant or deny the appearance of witnesses shall be reserved for the ICC.

(8) When an IE provides assistance to an inmate, in lieu of or in addition to that provided by a SA the IE shall do so as a representative of the official who will conduct the classification hearing rather than as a representative of the inmate.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code; *Coleman* v. *Wilson* 912 F. Supp. 1282 (E.D. Cal. 1995); and *Clark* v. *California* 123 F. 3d 1267 (9th Cir. 1997).

HISTORY:

1. Renumbering of former section 3340 to section 3335.5 and new section 3340 filed 6-1-2015 as an emergency; operative 6-1-2015 (Register 2015, No. 23). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 11-9-2015 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 6-1-2015 order, including amendment of subsection (d)(2), transmitted to OAL 10-19-2015 and filed 12-3-2015; amendments effective 12-3-2015 pursuant to Government Code section 11343.4(b)(3) (Register 2015, No. 49).
3. Amendment of subsection (g)(1)(B) filed 6-2-2016 as an emergency; operative 6-2-2016 (Register 2016, No. 23). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 11-9-2016 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 6-2-2016 order transmitted to OAL 11-7-2016 and filed 12-22-2016 (Register 2016, No. 52).

3341. Segregated Program Housing Units.

(a) Segregated Program Housing Units (SPHU) are designated for extended term programming of inmates not suited for housing in the general population. They are specialized programming units with established placement criteria. Placement into these units requires approval by a Classification Staff Representative (CSR), on the basis of classification committee recommendations and referrals.

(b) With the exception of Protective Housing Unit (PHU) and as otherwise specified in subsections section 3378.3(b)(1) through 3378.3(b)(3), SPHU placement for administrative SHU purposes shall be reviewed by ICC at least every 180 days, or sooner as directed by a CSR. For determinate SHU inmates, ICC reviews shall be no less frequently than every 180 days following their initial SHU annual review, or sooner as directed by a CSR. The purpose of such reviews is to evaluate the inmate's case factors to determine if specialized housing continues to be the most appropriate and least restrictive placement option commensurate with any existing threat to institutional security or the safety of any person.

(c) Special circumstances or exceptions to the placement criteria for SPHU must be referred to and decided by the Departmental Review Board (DRB) in accordance with section 3376.1.

(d) The ICC may release an inmate from PSU/SHU to an available and appropriate bed pending CSR review for alternate placement consideration at another institution. Unless otherwise specified in this section, if the current institution has other available and appropriate non SPHU housing, the ICC may release the inmate to that program pending C&PR review who has local endorsement authority in this circumstance.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 5054 and 5068, Penal Code; *Sandin* v. *Connor* (1995) 515 U.S. 472; *Toussaint* v. *McCarthy* (9th Cir. 1990) 926 F.2d 800; and *Toussaint* v. *Yockey* (9th Cir. 1984) 722 F.2d 1490.

HISTORY:

1. Editorial correction removing extraneous text (Register 97, No. 5).
2. Change without regulatory effect amending section filed 1-29-97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 5).
3. Repealer and new section filed 6-1-2015 as an emergency; operative 6-1-2015 (Register 2015, No. 23). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 11-9-2015 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 6-1-2015 order transmitted to OAL 10-19-2015 and filed 12-3-2015 (Register 2015, No. 49).

3341.1. Protective Housing Unit.

Protective Housing Unit (PHU). A PHU houses inmates whose safety would be endangered by general population inmates and provides secure housing and care for inmates with safety concerns of such magnitude, that no other viable housing options are available.

(a) An inmate may be placed in PHU in accordance with the following criteria:

(1) The inmate does not require segregated housing placement for reasons other than protection.

(2) The inmate is not documented as an affiliate of an STG-I.

(3) A classification committee has determined that the inmate does not pose a threat to the safety or security of other inmates similarly housed in the PHU.

(4) The inmate has specific, documented and verified safety and/or enemy concerns, likely to and capable of causing the inmate great bodily injury if placed in the general population.

(5) The inmate has notoriety likely to result in great bodily injury to the inmate if placed in general population.

(6) There is no alternative placement available that can both ensure the inmate's safety and provide the level of custody required for the appropriate control of the inmate's movement.

(b) The inmate's uncorroborated personal report, the nature of their commitment offense or a record of prior protective custody shall not be the sole basis for protective housing unit placement.

(c) The DRB shall retain sole authority for the placement and removal of inmates from PHU.

NOTE Authority cited: Section 5058, Penal Code. Reference: Sections 5054 and 5068, Penal Code.

HISTORY:

1. New section filed 6-1-2015 as an emergency; operative 6-1-2015 (Register 2015, No. 23). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 11-9-2015 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 6-1-2015 order transmitted to OAL 10-19-2015 and filed 12-3-2015 (Register 2015, No. 49).

3341.2. Psychiatric Services Unit.

Psychiatric Services Unit (PSU). A PSU provides secure housing and care for inmates with diagnosed psychiatric disorders not requiring inpatient hospital care, but who require placement in housing equivalent to Security Housing Unit (SHU), as described in section 3341.3.

(a) An inmate shall be housed in a Psychiatric Services Unit (PSU), if:

(1) The inmate is included in the MHSDS at the Enhanced Outpatient Program (EOP) level of care and the inmate's conduct has resulted in either a determinate or administrative SHU term.

(2) The inmate is included in the Developmental Disability Program at DD3 and the inmate's conduct has resulted in either a determinate or administrative SHU term.

(b) Staff shall not postpone a CSR referral for any inmate requiring placement in a PSU.

(c) The CSR shall document any pending issues, such as disciplinary matters, DA referrals or investigations, on the CDC Form 128-G (Rev. 10/89) identifying the sending institutions responsibility for resolving any outstanding concerns.

(d) Inmates assigned to PSU shall be classified pursuant to section 3341.8.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 2933.6, 5054 and 5068, Penal Code; *Madrid* v. *Gomez* (N.D. Cal. 1995) 889 F.Supp. 1146, 1278; *Coleman* v. *Wilson* 912 F. Supp. 1282 (E.D. Cal. 1995); and *Clark* v. *California* 123 F.3d 1267 (9th Cir. 1997).

HISTORY:

1. New section filed 6-1-2015 as an emergency; operative 6-1-2015 (Register 2015, No. 23). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 11-9-2015 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 6-1-2015 order, including amendment of subsection (c), transmitted to OAL 10-19-2015 and filed 12-3-2015; amendments effective 12-3-2015 pursuant to Government Code section 11343.4(b)(3) (Register 2015, No. 49).

3341.3. Security Housing Unit.

An inmate whose conduct endangers the safety of others or the security of the institution shall be housed in a Security Housing Unit (SHU) for administrative reasons or for a determinate period of time if found guilty for serious misconduct pursuant to section 3341.9(e).

(a) Placement in SHU shall be based on the following criteria:

(1) Administrative SHU. An inmate may be assessed an administrative SHU term when:

(A) At a pre-MERD review, ICC identifies an inmate with a substantial disciplinary history, consisting of no less than three SHU terms within the past five years, which demonstrates an unwillingness to comply with departmental rules and behavior. ICC shall articulate substantive justification for the need of continued SHU placement due to the inmate's ongoing threat to the safety and security of the institution and/or others.

(B) The inmate's case factors are such that overwhelming evidence exists supporting an immediate threat to the security of the institution or the safety of others, where ICC shall articulate substantive justification for the need for SHU placement.

(C) The inmate has voluntarily requested continued retention in segregation, where ICC has carefully articulated and substantively justified support for retention and the inmate does not qualify for housing within the Protective Housing Unit.

(D) The inmate is a validated STG affiliate and placed in the Step Down Program by ICC or DRB in accordance with section:

1. STG-I Member: upon initial validation and Institutional Classification Committee Confirmation.

2. STG-I Associate: as part of initial validation, source items include serious documented STG behavior or activity as listed in section 3378.4(a) STG Disciplinary Matrix and which is also identified in Section 3341.9(e) SHU Term Assessment Chart.

3. STG-II Member or Associate: as part of initial validation, source items include two occurrences, both of which have occurred within four years of the validation date, of serious documented STG behavior or activity, as listed in section 3378.4(a) STG Disciplinary Matrix which are also identified in CCR Section 3341.9(e) SHU Term Assessment Chart.

(E) As provided in Section 3378.4(c), a validated STG affiliate shall be considered by ICC for initial placement in a SHU. ICC maintains discretion in evaluating an affiliate's overall disciplinary record and case factors in determining the need for placement in a SHU/Step Down Program (SDP) for an administrative term when the following criteria are met:

1. STG-I Associate: the validated affiliate being found guilty of STG related behavior, as identified in section 3378.4(a) and subsequent to initial validation as follows: 1) two administrative rules violation reports within the preceding 12 months, or 2) one serious rules violation report.

2. Inactive Status or Inactive-Monitored Status Affiliate: the validated affiliate being found guilty of STG related behavior, as identified in section 3378.4(a) and subsequent to initial validation as follows: 1) two administrative rules violation reports within the preceding 12 months, or 2) one serious rules violation report.

3. STG-II Member or Associate: the validated affiliate being found guilty of two serious STG related rules violation reports as listed in section 3378.4(a) STG Disciplinary Matrix and which are also identified in section 3341.9(e) SHU Term Assessment Chart within the preceding four (4) years.

4. Monitored Status or Dropout Status Affiliate: the validated affiliate being found guilty of STG related behavior, as identified in section 3378.4(a) and subsequent to initial validation as follows: 1) two administrative rules violation reports within the preceding 12 months, or 2) one serious rules violation report.

(F) The DRB approves placement.

(2) Determinate SHU. An inmate shall be assessed a determinate SHU term when the inmate is found guilty of a Rules Violation Report for an offense specifically listed in subsection 3341.9(e) and ICC has determined the inmate presents a threat to the security of the institution and/or the safety of others.

(A) A determinate SHU term shall be computed using the SHU Term Assessment Chart, pursuant to subsection 3341.9(e), utilizing the SHU Term Assessment Worksheet. All determinate SHU terms shall be assessed at the expected term for the offense, in the absence of mitigating or aggravating factors, as listed in subsections 3341.9(b) & (c).

(B) The SHU term effective date shall be the date of placement in administrative segregation or upon the date of discovery of the information leading to the disciplinary charge, whichever occurs first.

(C) Inmates shall be assessed a determinate SHU term for serious misconduct occurring while on administrative SHU status provided the inmate is found guilty of an offense listed in subsection 3341.9(e). The administrative SHU status shall run concurrently to any/all assessed Determinate SHU terms, whether active or suspended, and upon the MERD the administrative status will continue.

(D) Only rule violations occurring within the past 5 years on an inmate's current CDCR number which warrant a SHU assessment shall be addressed by ICC and reviewed by the CSR. ICC shall assess the appropriate SHU term per 3341.9(e) and one of the following actions:

1. Impose/Re-impose
2. Impose/Re-impose and Suspend
3. Impose/Re-impose and Suspend in Entirety
4. Commute

Re-imposed SHU terms shall be addressed in accordance with section 3341.6.

(b) SHU terms shall be served in a departmentally approved SHU, or a facility specifically designated for that purpose, except under those circumstances where the term may be served in ASU or PSU. SHU terms may also be served in secure inpatient medical or mental health settings, when deemed clinically necessary. Inmates who are serving a SHU term in ASU shall be reviewed by a classification committee pursuant to section 3341.8.

(c) SHU classification decisions, including notification of the reasons for a classification hearing, SHU term assessment, housing restrictions, and yard assignment shall be documented on the CDC Form 128-G (Rev. 10/89), with a copy provided to the inmate

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 2933.6, 5054 and 5068, Penal Code; *Sandin* v. *Connor* (1995) 515 U.S. 472; *Madrid* v. *Gomez* (N.D. Cal. 1995) 889 F.Supp. 1146; *Toussaint* v. *McCarthy* (9th Cir. 1990) 926 F.2d 800; *Toussaint* v. *Yockey* (9th Cir. 1984) 722 F.2d 1490; and *Castillo* v. *Alameida*, et al., (N.D. Cal., No. C94-2847).

HISTORY:

1. New section filed 6-1-2015 as an emergency; operative 6-1-2015 (Register 2015, No. 23). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 11-9-2015 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 6-1-2015 order, including amendment of subsections (a)(2) and (c), transmitted to OAL 10-19-2015 and filed 12-3-2015; amendments effective 12-3-2015 pursuant to Government Code section 11343.4(b)(3) (Register 2015, No. 49).
3. Amendment of subsection (a)(2) filed 6-2-2016 as an emergency; operative 6-2-2016 (Register 2016, No. 23). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 11-9-2016 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 6-2-2016 order transmitted to OAL 11-7-2016 and filed 12-22-2016 (Register 2016, No. 52).

3341.4. Security Housing Unit Terms—Initial, Concurrent and Consecutive.

(a) An initial Security Housing Unit (SHU) term is the first established term that changes the inmate's status from administrative segregation to SHU and shall be calculated using the SHU Term Assessment Worksheet. The initial SHU term shall be the controlling term unless another SHU term is later assessed with a more distant MERD.

(b) Concurrent SHU terms are independent SHU terms running simultaneously to another SHU term(s) and shall be calculated using the SHU Term Assessment Worksheet. Concurrent SHU terms shall be assessed for any offenses eligible for SHU assessment that occur either prior to the initial SHU term and may also be assessed for those offenses eligible for SHU assessment that occur or after the initial SHU term.

(c) Consecutive SHU terms are successive SHU terms that begin following the maximum MERD of an initial or previously assessed SHU term and shall be calculated using the SHU Term Assessment Worksheet. Consecutive SHU terms may be assessed for any offense committed after the assessment of a previous SHU term with an unexpired MERD.

(d) For SHU assessable violations that occur after a previously assessed SHU term, with an unexpired MERD, ICC shall have the discretion to assess either a Concurrent or Consecutive SHU term, in accordance with subsections 3341.4(b) and (c). Any ICC action to assess either a Concurrent or Consecutive SHU term shall clearly articulate substantive justification for the decision on the CDC Form 128-G (Rev. 10/89).

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 2933.6, 5054 and 5068, Penal Code; *Sandin* v. *Connor* (1995) 515 U.S. 472; *Toussaint* v. *McCarthy* (9th Cir. 1990) 926 F.2d 800; *Toussaint* v. *Yockey* (9th Cir. 1984) 722 F.2d 1490; and *Castillo* v. *Alameida*, et al., (N.D. Cal., No. C94-2847).

HISTORY:

1. New section filed 6-1-2015 as an emergency; operative 6-1-2015 (Register 2015, No. 23). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 11-9-2015 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 6-1-2015 order, including amendment of subsection (d), transmitted to OAL 10-19-2015 and filed 12-3-2015; amendments effective 12-3-2015 pursuant to Government Code section 11343.4(b)(3) (Register 2015, No. 49).

3341.5. Suspending Security Housing Unit Terms.

(a) ICC may commute or suspend any portion of a Determinate SHU term. Once commuted, the term shall not be re-imposed. ICC may suspend a Determinate and/or end an Administrative SHU term any time it is determined an inmate no longer poses a threat to the safety of any person or the security of the institution. Additionally, ICC may suspend a Determinate or end an Administrative SHU term for purposes of inpatient medical or mental health treatment when deemed clinically necessary. Any ICC action to suspend or commute a SHU term shall clearly articulate substantive justification for the decision on the CDC Form 128-G (Rev. 10/89).

(1) ICC shall suspend any portion of a SHU term during any time the inmate was not on segregation status.

(2) The remaining time of the suspended SHU term continues to run while the inmate is no longer in segregated housing as long as the inmate remains in custody.

(3) The ICC action to suspend a SHU term may require CSR review for placement consideration and/or audit. ICC has the authority to release an inmate to a GP or ASU within the same institution pending placement review, as appropriate. If multiple SHU terms are suspended, the SHU term with the most distant MERD need only be addressed. In this circumstance, any remaining SHU terms with unexpired MERD's shall be considered suspended.

(b) If an inmate paroles while serving a determinate SHU term, the remaining time on the SHU term is automatically suspended and any remaining time stayed. Any remaining SHU time shall be recalculated and assessed should the inmate return to custody, so long as the inmate maintains the same CDCR identification number.

(c) If an inmate paroles prior to assessment of a determinate SHU term, the ICC shall address the unresolved term should the inmate return to CDCR custody with the same CDCR identification number, in accordance with subsection 3341.3(a)(6).

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 2933.6, 5054 and 5068, Penal Code; *Sandin* v. *Connor* (1995) 515 U.S. 472; *Madrid* v. *Gomez* (N.D. Cal. 1995) 889 F.Supp. 1146; *Toussaint* v. *McCarthy* (9th Cir. 1990) 926 F.2d 800; and *Coleman* v. *Wilson* 912 F.Supp. 1282 (E.D. Cal. 1995).

HISTORY:

1. New section filed 8-7-87 as an emergency; operative 8-7-87 (Register 87, No. 34). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 12-7-87.
2. Certificate of Compliance as to 8-7-87 order transmitted to OAL 12-4-87; disapproved by OAL (Register 88, No. 16).
3. New section filed 1-4-88 as an emergency; operative 1-4-88 (Register 88, No. 16). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 5-3-88.
4. Certificate of Compliance as to 1-4-88 order transmitted to OAL 5-3-88; disapproved by OAL (Register 88, No. 24).
5. Amendment filed 6-2-88 as an emergency; operative 6-2-88 (Register 88, No. 24). A Certificate of Compliance must be transmitted

to OAL within 120 days or emergency language will be repealed on 9-30-88.

6. Certificate of Compliance including amendment transmitted to OAL 9-26-88 and filed 10-26-88 (Register 88, No. 50).
7. Editorial correction of printing errors in subsection (c)(2)(B)1 and CDC Forms 629-B and 629-D (Register 92, No. 5).
8. New subsection (c)(6)(H), subsection relettering, and amendment of Note filed 7-29-93 as an emergency; operative 7-29-93 (Register 93, No. 31). A Certificate of Compliance must be transmitted to OAL 11-26-93, or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 7-29-93 order transmitted to OAL 11-18-93 and filed 12-31-93 (Register 94, No. 1).
10. Amendment of subsection (c)(2)(B)1. and 4., new subsection (c)(2)(B)5. and subsection renumbering, repealer of form CDC 629-A, and new form CDC 629-A filed 2-8-96 as an emergency per Penal Code section 5058(e); operative 2-8-96 (Register 96, No. 6). A Certificate of Compliance must be transmitted to OAL by 7-18-96 or emergency language will be repealed by operation of law on the following day.
11. Certificate of Compliance as to 2-8-96 order including amendment of form CDC 629-A transmitted to OAL 6-17-96 and filed 7-30-96 (Register 96, No. 31).
12. New subsection (c)(2)(A)1. designator, new subsections (c)(2)(A)2. and (c)(4) and subsection relettering filed 1-21-99 as an emergency; operative 1-21-99 (Register 99, No. 4). Pursuant to Penal Code section 5058(e), a Certificate of Compliance must be transmitted to OAL by 6-30-99 or emergency language will be repealed by operation of law on the following day.
13. Certificate of Compliance as to 1-21-99 order transmitted to OAL 6-30-99 and filed 8-12-99 (Register 99, No. 33).
14. Amendment of subsections (c)(2)(A)1. and 2. and (c)(4), new subsections (c)(5) and (c)(6), subsection renumbering, amendment of newly designated subsection (c)(10) and amendment of Note filed 8-30-99 as an emergency; operative 8-30-99 (Register 99, No. 36). Pursuant to Penal Code section 5058(e), a Certificate of Compliance must be transmitted to OAL by 2-8-2000 or emergency language will be repealed by operation of law on the following day.
15. Certificate of Compliance as to 8-30-99 order transmitted to OAL 2-7-2000 and filed 3-21-2000 (Register 2000, No. 12).
16. Change without regulatory effect amending subsection (c)(2)(B)1. filed 10-16-2001 pursuant to section 100, title 1, California Code of Regulations (Register 2001, No. 42).
17. Amendment of subsection (c)(6) and Note filed 5-25-2006; operative 5-25-2006 pursuant to Government Code section 11343.4 (Register 2006, No. 21).
18. Change without regulatory effect amending subsection (b) filed 6-27-2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 26).
19. New subsections (c)(9)(K)–(c)(9)(K)2., subsection relettering and amendment of Note filed 2-23-2007 as an emergency; operative 2-23-2007 (Register 2007, No. 8). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 8-2-2007 or emergency language will be repealed by operation of law on the following day.
20. Certificate of Compliance as to 2-23-2007 order, including amendment of subsection (c)(9)(K)1.–2., transmitted to OAL 7-27-2007 and filed 9-5-2007 (Register 2007, No. 36).
21. New subsection (c)(9)(L) and subsection relettering filed 12-28-2007; operative 12-28-2007 pursuant to Government Code section 11343.4 (Register 2007, No. 52).
22. Amendment of subsection (b) filed 9-29-2009; operative 10-29-2009 (Register 2009, No. 40).
23. New subsections (c)(2)(A)3. and (c)(2)(B)8.–9., subsection renumbering, new subsection (c)(2)(C) and amendment of subsection (c)(7) filed 11-14-2011 as an emergency; operative 11-14-2011 (Register 2011, No. 46). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 4-23-2012 or emergency language will be repealed by operation of law on the following day.
24. Certificate of Compliance as to 11-14-2011 order transmitted to OAL 2-29-2012 and filed 4-5-2012 (Register 2012, No. 14).
25. Amendment filed 10-17-2014; operative 10-17-2014 pursuant to Government Code section 11343.4(b)(3) (Register 2014, No. 42).
26. Repealer of section and SHU Time Computation Table (CDCR Form 629-D) and new section filed 6-1-2015 as an emergency; operative 6-1-2015 (Register 2015, No. 23). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 11-9-2015 or emergency language will be repealed by operation of law on the following day.
27. Certificate of Compliance as to 6-1-2015 order, including amendment of subsection (a), transmitted to OAL 10-19-2015 and filed 12-3-2015; amendments effective 12-3-2015 pursuant to Government Code section 11343.4(b)(3) (Register 2015, No. 49).

STATE OF CALIFORNIA
DEPARTMENT OF CORRECTIONS

SHU TERM ASSESSMENT WORKSHEET
CDC 629-A (Rev 3/96)

CDC NUMBER	NAME (LAST, FIRST, MI)	INSTITUTION	UNIT

1. RULE VIOLATION RESULTING IN SHU TERM ASSESSMENT
(If more than one SHU assessable offense and no SHU term has been established, use most serious as base term and less serious as aggravation.)

a. Rule No._____ Date Issued_____ Title _____

b. Specific Act_____
(Must be an offense on SHU Term Assessment Chart.)

c. List range of months for the offense using SHU Time Computation Table..... LOW ___ EXP ___ HIGH ___

d. Enter "expected" (mid-range) years, months, days of confinement..... YR ___ MO ___ DAYS ___

2. FACTORS IN MITIGATION AND AGGRAVATION
(Enter "NONE" for item 2c or indicate amount of time. Describe factors and document sources. Use only factors listed in the DOM 62050 or concurrent offenses.)

a. Mitigating Factors. Time subtracted for mitigations..... - YR ___ MO ___ DAYS ___
1)
2)
3)

b. Aggravating Factors. Time added for aggravations..... + YR ___ MO ___ DAYS ___
1)
2)
3)

c. Total time added or subtracted..... = YR ___ MO ___ DAYS ___

3. TOTAL SHU CONFINEMENT TIME ASSESSED..... YR ___ MO ___ DAYS ___
(Subtract or add time for mitigation or aggravation to expected, item 1d plus or minus 2c)

4. DATE OF ADMINISTRATIVE SEGREGATION CONFINEMENT/VIOLATION.....

5. MAXIMUM DATE OF RELEASE FROM SHU..... YR ___ MO ___ DAY ___
(Add total time assessed to date of confinement, item 3 plus 4) YR ___ MO ___ DAY ___

6. MINIMUM SHU CONFINEMENT TIME TO SERVE.....
(Enter 75% of the total SHU time (item 3) using the SHU Time Computation Table)
a. Date of confinement/violation (item 4)..... YR ___ MO ___ DAYS ___

7. MINIMUM ELIGIBLE RELEASE DATE (MERD)..... YR ___ MO ___ DAY ___
(Add the minimum SHU time to the date of confinement, item 6 plus 6a) YR ___ MO ___ DAY ___

8. FORFEITURE OF GOOD CONDUCT CREDITS FOR SUBSEQUENT MISCONDUCT
(Enter "NONE" for item 8a or indicate the amount of time lost and describe and document the misconduct for which credit is being forfeited). SHU inmates may forfeit up to 45 days of clean conduct credits for each disciplinary infraction that is not serious enough to warrant the assessment of a subsequent or concurrent SHU term. Such forfeiture may be assessed against credits already earned or future credits.

a. Time forfeited for CDC 115 - Dated:_____ ..... YR ___ MO ___ DAYS ___
1)
2)

b. **ADJUSTED MERD** Cannot Exceed MAXIMUM..... YR ___ MO ___ DAY ___
(Add the amount of time forfeited to the prior MERD, item 7 plus 8a)

NAME AND TITLE OF STAFF COMPUTING TERM	DATE SIGNED	DATE ICC ESTABLISHED TERM

DISTRIBUTION ORIGINAL - CENTRAL FILE, YELLOW - INMATE, PINK - AUDITOR

SAMPLE

STATE OF CALIFORNIA
DEPARTMENT OF CORRECTIONS

ASSESSMENT OF SUBSEQUENT OR REIMPOSED SHU TERM WORKSHEET

CDC 629-B (9/90)

CDC NUMBER	NAME (LAST, FIRST, MI)	INSTITUTION	UNIT

1. **VIOLATION COMMITTED WHILE SECURITY HOUSING UNIT (SHU) TERM ACTIVE**

   a Rule No _____ Date Issued _____ Title _____

   b Specific Act _____
   (Must be an offense on SHU Term Assessment Chart)

2. **CONSECUTIVE SHU TERM CALCULATIONS**

   a Prior maximum SHU expiration date .. .. ___ YR ___ MO ___ DAY
   (SHU Term Assessment Worksheet, item 3c)

   b. Enter total additional confinement time assessed..... ... ... ___ YR ___ MO ___ DAYS
   (Expected plus or minus Aggravation/Mitigation in years, months and days)

   c. New maximum expiration of term date..... . .. . ___ YR ___ MO ___ DAY
   (Add additional time to expiration date, item 2a plus 2b)

   d **New Minimum Eligible Release Date**.... ... . ___ YR ___ MO ___ DAY
   (Add 75% of additional time to prior maximum expiration date using the SHU Time Computation Table, item 2a plus 2b)

3. **CONCURRENT SHU TERM CALCULATIONS**

   a. Date of new violation... . ... ___ YR ___ MO ___ DAY

   b. Enter total confinement time assessed. . . .. ___ YR ___ MO ___ DAYS
   (Expected plus or minus Aggravation/Mitigation in years, months and days)

   c Expiration date of new violation . . . . ___ YR ___ MO ___ DAY
   (Add total assessed to violation date, item 3a plus 3b)

   d. Controlling Maximum SHU Expiration Date... .... ___ YR ___ MO ___ DAY
   (Enter prior or new expiration date whichever is later)

   e. **Controlling Minimum Eligible Release Date**..... .... ___ YR ___ MO ___ DAY
   (Enter prior date or add 75% of assessed time to violation date if the new maximum is later, 75% of item 3b plus 3a)

4. **REIMPOSITION OF SHU TERM FROM PAROLE/DISCHARGE**

   a. Maximum SHU expiration date when paroled/discharged. .... ___ YR ___ MO ___ DAY

   b Date paroled/discharged from SHU .... ___ YR ___ MO ___ DAY

   c Maximum confinement time remaining when paroled/discharged... .... ___ YR ___ MO ___ DAYS
   (Subtract date paroled from expiration date, item 4b from 4a)

   d Date of reconfinement in Administrative Segregation .. .. ___ YR ___ MO ___ DAY

   e New maximum expiration date... .... ___ YR ___ MO ___ DAY
   (Add time remaining to reconfinement date, item 4c to 4d)

   f. Minimum release time remaining when paroled/discharged..... ... . ___ YR ___ MO ___ DAY
   (Subtract date paroled, item 4b, from Prior **Minimum Eligible Release Date**)

   g. **New Minimum Eligible Release Date**..... .... ___ YR ___ MO ___ DAY
   (Add minimum time remaining to date of reconfinement, item 4f plus 4d)

NAME AND TITLE OF STAFF COMPUTING TERM	DATE	DATE ICC ESTABLISHED TERM

DISTRIBUTION. ORIGINAL CENTRAL FILE, YELLOW INMATE, PINK AUDITOR

SAMPLE

3341.6. Re-Imposed Security Housing Unit Terms.

(a) A suspended SHU term may be re-imposed if an inmate is placed in administrative segregation immediately following an RVR for serious misconduct that occurred prior to the expiration of a previously established MERD. In this circumstance, the inmate must be found guilty of the serious misconduct and the ICC determines that the inmate poses a threat to the safety of any person or to the security of the institution. SHU terms re-imposed based on subsequent serious misconduct shall be effective the date of the misconduct. SHU terms suspended based solely on the need for inpatient medical or mental health treatment may be re-imposed without subsequent misconduct if the inmate continues to pose a threat to the safety of others or the security of the institution.

(1) If the SHU term is re-imposed, the ICC shall record the decision and the reasons for the decision on the CDC Form 128-G (Rev. 10/89). If multiple SHU terms are eligible for re-imposition, the SHU term with the most distant MERD need only be addressed. In this circumstance, any remaining SHU terms with unexpired MERD's shall be considered re-imposed.

(2) Upon a guilty finding of subsequent serious misconduct, the ICC may elect to re-impose the current unexpired MERD, impose a forfeiture of clean conduct credits or impose a subsequent SHU term. ICC may impose a forfeiture of clean conduct credit or a concurrent/consecutive SHU term, where appropriate, upon those cases where the subsequent and serious misconduct occurred prior to the expiration of the established MERD; however, adjudication did not occur until after.

(b) If an inmate paroles with an active Determinate or Administrative SHU term and subsequently returns to CDCR custody as a parole violator or with a new prison commitment under the same CDCR number, ICC shall evaluate the case for re-imposition. Re-imposed Administrative SHU terms shall be in accordance with subsection (a)(1), except as otherwise provided in subsection 3341.6(c)(1)–(3)(A). Re-imposed Determinate SHU terms shall be calculated utilizing the SHU Term Assessment Worksheet. Any unexpired SHU term shall be recalculated and addressed by ICC. If multiple CSR approved SHU terms are eligible for re-imposition, the SHU term with the most distant MERD need only be addressed. In this circumstance, any remaining SHU terms with unexpired MERD's shall be considered re-imposed. ICC retains the authority to impose or suspend any remaining time based upon the safety of persons or security of the institution.

(1) If re-imposed, the SHU term shall not exceed the period of time remaining on the original SHU term at the time of parole.

(2) Re-imposition of the SHU term following return to custody shall be documented on the appropriate CDC Form 128-G (Rev. 10/89).

(3) SHU terms reassessed under the provisions of this subsection shall be audited and approved by a CSR.

(c) A validated STG affiliate who paroled or discharged from CDCR jurisdiction and returns to custody shall be addressed as follows:

(1) An inmate who previously paroled or was discharged with Maximum (MAX) custody while pending validation and is returned to CDCR's custody shall be placed in ASU. The STG Investigator shall obtain the validation package to determine the status of validation and housing at time of parole/discharge. The validation process shall be completed, as necessary. After review by the STG Unit Classification Committee is completed, the inmate will be referred to ICC for appropriate housing determination.

(2) A validated STG affiliate who previously paroled or was discharged with MAX custody and is returned to CDCR's custody shall be placed in ASU and afforded all procedural safeguards for segregated inmates. The STG Investigator will determine if there has been STG related behavior while the inmate was outside CDCR jurisdiction. The inmate will be referred to the STG Unit Classification Committee in accordance with section 3376(d)(5) or ICC, as appropriate.

(A) While outside of CDCR jurisdiction, the inmate had no documented STG related behavior, ICC shall place the inmate at the beginning of the step that they were in at the time of parole/discharge.

(B) While outside of CDCR jurisdiction, the inmate had a documented STG related conviction or good cause finding by a court, ICC shall place the inmate in Step 1 of the SDP.

(3) A validated STG affiliate who previously paroled or was discharged and was designated either inactive, inactive-monitored, monitored, or dropout status and returns to the custody of the CDCR shall be assigned housing based upon current case factors. The STG Investigator will determine if there has been STG related behavior while the inmate was outside CDCR jurisdiction. The inmate will be referred to the STG Unit Classification Committee in accordance with section 3376(d)(5) or ICC, as appropriate.

(A) ICC shall complete a case by case criteria review to determine if placement into the SDP Step 1 is appropriate. This review shall consist of commitment offense or good cause finding circumstances which were specifically related to the same STG with which the inmate was previously validated and occurred within the past four years from the date of arrest for this conviction or good cause finding.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 314, 2933.6, 5054 and 5068, Penal Code; *Sandin* v. *Connor* (1995) 515 U.S. 472; *Madrid* v. *Gomez* (N.D. Cal. 1995) 889 F.Supp. 1146; *Toussaint* v. *McCarthy* (9th Cir. 1990) 926 F.2d 800; *Toussaint* v. *Yockey* (9th Cir. 1984) 722 F.2d 1490; *Coleman* v. *Wilson* 912 F. Supp. 1282 (E.D. Cal. 1995); and *Castillo* v. *Alameida, et al.*, (N.D. Cal., No.C94-2847).

HISTORY:

1. New section filed 6-1-2015 as an emergency; operative 6-1-2015 (Register 2015, No. 23). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 11-9-2015 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 6-1-2015 order, including amendment of subsections (a)(1) and (b)(2), transmitted to OAL 10-19-2015 and filed 12-3-2015; amendments effective 12-3-2015 pursuant to Government Code section 11343.4(b)(3) (Register 2015, No. 49).

3341.7. Forfeiture of Clean Conduct Credit.

(a) Serious misconduct not warranting a SHU term, occurring at any time following the commission of any offense listed in subsection 3341.9(e), but prior to a projected/established MERD, may result in a forfeiture of clean conduct credits.

(1) Up to 45 days of clean conduct credit may be forfeited as a result of a guilty finding for a serious misconduct not listed in subsection 3341.9(e). Such forfeiture shall be calculated utilizing the SHU Term Assessment Worksheet.

(2) If the SHU term has not yet been assessed or has been suspended in accordance with section 3341.5 at the time of the subsequent serious misconduct, the forfeiture of clean conduct credit is permitted should the SHU term be imposed or re-imposed.

(b) For inmates on segregation status, the ICC shall review any serious misconduct which may result in forfeiture of clean conduct credit and clearly articulate in the CDC Form 128-G (Rev. 10/89) the basis for their decision.

(c) Forfeitures of clean conduct credit may be assessed against credits already earned or future clean conduct credits, but shall not be assessed in periods exceeding the maximum MERD for the controlling offense.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 2933.6, 5054 and 5068, Penal Code; *Sandin* v. *Connor* (1995) 515 U.S. 472; *Madrid* v. *Gomez* (N.D. Cal. 1995) 889 F.Supp. 1146; *Toussaint* v. *McCarthy* (9th Cir. 1990) 926 F.2d 800; and *Toussaint* v. *Yockey* (9th Cir. 1984) 722 F.2d 1490.

HISTORY:

1. New section filed 6-1-2015 as an emergency; operative 6-1-2015 (Register 2015, No. 23). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 11-9-2015 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 6-1-2015 order, including amendment of subsection (b), transmitted to OAL 10-19-2015 and filed 12-3-2015; amendments effective 12-3-2015 pursuant to Government Code section 11343.4(b)(3) (Register 2015, No. 49).

3341.8. Security Housing Unit/Psychiatric Services Unit Classification Hearings.

The ICC shall conduct all classification hearings of SHU/PSU status inmates.

(a) SHU/PSU Status Reviews. Except as otherwise provided, inmates on Administrative SHU status, shall be reviewed by the ICC no less frequently than every 180 days for release consideration to a GP. Inmates on Determinate SHU status shall be reviewed by the ICC no less frequently than every 180 days following their initial SHU annual review for release consideration to a GP. The ICC review shall include, but not be limited to, the availability of alternative housing, demonstrated evidence of behavioral change and expressed willingness to conform to CDCR rules in accordance with California Code of Regulations, Division 3, Title 15. A validated STG affiliate assigned to a security housing unit to participate in the Step Down Program (SDP) shall be reviewed by a classification committee on a schedule that is consistent with section 3378.3(b)(1) through 3378.3(b)(3) for consideration of program participation or movement to the next step of the SDP.

(1) Any inmate expected to be retained on SHU status beyond 360 days shall be provided a CDC Form 114-D documenting the SHU annual review, which shall be issued in accordance with section 3338(a)(1)–(3), 3338(b) and 3338(c), prior to the inmate's SHU annual review. Administrative SHU inmates shall require CSR referral and placement review following each SHU annual review.

(2) An inmate shall not be retained on SHU status beyond the expiration of a determinate term or beyond 360 days, unless the ICC has determined before such time that continuance in the SHU is required for one of the following reasons:

(A) The inmate has an unexpired MERD from SHU/PSU.

(B) Release of the inmate would severely endanger the lives of inmates, staff, or the security of the institution.

(C) The inmate has voluntarily requested continued retention in segregation and the ICC has substantively justified retention.

(3) A validated STG shall be considered for release from a SHU, as provided above, after the inmate is verified as a STG dropout through a debriefing process.

(4) A validated STG affiliate shall be considered for release from SHU upon successful completion of Steps 1 through 4 of the STG Step Down Program (SDP), pursuant to section 3378.3. Successful inmates shall be transferred to the general population of a Level IV facility for a 12 month period of observation that shall be considered Step 5 of the SDP. Upon completion of Step 5, the inmate shall be housed in a facility commensurate with his or her safety needs. In the absence of safety needs, the inmate shall be housed in a facility consistent with his or her classification score.

(5) An affiliate on monitored status, inactive-monitored status, inactive status, or validated as a dropout of a STG and placed in general population may be returned to segregation based upon STG activity/behavior pursuant to section 3378.4(c) identifying the inmate as a currently active affiliate of the STG with which the inmate was previously validated. Current activity is defined as any documented STG activity or behavior within the past four (4) years. The procedures described in Sections 3335 through 3345, and in Article 10, Classification, shall be utilized for the removal of the offender from the general population, the review of the initial segregation order, and all periodic reviews of the STG SHU term.

(b) Pre-MERD Hearing. A Pre-MERD hearing shall be held by ICC 120 days prior to the expiration of a MERD. The ICC review shall include, but not be limited to, the availability of alternative housing, demonstrated evidence of behavioral change and expressed willingness to conform to CDCR rules, as well as determination of the housing and program assignment following completion of the SHU term, or sooner, if appropriate.

(1) If before the Pre-MERD hearing, there is any indication the inmate may be retained in segregation beyond the MERD for reasons specified in section 3335, the inmate shall be issued an CDC Form 114-D in accordance with section 3338.

(2) If ICC retains the inmate in segregation beyond the expiration of the MERD, the inmate's status then becomes administrative segregation, where future classification hearings shall be conducted in accordance with section 3337.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 2933.6, 5054 and 5068, Penal Code; *Sandin* v. *Connor* (1995) 515 U.S. 472; *Madrid* v. *Gomez* (N.D. Cal. 1995) 889 F.Supp. 1146; *Toussaint* v. *McCarthy* (9th Cir. 1990) 926 F.2d 800; *Toussaint* v. *Yockey* (9th Cir. 1984) 722 F.2d 1490; *Castillo* v. *Alameida*, et al., (N.D. Cal., No.C94-2847); *Coleman* v. *Wilson* 912 F. Supp. 1282 (E.D. Cal. 1995); and *Clark* v. *California* 123 F. 3d 1267 (9th Cir. 1997).

HISTORY:

1. New section filed 6-1-2015 as an emergency; operative 6-1-2015 (Register 2015, No. 23). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 11-9-2015 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 6-1-2015 order transmitted to OAL 10-19-2015 and filed 12-3-2015 (Register 2015, No. 49).

3341.9. Security Housing Unit Term Calculation and Assessment.

(a) The SHU term shall be set at the expected range unless the ICC finds factors exist which warrant the imposition of a lesser or greater period of confinement.

(1) Both aggravating and mitigating factors shall be considered for behavior occurring prior to the current serious rules violation. Aggravating and mitigating factors shall be considered for behavior occurring during an inmate's current term, prior term, discharged term or other verifiable incarcerated period, which have occurred during the past 5 calendar years.

(2) The total period of confinement assessed shall be no less than nor greater than the lowest or highest months listed for the offense in subsection 3341.9(e), the SHU Term Assessment Chart. In setting the term, the ICC shall determine the expected term for the offense, review the circumstances of the disciplinary offense, and consider the inmate's institutional behavior history using the factors below. The ICC shall then determine that either no unusual factors exist, or find that specific aggravating and/or mitigating factors exist which specify a greater or lesser term. The reasons for the specific amount of time assessed or deviation from the expected term shall be clearly documented on a CDC Form 128-G (Rev. 10/89), and SHU Term Assessment Worksheet, with a copy provided to the inmate.

(3) When calculating a SHU term, ICC shall address all aggravating and mitigating factors. Any single aggravating and/or mitigating factor shall be considered. If aggravating or mitigating

factors exist, ICC shall adjust the SHU term in consideration of such factors. Should both aggravating and mitigating factors exist, ICC shall adjust the SHU term by uniformly applying each factor.

(b) Factors in Mitigation.

(1) The inmate has no serious RVR's within 12 months of the behavior or no disciplinary history during the first year of CDCR incarceration.

(2) The inmate has not been involved in prior serious misconduct of the same or similar nature, as listed in subsection 3341.9(e), within the last five calendar years.

(3) The serious misconduct was situational and spontaneous, as documented and referenced.

(4) The inmate was influenced by others to commit the offense, as documented and referenced.

(5) The serious misconduct resulted, in part, from the inmate's fear for safety, as documented and referenced.

(6) The serious misconduct resulted, in part, from the inmate's mental health, as documented and referenced on the CDCR Form 115-MH-A (Rev. 09/15).

(c) Factors in Aggravation.

(1) The inmate has been involved in prior serious misconduct of the same or similar nature, as listed in subsection 3341.9(e), within the last five calendar years.

(2) The serious misconduct was planned and executed, as documented and referenced.

(3) The serious misconduct was committed on behalf of an STG, as documented and referenced.

(4) The inmate influenced others to commit serious misconduct at the time of the offense, as documented and referenced.

(5) The serious misconduct directly resulted in injury to more than one victim, as documented and referenced.

(d) ICC decisions to assess a SHU term and/or referral for segregated housing placement, shall be referred to a CSR for review and approval. In auditing and endorsing cases, the CSR shall ensure that any SHU term assessment is consistent with the specific disciplinary violation that was charged and the subsequent findings as confirmed by the Chief Disciplinary Officer (CDO) and ICC.

(e) SHU Term Assessment Chart (Calculating determinate confinement to SHU).

(f) Staff shall apply the appropriate amount of time to calculate the maximum and minimum eligible release date of the SHU term, pursuant to subsection 3341.9(e). Both the maximum and minimum eligible release dates from SHU shall be established by assessing the appropriate number of months, followed by any remaining calendar days.

(1) SHU MOS refers to the maximum number of months assessed for a specific determinate term pursuant to subsection 3341.9(e).

(2) MERD TERM means a combination of months, followed by days which represent the minimum amount of time that must pass before a SHU term expires and is also referred to as the MERD. The MERD initially represents 50% or one-half of the maximum SHU term, as it incorporates 50% or one-half clean conduct credit. The MERD may be adjusted based upon subsequent serious misconduct.

(A) Unless previously suspended, the established MERD is the date the SHU term ends and the date on which the inmate is no longer on SHU status. When multiple MERD's exist, the most distant MERD shall be the controlling MERD.

(3) CLEAN CONDUCT CREDIT means a combination of months, followed by days which represent credits that shall be applied to the maximum determinate SHU term, as long as the inmate remains free of any subsequent serious misconduct through the MERD. Clean conduct credit is calculated as one-half or 50% of the assessed maximum SHU term.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 314, 530, 532, 646.9, 653m, 932, 2081, 2933.6, 5054 and 5068, Penal Code; *Sandin* v. *Connor* (1995) 515 U.S. 472; *Madrid* v. *Gomez* (N.D. Cal. 1995) 889 F.Supp. 1146; *Toussaint* v. *McCarthy* (9th Cir. 1990) 926 F.2d 800; *Toussaint* v. *Yockey* (9th Cir. 1984) 722 F.2d 1490; *Castillo* v. *Alameida, et al.*, (N.D. Cal., No.C94-2847); *Coleman* v. *Wilson* 912 F. Supp. 1282 (E.D. Cal. 1995); and *Clark* v. *California* 123 F. 3d 1267 (9th Cir. 1997).

HISTORY:

1. New section filed 6-1-2015 as an emergency; operative 6-1-2015 (Register 2015, No. 23). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 11-9-2015 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 6-1-2015 order, including amendment of subsections (a)(2) and (b)(6), transmitted to OAL 10-19-2015 and filed 12-3-2015; amendments effective 12-3-2015 pursuant to Government Code section 11343.4(b)(3) (Register 2015, No. 49).

OFFENSE	*Low*	*Expected*	*High*
(1) Homicide:			
(A) Murder, attempted murder, solicitation of murder, or voluntary manslaughter of a non-inmate.	36	48	60
B)Murder, attempted murder, solicitation of murder, or voluntary manslaughter of an inmate.	24	36	48
(2) Violence Against Persons:			
A)Battery on a non-inmate with a weapon capable of causing serious or mortal injury; caustic substance or other fluids capable of causing serious or mortal injury; or physical force causing serious injury.	18	30	42
(B) Assault on a non-inmate with a weapon, capable of causing serious or mortal injury; caustic substance or other fluids capable of causing serious or mortal injury.	09	15	21
(C) Rape, sodomy, or oral copulation on a non-inmate, or any attempt.	18	30	42
(D) Battery on an inmate with a weapon capable of causing serious or mortal injury; caustic substance or other fluids capable of causing serious or mortal injury or physical force causing serious injury.	12	18	24
(E)Assault on an inmate with a weapon capable of causing serious or mortal injury; caustic substance or other fluids capable of causing serious or mortal injury.	6	9	12
(F) Rape, sodomy, or oral copulation on an inmate accomplished against the inmate's will, or any Attempt.	12	18	24
(G) Battery on a non-inmate without serious injury.	6	12	18
(H) Assault on a non-inmate	3	6	9
(I) Battery on an inmate without serious injury. (2 or more offenses within a 12 month period or 1 with direct STG nexus).	2	4	6
(3) Threat to Kill or Assault Persons:			
(A) To take or use a non-inmate as a hostage.	18	30	42
(B) Threat of violence to non-inmate.	2	5	8
(4) Possession of a Weapon:			
(A) Possession of a firearm or possession or manufacturing of an explosive device.	18	30	42

(B) Possession or manufacture/manufacturing of a Weapon including materials altered from their original manufactured state or purpose and which can be made into a weapon–other than a firearm or explosive device and which has been manufactured or modified so as to have the obvious intent or capability of inflicting serious injury, and which is under the immediate or identifiable control of the inmate.	4	8	12
(5) Distribution of Controlled Substances as defined in section 3000.	6	12	18
(6) Escape:			
(A)With force or Attempted Escape with force against a person.	12	24	36
(B) Or attempted Escape from any departmental prison or institution other than a camp, MSF or reentry facility.	6	12	18
(7) Disturbance, Riot, or Strike:			
(A) Leading a disturbance, riot or strike.	6	12	18
(B) Active participation in a disturbance, riot or Strike (2 or more offenses within a 12 month period or1 with direct STG nexus).	3	6	9
(C) Inciting conditions likely to threaten institution security	3	6	9
(8) Harassment of another person, group, or entity either directly or indirectly through the use of the mail or other means.	6	12	18
(9) Theft or destruction of State property by any means where the loss or potential loss exceeds $10,000 or threatens the safety of others.	2	8	12
(10) Extortion or Bribery:			
(A) Extortion or bribery of a non-inmate.	4	8	12
(B) Extortion or bribery of an inmate.	2	3	4
(11) Sexual Misconduct:			
(A) Indecent Exposure.	3	6	9
(B)Sexual Disorderly Conduct (two or more offenses within a twelve month period).	3	6	9
(12) Except as otherwise specified in this section or identified as an assault, proven attempts to commit any of the above listed offenses shall receive one-half (1/2) of the term specified for that offense.			
(13) Any inmate who conspires to commit or solicits another person to commit any of the offenses above shall receive the term specified for that offense.			

3342. Case Review.

(a) The case of every inmate assigned to a segregated housing unit will be continuously reviewed and evaluated by custodial and casework staff assigned to the unit. Staff will confer on each case no less frequently than once a week during the first two months of the inmate's segregated status. Such case reviews will not be necessary during any week in which the inmate's case is reviewed by a regular or special classification committee or by staff who are authorized to take classification actions. Any significant observations, determinations or recommendations, will be documented on the inmate's CDC Form 114-A, Detention/Segregation Record.

(b) Psychological Assessment. A psychological assessment of the inmate's mental health will be included in the case review and classification committee review of inmates assigned to segregated housing units. When any indication of psychiatric or psychological problems exists, the case will be referred to the institution's psychiatrist or psychologist for further evaluation and recommended classification committee actions, if any.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.

HISTORY:

1. Amendment of subsection (a) filed 6-1-2015 as an emergency; operative 6-1-2015 (Register 2015, No. 23). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 11-9-2015 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 6-1-2015 order, including further amendment of subsection (a), transmitted to OAL 10-19-2015 and filed 12-3-2015; amendments effective 12-3-2015 pursuant to Government Code section 11343.4(b)(3) (Register 2015, No. 49).

3343. Conditions of Segregated Housing.

For the purposes of this section, special purpose segregated housing includes, but is not limited to, Administrative Segregation Units (ASU) and Segregated Program Housing Units (SPHU).

(a) Living Conditions. In keeping with the special purpose of an Administrative Segregation Unit (ASU) or Segregated Program Housing Unit (SPHU), the physical conditions of special purpose segregated housing ASU and SPHU will approximate those of the general population, with the exception of the physical layout of the building itself and necessary security measures that must be enforced to provide the level of security, control, and supervision required to serve that special purpose.

(b) Restrictions. Whenever an inmate in ASU or SPHU is deprived of any usually authorized item or activity and the action and reason for that action is not otherwise documented and available for review by administrative and other concerned staff, a report of the action will be made and forwarded to the unit administrator as soon as possible.

(c) Clothing. No inmate in ASU or SPHU shall be required to wear clothing that significantly differs from that worn by other inmates in the unit, except that temporary adjustments may be made in an inmate's clothing as is necessary for security reasons or to protect the inmate from self-inflicted harm. No inmate shall be clothed in any manner intended to degrade the inmate.

(d) Meals. Inmates assigned to ASU or SPHU, shall be fed the same meal and ration as is provided for inmates of the general population, except that a sandwich meal may be served for lunch. Deprivation of food will not be used as punishment.

(e) Mail. Inmates assigned to ASU or SPHU, shall not be restricted in their sending and receiving of personal mail, except that incoming packages may be limited in number, and in content to that property permitted in the segregated unit to which an inmate is assigned.

(f) Visits. Inmates assigned to ASU, SHU and PSU shall be permitted non contact visits, unless otherwise specified in section 3170.1(f), General Visiting.

(g) Personal Cleanliness. Inmate's assigned to ASU or SPHU, shall be provided the means to keep themselves clean and well-groomed. Haircuts will be provided as needed. Showering and shaving shall be permitted at least three times a week. Clothing, bedding, linen and other laundry items shall be issued and exchanged no less often than is provided for general population inmates.

(h) Exercise. Inmates assigned to ASU or SPHU shall be permitted a minimum of one hour per day, five days a week, of exercise outside their rooms or cells unless security and safety considerations preclude such activity. When ASU or SPHU are equipped with their own recreation yard, the yard periods may substitute for other out of cell exercise periods, providing the opportunity for use of the yard is available at least three days per week for a total of not less than 10 hours a week.

(i) Reading Material. Inmates assigned to ASU or SPHU, shall be permitted to obtain and possess the same publications, books, magazines and newspapers as are inmates of the general population, except the quantity may be limited for safety and security reasons. Library services shall be provided and will represent a cross-section of material available to the general population.

(j) Telephones. Institutions shall establish procedures for the making of outside telephone calls by inmates in ASU or SPHU. Such procedures will approximate those for the work/training incentive group to which the inmate is assigned, except that individual calls must be specifically approved by the supervisor in charge or the administrator of the unit before a call is made.

(k) Institution Programs and Services. Inmates assigned to ASU or SPHU shall be permitted to participate and have access to such programs and services as can be reasonably provided within the unit without endangering security or the safety of persons. Such programs and services may include, but are not limited to: education, commissary, library services, social services, counseling, religious guidance and recreation.

(*l*) Visitation and Inspection. Inmates assigned to ASU or SPHU shall be seen daily by the custodial supervisor in charge of the unit and by a physician, registered nurse or medical technical assistant, and, by request, members of the program staff. A timely response should be given to such requests whenever reasonably possible. Any indication of medical or mental health distress, shall be immediately referred for further evaluation.

(m) Management Disruptive Cases. Inmates assigned to ASU or SPHU who persist in disruptive, destructive, or dangerous behavior and who will not heed or respond to orders and warnings to desist, are subject to placement in a management cell, as provided in Section 3332(f).

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 2601(d) and 5054, Penal Code.

HISTORY:

1. Amendment of subsections (e), (f) and (j) filed 2-16-83; effective thirtieth day thereafter (Register 83, No. 8).
2. Amendment of subsection (f) filed 8-15-89; operative 9-14-89 (Register 89, No. 33).
3. Amendment filed 6-1-2015 as an emergency; operative 6-1-2015 (Register 2015, No. 23). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 11-9-2015 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 6-1-2015 order transmitted to OAL 10-19-2015 and filed 12-3-2015 (Register 2015, No. 49).

3344. Administrative Segregation Records.

(a) A CDC Form 114, Isolation Log (rev: 3/03), shall be maintained in each ASU and SPHU. One Isolation Log may serve two or more special purpose units which are administered and supervised by the same staff members.

(b) A separate record shall be maintained for each inmate assigned to administrative segregation, including SHU and PSU. This record shall be compiled on CDC Form 114-A Detention/Segregation Record, including all identifying information required on the form. Additionally, all significant information relating to the inmate during the course of segregation, from reception to release, including, but not limited to, documentation of all programs, activities, and services afforded the inmate while segregated and note any significant staff observations, determinations or recommendations regarding unusual behavior displayed by the inmate during this period shall be entered in chronological order.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.

HISTORY:

1. Amendment filed 6-1-2015 as an emergency; operative 6-1-2015 (Register 2015, No. 23). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 11-9-2015 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 6-1-2015 order, including further amendment of subsection (b), transmitted to OAL 10-19-2015 and filed 12-3-2015; amendments effective 12-3-2015 pursuant to Government Code section 11343.4(b)(3) (Register 2015, No. 49).

Article 7.5. Administration of Death Penalty

3349. Method of Execution.

(a) Inmates sentenced to death shall have the opportunity to choose to have the punishment imposed by lethal gas or lethal injection. Upon being served with the warrant of execution, the inmate shall be served with California Department of Corrections and Rehabilitation (CDCR) Form 1801-B (Rev. 06/10), Service of Execution Warrant, Warden's Initial Interview, which is incorporated by reference. The completed CDCR Form 1801-B shall be transmitted to the Warden.

(b) The inmate shall be notified of the opportunity for such choice and that, if the inmate does not choose either lethal gas or lethal injection within ten days after being served with the execution warrant, the penalty of death shall be imposed by lethal injection. The inmate's attestation to this service and notification shall be made in writing and witnessed utilizing the CDCR Form 1801 (Rev. 01/09), Notification of Execution Date and Choice of Execution Method, which is incorporated by reference. The completed CDCR Form 1801 shall be transmitted to the Warden.

(c) The inmate's choice shall be made in writing and witnessed utilizing the CDCR Form 1801-A (Rev. 01/09), Choice of Execution Method, which is incorporated by reference. The completed CDCR Form 1801-A shall be transmitted to the Warden.

(d) The inmate's choice shall be irrevocable, with the exception that, if the inmate sentenced to death is not executed on the date set for execution and a new execution date is subsequently set, the inmate again shall have the opportunity to choose to have the punishment imposed by lethal gas or lethal injection, according to the procedures set forth in subsections (a), (b), and (c) of this section.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 190, 3603, 3604 and 5054, Penal Code.

HISTORY:

1. New article 7.5 and section filed 12-22-92 as an emergency; operative 1-1-93 (Register 93, No. 1). A Certificate of Compliance must be transmitted to OAL 4-22-92 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 1-22-92 order transmitted to OAL 4-9-93 and filed 4-29-93 (Register 93, No. 18).
3. Amendment of section and repealer and new form CDC 1801 filed 12-10-98; operative 1-9-99 (Register 98, No. 50).
4. Amendment of article heading and section, repealer and incorporation by reference of new form CDC 1801 and amendment of Note filed 7-30-2010; operative 8-29-2010 (Register 2010, No. 31).

3349.1.1. Definitions. [Repealed]

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 190, 3600, 3601, 3602, 3603, 3605, 3607, 3700, 3700.5, 3701, 3702, 3703, 3704 and 5054, Penal Code; and *Baze* v. *Rees* (2008) 553 U.S. 35.

HISTORY:

1. New section filed 7-30-2010; operative 8-29-2010 (Register 2010, No. 31).
2. Change without regulatory effect repealing section filed 11-5-2015 pursuant to section 100, title 1, California Code of Regulations (Register 2015, No. 45).

3349.1.2. Selection, Recruitment and Annual Review of Lethal Injection Team Members. [Repealed]

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 190, 3600, 3603, 3604 and 5054, Penal Code; United States Constitution, Amendment VIII; and California Constitution, Art. 1, Sections 17, 27.

HISTORY:

1. New section filed 7-30-2010; operative 8-29-2010 (Register 2010, No. 31).
2. Change without regulatory effect repealing section filed 11-5-2015 pursuant to section 100, title 1, California Code of Regulations (Register 2015, No. 45).

3349.1.3. Lethal Injection Team Duties. [Repealed]

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 190, 3600, 3603, 3604 and 5054, Penal Code; United States Constitution, Amendment VIII; and California Constitution, Art. 1, Sections 17, 27.

HISTORY:

1. New section filed 7-30-2010; operative 8-29-2010 (Register 2010, No. 31).
2. Change without regulatory effect repealing section filed 11-5-2015 pursuant to section 100, title 1, California Code of Regulations (Register 2015, No. 45).

3349.1.4. Lethal Injection Team Training. [Repealed]

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 190, 3600, 3603, 3604 and 5054, Penal Code; United States Constitution, Amendment VIII; and California Constitution, Art. 1, Sections 17, 27.

HISTORY:

1. New section filed 7-30-2010; operative 8-29-2010 (Register 2010, No. 31).
2. Change without regulatory effect repealing section filed 11-5-2015 pursuant to section 100, title 1, California Code of Regulations (Register 2015, No. 45).

3349.2.1 Execution Site Operation. [Repealed]

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 190, 3600, 3603, 3604, 3605 and 5054, Penal Code; United States Constitution, Amendment VIII; and California Constitution, Art. 1, Sections 17, 27.

HISTORY:

1. New section filed 7-30-2010; operative 8-29-2010 (Register 2010, No. 31).

2. Change without regulatory effect repealing section filed 11-5-2015 pursuant to section 100, title 1, California Code of Regulations (Register 2015, No. 45).

3349.2.2. Lethal Injection Record Keeping and Documentation. [Repealed]

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 190, 3600, 3603, 3604, 3605, 3700, 3700.5, 3701, 3702, 3703, 3704 and 5054, Penal Code; United States Constitution, Amendment VIII; and California Constitution, Art. 1, Sections 17, 27.

HISTORY:
1. New section filed 7-30-2010; operative 8-29-2010 (Register 2010, No. 31).
2. Change without regulatory effect repealing section filed 11-5-2015 pursuant to section 100, title 1, California Code of Regulations (Register 2015, No. 45).

3349.2.3. Witnesses, Observers, Media, and Information Releases. [Repealed]

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 190, 3600, 3603, 3604, 3605 and 5054, Penal Code; United States Constitution, Amendment I and VIII; and California Constitution, Art. 1, Sections 17, 27.

HISTORY:
1. New section filed 7-30-2010; operative 8-29-2010 (Register 2010, No. 31).
2. Change without regulatory effect repealing section filed 11-5-2015 pursuant to section 100, title 1, California Code of Regulations (Register 2015, No. 45).

3349.2.4. Communication. [Repealed]

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.

HISTORY:
1. New section filed 7-30-2010; operative 8-29-2010 (Register 2010, No. 31).
2. Change without regulatory effect repealing section filed 11-5-2015 pursuant to section 100, title 1, California Code of Regulations (Register 2015, No. 45).

3349.3. Chronology of Events Prior to a Scheduled Execution. [Repealed]

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 190, 3600, 3603, 3604, 3605, 3700, 3700.5, 3701, 3702, 3703, 3704 and 5054, Penal Code; United States Constitution, Amendment VIII; and California Constitution, Art. 1, Sections 17, 27.

HISTORY:
1. New section filed 7-30-2010; operative 8-29-2010 (Register 2010, No. 31).
2. Change without regulatory effect repealing section filed 11-5-2015 pursuant to section 100, title 1, California Code of Regulations (Register 2015, No. 45).

3349.3.1. Responsibilities and Tasks Approximately 45 days Prior to a Scheduled Execution. [Repealed]

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 190, 3600, 3603, 3604, 3605, 3700, 3700.5, 3701, 3702, 3703, 3704 and 5054, Penal Code; United States Constitution, Amendment VIII; and California Constitution, Art. 1, Sections 17, 27.

HISTORY:
1. New section filed 7-30-2010; operative 8-29-2010 (Register 2010, No. 31).
2. Change without regulatory effect repealing section filed 11-5-2015 pursuant to section 100, title 1, California Code of Regulations (Register 2015, No. 45).

3349.3.2. Responsibilities and Tasks Approximately 30 Days Prior to a Scheduled Execution. [Repealed]

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 190, 3600, 3603, 3604, 3605, 3700, 3700.5, 3701, 3702, 3703, 3704 and 5054, Penal Code; United States Constitution, Amendment VIII; and California Constitution, Art. 1, Sections 17, 27.

HISTORY:
1. New section filed 7-30-2010; operative 8-29-2010 (Register 2010, No. 31).
2. Change without regulatory effect repealing section filed 11-5-2015 pursuant to section 100, title 1, California Code of Regulations (Register 2015, No. 45).

3349.3.3. Approximately Ten Days Prior to a Scheduled Execution. [Repealed]

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 190, 3600, 3603, 3604, 3605, 3700, 3700.5, 3701, 3702, 3703, 3704 and 5054, Penal Code; United States Constitution, Amendment VIII; and California Constitution, Art. 1, Sections 17, 27.

HISTORY:
1. New section filed 7-30-2010; operative 8-29-2010 (Register 2010, No. 31).
2. Change without regulatory effect repealing section filed 11-5-2015 pursuant to section 100, title 1, California Code of Regulations (Register 2015, No. 45).

3349.3.4. Five Days Prior to a Scheduled Execution. [Repealed]

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 190, 3600, 3603, 3604, 3605, 3700, 3700.5, 3701, 3702, 3703, 3704 and 5054, Penal Code; United States Constitution, Amendment VIII; and California Constitution, Art. 1, Sections 17, 27.

HISTORY:
1. New section filed 7-30-2010; operative 8-29-2010 (Register 2010, No. 31).
2. Change without regulatory effect repealing section filed 11-5-2015 pursuant to section 100, title 1, California Code of Regulations (Register 2015, No. 45).

3349.3.5. Four Days Prior to a Scheduled Execution. [Repealed]

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 190, 3600, 3603, 3604 and 5054, Penal Code; United States Constitution, Amendment VIII; and California Constitution, Art. 1, Sections 17, 27.

HISTORY:
1. New section filed 7-30-2010; operative 8-29-2010 (Register 2010, No. 31).
2. Change without regulatory effect repealing section filed 11-5-2015 pursuant to section 100, title 1, California Code of Regulations (Register 2015, No. 45).

3349.3.6. Three Days Prior to a Scheduled Execution. [Repealed]

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 190, 3600, 3601, 3602, 3603, 3604, 3605, 3705, 3706 and 5054, Penal Code; United States Constitution, Amendment VIII; and California Constitution, Art. 1, Sections 17, 27.

HISTORY:
1. New section filed 7-30-2010; operative 8-29-2010 (Register 2010, No. 31).
2. Change without regulatory effect repealing section filed 11-5-2015 pursuant to section 100, title 1, California Code of Regulations (Register 2015, No. 45).

3349.3.7. Two Days Prior to a Scheduled Execution. [Repealed]

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.

HISTORY:
1. New section filed 7-30-2010; operative 8-29-2010 (Register 2010, No. 31).
2. Change without regulatory effect repealing section filed 11-5-2015 pursuant to section 100, title 1, California Code of Regulations (Register 2015, No. 45).

3349.4.1. Twenty-Four Hours Prior to a Scheduled Execution. [Repealed]

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 190, 3600, 3603, 3604 and 5054, Penal Code; United States Constitution, Amendment VIII; California Constitution, Art. 1, Sections 17, 27; and *Baze* v. *Rees* (2008) 553 U.S.35.

HISTORY:
1. New section filed 7-30-2010; operative 8-29-2010 (Register 2010, No. 31).
2. Change without regulatory effect repealing section filed 11-5-2015 pursuant to section 100, title 1, California Code of Regulations (Register 2015, No. 45).

3349.4.2. Six Hours Prior to a Scheduled Execution. [Repealed]

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 190, 3600, 3603, 3604 and 5054, Penal Code; United States Constitution, Amendment VIII; California Constitution, Art. 1, Sections 17, 27; and *Baze* v. *Rees* (2008) 553 U.S.35.

HISTORY:
1. New section filed 7-30-2010; operative 8-29-2010 (Register 2010, No. 31).
2. Change without regulatory effect repealing section filed 11-5-2015 pursuant to section 100, title 1, California Code of Regulations (Register 2015, No. 45).

3349.4.3. Approximately Three Hours Prior to a Scheduled Execution. [Repealed]

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 190, 3600, 3603, 3604 and 5054, Penal Code; United States Constitution, Amendment VIII; California Constitution, Art. 1, Sections 17, 27; and *Baze* v. *Rees* (2008) 553 U.S.35.

HISTORY:
1. New section filed 7-30-2010; operative 8-29-2010 (Register 2010, No. 31).
2. Change without regulatory effect repealing section filed 11-5-2015 pursuant to section 100, title 1, California Code of Regulations (Register 2015, No. 45).

3349.4.4. During the Day of a Scheduled Execution. [Repealed]

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 190, 3600, 3603, 3604, 3605, 3700, 3700.5, 3701, 3702, 3703, 3704 and 5054, Penal Code; United States Constitution, Amendment VIII; California Constitution, Art. 1, Sections 17, 27; and *Baze* v. *Rees* (2008) 553 U.S.35.

HISTORY:
1. New section filed 7-30-2010; operative 8-29-2010 (Register 2010, No. 31).
2. Change without regulatory effect repealing section filed 11-5-2015 pursuant to section 100, title 1, California Code of Regulations (Register 2015, No. 45).

3349.4.5. Administration of the Lethal Injection Chemicals. [Repealed]

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 190, 3600, 3603, 3604 and 5054, Penal Code; United States Constitution, Amendment VIII; California Constitution, Art. 1, Sections 17, 27; and *Baze* v. *Rees* (2008) 553 U.S.35.

HISTORY:
1. New section filed 7-30-2010; operative 8-29-2010 (Register 2010, No. 31).
2. Change without regulatory effect repealing section filed 11-5-2015 pursuant to section 100, title 1, California Code of Regulations (Register 2015, No. 45).

3349.4.6. Post Execution Procedure. [Repealed]

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 190, 3600, 3603, 3604, 3605 and 5054, Penal Code; United States Constitution, Amendment VIII; and California Constitution, Art. 1, Sections 17, 27.

HISTORY:
1. New section filed 7-30-2010; operative 8-29-2010 (Register 2010, No. 31).
2. Change without regulatory effect repealing section filed 11-5-2015 pursuant to section 100, title 1, California Code of Regulations (Register 2015, No. 45).

Article 8. Medical and Dental Services

3350. Provision of Medical Care and Definitions.

(a) The department shall only provide medical services for inmates, which are based on medical necessity and supported by outcome data as effective medical care. In the absence of available outcome data for a specific case, treatment will be based on the judgment of the physician that the treatment is considered effective for the purpose intended and is supported by diagnostic information and consultations with appropriate specialists. Treatments for conditions, which might otherwise be excluded, may be allowed pursuant to section 3350.1(d).

(b) For the purposes of this article, the following definitions apply:

(1) Medically Necessary means health care services that are determined by the attending physician to be reasonable and necessary to protect life, prevent significant illness or disability, or alleviate severe pain, and are supported by health outcome data as being effective medical care.

(2) Outcome Study means the definition, collection and analysis of comparable data, based on variations in treatment, concerning patient health assessment for purposes of improving outcomes and identifying cost-effective alternatives.

(3) Outcome Data mean statistics such as diagnoses, procedures, discharge status, length of hospital stay, morbidity and mortality of patients, that are collected and evaluated using science-based methodologies and expert clinical judgment for purposes of outcome studies.

(4) Severe pain means a degree of discomfort that significantly disables the patient from reasonable independent function.

(5) Significant illness and disability means any medical condition that causes or may cause if left untreated a severe limitation of function or ability to perform the daily activities of life or that may cause premature death.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.

HISTORY:
1. Repealer of Article 8 (Sections 3370–3372) and new Article 8 (Sections 3350–3359) filed 4-18-80; effective thirtieth day thereafter (Register 80, No. 16). For prior history see Register 77, No. 9.

2. Amendment of article heading, section heading and text filed 7-2-93; operative 8-2-93 (Register 93, No. 27).
3. Amendment of section heading, relocation of subsections 3350(a)–(c) to 3350.2(a)–(c), and new Subsections (a)–(b)(3) filed 2-17-95 as an emergency; operative 3-1-95 (Register 95, No. 9). This regulatory action was deemed an emergency pursuant to section 5058(e) of the Penal Code and remains in effect for 160 days. A Certificate of Compliance must be transmitted to OAL by 8-8-95 or emergency language will be repealed by operation of law on the following day.
4. Amendment refiled 8-7-95 as an emergency; operative 8-7-95 (Register 95, No. 32). This regulatory action was deemed an emergency pursuant to section 5058(e) of the Penal Code and remains in effect for 160 days. A Certificate of Compliance must be transmitted to OAL by 1-16-96 or emergency language will be repealed by operation of law on the following day.
5. Reinstatement of section as it existed prior to emergency amendment filed 2-17-95 by operation of Government Code section 11346.1(f) (Register 96, No. 8).
6. Amendment of section heading, renumbering of subsections 3350(a)–(c) to 3350.2(a)–(c), and new subsections (a)–(b)(3) filed 2-21-96 as an emergency; operative 2-21-96 (Register 96, No. 8). A Certificate of Compliance must be transmitted to OAL by 6-20-96 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 2-21-96 order including amendment of subsection (a) and new subsections (b)(4) and (b)(5) transmitted to OAL 6-18-96 and filed 7-9-96 (Register 96, No. 28).

3350.1. Medical and Dental Treatment/Service Exclusions.

(a) Treatment refers to attempted curative treatment and does not preclude palliative therapies to alleviate serious debilitating conditions such as pain management and nutritional support. Treatment shall not be provided for the following conditions:

(1) Conditions that improve on their own without treatment. Examples include, but are not limited to:

(A) Common cold.

(B) Mononucleosis.

(C) Viral hepatitis A.

(D) Viral pharyngitis.

(E) Mild sprains.

(F) Benign oral lesions.

(G) Traumatic oral ulcers.

(H) Recurrent aphthous ulcer.

(2) Conditions that are not readily amenable to treatment, including, but not limited to, those which may be made worse by treatment with conventional medication or surgery, and those that are so advanced in the disease process that the outcome would not change with existing conventional or heroic treatment regimens. Examples include, but are not limited to:

(A) Multiple organ transplants.

(B) Temporomandibular joint dysfunction.

(C) Grossly metastatic cancer.

(D) Shrinkage and atrophy of the bony ridges of the jaws.

(E) Benign root fragments whose removal would cause greater damage or trauma than if retained for observation.

(3) Conditions that are cosmetic. Examples include, but are not limited to:

(A) Removal of tattoos.

(B) Removal of nontoxic goiter.

(C) Breast reduction or enlargement.

(D) Penile implants.

(E) Removal of existing body piercing metal or plastic rings or similar devices within the oral cavity, except for security reasons.

(F) Restoration or replacement of teeth for esthetic reasons.

(G) Restoration of any natural or artificial teeth with unauthorized biomaterials.

(b) Surgery not medically necessary shall not be provided. Examples include, but are not limited to:

(1) Castration.

(2) Vaginoplasty (except for Cystocele or Rectocele).

(3) Vasectomy.

(4) Tubal ligation.

(5) Extractions of asymptomatic teeth or root fragments unless required for a dental prosthesis, or for the general health of the patient's mouth.

(6) Removal of a benign bony enlargement (torus) unless required for a dental prosthesis.

(7) Surgical extraction of asymptomatic un-erupted teeth.

(c) Services that have no established outcome on morbidity or improved mortality for acute health conditions shall not be provided. Examples include, but are not limited to:

(1) Acupuncture.

(2) Orthoptics.

(3) Pleoptics.

(4) Root canals on posterior teeth (bicuspids and molars).

(5) Dental Implants.

(6) Fixed prosthodontics (dental bridges).

(7) Laboratory processed crowns.

(8) Orthodontics.

(d) Treatment for those conditions that are excluded within these regulations may be provided in cases where all of the following criteria are met:

(1) The inmate's attending physician or dentist prescribes the treatment as clinically necessary.

(2) The service is approved by the Dental Authorization Review committee and the Dental Program Health Care Review Committee for dental treatment, or the Institutional Utilization Management committee and the Headquarters Utilization Management committee for medical treatment. The decision of the review committee, as applicable, to approve an otherwise excluded service shall be based on:

(A) Available health and dental care outcome data supporting the effectiveness of the services as medical or dental treatment.

(B) Other factors, such as:

1. Coexisting medical or dental problems.
2. Acuity.
3. Length of the inmate's sentence.
4. Availability of the service.
5. Cost.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code; and *Perez, et al.* v. *Cate, et al.,* USDC no. 3:05-cv-05241-JSW (No. Cal.).

HISTORY:

1. New section, including relocation and amendment of old subsection 3354.1(a) to 3350.1(b), filed 2-17-95 as an emergency; operative 3-1-95 (Register 95, No. 9). This regulatory action was deemed an emergency pursuant to section 5058(e) of the Penal Code and remains in effect for 160 days. A Certificate of Compliance must be transmitted to OAL by 8-8-95 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 8-7-95 as an emergency; operative 8-7-95 (Register 95, No. 32). This regulatory action was deemed an emergency pursuant to section 5058(e) of the Penal Code and remains in effect for 160 days. A Certificate of Compliance must be transmitted to OAL by 1-16-96 or emergency language will be repealed by operation of law on the following day.
3. Reinstatement of section as it existed prior to emergency amendment filed 2-17-95 by operation of Government Code section 11346.1(f) (Register 96, No. 8).
4. New section, including renumbering and amendment of former subsection 3354.1(a) to 3350.1(b), filed 2-21-96 as an emergency; operative 2-21-96 (Register 96, No. 8). A Certificate of Compli-

ance must be transmitted to OAL by 6-20-96 or emergency language will be repealed by operation of law on the following day.

5. Certificate of Compliance as to 2-21-96 order including amendment of subsection (a), repealer of subsection (d)(2) and subsection renumbering, amendment of newly designated subsection (d)(2), repealer of newly designated subsection (d)(2)(A) and subsection relettering, and amendment of newly designated subsection (d)(2)(A) transmitted to OAL 6-18-96 and filed 7-9-96 (Register 96, No. 28).
6. Amendment of subsections (d)(1)–(d)(2)(A) and (d)(2)(B)1. filed 10-3-2006 as an emergency; operative 10-3-2006 (Register 2006, No. 40). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 3-12-2007 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 10-3-2006 order transmitted to OAL 3-7-2007 and filed 4-18-2007 (Register 2007, No. 16).
8. New subsections (a)(1)(F)–(H), (a)(2)(D)–(E), (a)(3)(E)–(G), (a)(5)–(7) and (c)(4)–(8) and amendment of subsections (d)(1)–(2) and Note filed 3-28-2012 as an emergency; operative 3-28-2012 (Register 2012, No. 13). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 9-4-2012 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 3-28-2012 order, including further amendment of subsection (d)(2), transmitted to OAL 9-4-2012 and filed 10-4-2012 (Register 2012, No. 40).

3350.2. Off-Site Health Care Treatment.

(a) Each facility shall maintain contractual arrangements with local off-site agencies for those health services deemed to be medically necessary as defined in section 3350(b)(1), and that are not provided within the facility. Such services may include medical, surgical, laboratory, radiological, dental, and other specialized services likely to be required for an inmate's health care.

(b) When medically necessary services are not available for an inmate within a facility, the facility's chief medical officer or supervising dentist may request the institution head's approval to temporarily place that inmate in a community medical facility for such services.

(c) In an extreme emergency when a physician is not on duty or immediately available, the senior custodial officer on duty may, with assistance of on-duty health care staff, place an inmate in a community medical facility. Such emergency action shall be reported to the facility's administrative and medical officers-of-the-day as soon as possible.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.

HISTORY:

1. New section, including relocation and amendment of old subsections 3350(a)–(c) to 3350.2(a)–(c), filed 2-17-95 as an emergency; operative 3-1-95 (Register 95, No. 9). This regulatory action was deemed an emergency pursuant to section 5058(e) of the Penal Code and remains in effect for 160 days. A Certificate of Compliance must be transmitted to OAL by 8-8-95 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 8-7-95 as an emergency; operative 8-7-95 (Register 95, No. 32). This regulatory action was deemed an emergency pursuant to section 5058(e) of the Penal Code and remains in effect for 160 days. A Certificate of Compliance must be transmitted to OAL by 1-16-96 or emergency language will be repealed by operation of law on the following day.
3. Reinstatement of section as it existed prior to emergency amendment filed 2-17-95 by operation of Government Code section 11346.1(f) (Register 96, No. 8).
4. New section, including renumbering of former subsection 3350(a)–(c) to 3350.2(a)–(c), filed 2-21-96 as an emergency; operative 2-21-96 (Register 96, No. 8). A Certificate of Compliance must be transmitted to OAL by 6-20-96 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 2-21-96 order transmitted to OAL 6-18-96 and filed 7-9-96 (Register 96, No. 28).
6. Change without regulatory effect amending subsection (b) filed 8-11-2010 pursuant to section 100, title 1, California Code of Regulations (Register 2010, No. 33).

3351. Inmate Refusal of Treatment.

(a) Healthcare treatment may be given without the inmate's consent when an emergency exists. An emergency exists when there is a sudden, marked change in an inmate's condition so that action is immediately necessary for the preservation of life or the prevention of serious bodily harm to the inmate or others, and it is impracticable to first obtain consent.

(b) An inmate may accept or decline any or all portions of a recommended dental treatment plan. The inmate's decision is reversible at any time and shall not prejudice future treatments. Refusals shall be documented for inclusion in the inmate's health record.

(c) When an inmate has a valid advance health care directive or a valid executed Physicians Orders for Life Sustaining Treatment (POLST), health care staff shall act in accordance with the provisions of the advance health care directive, or POLST, as provided by law.

(d) Each institution shall establish procedures to implement the provisions of the Health Care Decisions Law, codified in the Probate Code at Division 4.7, Section 4600 et seq.

(e) Health care treatment, including medication, shall not be forced over the objections of a mentally competent inmate; the guardian of a mentally incompetent inmate; or a responsible relative of a minor inmate, except in an emergency, or as required to complete the examination or tests for tuberculosis infection, or to implement the treatment for tuberculosis disease, or unless the provisions of Probate Code Sections 3200 et seq. or the procedures set forth in Penal Code (PC) Section 2602 are followed.

NOTE: Authority cited: Sections 2602 and 5058, Penal Code. Reference: Sections 2600, 2602, 5054 and 7570 et seq., Penal Code; Sections 3200 et seq., Probate Code; *Thor* v. *Superior Court* (Andrews) (1993) 21 Cal. Rptr.2d 357; and Sections 4600 and 4781.2, Probate Code.

HISTORY:

1. Amendment of section heading and text filed 7-2-93; operative 8-2-93 (Register 93, No. 27).
2. Amendment of section and Note filed 1-3-95 as an emergency; operative 1-3-95 (Register 95, No. 1). A Certificate of Compliance must be transmitted to OAL 6-12-95 or emergency language will be repealed by operation of law on the following day.
3. Amendment of section and Note filed 2-17-95 as an emergency; operative 3-1-95 (Register 95, No. 9). This regulatory action was deemed an emergency pursuant to section 5058(e) of the Penal Code and remains in effect for 160 days. A Certificate of Compliance must be transmitted to OAL by 8-8-95 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 1-3-95 order including amendment of subsection (a) and Note transmitted to OAL 6-12-95 and filed 7-25-95 (Register 95, No. 30).
5. Amendment of section and Note refiled 8-7-95 as an emergency; operative 8-7-95 (Register 95, No. 32). This regulatory action was deemed an emergency pursuant to section 5058(e) of the Penal Code and remains in effect for 160 days. A Certificate of Compliance must be transmitted to OAL by 1-16-96 or emergency language will be repealed by operation of law on the following day.
6. Reinstatement of section as it existed prior to emergency amendment filed 2-17-95 by operation of Government Code section 11346.1(f) (Register 96, No. 8).
7. Amendment of section and Note filed 2-21-96 as an emergency; operative 2-21-96 (Register 96, No. 8). A Certificate of Compliance must be transmitted to OAL by 6-20-96 or emergency language will be repealed by operation of law on the following day.

8. Certificate of Compliance as to 2-21-96 order transmitted to OAL 6-18-96 and filed 7-9-96 (Register 96, No. 28).
9. Amendment of subsection (a), new subsections (c)–(e) and amendment of Note filed 1-28-2015; operative 1-28-2015 pursuant to Government Code section 11343.4(b)(3) (Register 2015, No. 5).

3352. Institutional Utilization Management Committee.

(a) An Institutional Utilization Management (IUM) committee shall be established within each facility. The committee shall meet as often as necessary to approve or disapprove requests for medical services otherwise excluded by these regulations, review and manage referrals for specialty medical services, review and manage institutional and community hospital bed usage, review other available utilization management data, and report requested utilization management data to the Headquarters Utilization Management (HUM) committee. Committee decisions concerning the approval or disapproval of requests for medical services shall be rendered within 21 calendar days of the request of the treating physician.

(b) The committee shall:

(1) Consist of, but not be limited to, representatives from the health care staff of each institution.

(2) Consist of not less than three staff physicians.

(c) Committee decisions concerning the approval or disapproval of requests for medical services otherwise excluded by these regulations shall be based on criteria established in Section 3350.1(d). Only licensed physicians may vote on the approval or disapproval of a request for medical services. Committee decisions shall be documented in the inmate's health record. Those cases that receive committee approval, shall be forwarded along with all supporting documentation to the HUM committee. The treating physician shall notify the inmate of the committee's decision.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 5023.2 and 5054, Penal Code; and *Perez, et al.* v. *Cate, et al.*, USDC no. 3:05-cv-05241-JSW (No. Cal.).

HISTORY:

1. Amendment of section heading and text filed 7-2-93; operative 8-2-93 (Register 93, No. 27).
2. Amendment filed 1-3-95 as an emergency; operative 1-3-95 (Register 95, No. 1). A Certificate of Compliance must be transmitted to OAL 6-12-95 or emergency language will be repealed by operation of law on the following day.
3. Amendment filed 2-17-95 as an emergency; operative 3-1-95 (Register 95, No. 9). This regulatory action was deemed an emergency pursuant to section 5058(e) of the Penal Code and remains in effect for 160 days. A Certificate of Compliance must be transmitted to OAL by 8-8-95 or emergency language will be repealed by operation of law on the following day.
4. Amendment refiled 8-7-95 as an emergency; operative 8-7-95 (Register 95, No. 32). This regulatory action was deemed an emergency pursuant to section 5058(e) of the Penal Code and remains in effect for 160 days. A Certificate of Compliance must be transmitted to OAL by 1-16-96 or emergency language will be repealed by operation of law on the following day.
5. Reinstatement of section as it existed prior to emergency amendment filed 2-17-95 by operation of Government Code section 11346.1(f) (Register 96, No. 8).
6. Amendment filed 2-21-96 as an emergency; operative 2-21-96 (Register 96, No. 8). A Certificate of Compliance must be transmitted to OAL by 6-20-96 or emergency language will be repealed by operation of law on the following day.
7. Renumbering of former section 3352 to new section 3353 filed 7-9-96; operative 7-9-96 (Register 96, No. 28).
8. New section filed 7-9-96; operative 7-9-96 (Register 96, No. 28).
9. Amendment of section heading, section and Note filed 3-28-2012 as an emergency; operative 3-28-2012 (Register 2012, No. 13). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 9-4-2012 or emergency language will be repealed by operation of law on the following day.
10. Certificate of Compliance as to 3-28-2012 order, including further amendment of section, transmitted to OAL 9-4-2012 and filed 10-4-2012 (Register 2012, No. 40).
11. Change without regulatory effect amending subsection (c) filed 1-8-2014 pursuant to section 100, title 1, California Code of Regulations (Register 2014, No. 2).

3352.1. Headquarters Utilization Management Committee.

(a) The Headquarters Utilization Management (HUM) committee shall meet as often as necessary to review cases approved by the Institutional Utilization Management (IUM) committee for otherwise excluded medical services, develop objective, evidence-based medical necessity criteria and utilization guidelines, provide oversight of referrals to specialty medical services, provide oversight of community hospital bed usage, develop case management processes for high medical risk and high medical cost patients, and develop policies and procedures to ensure statewide employment of a utilization management program. HUM committee decisions concerning the approval or disapproval of requests for medical services otherwise excluded by these regulations shall be based on criteria established in Section 3350.1(d).

(b) The HUM committee shall consist of, but not be limited to, the following:

(1) Deputy Director, Healthcare Operations or their designee.

(2) Statewide Medical Executive, or their designee.

(3) Deputy Medical Executive, Utilization Management,

(4) Physician representatives.

(5) Nursing representatives.

(6) Mental health representatives.

(c) Only licensed physicians may vote on decisions to approve or deny a request for an excluded service. Committee decisions concerning the approval or disapproval of requests for medical services shall be rendered within 60 calendar days of the initial request from the treating physician. All decisions shall be documented in the inmate's health record. The treating physician shall notify the inmate of the committee's decision regarding medical services.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 5023.2 and 5054, Penal Code; and *Perez, et al.* v. *Cate, et al.,* USDC no. 3:05-cv-05241-JSW (No. Cal.).

HISTORY:

1. New section filed 7-9-96; operative 7-9-96 (Register 96, No. 28).
2. Amendment filed 10-3-2006 as an emergency; operative 10-3-2006 (Register 2006, No. 40). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 3-12-2007 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 10-3-2006 order transmitted to OAL 3-7-2007 and filed 4-18-2007 (Register 2007, No. 16).
4. Amendment of section heading, section and Note filed 3-28-2012 as an emergency; operative 3-28-2012 (Register 2012, No. 13). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 9-4-2012 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 3-28-2012 order, including further amendment of section, transmitted to OAL 9-4-2012 and filed 10-4-2012 (Register 2012, No. 40).

3352.2. Dental Authorization Review Committee.

(a) Each departmental institution shall establish a Dental Authorization Review (DAR) committee. The DAR shall be established for the purpose of:

(1) Approving or disapproving requests for:

(A) Otherwise excluded dental services.

(B) Deviations from treatment policy.

(C) Medically necessary treatment that requires a contract specialist to provide treatment at the local institution.

(D) Medically necessary treatments or consultations that cannot be accomplished at the local institution.

(2) Reviewing treatment recommendations for special dental care needs.

(b) DAR committee membership shall consist of:

(1) A staff dentist as Chairperson.

(2) A staff dentist as Vice-Chairperson.

(3) Any institutional dentist(s) providing dental services to inmates.

(4) Representatives from other institution services or divisions shall be invited, when appropriate, to committee meetings.

(c) DAR committee decisions shall be based on criteria established in section 3350.1(d). Committee decisions shall be documented in the inmate's unit health record. Cases that receive committee approval shall be forwarded, along with all supporting documentation, to the Dental Program Health Care Review Committee (DPHCRC). The treating dentist shall notify the inmate of the committee's decision.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code; and *Perez, et al.* v. *Cate, et al.,* USDC no. 3:05-cv-05241-JSW (No. Cal.).

HISTORY:

1. New section filed 10-3-2006 as an emergency; operative 10-3-2006 (Register 2006, No. 40). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 3-12-2007 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 10-3-2006 order transmitted to OAL 3-7-2007 and filed 4-18-2007 (Register 2007, No. 16).
3. Change without regulatory effect amending subsection (b) filed 8-11-2010 pursuant to section 100, title 1, California Code of Regulations (Register 2010, No. 33).
4. Amendment of section and Note filed 3-28-2012 as an emergency; operative 3-28-2012 (Register 2012, No. 13). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 9-4-2012 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 3-28-2012 order, including further amendment of subsections (b)(1)–(2), transmitted to OAL 9-4-2012 and filed 10-4-2012 (Register 2012, No. 40).

3352.3. Dental Program Health Care Review Committee.

(a) The Dental Program Health Care Review Committee (DPHCRC) shall meet as often as necessary to review cases approved by the Dental Authorization Review (DAR) committee for otherwise excluded dental services. DPHCRC decisions shall be completed within 15 business days of receipt and shall be based on criteria established in Section 3350.1(d).

(b) The DPHCRC shall consist of, but not be limited to, the following:

(1) Chief Dentist, DAR, Inmate Dental Services Program (IDSP), DCHCS.

(2) Chief Dentist, Policy and Risk Management, IDSP, DCHCS.

(3) Chief Dentist, Training, IDSP, DCHCS.

(4) A minimum of two (2) dentists, IDSP, DCHCS.

(c) Decisions to approve or deny requests for dental services which have been referred by the DAR committee shall require the attendance of a minimum of three (3) dentists, IDSP, DCHCS, at the applicable review committee, at least one of which must be a Chief Dentist or their designee, and shall be based upon the decision adopted by a majority of the DPHCRC members present.

(d) The treating dentist shall notify the inmate of the committee's decision regarding dental services. All decisions shall be documented in the inmate's health record.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code; and *Perez, et al.* v. *Cate, et al.,* USDC no. 3:05-cv-05241-JSW (No. Cal.).

HISTORY:

1. New section filed 3-28-2012 as an emergency; operative 3-28-2012 (Register 2012, No. 13). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 9-4-2012 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 3-28-2012 order, including further amendment of subsection (a), transmitted to OAL 9-4-2012 and filed 10-4-2012 (Register 2012, No. 40).

3353. Informed Consent Requirement.

When unusual, serious or major health care procedures are indicated and time and circumstances permit, the inmate's specific written informed consent shall be obtained before treatment is undertaken, except as otherwise provided in Sections 3351 and 3364. If the inmate or the inmate's guardian or responsible relative objects to the recommended treatment, such objection shall be documented for inclusion in the inmate's health record.

NOTE: Authority cited: section 5058, Penal Code. Reference: section 5054, Penal Code.

HISTORY:

1. Amendment of section heading and text filed 7-2-93; operative 8-2-93 (Register 93, No. 27).
2. Amendment filed 2-17-95 as an emergency; operative 3-1-95 (Register 95, No. 9). This regulatory action was deemed an emergency pursuant to section 5058(e) of the Penal Code and remains in effect for 160 days. A Certificate of Compliance must be transmitted to OAL by 8-8-95 or emergency language will be repealed by operation of law on the following day.
3. Amendment refiled 8-7-95 as an emergency; operative 8-7-95 (Register 95, No. 32). This regulatory action was deemed an emergency pursuant to section 5058(e) of the Penal Code and remains in effect for 160 days. A Certificate of Compliance must be transmitted to OAL by 1-16-96 or emergency language will be repealed by operation of law on the following day.
4. Reinstatement of section as it existed prior to emergency amendment filed 2-17-95 by operation of Government Code section 11346.1(f) (Register 96, No. 8).
5. Amendment filed 2-21-96 as an emergency; operative 2-21-96 (Register 96, No. 8). A Certificate of Compliance must be transmitted to OAL by 6-20-96 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 2-21-96 order including renumbering of former section 3352 to section 3353 and renumbering of former section 3353 to new section 3353.1 transmitted to OAL 6-18-96 and filed 7-9-96 (Register 96, No. 28).

3353.1. Capacity for Informed Consent.

An inmate shall be considered capable of giving informed consent if in the opinion of health care staff the inmate is:

(a) Aware that there is a physiological disorder for which treatment or medication is recommended.

(b) Able to understand the nature, purpose and alternatives of the recommended treatment, medication, or health care procedures.

(c) Able to understand and reasonably discuss the possible side effects and any hazards associated with the recommended treatment, medication, or health care procedures. An inmate shall not be deemed incapable of informed consent solely because of being diagnosed as mentally disordered, abnormal, or mentally defective.

NOTE: Authority cited: section 5058, Penal Code. Reference: section 5054, Penal Code.

HISTORY:

1. Certificate of Compliance as to 2-21-96 order including renumbering of former section 3353 to new section 3353.1 transmitted to OAL 6-18-96 and filed 7-9-96 (Register 96, No. 28).

3354. Health Care Responsibilities and Limitations.

(a) Authorized staff. Only facility-employed health care staff, contractors paid to perform health services for the facility, or persons employed as health care consultants shall be permitted, within the scope of their licensure, to diagnose illness or, prescribe medication and health care treatment for inmates. No other personnel or inmates may do so.

(b) Inmate Workers. Only trained or certified inmates shall operate health care equipment. Inmates shall not be permitted to:

(1) Schedule appointments.

(2) Determine another inmate's access to health care services.

(3) Obtain blood samples.

(4) Administer blood.

(5) Introduce or discontinue intravenous infusions.

(6) Have access to surgical instruments, syringes, needles, medications, or health records except as otherwise specified in these regulations.

(7) Perform any task identified as a health care responsibility.

(c) Private Consultants. Health care personnel not employed by the department are not authorized to order treatment for an inmate. Such persons may offer opinions and recommendations for consideration by department health care staff as follows: An inmate or an inmate's responsible guardian or relative, or an attorney or other interested person wanting the inmate examined by a private physician, shall submit a written request to the institution head. The institution head shall, after consulting with the facility's chief medical officer grant the request unless convinced that specific case factors warrant denial. The fact of and reasons for such denial, and notice of the right to appeal the decision in writing to the director, shall be documented and given to the inmate or the person requesting the outside health care service. Costs of such private consultations or examinations shall be paid by the inmate or the person requesting the service.

(d) Emergency Health Care Attention. If an inmate is away from a facility for authorized reasons, such as assignment to a camp or transportation between institutions, becomes seriously ill or injured, emergency health care attention by available resources shall be obtained by the official in charge. Community physicians and hospitals shall be used if the inmate's condition does not permit prompt return to a department medical facility.

(e) Medical Sick Call. Each department facility confining inmates shall provide scheduled times and locations for general population inmates. A medical doctor, registered nurse, or medical technical assistant shall make daily visits to each nongeneral population housing unit to provide medical attention to inmates unable to use the sick call services provided for general population. Staff conducting sick call shall screen medical problems appearing to require further medical attention and shall evaluate requests for appointments with other medical staff. A facility physician shall personally visit each specialized housing unit at least once each week.

(f) Dental Priority Classification (DPC) codes: Inmates requesting dental treatment shall be evaluated and scheduled into one of the following categories:

(1) Emergency care category: A dental emergency, as determined by health care staff, includes any medical or dental condition for which evaluation and treatment are necessary to prevent death, severe or permanent disability, or to alleviate disabling pain. Immediate treatment shall be provided and will be available to such inmates 24 hours a day, 7 days a week.

(2) Urgent care category: Treatment of a dental condition of sudden onset or severe pain which prevents the inmate from carrying out essential activities of daily living; or sub-acute or unusual hard or soft tissue condition or pathology requiring early intervention. This category includes:

(A) DPC 1A: Such inmates shall receive treatment within one calendar day of diagnosis.

(B) DPC 1B: Such inmates shall receive treatment within 30 calendar days of diagnosis.

(C) DPC 1C: Such inmates shall receive treatment within 60 calendar days of diagnosis.

(3) DPC 2 Interceptive care category: Treatment of advanced caries, moderate or advanced periodontal pathology, or the provision of dentures. This category requires that inmates have over 6 months remaining to serve on their sentence within the department at the time DPC 2 care is initiated, and provides eligibility for DPC 2 care regardless of oral hygiene status. Such inmates shall receive treatment within 120 calendar days of diagnosis.

(4) DPC 3 Routine Rehabilitative care category: Treatment of caries not likely to become advanced within one year, mild periodontal pathology, or the provision of removable partial dentures. This category requires that inmates have over 12 months remaining to serve on their sentence within the department at the time DPC 3 care is initiated, and meet oral hygiene requirements. Such inmates shall receive treatment within one year of diagnosis.

(5) DPC 4 No dental care needed: Inmates not appropriate for inclusion in DPC 1, 2, 3 or 5.

(6) DPC 5 Special needs care: Inmates with special needs. These include inmates requiring dental care that is a deviation from treatment policy as well as treatments that may require a contract specialist or that cannot be accomplished at the institution.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code; and *Perez, et al.* v. *Cate, et al.,* USDC no. 3:05-cv-05241-JSW (No. Cal.).

HISTORY:

1. Amendment of section heading and text filed 7-2-93; operative 8-2-93 (Register 93, No. 27).
2. Amendment of subsections (a), (b)(6)–(7), (c) and (d) filed 2-17-95 as an emergency; operative 3-1-95 (Register 95, No. 9). This regulatory action was deemed an emergency pursuant to section 5058(e) of the Penal Code and remains in effect for 160 days. A Certificate of Compliance must be transmitted to OAL by 8-8-95 or emergency language will be repealed by operation of law on the following day.
3. Amendment of subsections (a), (b)(6)–(7), (c) and (d) refiled 8-7-95 as an emergency; operative 8-7-95 (Register 95, No. 32). This regulatory action was deemed an emergency pursuant to section 5058(e) of the Penal Code and remains in effect for 160 days. A Certificate of Compliance must be transmitted to OAL by 1-16-96 or emergency language will be repealed by operation of law on the following day.
4. Reinstatement of section as it existed prior to emergency amendment filed 2-17-95 by operation of Government Code section 11346.1(f) (Register 96, No. 8).
5. Amendment of section heading and subsections (a), (b)(6)–(7), (c) and (d) filed 2-21-96 as an emergency; operative 2-21-96 (Register 96, No. 8). A Certificate of Compliance must be transmitted to OAL by 6-20-96 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 2-21-96 order transmitted to OAL 6-18-96 and filed 7-9-96 (Register 96, No. 28).
7. Amendment of subsections (f)–(f)(2), new subsections (f)(2)(A)–(C), amendment of subsection (f)(3) and new subsections (f)(3)(A)–(f)(4)(D) filed 10-3-2006 as an emergency; operative 10-3-2006 (Register 2006, No. 40). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 3-12-2007 or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 10-3-2006 order transmitted to OAL 3-7-2007 and filed 4-18-2007 (Register 2007, No. 16).

9. Amendment of subsections (f) and (f)(2)(A)–(f)(3), repealer of subsections (f)(3)(A)–(D), amendment of subsection (f)(4), repealer of subsections (f)(4)(A)–(D), new subsections (f)(5)–(6) and amendment of Note filed 3-28-2012 as an emergency; operative 3-28-2012 (Register 2012, No. 13). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 9-4-2012 or emergency language will be repealed by operation of law on the following day.
10. Certificate of Compliance as to 3-28-2012 order, including further amendment of subsections (f)(2), (f)(3) and (f)(4), transmitted to OAL 9-4-2012 and filed 10-4-2012 (Register 2012, No. 40).

3354.1. Elective Surgery.

Repealed.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.

HISTORY:

1. New section filed 7-2-93; operative 8-2-93 (Register 93, No. 27).
2. Repealer, including relocation of subsection 3354.1(a) to 3350.1(b), filed 2-17-95 as an emergency; operative 3-1-95 (Register 95, No. 9). This regulatory action was deemed an emergency pursuant to section 5058(e) of the Penal Code and remains in effect for 160 days. A Certificate of Compliance must be transmitted to OAL by 8-8-95 or emergency language will be repealed by operation of law on the following day.
3. Repealer refiled 8-7-95 as an emergency; operative 8-7-95 (Register 95, No. 32). This regulatory action was deemed an emergency pursuant to section 5058(e) of the Penal Code and remains in effect for 160 days. A Certificate of Compliance must be transmitted to OAL by 1-16-96 or emergency language will be repealed by operation of law on the following day.
4. Reinstatement of section as it existed prior to emergency amendment filed 2-17-95 by operation of Government Code section 11346.1(f) (Register 96, No. 8).
5. Repealer, including renumbering and amendment of subsections 3354.1(a) to 3350.1(b), filed 2-21-96 as an emergency; operative 2-21-96 (Register 96, No. 8). A Certificate of Compliance must be transmitted to OAL by 6-20-96 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 2-21-96 order transmitted to OAL 6-18-96 and filed 7-9-96 (Register 96, No. 28).

3354.2. Inmate Copayment for Health Care Services.

(a) The terms below are defined for the purposes of this section:

(1) Inmate-initiated means that the inmate sought health care services through Department staff, or reported to health care staff for consultation and/or treatment without having first been contacted or scheduled by health care staff.

(2) Health care services means medical, mental health, dental, pharmaceutical, diagnostic and ancillary services to identify, diagnose, evaluate, and treat a medical, psychiatric, or dental condition.

(3) Health care staff means those persons licensed by the state to provide health care services, who are either employed by the Department or are under contract with the Department to provide health care services.

(b) Inmates shall be provided an opportunity to report an illness or any other health problem and receive an evaluation of the condition and medically necessary treatment and follow-up by health care staff.

(c) Inmates shall be charged and inmates shall pay a fee of five dollars ($5.00) for each inmate-initiated health care visit. The fee for this visit shall:

(1) Cover the evaluation, assessment, and medically necessary treatment, including follow-up services that relate to the initial condition and which are determined by health care staff to be necessary.

(2) Be charged for subsequent dental services provided in accordance with a prescribed dental treatment plan. Such services shall not be considered as a follow-up service as described in Section 3354.2(c)(1) and shall be subject to a copayment unless the visit was initiated by the dental care provider.

(3) Be charged to the trust account of the inmate. When the inmate is without sufficient funds at the time for the charge, and remains without sufficient funds for 30 days after this time, the inmate shall not be charged for any remaining balance of the fee.

(4) Be waived for the following:

(A) Emergencies: any medical or dental condition for which evaluation and therapy, as determined by health care staff, are immediately necessary to prevent death, severe or permanent disability, or to alleviate or lessen objectively apparent and disabling pain. Signs of objectively apparent and disabling pain may include, but are not limited to, visible injuries, high blood pressure, rapid heart rate, sweating, pallor, involuntary muscle spasms, nausea and vomiting, high fever, and facial swelling. Emergency also includes, as determined by health care staff, necessary crisis intervention for inmates suffering from situational crises or acute episodes of mental illness.

(B) Diagnosis and treatment of communicable disease conditions as outlined in Title 17, Chapter 4, Subchapter 1, Section 2500 of the California Code of Regulations, including human immunodeficiency virus and Acquired Immunodeficiency Syndrome.

(C) Diagnosis and necessary mental health treatment for which there is a clinical determination of mental illness.

(D) Follow-up health care services defined as any request or recommendation by a member of the health care staff to provide subsequent health care services.

(E) Health care services necessary to comply with state law and/or regulations that shall include, but not be limited to, annual testing for tuberculosis.

(F) Reception center health screening and evaluation.

(G) Inpatient services, extended care, or skilled nursing services.

NOTE: Authority cited: Sections 5007.5 and 5058, Penal Code. Reference: Section 5054, Penal Code; and *Perez, et al.* v. *Cate, et al.,* USDC no. 3:05-cv-05241-JSW (No. Cal.).

HISTORY:

1. New section filed 9-21-94 as an emergency; operative 9-21-94 (Register 94, No. 38). A Certificate of Compliance must be transmitted to OAL by 1-19-95 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 9-21-94 order transmitted to OAL 1-18-95 and filed 2-27-95 (Register 95, No. 9).
3. Amendment of subsection (c)(1) and Note filed 3-28-2012 as an emergency; operative 3-28-2012 (Register 2012, No. 13). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 9-4-2012 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 3-28-2012 order, including further amendment of subsection (c)(1), new subsection (c)(2) and subsection relettering, transmitted to OAL 9-4-2012 and filed 10-4-2012 (Register 2012, No. 40).

3355. Health Care Examinations.

(a) Initial Examination. Every person newly committed or returned to the custody of the Secretary of the California Department of Corrections and Rehabilitation shall be examined by health care staff for contagious diseases, illness, or other health conditions within 24 hours of arrival. In addition, female inmates will also be screened for pregnancy.

(b) Transfers. Inmates received on transfer from other facilities shall be interviewed by health care staff at the receiving facility within 24 hours of arrival. The health record of each new arrival shall be reviewed to determine the need for previously prescribed medications or continuing treatment for unusual or chronic health problems. Sending facility health care staff shall notify the receiving facility and any anticipated layover facilities regarding any

inmate's need, as in the case of diabetics, for maintenance medications while en route and after arrival.

(c) Camp Assignment. Inmates shall be personally screened by a medical officer before receiving medical clearance for assignment to a camp or fire fighting assignment. Such inmate shall be in generally good health and physically capable of strenuous and prolonged heavy labor without danger to the inmate's health and safety or the safety of others when involved in hazardous work such as forest firefighting. Exceptions: an inmate may be assigned to light duty non-hazardous work in camp if a department physician specifically approves such assignment.

(d) Releases. Each inmate shall be personally screened by health care staff prior to release to parole or discharge from a facility. Staff conducting such screening shall alert the inmate's parole agent regarding any current health problems and shall provide the inmate with any necessary maintenance medication until the releasee can obtain medication in the community.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.

HISTORY:

1. Amendment filed 7-2-93; operative 8-2-93 (Register 93, No. 27).
2. Amendment of section heading and subsections (b) and (d) filed 2-17-95 as an emergency; operative 3-1-95 (Register 95, No. 9). This regulatory action was deemed an emergency pursuant to section 5058(e) of the Penal Code and remains in effect for 160 days. A Certificate of Compliance must be transmitted to OAL by 8-8-95 or emergency language will be repealed by operation of law on the following day.
3. Amendment of section heading and subsections (b) and (d) refiled 8-7-95 as an emergency; operative 8-7-95 (Register 95, No. 32). This regulatory action was deemed an emergency pursuant to section 5058(e) of the Penal Code and remains in effect for 160 days. A Certificate of Compliance must be transmitted to OAL by 1-16-96 or emergency language will be repealed by operation of law on the following day.
4. Reinstatement of section as it existed prior to emergency amendment filed 2-17-95 by operation of Government Code section 11346.1(f) (Register 96, No. 8).
5. Amendment of section heading and subsections (b) and (d) filed 2-21-96 as an emergency; operative 2-21-96 (Register 96, No. 8). A Certificate of Compliance must be transmitted to OAL by 6-20-96 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 2-21-96 order including amendment of subsection (b) transmitted to OAL 6-18-96 and filed 7-9-96 (Register 96, No. 28).
7. Amendment of subsection (a) filed 3-6-2008; operative 4-5-2008 (Register 2008, No. 10).

3355.1. Dental Care.

(a) Reception Centers. Newly arriving inmates at a reception center, including new commitments and parole violators, shall receive an initial health screening by a licensed health care provider to identify urgent/emergent dental needs. Within sixty (60) calendar days of an inmate's arrival at a reception center, a dentist shall perform a dental screening. Dental treatment provided to reception center inmates shall be limited to the treatment of Emergency and Urgent Care dental conditions, as defined in Section 3354(f)(1) and 3354(f)(2). Inmates who remain in a reception center for ninety (90) days or longer may submit a CDC Form 7362 (Rev. 03/04) Health Care Services Request Form, which is incorporated by reference, to request DPC 2 care (excluding prosthetics). Upon receipt of a CDC Form 7362, the dentist shall exercise professional judgment in considering treatment for a DPC 2 condition for the inmate.

(b) Assigned Facility. Upon arrival at a program facility all inmates shall be notified that they are eligible to receive an initial comprehensive dental examination performed by a dentist who shall formulate and document a dental treatment plan. The inmates shall be notified that no copayment is required for this service.

(1) When a treatment plan is proposed, the inmate shall be provided an explanation of its advantages and disadvantages.

(2) Each inmate's dental health history shall be documented at the time of initial examination and signed by the inmate and witnessed by the dentist. Such history shall be available and reviewed at each dental visit.

(3) Inmates with a plaque index score above 20% or who refuse oral hygiene instruction shall receive only Emergency Care, Urgent Care, Interceptive Care, and/or Special Needs Care, as these terms are described in Subsections 3354(f)(1), 3354(f)(2), 3354(f)(3), and 3354(f)(6), respectively.

(c) Within the second trimester of gestation and regardless of their plaque index score, pregnant inmates shall receive a comprehensive dental examination, periodontal examination, oral hygiene instruction, and the necessary periodontal treatment in order to maintain periodontal health during the gestation period.

(d) Reexamination. After the initial comprehensive dental examination, all program facility inmates shall be notified that they are eligible to receive a periodic comprehensive dental examination by a dentist with no copayment required as follows:

(1) Every two (2) years (biennially), until the age of fifty (50).

(2) Annually after the age of 50 and regardless of age if the inmate is diagnosed with diabetes, HIV, seizure disorder or pregnancy.

(e) Restraints. If an inmate requiring dental treatment also requires use of restraint gear, such restraints shall be selected to enable sitting in a dental chair and shall remain in place during the treatment. Exceptions require concurrence of the dentist, the escorting officer, and a lieutenant. For pregnant inmates, the rules provided in subsections 3268.2(b) and (d) concerning the use of restraints shall be followed.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 3424 and 5054, Penal Code; and *Perez, et al.* v. *Cate, et al.,* USDC no. 3:05-cv-05241-JSW (No. Cal.).

HISTORY:

1. New section filed 7-2-93; operative 8-2-93 (Register 93, No. 27).
2. Amendment of subsection (b) and new Note filed 4-18-2007; operative 4-18-2007 pursuant to Government Code section 11343.4 (Register 2007, No. 16).
3. New subsection (c), subsection relettering, amendment of newly designated subsection (e) and amendment of Note filed 3-6-2008; operative 4-5-2008 (Register 2008, No. 10).
4. Amendment of section heading, section and Note filed 3-28-2012 as an emergency; operative 3-28-2012 (Register 2012, No. 13). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 9-4-2012 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 3-28-2012 order, including further amendment of section, transmitted to OAL 9-4-2012 and filed 10-4-2012 (Register 2012, No. 40).

3355.2. Treatment for Pregnant Inmates.

(a) Inmates identified as possibly being pregnant during the initial health examination will be scheduled for laboratory work to verify the pregnancy within three business days of arrival at the institution.

(b) Confirmed pregnant inmates, within seven days of arrival at the institution, will be scheduled for an obstetrics (OB) examination by an Obstetrical Physician or Obstetrical Nurse Practitioner (NP) wherein:

(1) A term of pregnancy and a plan of care will be determined.

(2) Diagnostic studies will be ordered, if needed.

(c) Pregnant inmates shall be scheduled OB visits as follows, unless otherwise indicated by the OB physician or NP:

(1) Every 4 weeks in the first trimester up to 24–26 weeks gestation.

(2) Every 3 weeks thereafter up to 30 weeks gestation.

(3) Every 2 weeks thereafter up to 36 weeks gestation.

(4) Weekly after 36 weeks up to delivery.

(d) Pregnant inmates housed in a multi-tier housing unit will be issued a CDC Form 7410 (Rev. 08/04), Comprehensive Accommodation Chrono, which is incorporated by reference, for lower bunk and lower tier housing.

(e) Pregnant inmates who have used heroin within three days prior to incarceration, either by her own admission or written documentation by a parole agent, or are currently receiving methadone treatment, shall be enrolled in the Methadone Maintenance Program and recommended for immediate transfer to the California Institution for Women.

(f) Community treatment programs. Any community treatment program developed for eligible pregnant and/or parenting female inmates in addition to the Family Foundations Program, shall include, but not be limited to:

(1) Prenatal care.

(2) Access to prenatal vitamins.

(3) Childbirth education.

(4) Infant care.

(g) Any inmate who gives birth after her receipt by the Department shall be provided notice of, and a written application for, a community treatment program. At a minimum, the notice shall contain:

(1) Guidelines for qualification.

(2) Timeframe for application.

(3) Process for appealing a denial of admittance.

(h) A pregnant inmate who is not eligible for a community treatment program shall have access to complete prenatal health care, which shall include:

(1) A balanced, nutritious diet per subsection 3050(a).

(2) Prenatal and postpartum information and health care, including, but not limited to, necessary vitamins as prescribed by a doctor.

(3) Information pertaining to childbirth education and infant care.

(4) Dental care pursuant to subsection 3355.1(c).

(i) Each pregnant inmate shall be referred to a Medical Social Worker. The Medical Social Worker shall:

(1) Discuss with the inmate, the options available for the placement and care of the child after delivery.

(2) Assist the pregnant inmate with access to a phone in order to contact relatives regarding newborn placement.

(3) Oversee the placement of the newborn child.

(j) A pregnant inmate may be temporarily taken to a hospital outside the institution for the purposes of childbirth and shall be transported in the least restrictive way pursuant to the rules provided in subsections 3268.2(b) and (d). A pregnant inmate in labor shall be treated as an emergency and shall be transported via ambulance to the outside facility, accompanied by custody staff.

(k) A pregnant inmate may elect to have a support person present during child birth. The support person may be an approved visitor or the institution's staff designated to assist with prenatal, labor and postpartum care. The approval for the support person will be made by the institution's Warden or designee. If a pregnant inmate's request for an elected support person is denied, reason for the denial shall be provided in writing to the inmate within 15 working days of receipt of the request. The written denial must address the safety/security concerns for the inmate, infant, public, and/or staff. Upon receipt of a written denial, the pregnant inmate may then choose the approved institution staff to act as the support person.

(*l*) Postpartum care. Upon return to the institution, any inmate who delivers a child via C-Section, shall be admitted to the Outpatient Hospital Unit (OHU) or Correctional Treatment Center (CTC). Any inmate who delivers a child vaginally shall be assessed in the Triage and Treatment Area (TTA) to determine the appropriate housing and to initiate postpartum care.

(1) Orders for routine postpartum care shall be initiated by the Registered Nurse (RN) in the TTA, CTC, or OHU.

(2) The Supervising Obstetrician or RN/NP shall:

(A) Determine when the inmate is cleared for housing in the general population.

(B) Complete the medical lay-in.

(3) The inmate shall have a six week postpartum examination. At the examination, the Supervising Obstetrician or RN/NP shall determine whether the inmate may be cleared for full duty or if medical restrictions are still warranted.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 3419, 3423, 3424, 5007.7 and 5054, Penal Code.

HISTORY:

1. New section filed 3-6-2008; operative 4-5-2008 (Register 2008, No. 10).

3356. Health Care Treatment for Parolees.

(a) Community Treatment. Health care for parolees shall normally be provided by private physicians and community medical facilities, as desired by the parolee and at the parolee's own expense.

(b) Facility Treatment. When a parolee requires medical, surgical, psychiatric, or dental care of an emergency nature and community resources are not available or lack the security required for retention and treatment of the parolee, the district parole administrator or their designee may arrange with the facility chief medical officer or supervising dentist the chief psychiatrist for the parolee's return to department custody for emergency treatment.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.

HISTORY:

1. Amendment of section heading and text filed 7-2-93; operative 8-2-93 (Register 93, No. 27).
2. Amendment of section heading and subsection (a) filed 2-17-95 as an emergency; operative 3-1-95 (Register 95, No. 9). This regulatory action was deemed an emergency pursuant to section 5058(e) of the Penal Code and remains in effect for 160 days. A Certificate of Compliance must be transmitted to OAL by 8-8-95 or emergency language will be repealed by operation of law on the following day.
3. Amendment of section heading and subsection (a) refiled 8-7-95 as an emergency; operative 8-7-95 (Register 95, No. 32). This regulatory action was deemed an emergency pursuant to section 5058(e) of the Penal Code and remains in effect for 160 days. A Certificate of Compliance must be transmitted to OAL by 1-16-96 or emergency language will be repealed by operation of law on the following day.
4. Reinstatement of section as it existed prior to emergency amendment filed 2-17-95 by operation of Government Code section 11346.1(f) (Register 96, No. 8).
5. Amendment of section heading and subsection (a) filed 2-21-96 as an emergency; operative 2-21-96 (Register 96, No. 8). A Certificate of Compliance must be transmitted to OAL by 6-20-96 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 2-21-96 order transmitted to OAL 6-18-96 and filed 7-9-96 (Register 96, No. 28).
7. Amendment of subsection (b) filed 12-9-2008; operative 1-8-2009 (Register 2008, No. 50).
8. Change without regulatory effect amending subsection (b) filed 8-11-2010 pursuant to section 100, title 1, California Code of Regulations (Register 2010, No. 33).

3357. Inmate Deaths.

(a) The institution head shall maintain a valid service agreement with local mortuaries to provide services such as cremation, transportation, and/or other services related to the disposition of a deceased inmate's body.

(b) When an inmate's death occurs away from an institution/facility, the body of the deceased shall, unless the county coroner orders otherwise, be released to a licensed funeral director in the community where the death occurred.

(c) If the deceased is known to have had a communicable disease which presents a threat to the public health and safety, health care staff shall notify the contract mortuary and public agencies as required by California Code of Regulations, Title 17, Section 2500, and Health and Safety Code Sections 1797.188 and 1797.189.

(d) A chaplain of the decedent's professed faith may perform a ceremony in accordance with that faith.

(e) Staff shall review the decedent's central file and locate the current Notification in Case of Inmate Death, Serious Injury, or Serious Illness to identify the inmate's next of kin or person(s) to be notified, and to determine the existence of a will. The Notification is to be completed annually or when the inmate is transferred. Counseling staff are to complete the Notification and must witness the inmate's dated signature. The Notification is not to be used as a will. The Notification shall include:

(1) Inmate name, CDC number, Personal Identification number, and current Institution.

(2) The name, relationship, telephone, and address of person to be notified.

(3) The name, relationship, telephone, and address of the contact person for a will.

(4) Whether the inmate is a foreign national.

(f) Staff shall attempt to notify individual(s) listed on the Notification in Case of Inmate Death, Serious Injury, or Serious Illness as the person(s) to be notified of the death, in person, or, if personal contact is not practical, by telephone. Staff shall send a telegram notification to the next-of-kin, person(s) to be notified and/or legally appointed representative, offering consolation, which shall include:

(1) The name and address of the funeral director to whom the body has been or will be released;

(2) A request for instructions on disposition of the body at the family's or designee's expense, within 48 hours, to preclude disposition by the state; and

(3) The name and telephone number of a staff member who may be contacted for additional information.

(g) If after 10 days the next-of-kin or legally appointed representative fails to claim or direct disposition of the decedent's body, or notifies the department within ten days that he or she does not assume responsibility for burial without expense to the state, the decedent shall be considered unclaimed. If the body is unclaimed, the institution/facility shall make arrangements for use of state materials or services as necessary in accordance with Penal Code Section 5061. All money and personal property shall be inventoried and released in accordance with Penal Code 5061, upon direction from the Associate Warden of Business Services or other staff designated by the institution head.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 2082, 5021, 5022, 5054 and 5061, Penal Code; Sections 1797.188, 1797.189, 7104, 7200, 7201 and 7302, Health and Safety Code; and Sections 12525, 27491, 27491.2 and 27491.3, Government Code.

HISTORY:

1. Amendment filed 7-16-92; operative 8-15-92 (Register 92, No. 29).
2. Amendment of subsections (b), (c), (f) and Note filed 2-17-95 as an emergency; operative 3-1-95 (Register 95, No. 9). This regulatory action was deemed an emergency pursuant to section 5058(e) of the Penal Code and remains in effect for 160 days. A Certificate of Compliance must be transmitted to OAL by 8-8-95 or emergency language will be repealed by operation of law on the following day.
3. Amendment of subsections (b), (c), (f) and Note refiled 8-7-95 as an emergency; operative 8-7-95 (Register 95, No. 32). This regulatory action was deemed an emergency pursuant to section 5058(e) of the Penal Code and remains in effect for 160 days. A Certificate of Compliance must be transmitted to OAL by 1-16-96 or emergency language will be repealed by operation of law on the following day.
4. Reinstatement of section as it existed prior to emergency amendment filed 2-17-95 by operation of Government Code section 11346.1(f) (Register 96, No. 8).
5. Amendment of subsections (b), (c), (f), and Note filed 2-21-96 as an emergency; operative 2-21-96 (Register 96, No. 8). A Certificate of Compliance must be transmitted to OAL by 6-20-96 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 2-21-96 order transmitted to OAL 6-18-96 and filed 7-9-96 (Register 96, No. 28).
7. Amendment of section and Note filed 8-28-2000; operative 9-27-2000 (Register 2000, No. 35).
8. Amendment of subsection (e), new subsections (e)(1)–(4) and amendment of subsection (f) filed 6-2-2014; operative 6-2-2014 pursuant to Government Code section 11343.4(b)(3) (Register 2014, No. 23).

3358. Artificial Appliances.

(a) Appliance Categories. Appliances include but are not limited to eyeglasses, artificial eyes, dental prosthesis, artificial limbs, orthopedic braces and shoes, and hearing aids. An inmate's need for such appliance shall be based on medical necessity as described in section 3350(b)(1).

(b) Possession of Appliance. No inmate shall be deprived of a prescribed orthopedic or prosthetic appliance in the inmate's possession upon arrival into the department's custody or properly obtained while in the department's custody unless a department physician or dentist determines the appliance is no longer needed and the inmate's personal physician, if any, concurs in that opinion. If an inmate's dental prosthetic appliance is confiscated for safety and security reasons, a dentist shall be notified by the next business day to determine whether the inmate will require any accommodations due to the loss of the prosthetic appliance.

(c) Purchase of Appliance. Prescribed appliances shall be provided at state expense if an inmate is indigent, otherwise the inmate shall purchase prescribed appliances through the department or an approved vendor as directed by the chief medical officer or supervising dentist. Departmental dentists shall not order prescribed dental appliances made from precious metal, and departmental dentists or dental laboratories shall not perform repairs to existing dental prosthesis made from precious metal. If an inmate's existing dental appliance made from precious metal needs repair, the dentist shall offer the inmate the option of having a new prosthesis made. When a prescribed appliance is to be provided the inmate shall sign a CDC Form 193, Trust Account Withdrawal Order (Rev. 1/88), to pay for the materials.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code; and *Perez, et al.* v. *Cate, et al.,* USDC no. 3:05-cv-05241-JSW (No. Cal.).

HISTORY:

1. Amendment of section heading and text filed 7-2-93; operative 8-2-93 (Register 93, No. 27).
2. Amendment of subsection (a) and repealer of subsections (a)(1)–(3) filed 2-17-95 as an emergency; operative 3-1-95 (Reg-

ister 95, No. 9). This regulatory action was deemed an emergency pursuant to section 5058(e) of the Penal Code and remains in effect for 160 days. A Certificate of Compliance must be transmitted to OAL by 8-8-95 or emergency language will be repealed by operation of law on the following day.

3. Amendment of subsection (a) and repealer of subsections (a)(1)–(3) refiled 8-7-95 as an emergency; operative 8-7-95 (Register 95, No. 32). This regulatory action was deemed an emergency pursuant to section 5058(e) of the Penal Code and remains in effect for 160 days. A Certificate of Compliance must be transmitted to OAL by 1-16-96 or emergency language will be repealed by operation of law on the following day.
4. Reinstatement of section as it existed prior to emergency amendment filed 2-17-95 by operation of Government Code section 11346.1(f) (Register 96, No. 8).
5. Amendment of subsection (a) and repealer of subsections (a)(1)–(3) filed 2-21-96 as an emergency; operative 2-21-96 (Register 96, No. 8). A Certificate of Compliance must be transmitted to OAL by 6-20-96 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 2-21-96 order including amendment of subsection (c) transmitted to OAL 6-18-96 and filed 7-9-96 (Register 96, No. 28).
7. Amendment of subsection (b) filed 10-3-2006 as an emergency; operative 10-3-2006 (Register 2006, No. 40). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 3-12-2007 or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 10-3-2006 order, including amendment of subsection (c), transmitted to OAL 3-7-2007 and filed 4-18-2007 (Register 2007, No. 16).
9. Change without regulatory effect amending subsection (c) filed 8-11-2010 pursuant to section 100, title 1, California Code of Regulations (Register 2010, No. 33).
10. Amendment of subsections (b) and (c) and Note filed 3-28-2012 as an emergency; operative 3-28-2012 (Register 2012, No. 13). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 9-4-2012 or emergency language will be repealed by operation of law on the following day.
11. Certificate of Compliance as to 3-28-2012 order transmitted to OAL 9-4-2012 and filed 10-4-2012 (Register 2012, No. 40).

3359. Donation and Sale of Blood.

Institution heads may permit, subject to acceptance by a blood collection agency, inmates to donate blood for charitable and research purposes or to sell their blood only when needed blood cannot be reasonably and readily obtained from other sources. When a blood sale is authorized, the inmate must receive from the purchaser a payment equal to the current market price for purchases of the same type blood. The facility may impose an additional charge to the purchaser to retrieve the cost of department resources used in drawing the blood. Proceeds of such charges shall be deposited in the inmate welfare fund.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.

HISTORY:

1. Amendment filed 7-2-93; operative 8-2-93 (Register 93, No. 27).

3359.1. Medical Parole General Policy.

(a) Pursuant to Penal Code section 3550, an inmate who is found to be permanently medically incapacitated, as defined in (a)(1) below, with a medical condition that renders him or her permanently unable to perform the activities of daily living and results in the inmate requiring 24-hour care, shall be referred to the Board of Parole Hearings, within 30 working days of the Chief Medical Officer or Chief Medical Executive determination, if all of the following conditions exist:

(1) The inmate is permanently medically incapacitated with a medical condition that renders him or her permanently unable to perform activities of basic daily living and results in the inmate requiring 24-hour care. Activities of basic daily living are breathing, eating, bathing, dressing, transferring, elimination, arm use, or physical ambulation.

(2) The medical/physical limitations documented in subsection (a)(1) above did not exist at the time the inmate was sentenced to the current incarceration.

(3) The inmate is not serving a life sentence without the possibility of parole.

(4) The inmate is not sentenced to death.

(b) A request for an inmate to be considered for medical parole may be initiated by any of the following:

(1) The inmate's primary care physician.

(2) The inmate's immediate family member, as defined in section 3000.

(3) An attorney or other individual appropriately authorized to initiate such actions on behalf of the inmate.

(4) The inmate.

(c) Requests from individuals described in subsection (b)(2)–(4) above shall not be considered if the inmate's primary care physician has previously reviewed an inmate's eligibility for medical parole within the last 90 days.

(d) The inmate shall be granted medical parole if the Board of Parole Hearings determines the conditions under which the inmate would be released would not reasonably pose a threat to public safety.

NOTE: Authority cited: Sections 5058 and 5058.3, Penal Code. Reference: Sections 3550 and 5054, Penal Code.

HISTORY:

1. New section filed 4-29-2011 as an emergency pursuant to Penal Code section 5058.3(a)(2); operative 4-29-2011 (Register 2011, No. 17). Pursuant to Penal Code section 5058.3(a)(1), a Certificate of Compliance must be transmitted to OAL by 10-6-2011 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 4-29-2011 order, including amendment of subsection (b)(3), new subsection (b)(4) and amendment of subsection (c), transmitted to OAL 10-5-2011 and filed 11-10-2011 (Register 2011, No. 45).

3359.2. Medical Parole Processing.

(a) The inmate's primary care physician shall refer the inmate for medical parole to the Chief Medical Officer (CMO) or Chief Medical Executive (CME) of the institution where the inmate is housed, utilizing the CDCR Form 7478 (12/10), Medical Parole Form, which is incorporated by reference, along with any other documentation the inmate's primary care physician or designee considers useful in determining the inmate's eligibility for medical parole. The inmate's primary care physician or designee shall also ensure the CDCR Form 7385-MP (03/11), Medical Parole Authorization for Release of Information, which is incorporated by reference, is completed and signed by the inmate or inmate's designee.

(b) The CMO or CME shall review the CDCR Form 7478 and any other documentation submitted by the inmate's primary care physician, and make a determination as to the inmate's eligibility for medical parole based on the inmate's medical case factors as described in subsections 3359.1(a)(1)–(2).

(1) If the CMO or CME does not concur with the primary care physician's recommendation, he or she shall note on the CDCR Form 7478 the reason for the denial, and will sign and return the CDCR Form 7478 to the primary care physician, within three working days. The CMO or CME, or designee, shall notify the inmate and/or the inmate's designee of the reason for denial in writing within 30 working days.

(2) If the CMO or CME concurs with the primary care physician's recommendation, he or she shall sign and forward the CDCR Form 7478 and any supporting documentation to the institution's Classification and Parole Representative (C&PR), within three working days.

(c) Upon receipt of the CDCR Form 7478, the C&PR shall review the inmate's Central File to determine the inmate's statutory eligibility for medical parole as described in subsections 3359.1(a)(3)–(4).

(1) If the inmate does not meet the statutory requirements, the C&PR shall note the reason for denial on the CDCR Form 7478 and shall sign and return the form to the CMO or CME within three working days. The CMO or CME, or designee, shall notify the inmate and/or the inmate's designee of the reason for denial in writing within 30 working days.

(2) If the inmate meets the statutory requirements, the C&PR shall complete and sign the CDCR Form 7478 and return the form to the CMO or CME, and attach the information outlined in subsections 3359.2 (d)(10)–(15), within three working days, and shall request that the inmate's caseworker prepare an evaluation report.

(d) The inmate's caseworker shall complete the evaluation report and submit it to the C&PR within five working days, including the following information and attachments:

(1) Inmate's name and CDC number.

(2) Current commitment offense, brief description of crime, and sentence.

(3) County of commitment and County of Last Legal Residence.

(4) Prior juvenile and adult criminal history (include all arrests and convictions).

(5) Active or potential holds, warrants, and detainers.

(6) Institutional adjustment including, rule violation reports, counseling chronos, pending disciplinary actions, gang/disruptive group information, placement score, current housing assignment, work/education assignments, participation in self-help activities, and other information deemed pertinent to the inmate's case factors.

(7) Mental health and/or developmental disability status/information.

(8) California Static Risk Assessment (CSRA) Score, as described in section 3768.1, if available.

(9) Any victim(s)/victim(s) next of kin notifications.

(10) Abstract of Judgment for the inmate's current commitment offense.

(11) Probation Officer's Report for the inmate's current commitment offense.

(12) Legal Status Summary.

(13) Institutional Staff Recommendation Summary.

(14) Criminal Identification and Information Number issued by the California Department of Justice, Bureau of Identification.

(15) Most recent CDC Form 128-G (Rev. 10/89), Classification Chrono, with the inmate's full case factors.

(e) The C&PR shall review the evaluation report and attachments and forward the package to the Warden or Chief Deputy Warden, within three working days.

(f) The Warden or Chief Deputy Warden shall review, sign, and forward the original evaluation report and attachments to the Classification Services Unit, within three working days.

(g) Upon receipt of the original CDCR Form 7478 as noted in subsection 3359.2(c)(2), and the information outlined in subsections 3359.2(d)(10)–(15), the CMO or CME shall forward the documents, along with the completed CDCR Form 7385-MP to the designated California Prison Health Care Services office, who shall identify suitable placement for the inmate, document the placement plan information on the CDCR Form 7478, and forward all the documents referenced in this subsection to the appropriate Division of Adult Parole Operations (DAPO) Re-entry Unit, within eight working days.

(h) DAPO Re-Entry Unit staff shall forward the CDCR Form 7478, CDCR Form 7385-MP, and attachments to the appropriate parole unit, where the assigned parole agent shall review the recommended placement plan. Within eight working days, the parole agent shall document his/her assessment of the placement plan on the CDCR Form 7478 and forward a copy to the designated California Prison Health Care Services staff, along with a copy of the CDCR Form 1515-MP (02/11), Conditions of Medical Parole, which is incorporated by reference, noting approval or disapproval of the proposed placement and any conditions of medical parole. The assigned parole agent shall also forward the original CDCR Form 7478, CDCR Form 7385-MP, and CDCR Form 1515-MP to the Classification Services Unit.

(1) If the identified placement plan is not approved, the parole agent shall document the reason for the disapproval on the CDCR 7478 and return the original form to the California Prison Health Care Services office, for consideration of an alternative placement.

(i) The Classification Services Unit shall review the CDCR Form 7478, CDCR Form 7385-MP, evaluation report, and CDCR Form 1515-MP, for completeness, and forward to the Board of Parole Hearings within three working days, after receiving the entire packet.

NOTE: Authority cited: Sections 5058 and 5058.3, Penal Code. Reference: Sections 3550 and 5054, Penal Code.

HISTORY:

1. New section filed 4-29-2011 as an emergency pursuant to Penal Code section 5058.3(a)(2); operative 4-29-2011 (Register 2011, No. 17). Pursuant to Penal Code section 5058.3(a)(1), a Certificate of Compliance must be transmitted to OAL by 10-6-2011 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 4-29-2011 order transmitted to OAL 10-5-2011 and filed 11-10-2011 (Register 2011, No. 45).

3359.3. Pre-Release Process.

(a) Upon the Board of Parole Hearings' approval of medical parole, the Classification and Parole Representative (C&PR) shall be notified to ensure a medical parole packet is processed, and required Penal Code notifications are completed. The C&PR shall forward the packet to the parole unit that will supervise the medical parolee, within five working days.

(b) If the inmate is already housed in the community, the parole agent of record shall collaborate with the institution to complete parole release documents.

(c) The assigned parole agent shall contact the local law enforcement agency to notice the agency of any required Penal Code registration(s).

(d) The inmate's Central File shall be forwarded to the institution designated by the Director, Division of Adult Institutions, with oversight of the medical parolee.

(e) Release allowances, as defined in subsection 3075.2(d), will not be issued to inmates on medical parole until the inmate transitions to parole pursuant to PC Section 3000.

NOTE: Authority cited: Sections 5058 and 5058.3, Penal Code. Reference: Sections 3550 and 5054, Penal Code.

HISTORY:

1. New section filed 4-29-2011 as an emergency pursuant to Penal Code section 5058.3(a)(2); operative 4-29-2011 (Register 2011, No. 17). Pursuant to Penal Code section 5058.3(a)(1), a Certificate of Compliance must be transmitted to OAL by 10-6-2011 or emergency language will be repealed by operation of law on the following day.

2. Certificate of Compliance as to 4-29-2011 order, including new subsection (e), transmitted to OAL 10-5-2011 and filed 11-10-2011 (Register 2011, No. 45).

3359.4. Classification, Case Records, and Life Prisoner Processes.

(a) While on medical parole, the offender's classification processes, pursuant to California Code of Regulations, Title 15, Division 3, shall be suspended.

(b) Inmates sentenced to an indeterminate prison term shall continue to have life parole consideration hearings. The institution designated by the Director, Division of Adult Institutions will be responsible for processes related to life prisoner parole consideration hearings.

(c) Case Records functions of inmates on medical parole shall be managed by an institution designated by the Director, Division of Adult Institutions.

NOTE: Authority cited: Sections 5058 and 5058.3, Penal Code. Reference: Sections 3550 and 5054, Penal Code.

HISTORY:

1. New section filed 4-29-2011 as an emergency pursuant to Penal Code section 5058.3(a)(2); operative 4-29-2011 (Register 2011, No. 17). Pursuant to Penal Code section 5058.3(a)(1), a Certificate of Compliance must be transmitted to OAL by 10-6-2011 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 4-29-2011 order transmitted to OAL 10-5-2011 and filed 11-10-2011 (Register 2011, No. 45).

3359.5. Medical Parole Supervision.

(a) Pursuant to the provisions of section 3504, the assigned parole agent shall conduct a face to face contact with the inmate at the placement location and conduct an initial interview, if possible, to include the following:

(1) Digital photograph.

(2) CDCR Form 1650-MP (02/11), Medical Parole Initial Interview/Contact, which is incorporated by reference.

(b) Inmates released on medical parole shall have general and/or special conditions of medical parole documented on the CDCR Form 1515-MP (02/11), Conditions of Medical Parole. These conditions shall remain in effect from the date of release to medical parole until transition to parole pursuant to Penal Code section 3000.

(1) In the event the medical parolee does not comprehend, or is otherwise not capable of signing the CDCR Form 1515-MP, the conditions of medical parole will be imposed.

(2) In the event the inmate refuses to sign the conditions of medical parole, the case will be referred to the Board of Parole Hearings.

(3) Inmates released to medical parole, who are required to register pursuant to Penal Code section 290, are not required to submit to continuous electronic monitoring, pursuant to Penal Code section 3010, until the medical parolee commences serving the period of parole provided by, and under the provisions of, Penal Code section 3000. However, electronic monitoring may be added as a condition of medical parole, pursuant to Penal Code section 3550(h).

(4) When a special condition of medical parole is imposed by the Division of Adult Parole Operations and no longer applies to the medical parolee, a parole unit supervisor or higher-level staff person may remove or modify the special condition of medical parole.

(5) When a special condition of medical parole is imposed by the Board of Parole Hearings, only the Board of Parole Hearings may remove or modify the special condition of medical parole.

NOTE: Authority cited: Sections 5058 and 5058.3, Penal Code. Reference: Sections 3550 and 5054, Penal Code.

HISTORY:

1. New section filed 4-29-2011 as an emergency pursuant to Penal Code section 5058.3(a)(2); operative 4-29-2011 (Register 2011, No. 17). Pursuant to Penal Code section 5058.3(a)(1), a Certificate of Compliance must be transmitted to OAL by 10-6-2011 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 4-29-2011 order transmitted to OAL 10-5-2011 and filed 11-10-2011 (Register 2011, No. 45).

3359.6. Removal from Medical Parole.

(a) The inmate's treating physician, any other physician selected by the Board of Parole Hearings (BPH), or the parole agent may make a recommendation to BPH to return a medical parolee to the custody of the Division of Adult Institutions (DAI) under the following circumstances:

(1) The inmate's treating physician or physician selected by BPH has conducted a medical examination of the medical parolee and has made a determination that his or her condition has improved to the extent that the medical parolee no longer qualifies for medical parole.

(2) The parole agent has made a determination that the medical parolee is a threat to himself or herself, another person, or to public safety, or there has been a significant change in his or her conditions of release.

(b) The parole agent shall contact the Director, Division of Adult Parole Operations, or designee, and request that the medical parolee be placed on suspended medical parole status, pending review by BPH to return the medical parolee to the custody of DAI or placement at an alternative location.

(c) The parole agent of record shall submit a CDCR Form 2219-MP (02/11) Medical Parole Status Change, which is incorporated by reference, to the Chief Deputy Commissioner, BPH, with a recommendation for removal from medical parole or placement at an alternative location.

NOTE: Authority cited: Sections 5058 and 5058.3, Penal Code. Reference: Sections 3550 and 5054, Penal Code.

HISTORY:

1. New section filed 4-29-2011 as an emergency pursuant to Penal Code section 5058.3(a)(2); operative 4-29-2011 (Register 2011, No. 17). Pursuant to Penal Code section 5058.3(a)(1), a Certificate of Compliance must be transmitted to OAL by 10-6-2011 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 4-29-2011 order transmitted to OAL 10-5-2011 and filed 11-10-2011 (Register 2011, No. 45).

3359.7. Non-Citizen Inmates. [Repealed]

NOTE: Authority cited: Sections 5058 and 5058.3, Penal Code. Reference: Sections 3550 and 5054, Penal Code.

HISTORY:

1. New section filed 4-29-2011 as an emergency pursuant to Penal Code section 5058.3(a)(2); operative 4-29-2011 (Register 2011, No. 17). Pursuant to Penal Code section 5058.3(a)(1), a Certificate of Compliance must be transmitted to OAL by 10-6-2011 or emergency language will be repealed by operation of law on the following day.
2. Repealed by operation of Government Code section 11346.1(g) (Register 2011, No. 45).

3359.8. End of Life Option Act Exemption.

All terminally ill inmates remaining in the custody of the California Department of Corrections and Rehabilitation ("Department" or "CDCR") will receive health care appropriate and necessary to their situation, including counseling, hospice and palliative care. Inmates in the custody of CDCR shall not be provided aid-in-dying drugs under the End of Life Option Act (California Health and

Safety Code, Division 1, Part 1.85, Sections 443-443.22). Employees, independent contractors, or other persons or entities, including other health care providers, shall not participate in activities under the End of Life Option Act on premises managed by or under the direct control or management of the Department or while acting within the course and scope of any employment by, or contract with, the Department.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code; and Sections 443, 443.1, 443.2, 443.3, 443.4, 443.5, 443.6, 443.7, 443.8, 443.9, 443.10, 443.11, 443.12, 443.13, 443.14, 443.15, 443.16, 443.17, 443.18, 443.19, 443.20, 443.21, 443.215 and 443.22, Health and Safety Code.

HISTORY:

1. New section filed 6-21-2016 as an emergency; operative 6-21-2016 (Register 2016, No. 26). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 11-28-2016 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 6-21-2016 order, including nonsubstantive amendment of section, transmitted to OAL 11-16-2016 and filed 12-29-2016 (Register 2016, No. 53).

Article 9. Mental Health Services

3360. Availability of Mental Health Services.

(a) The department will provide a broad range of mental health services to inmates and parolees by assessing the needs of its population and developing specialized programs of mental health care, to the extent resources are available for this purpose. Necessary and appropriate mental health services will be provided to inmates and parolees, and adequate staff and facilities will be maintained for the delivery of such services.

(b) When an inmate is found to require mental health care not available within these resources, but which is available in the Department of Mental Health, the case will be referred to the director for consideration of temporary transfer to that department pursuant to Penal Code section 2684.

(c) Recognizing that many parolees have unique treatment needs not readily met by community mental health programs, and that the promptness and appropriateness of those needs affect public safety, the department provides outpatient clinics for parolees. These clinics are conducted in widely distributed locations throughout the state at times and places such that they are available to parolees, and that they shall maintain close working relationships with parole supervisors, paroling authorities, and the community in which the parolee resides.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 2684 and 5054, Penal Code.

HISTORY:

1. New Article 9 (Sections 3360–3369) filed 4-18-80; effective thirtieth day thereafter (Register 80, No. 16).
2. Amendment of section heading and subsection (b) filed 1-3-95 as an emergency; operative 1-3-95 (Register 95, No. 1). A Certificate of Compliance must be transmitted to OAL 6-12-95 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 1-3-95 order including amendment of Note transmitted to OAL 6-12-95 and filed 7-25-95 (Register 95, No. 30).

3361. Responsibility.

(a) All required mental health treatment or diagnostic services shall be provided under the supervision of a psychiatrist licensed to practice in this state, or a psychologist licensed to practice in this state and who holds a doctoral degree and has at least two years of experience in the diagnosis and treatment of emotional and mental disorders. Facilities for mental health treatment and diagnostic services shall be under the direction of such a psychiatrist or psychologist. A psychiatrist shall be available to assume responsibility for all acts of diagnosis or treatment that may only be performed by a licensed physician and surgeon.

(b) When an inmate or an inmate's guardian or relative, or an attorney or other interested party desires to have an inmate examined by a private psychiatrist or other mental health professional, a request shall be submitted in writing by such person or persons to the warden. After consulting with the institution's chief psychiatrist or, in his absence, the chief medical officer, the warden will grant the request unless there are specific case factors which, in the judgment of the warden, warrant denial. If the request is denied, the person making the request will be notified in writing of the reason for the denial and the right to appeal the decision, to the director. Any financial responsibility or obligation for private consultants or examinations will be assumed by the inmate or the person requesting the service. Private consultants will not be permitted to order mental health treatment for any inmate. However, the private consultant may be asked to make a report of findings and recommendations to the warden.

(c) Recognizing that mental health care often involves revealing deeply personal and private matters, all mental health care shall be provided in such a manner as to maintain the dignity of the inmate. Professional relationships shall be conducted with proper privacy, with due regard for the professional to take necessary and appropriate action to prevent harm to the patient or to others. Records of mental health diagnosis, evaluation and treatment prepared or maintained by the department shall remain the property of the department and are subject to all applicable laws governing their confidentiality and disclosure. Treatment will be in accord with sound principles of practice and will not serve a punitive purpose.

NOTE: Authority cited: Sections 5058 and 5079, Penal Code. Reference: Section 5054, Penal Code.

HISTORY:

1. Editorial correction of printing error in subsection (a) (Register 92, No. 5).
2. Amendment of subsections (b) and (c) filed 1-3-95 as an emergency; operative 1-3-95 (Register 95, No. 1). A Certificate of Compliance must be transmitted to OAL 6-12-95 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 1-3-95 order including amendment of section and Note transmitted to OAL 6-12-95 and filed 7-25-95 (Register 95, No. 30).

3362. Availability of Treatment.

All persons committed to the department shall be informed that mental health services are available to them. They shall be informed that, upon their request, an evaluative interview will be provided within a reasonable period of time by a licensed practitioner, or a specially trained counselor supervised by a licensed practitioner. Upon request, they will be provided with information as to what specialized treatment programs may be available in the department and how such treatment may be obtained.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.

3363. Right to Refuse Treatment.

Inmates/Parolees shall be informed any time they are the object of particular mental health diagnosis or treatment procedures. Such persons shall have the right to refuse assignment to such a program of diagnosis or treatment without being subject to discipline or other deprivation, except as indicated in the following:

(a) When mental health evaluation is required by law or ordered by a court.

(b) When an inmate is placed in a mental health program for diagnostic study by the action of a classification committee, which acted upon documented information or observations that gave reasonable cause to believe the inmate was suffering from a mental illness which poses a danger to self or others, or is gravely disabled. A physician or other licensed practitioner may act in an emergency situation to place an inmate in psychiatric segregation under observation and treatment for a period of up to five working days pending classification action, providing the reasons for this action are documented.

(c) When diagnostic study has led to a diagnosis of existing or recurrent mental illness, which renders the inmate dangerous to self or others, or gravely disabled.

(d) If there is a special condition of parole requiring attendance at a parole outpatient clinic, interviews may be imposed upon the parolee. However, no medication will be administered by these clinics without the specific informed consent of the patient.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.

HISTORY:

1. Amendment of first paragraph and subsections (b) and (c) filed 1-3-95 as an emergency; operative 1-3-95 (Register 95, No. 1). A Certificate of Compliance must be transmitted to OAL 6-12-95 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 1-3-95 order transmitted to OAL 6-12-95 and filed 7-25-95 (Register 95, No. 30).

3364. Involuntary Medication.

(a) If medication used in the treatment of mental disease, disorder or defect is administered in an emergency, as that term is defined in section 3351, such medication shall only be that which is required to treat the emergency condition. If a psychiatrist determines that further administration of such medication is necessary for a period of longer than 72 hours and the inmate does not consent to take the medication voluntarily, the provisions set forth in sections 3364.1 and 3364.2 shall be followed:

(b) Psychiatric medication shall not normally be involuntarily administered to an inmate in his or her housing unit. An inmate shall normally be transferred to the hospital, clinic, emergency room, or infirmary room at the institution prior to the administration of the medication. If a psychiatrist determines that the prior transfer of the inmate to such a setting would pose a greater risk to the inmate and staff than the risk involved to the inmate in receiving the medication in a non-medical setting, the medication may be involuntarily administered in the inmate's cell, as follows:

(1) Nursing/Psychiatric Technician (PT) staff shall alert custody staff verbally that an order for involuntary medication is being implemented (either as an involuntary medication order that was ordered on an emergency basis by a psychiatrist or as a PC 2602 order for involuntary medication that was previously ordered and is now being implemented). Nursing/PT staff shall alert custody staff verbally where the involuntary medication will be administered (either in the inmate-patient's cell or in a different location). In the event the inmate-patient develops side effects from the medication, Nursing/PT staff shall contact a psychiatrist or psychiatric nurse practitioner immediately. In the event that the inmate-patient develops emergent or life-threatening side effects, Nursing/PT staff shall immediately initiate the emergency response system.

(2) In all cases where it is both feasible and medically desirable, a fast-acting medication shall be utilized to facilitate the inmate's rapid transfer to a medical setting.

(3) After being given involuntary psychiatric medication, and if the inmate is not already housed in a medical setting such as a Correctional Treatment Center (CTC), Acute Psychiatric Program (APP), Intermediate Care Facility (ICF), Outpatient Housing Unit (OHU), or General Acute Care Hospital (GACH), the inmate shall be observed at least twice per day by mental health clinicians. If a significant adverse reaction to the medication is apparent, the inmate shall be transferred from his or her cell to a licensed medical or mental health setting for the effective duration of the medication. The psychiatrist shall note his or her observations and decision in writing. The inmate shall be transferred to a licensed medical or mental health setting no later than 72 hours after the involuntary medication if the effective duration of the medication administered exceeds that time period.

(c) Each institution's Chief Psychiatrist, or in his or her absence, Chief Medical Executive or designee, shall ensure that a log is maintained in which is recorded each occasion of involuntary medication given to any inmate. The log entries shall identify the inmate by name and number, and shall include the reason for medication and the time and date of medication. This information shall be maintained as part of an electronic medical record system. Such logs shall be made available for review by the departmental medical and mental health executives, upon request.

(d) When deemed necessary and clinically indicated by the treating psychiatrist, inmates subject to an involuntary medication order are also subject to monitoring of his or her medication levels to ensure presence in the bloodstream. Inmates who are subject to involuntary medication may also be required, when clinically indicated, to provide a blood or electrocardiogram test for side-effect monitoring. Laboratory tests may include, but are not limited to electrolytes, liver functions, white blood cell count, cholesterol and glucose monitoring. Each institution shall maintain a local operating procedure that logs inmates who are involuntarily required to provide blood for these purposes.

NOTE: Authority cited: Sections 2602 and 5058, Penal Code. Reference: Sections 2600, 2602 and 5054, Penal Code.

HISTORY:

1. Amendment filed 8-4-86; effective thirtieth day thereafter (Register 86, No. 32).
2. Repealer and new subsection (a), new subsections (a)(1)–(3), amendment of subsection (b), repealer of subsections (c)–(e), subsection relettering, and amendment of newly designated subsection (c) and Note filed 1-3-95 as an emergency; operative 1-3-95 (Register 95, No. 1). A Certificate of Compliance must be transmitted to OAL 6-12-95 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 1-3-95 order including amendment of subsections (a)–(a)(3) and Note transmitted to OAL 6-12-95 and filed 7-25-95 (Register 95, No. 30).
4. Amendment of section and Note filed 1-28-2015; operative 1-28-2015 pursuant to Government Code section 11343.4(b)(3) (Register 2015, No. 5).

3364.1. Involuntary Medication Definitions and Criteria.

(a) Definitions:

(1) Serious Mental Disorder means an illness or disease or condition that substantially impairs the person's thought, perception of reality, emotional process, or judgment; or grossly impairs behavior; or demonstrates evidence of an acute brain syndrome for which prompt remission, in the absence of treatment, is unlikely.

(2) Danger to Others means the inmate has inflicted, attempted to inflict, or made a credible threat of inflicting physical harm upon the person of another and, as a result of a serious mental disorder, the inmate presents a demonstrated danger of inflicting physical harm upon others. Demonstrated danger may be based on an assessment of the inmate's present mental condition, including consideration of the inmate's historical course of a serious mental disorder, to determine if the inmate currently presents an elevated chronic risk or an imminent risk of harming another person.

(3) Danger to Self means the inmate has made a credible threat or has attempted to engage in an act of self-harm and the threat is ongoing; or has threatened, attempted, or inflicted serious physical injury to self, and, as a result of a serious mental disorder, the inmate presents as a demonstrated danger to self. Demonstrated danger to self may be based on an assessment of the inmate's present mental condition, including consideration of the inmate's historical course of a serious mental disorder, to determine if the inmate currently presents an elevated chronic risk or an imminent risk to his or her own safety.

(4) Gravely Disabled means that there is a substantial probability, due to a serious mental disorder and incapacity to accept or refuse psychiatric medication, that serious harm to the physical or mental health of the inmate will result. Serious harm means significant psychiatric deterioration, debilitation or serious illness as a consequence of his or her inability to function in a correctional setting without the supervision or assistance of others, inability to satisfy his or her need for nourishment, and/or inability to attend to needed personal or medical care, seek shelter, and/or attend to self-protection or personal safety. The probability of harm to the physical or mental health of the inmate requires evidence that the inmate is presently suffering adverse effects to his or her physical or mental health, or evidence that the inmate has previously suffered these effects in the historical course of his or her mental disorder and that his or her psychiatric condition is again deteriorating. The fact that an inmate has a diagnosis of a mental disorder does not alone establish probability of serious harm to the physical or mental health of the inmate.

(5) Informed Consent means that the inmate, without duress or coercion, is able to clearly give consent for the proposed psychiatric medication to the treating psychiatrist. In order to demonstrate that an inmate has given informed consent, the following criteria shall apply:

A. The inmate has been advised by the psychiatrist or a psychologist regarding the nature and seriousness of his or her mental illness or disorder, and has communicated a willingness to pursue a recommended course of treatment.

B. A psychiatrist has explained the nature of the medication to be used in the proposed treatment, including its probable frequency and duration, and the inmate, using a rational thought process, has communicated his or her understanding of the fundamental meaning of the information provided.

C. The psychiatrist has stated the probable degree and duration (temporary or permanent) of improvement or remission of the inmate's condition to be expected, with or without medication, and the inmate has communicated a choice.

D. The inmate has been advised by a psychiatrist of how the medication is thought to work and the nature, degree, duration, and probability of risk and/or side effects commonly associated with the medication. In addition, this would include advising the inmate of how the medication acts to prevent, reduce, or address a particular mental health condition. The inmate has communicated a basic understanding of the information provided.

E. The inmate has been advised by a psychiatrist if there is a difference of opinion within community standards as to the effectiveness of the proposed medication and the inmate has communicated a basic understanding of the information.

F. The inmate has been advised of reasonable alternative treatments, if any, and why the psychiatrist is recommending a particular medication, and the inmate has communicated a basic understanding of the information.

G. The inmate has been advised by a psychiatrist of his or her right to accept or refuse the proposed medication, and of their right to revoke consent for any reason, at any time, prior to or between medications, and is able to articulate by means of a rational thought process the basis for accepting or rejecting the recommended course of treatment.

H. The inmate exhibits a reasonable understanding of his or her current condition and symptoms.

I. The inmate demonstrates capacity to consent to treatment, as defined in Subsection (a)(7).

(6) Informed Refusal occurs when an inmate who has documented capacity to give informed consent and elects to knowingly refuse to consent to a given medication or recommended course of treatment.

(7) Capacity or Lack of Capacity is to be determined by evaluating the person's: (a) ability to communicate a choice; (b) ability to understand relevant information; (c) ability to appreciate the nature of the situation and its likely consequences; and (d) ability to manipulate information rationally.

(8) Involuntary Medication means the administration of any psychiatric medication or drug to an inmate by the use of force, discipline, or restraint, including administration upon an inmate who lacks capacity to accept or refuse medication. Involuntary psychiatric medications may be utilized after less restrictive non-pharmaceutical alternatives have been deemed unavailable or clinically inappropriate, or in a medical emergency. If psychiatric medication is administered during an emergency, the medication shall only be that which is required to treat the emergency condition and shall be administered for only so long as the emergency exists.

(9) Psychiatric Medication means drugs or medications used in the treatment of a serious mental disorder, mental disease, or mental defect, or utilized to treat side effects caused by these medications or any medications used to augment or temper the effects of psychiatric medications. The drugs include, but are not limited to, antipsychotics, antidepressants, sedatives, or mood stabilizers, in both their short-acting and long-acting formulations.

(10) Elevated Chronic Risk means the serious and persistent presentation of clinical factors that suggests an inability to adequately navigate within society or inability to effectively navigate within a structured environment such that, based on historical course of mental disorder, there is a reasonably foreseeable elevated risk of self-harm, violence, or grave disability.

(11) Imminent Risk means the presence of clinical and situational factors that suggest a significant risk of violence toward others, self, or grave disability and requires immediate intervention.

NOTE: Authority cited: Sections 2602 and 5058, Penal Code. Reference: Sections 2600 and 2602, Penal Code.

HISTORY:

1. New section filed 1-28-2015; operative 1-28-2015 pursuant to Government Code section 11343.4(b)(3) (Register 2015, No. 5).

3364.2. Involuntary Medication Hearing Procedures.

(a) Initial involuntary medication proceedings shall be legibly documented and noticed by CDCR MH-7363 (Rev. 01/15), Involuntary Medication Notice and CDCR MH-7366 (Rev. 01/15), Inmate Rights Notice—Involuntary Medication, which are incorporated by reference. Any information that will not fit on the initial Involuntary Medication Notice form (CDCR MH-7363) should be put on the CDCR MH-7363-B, Involuntary Medication Notice: ADD-A-PAGE (01/15), which is incorporated by reference. These forms may be either dictated, filled out by hand or by computer, and served to the inmate, the inmate's appointed or retained attorney, and the state's attorney. The inmate shall be personally served. A copy shall be filed with the Office of Administrative Hearings the same day the inmate is served with CDCR MH-7363 and CDCR MH-7366.

(b) Renewal involuntary medication proceedings shall be legibly documented and noticed by CDCR MH-7368 (Rev. 01/15), Renewal of Involuntary Medication Notice, which is incorporated by reference, and CDCR MH-7366. Any information that will not fit on the Renewal of Involuntary Medication Notice form (CDCR MH-7368) should be put on the CDCR MH-7368-B, Renewal of Involuntary Medication Notice: ADD-A-PAGE (01/15), which is incorporated by reference. These forms may be either dictated, filled out by hand or by computer, and served on the inmate, the inmate's appointed or retained attorney, and the state's attorney. The inmate shall be personally served. A copy shall be filed with the Office of Administrative Hearings the same day the inmate is served with CDCR MH-7366 and CDCR MH-7368.

(c) The CDCR MH-7363 and CDCR MH-7368 forms shall be reviewed and signed under penalty of perjury by a psychiatrist prior to filing with the Office of Administrative Hearings. Declarations signed under penalty of perjury may utilize digital authentication and verification by a psychiatrist to facilitate electronic transmission. Staff such as psychologists, nurses, psychiatric technicians, and licensed clinical social workers who work with a psychiatrist may be used to record observations or help gather necessary data to complete portions of the CDCR MH-7363 or CDCR MH-7368.

(d) Pleadings that affect the substantial rights of the inmate, such as the addition of a new factual basis, or the dismissal of a case, shall be served on the inmate and the inmate's attorney. Supplemental petitions, notices from the Office of Administrative Hearings, and orders setting a matter for hearing do not need to be served on the inmate, but must be served on the inmate's attorney.

(e) Next of kin are not notified unless the inmate requests they be notified.

(f) The institution's Medication Court Administrator (MCA) shall collect and securely transmit appropriate supporting documentation of any filed petition by electronic means to both state and inmate attorneys within three (3) business days from the date of service on the inmate. In the unlikely event this is not possible, the institution should attempt to allow the inmate's attorney access to view the pertinent records on site prior to the hearing.

(g) In any proceeding involving a condemned inmate, a digital version of any petition initiating or renewing the involuntary medication order shall be sent by the institution's MCA to the California Appellate Project via email to keyhea@capsf.org, who will act as a distribution point for involved capital attorneys, and to the Department of Justice, Capital Unit. This is a courtesy notice, and the Office of Administrative Hearings shall continue to appoint an attorney for the inmate unless an outside retained attorney enters an appearance. Administrative Law Judges (ALJ) shall retain the discretion to manage all aspects of the hearing and courtroom process on the day of the hearing.

(h) On or before the day of hearing, the institution shall provide a space for inmate counsel and each inmate-client to meet confidentially.

(i) On the day of the hearing, the inmate shall again be given the advisements listed in PC Section 2602(c)(7)(B) and further advised that he or she may attend the hearing and, if mentally capable, may elect to personally agree to the petition in the presence of the ALJ, or may contest the petition with the assistance of counsel. In the event the inmate refuses to meet with his/her attorney, the advisements may be given to the inmate by a sworn correctional officer or by a sworn MCA.

(j) The judicial hearing for an order authorizing the involuntary administration of psychiatric medication to an inmate shall be conducted by an ALJ. The hearing shall be conducted at the institution or facility designated in the petition that has been served on the inmate.

(k) The inmate shall be brought to the hearing unless one of the following exceptions has occurred:

(1) Where the inmate is unable to attend the hearing by reason of a medical inability. CDCR shall establish the inmate's medical inability by declaration or testimony of a medical doctor, psychiatrist or psychologist. Emotional or psychological instability is not good cause for the absence of the inmate from the hearing unless, by reason of such instability, attendance at the hearing is likely to cause serious and immediate physiological damage to the inmate. The ALJ and the attorneys may conduct a hearing in a Mental Health Crisis Bed or other medical setting as long as safety precautions are in place.

(2) If a sworn correctional officer or other CDCR employee indicates that the inmate is not willing to attend the hearing or that the inmate expressly chooses not to attend the hearing, or that the inmate does not wish to contest the petition, the ALJ presiding over the hearing shall appoint the MCA, the inmate's attorney, or other sworn person to do the following:

(A) Interview the inmate personally and provide enough facts to allow the judge to determine whether the inmate is competent to knowingly and intelligently waive his or her attendance at the hearing;

(B) Inform inmate of the contents of the petition, of the nature, purpose and effect of the proceeding, the right of the inmate to attend the hearing, to oppose the request for involuntary medication, to be represented by legal counsel, to confront the witnesses, to have his or her attorney cross-examine witnesses, and to testify on his or her own behalf;

(C) Determine whether the inmate is able to attend and participate in the hearing and, if able to attend, whether the inmate wishes to attend the hearing;

(D) Determine whether the inmate wants to contest the petition;

(E) Determine whether the inmate wishes to speak to his or her appointed attorney or, if the inmate has retained private counsel, obtain the name or any other identifying information about private counsel so that the petition and supporting documentation can be served by the MCA on privately retained counsel and a new hearing date can be set within a reasonable time for the appearance of private counsel.

(*l*) The ALJ shall take sworn testimony from the person who contacted the inmate to establish that the inmate had capacity to enter into a waiver of appearance and that the waiver was knowing and voluntary.

(m) After receiving this information, the ALJ must make an express finding that the inmate's presence at the hearing is excused and/or find that the inmate has made a knowing and intelligent waiver of his or her right to be present at the hearing. If any party raises a question as to the inmate's competency to waive presence at the hearing, the judge should order the inmate brought to the hearing, or conduct the hearing at the inmate's cell.

(n) If the inmate is unable to attend the hearing due to a medical condition, the ALJ may continue the hearing if it appears that the inmate will be able to attend the hearing within a reasonable time, order that involuntary medication of the inmate may be administered until the new hearing date, or proceed with the hearing in the absence of the inmate if it appears that the inmate's medical condition will preclude his or her appearance within a reasonable time period.

(o) Where feasible, renewal interviews shall be conducted in person with the inmate by a psychiatrist. When it is not possible to conduct the interview in person, the use of telepsychiatry (video conference) is acceptable.

(p) Inmate-patients subject to involuntary medication who wish to seek reconsideration pursuant to PC 2602(c)(10) shall be

provided a form CDCR MH-7369 (01/15), Penal Code Section 2602 Reconsideration, which is incorporated by reference. The inmate-patient shall be responsible for sending the form as legal mail to the Office of Administrative Hearings within one year of the decision for which review is sought. The Office of Administrative Hearings shall notice all involved parties of its decision on the inmate's reconsideration application.

(q) Termination of Psychiatric Medication and Re-Initiation, if Warranted: In any situation where the prescribing physician or an ALJ orders termination of psychiatric medication, regardless of the reason, the inmate shall be withdrawn from the medication in a medically appropriate manner consistent with standards of professional practice. In the event the inmate then begins to show signs or symptoms that would warrant re-initiation of involuntary medication, clinicians must allow 72 hours between the termination of the earlier medication event before starting a new medication event. Under no circumstances does this section prohibit a physician from acting in a medical emergency.

NOTE: Authority cited: Sections 2602 and 5058, Penal Code. Reference: Sections 2600 and 2602, Penal Code.

HISTORY:

1. New section filed 1-28-2015; operative 1-28-2015 pursuant to Government Code section 11343.4(b)(3) (Register 2015, No. 5).

3365. Suicide Prevention and Response.

(a) Each institution head shall ensure that all employees whose assignments routinely involve inmate contact are trained to recognize signs and symptoms associated with suicide risk, the appropriate procedures for staff intervention, and the appropriate procedures to be followed in response to emergency situations resulting from self-injurious or suicidal actions. This training shall be conducted as in-service training, in compliance with Section 3435.

(b) Each institution head shall implement a Suicide Prevention Program for inmates who display self-injurious or suicidal behavior or symptoms. These programs shall include the following components:

(1) Suicide Watch. When medical staff determine that an inmate is actively suicidal, a licensed physician or psychologist shall order placement of the inmate on suicide watch in a General Acute Care Hospital (GACH), Correctional Treatment Center (CTC), Skilled Nursing Facility (SNF), Outpatient Housing Unit (OHU), or other appropriate health care facility, for continual observation.

(2) Suicide Precaution. When medical staff determine that an inmate is at high risk of attempting self-injurious behavior, a licensed physician or psychologist shall order placement of the inmate on suicide precaution in a GACH, CTC, SNF, OHU, or other appropriate health care facility, for periodic monitoring.

(3) Follow-up Treatment. Discharge from suicide watch or suicide precaution shall occur when an interdisciplinary team of clinicians determines that the inmate no longer presents a suicide risk. A written treatment plan and follow-up outpatient treatment shall be provided by a mental health clinician.

(c) When a suicide attempt is discovered in progress, medical assistance shall be summoned immediately to provide emergency medical care. Security and safety procedures shall be followed, including the use of required equipment and procedures to deal with bodily fluids. A cut-down kit shall be immediately accessible on each unit and shall be used by staff in case of an attempted suicide by hanging. All subsequent activities and procedures shall comply with local institutional emergency plans, as developed in compliance with Section 3301.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.

HISTORY:

1. New section filed 6-22-99 as an emergency; operative 6-22-99 (Register 99, No. 26). A Certificate of Compliance must be transmitted to OAL by 11-29-99 pursuant to Penal Code section 5058(e) or emergency language will be repealed by operation of law on the following day. For prior history, see Register 95, No. 30.
2. Repealed by operation of Government Code section 11346.1(g) (Register 2000, No. 3).
3. New section filed 1-18-2000 as an emergency; operative 1-18-2000 (Register 2000, No. 3). A Certificate of Compliance must be transmitted to OAL by 6-26-2000 pursuant to Penal Code section 5058(e) or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 1-18-2000 order, including amendment of subsections (b)(1) and (b)(3), transmitted to OAL 3-3-2000 and filed 4-10-2000 (Register 2000, No. 15).

3366. Mental Health Advisory Board.

Repealed.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.

HISTORY:

1. Repealer filed 1-28-99; operative 2-27-99 (Register 99, No. 5).

3367. Psychosurgery.

Psychosurgery, including lobotomy, stereotactic surgery, chemical or other destruction of brain tissue, or implantation of electrodes into brain tissue, is not and will not be performed on persons committed to or in the custody of the Department of Corrections and Rehabilitation.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.

HISTORY:

1. Change without regulatory effect amending section filed 3-11-2013 pursuant to section 100, title 1, California Code of Regulations (Register 2013, No. 11).

3368. Aversive Therapy.

The use of any drug, electronic stimulation of the brain, or infliction of physical pain when used as an aversive or reinforcing stimulus in a program of aversive, classical or operant conditioning is not and will not be performed on persons committed to or in the custody of the Secretary of Corrections and Rehabilitation. Nothing in this section prohibits the administration of drugs intended to cause negative physical reactions to the ingestion of alcohol or drugs unless part of a program of aversive conditioning.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.

HISTORY:

1. Change without regulatory effect amending section filed 3-11-2013 pursuant to section 100, title 1, California Code of Regulations (Register 2013, No. 11).

3369. Shock Therapy.

(a) Shock therapy is the only form of organic therapy, as defined by law, which may be used in the treatment of persons committed to the custody of the Secretary of Corrections and Rehabilitation. No inmate who is competent and capable of giving informed consent will be administered any form of shock therapy without having given his or her consent. Prior authorization of a superior court is also required before shock therapy may be administered for any treatment purpose other than as an emergency lifesaving measure.

(1) Shock therapy as a lifesaving emergency medical measure may be administered to an inmate who is competent and capable of giving informed consent and who has given consent, or an inmate who is incompetent or incapable of giving informed consent,

without prior court authorization. However, all pertinent clinical data relating to the nature of the emergency and the treatment given will be presented to the court for review within 10 days of the first instance of emergency shock treatment.

(2) When an inmate is competent and capable of giving informed consent and has done so, and the court has authorized such treatment, shock therapy may be administered in a nonemergency course of treatment. No form of shock therapy may exceed three months of continuous treatment nor more than three months in any 12-month period.

(b) Informed Consent. The term, "Informed Consent," means that a person must knowingly and intelligently, without duress or coercion, and clearly and explicitly consent to the proposed shock therapy. The inmate's consent must be given in writing and in the presence of the attending physician. It must be preserved and be available to the inmate, the inmate's attorney, guardian, or conservator.

(c) Determining Need. If the attending physician determines that shock therapy is required for the health and safety of the inmate, permission may be requested of the warden or superintendent to administer the therapy.

(1) The warden or superintendent will appoint a committee of physicians, two of whom are board certified or eligible for board certification in psychiatry or neurosurgery, to review the inmate's treatment record and the determination of the attending physician. At least one of the attending physicians must not be a full-time employee of the department.

(2) Before shock treatment may be administered, this committee must unanimously agree with the attending physician's determination that it is required and, if it is to be performed under the provisions of subsection (b), that the inmate has the ability to give informed consent and has in fact given informed consent.

(d) Withdrawal of Consent. Any inmate who has given informed consent may withdraw it at any time. The shock therapy must cease immediately.

(e) Court Petition.

(1) An inmate, or inmate's attorney, guardian or conservator may file a petition with the superior court of the county in which the inmate is confined for an order to prohibit the administration of shock therapy upon the inmate. This petition must be served by the county clerk upon the warden or superintendent on the same day it is filed and constitutes a refusal of consent or withdrawal of any prior consent.

(2) The warden or superintendent has 10 days to file a response to the petition. The superior court may grant a continuance of 10 additional days. The response must be served upon the inmate, and upon the inmate's attorney, guardian or conservator on the same day it is filed with the clerk of the superior court.

(f) Correspondence Regarding Shock Therapy. The inmate is entitled to communicate in writing with his or her attorney, and by writing or visits with his or her parents, guardian or conservator regarding any proposed administration of shock therapy or organic therapy. Any mail regarding shock therapy will not be prevented from leaving the institution.

(g) Incapable of Informed Consent.

(1) If the inmate is incapable of giving informed consent to a program of shock therapy, and the attending physician believes that such treatment is required for the health and safety of the inmate, the attending physician may request the permission of the warden or superintendent. If the warden or superintendent agrees with the request and the committee, appointed pursuant to subsection (c)(1), also unanimously agrees that such therapy is required, the warden or superintendent will forward the request to the Chief, Medical Services for review and recommendation to the director. If the director concurs in the course of treatment, the warden or superintendent will petition the superior court for permission to conduct the hearing. No treatment will be conducted until after a hearing at which the inmate is represented by counsel and after a court order authorizing the treatment is issued.

(2) In an extraordinary case, the attending physician may determine that shock treatment is required for a longer period of time than three months, or more frequently than three months in the period of one year. The same procedures as in paragraph (1) of this subsection will be followed before any further shock therapy will be administered.

(h) Inmate Rights. If the attending physician determines that an inmate should be administered shock therapy, the inmate will be informed of his or her rights under this article. A copy of Penal Code Sections 2670 through 2680 will be made and will be given to the inmate at that time.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.

HISTORY:

1. Change without regulatory effect amending subsection (a) filed 3-11-2013 pursuant to section 100, title 1, California Code of Regulations (Register 2013, No. 11).

3369.1. Inmate/Parolee Placements in Department of Mental Health Hospitals.

(a) Inmates considered for placement in a Department of Mental Health hospital pursuant to Penal Code section 2684 shall be informed of their rights to a hearing on the placement and to waive such a hearing. Except as provided in (b) below, inmates who do not waive their right to the hearing shall be provided the following:

(1) A written notice of the placement hearing at least 72 hours prior to the hearing.

(2) An independent and qualified staff member to assist the inmate with their preparation for the hearing. Any costs or expenses incurred related to independent assistance obtained by the inmate on their own shall be the sole responsibility of the inmate.

(3) An opportunity to present documentary evidence and the oral or written testimony of witnesses, and to refute evidence and cross-examine witnesses unless the hearing officer indicates a good cause for prohibiting such evidence or witnesses.

(4) A hearing officer who shall be the institution head or a designee, which shall be a correctional administrator, physician, psychiatrist, or psychologist who is not involved with treating the inmate.

(5) A copy of the written decision within 72 hours after the hearing, which shall include the reason for the decision and the evidence, relied upon in making the decision.

(b) Inmates and parolees who require emergency psychiatric hospitalization shall be entitled to a certification review hearing pursuant to Welfare and Institutions Code section 5256 at the Department of Mental Health hospital in lieu of the above hearing and waiver requirements.

(c) Inmates and parolees housed in Department of Mental Health hospitals remain under the jurisdiction of the department and shall not be permitted to leave the hospital grounds without the specific authorization of the director.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 5150 and 5250 through 5256, Welfare and Institutions Code; Sections 2684, 2974 and 5054, Penal Code; and *Vitek* v. *Jones* (1980) 445 U.S. 480, 100 S.Ct. 1254.

HISTORY:

1. New section filed 7-22-93; operative 8-23-93 (Register 93, No. 30).

Article 9.1. Research of Inmates/Parolees

3369.5. Research.

(a) No research shall be conducted on inmates/parolees without approval of the research advisory committee established to oversee research activities within the department. Members of the research advisory committee shall be named by the Secretary, and may include departmental staff and nondepartmental persons who are community academic representatives engaged in criminal justice research.

(b) No research project shall be considered without submission of a research proposal that shall contain the following:

(1) A statement of the objectives of the study.

(2) The specific values of the project.

(3) A description of the research methods to be used.

(4) A description of the measuring devices to be used, or if they are to be developed as part of the project, a statement of their intended use and reason.

(5) The name of the facility or office where the data will be collected.

(6) The names and titles of personnel involved and their responsibilities in the project.

(7) An estimate of departmental staff time needed for the project.

(8) Starting and ending dates of the research.

(9) Any additional costs to the state.

(10) An estimate of the inmate/parolee subjects' time needed for the project and a plan for the compensation of the inmates/parolees.

(11) The source of funding.

(12) A copy of the informed consent form to be used in the project which meets the requirements of Penal Code section 3521.

(13) A current resume for each professional staff member of the project.

(14) The full name, date of birth, and social security number of all project staff members who will enter an institution or other departmental facility to carry out the project.

(15) A certification of privacy signed by the project's principal investigator which outlines the procedure for protecting exempt personal information and certifies that the protective procedures shall be followed.

(16) If student research is involved, a letter from the student's faculty advisor stating that the student will be working under their supervision and the project is approved by their college/university.

(17) If the proposal was previously reviewed by a committee of another agency or organization, a copy of the record of that committee's approval.

(c) A nondepartmental person, agency or organization applying to conduct research within the department shall submit to the committee for approval a signed agreement to adhere to all departmental requirements.

(d) Any person, agency or organization conducting research shall, as requested by the department's chief of research or designee, submit progress reports on their projects.

NOTE: Authority cited: Sections 3509.5, 3517 and 5058, Penal Code. Reference: Sections 3500 through 3524 and 5054, Penal Code.

HISTORY:

1. Change without regulatory effect adding new article 9.1 (section 3369.5) and renumbering former section 3439 to new section 3369.5 filed 8-1-96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 31).
2. Amendment of subsection (a), including incorporation of portion of former subsection (a)(5) and repealer of subsections (a)(1)–(5) filed 7-3-2001; operative 8-2-2001 (Register 2001, No. 27).
3. Amendment of subsection (a) filed 12-9-2008; operative 1-8-2009 (Register 2008, No. 50).

Article 9.5. Case Records

3370. Case Records File and Unit Health Records Material—Access and Release.

(a) Unit health records means a patient's health record that includes all records of care and treatment rendered to an inmate-patient.

(b) Except by means of a valid authorization, subpoena, or court order, no inmate or parolee shall have access to another's case records file, unit health records, or component thereof.

(c) Inmates or parolees may review their own case records file and unit health records, subject to applicable federal and state law. This review shall be conducted in the presence of staff, and may necessitate the use of a computer.

(d) No inmate or parolee shall access information designated confidential pursuant to section 3321 which is in or from their own case records file.

(e) No case records file, unit health records, or component thereof shall be released to any agency or person outside the department, except for private attorneys hired to represent the department, the office of the attorney general, the Board of Parole Hearings, the Inspector General, and as provided by applicable federal and state law. Any outside person or entity that receives case records files or unit health records is subject to all legal and departmental standards for the integrity and confidentiality of those documents.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 2081.5, 5054 and 6126.5, Penal Code; Sections 56.10, 1798.24 and 1798.40, Civil Code; and Code of Federal Regulations, Title 45, Sections 164.512 and 164.524.

HISTORY:

1. New section filed 12-20-91 as an emergency; operative 12-20-91 (Register 92, No. 4). A Certificate of Compliance must be transmitted to OAL 4-20-92 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 12-20-91 order transmitted to OAL 4-15-92 and filed 5-27-92 (Register 92, No. 24).
3. New subsection (b) and subsection relettering filed 3-24-99; operative 4-23-99 (Register 99, No. 13).
4. Amendment of section heading, section and Note filed 1-19-2006; operative 2-18-2006 (Register 2006, No. 3).
5. Amendment of subsection (e) filed 12-9-2008; operative 1-8-2009 (Register 2008, No. 50).

3370.5. Detainers.

(a) When a detainer is received by the department, the inmate shall be provided a copy of the detainer and written notification concerning any options available to the inmate.

(b) An inmate may request resolution of a detainer case by completing the indicated form below and forwarding it to the case records office where the necessary documents shall be prepared for the inmate's signature and mailing.

(1) CDC Form 643 (Rev. 4/88), Inmate Notice and Demand for Trial to District Attorney, shall be completed to request disposition of untried charges in California.

(2) CDC Form 616 (Rev. 4/91), Request for Disposition of Probation (PC 1203.2a), shall be completed to request disposition of probation.

(c) If an inmate is not brought to trial within 90 days after the district attorney acknowledged receipt of CDC Form 643, case records staff shall complete and file with the court having jurisdiction of the matter the motion and order to request dismissal of the matter.

(d) When a district attorney requests custody of an inmate pursuant to PC section 1389 the inmate shall be provided a copy of the

explanation of rights under Article IV of the Interstate Agreement on Detainers.

(e) When a request is received for an inmate to appear for sentencing on an out-of-state or federal conviction, the inmate shall be provided notification of their rights with CDC Form 1673 (Rev. 12/86), Agreement on Detainer—Right to Request Sentencing. An inmate's demand for sentencing in absentia shall be executed on CDC Form 1674 (Rev. 12/86), Agreement on Detainer—Notice of Place of Imprisonment.

(f) Each out-of-state agency which has filed a detainer against an inmate shall be notified no later than 60 days before the inmate's pending parole or discharge. Each in-state agency which has filed a detainer against an inmate shall be notified no later than 10 days before the inmate's pending parole or discharge.

(g) The inmate shall be released to the agency, which first placed a detainer, unless a later detainer is based upon an adjudicated prison sentence in which case the inmate shall be offered to the agency holding the prison sentence detainer. In either case, the other agencies shall be notified which agency assumed custody of the inmate.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 1203.2a, 1381, 1389 and 5054, Penal Code. *In re Stoliker* (1957) 49 Cal.2nd 75; and *Tinghitella* v. *California* (9th Cir. 1983) 718 F.2d 308.

HISTORY:

1. New section filed 12-19-91 as an emergency; operative 12-19-91 (Register 92, No. 4). A Certificate of Compliance must be transmitted to OAL 4-17-92 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 12-19-91 order including amendment of subsection (f) transmitted to OAL 4-20-92 and filed 5-28-92 (Register 92, No. 24).

3371.1. Computation of Time and Preprison Credit.

(a) The method of computing time and applying credit to an inmate's term is governed by the laws applicable on the date the inmate's crime is committed.

(b) Credit towards an inmate's term shall be administratively applied if the credits are not reflected on legal documents for:

(1) Time spent under an indeterminate sentence as a mentally disordered offender pursuant to Penal Code (PC) section 1600.5.

(2) A commitment received on or after September 15, 1965 where the inmate spent time for diagnostic observation pursuant to PC section 1203.03.

(3) Time spent for a Welfare and Institutions Code (W&IC) section 3200 commitment.

(4) Time spent in the California Youth Authority/Division of Juvenile Justice on the same offense for which they were committed to the department pursuant to W&IC section 1782.

(c) If upon application of preprison credit the inmate is overdue for release, they shall be released within five working days.

(d) Only the following credit issues shall be referred by the department to the sentencing court:

(1) Any case where credit was granted for an in-prison offense, a crime committed while the inmate was on escape status, or where an inmate's consecutive case was sentenced after their received date and included credit for that time served.

(2) When an inmate's case was resentenced and the court credited the inmate with time being served in the department.

(3) When an inmate's probation is revoked and the inmate is granted more than 60 days custody credit which is also being credited by the department.

(4) Cases where legal documents reflect any conflict in credit.

(5) Cases where the court granted Penal Code section 4019 credit at the rate of day-for-day.

(e) Any preprison credit towards an indeterminate sentence shall be applied within one week after the inmate's parole date or term is established or fixed by the Board of Prison Terms.

(f) No preprison credit shall be applied towards time assessed for prior indeterminate sentence terms.

(g) The inmate's received date is counted as a full day regardless of the actual time of day received; for each day thereafter, they shall serve the full 24-hour period to receive credit.

(h) An inmate who has been convicted of a felony, and sentenced under Penal Code Section 667(b) through (i), or Penal Code Section 1170.12, with one or more prior felony convictions, as defined in Penal Code Section 667.5(c) and/or 1192.7(c), shall not be awarded behavior and/or work credits in an amount that exceeds one-fifth of the total term of imprisonment imposed. The limitation on the inmate's credit accrual shall commence on the received date, as defined in section 3000, even if the inmate's sentence has been modified as the result of a striken prior felony conviction under Penal Code Section 1385. There will be a maximum credit accrual rate of 20% so long as the trial court continues to use at least one prior felony conviction, as defined in PC Section 667.5(c) and/or 1192.7(c), for the purposes of determining the term of imprisonment upon resentencing.

NOTE: Authority cited: Section 5058 and 2930-2935 et seq., Penal Code. Reference: Sections 667, 667.5, 1168, 1170, 1170.12, 1192.7, 1203, 2900.1, 2900.5 and 5054, Penal Code; Section 1782, Welfare and Institutions Code; *People* v. *Caceres* (1997) 52 Cal. App. 4th 106, 60 Cal. Rptr. 2d 415; *People* v. *Buchalter* (2001) 26 Cal. 4th 994A, 108 Cal. Rptr. 2d 625; and *People* v. *Superior Court* (Romero) (1996) 13 Cal. 4th 497, 53 Cal. Rptr. 2d 789.

HISTORY:

1. New section filed 12-20-91 as an emergency; operative 12-20-91 (Register 92, No. 4). A Certificate of Compliance must be transmitted to OAL 4-20-92 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 12-20-91 order including amendment of subsection (d)(1) transmitted to OAL 4-20-92 and filed 6-2-92 (Register 92, No. 24).
3. New subsection (h) and amendment of Note filed 12-10-2002; operative 1-9-2002 (Register 2002, No. 50).
4. Change without regulatory effect amending subsection (b)(4) filed 3-11-2013 pursuant to section 100, title 1, California Code of Regulations (Register 2013, No. 11).

3371.2. Credits for Escapee or Parole Violator.

(a) An escapee or parole violator shall receive credit on their sentence for time in another jurisdiction's custody when they are held on "our hold only" and are available for return to the department's custody. No credit shall be applied for the time they are held on "our hold only" and are resisting extradition.

(b) An escapee or parole violator in local confinement is available except when serving a sentence in lieu of a fine or a sentence expressly ordered to run consecutively to their existing prison term.

(c) An escapee or parole violator in local confinement is available on the date our hold was placed or, if declared at-large and parole was suspended, the date of their arrest.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 2900 and 5054, Penal Code.

HISTORY:

1. New section filed 12-20-91 as an emergency; operative 12-20-91 (Register 92, No. 4). A Certificate of Compliance must be transmitted to OAL 4-20-92 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 12-20-91 order transmitted to OAL 4-20-92 and filed 6-2-92 (Register 92, No. 24).

Article 10. Classification

3375. Classification Process.

(a) The classification process shall be uniformly applied, commencing upon reception of a person committed to the custody of the Secretary and shall continue throughout the time the individual remains under the Secretary's jurisdiction. Each inmate shall be individually classified in accordance with this article. Senate Bill 618 Participants, as defined in section 3000 and pursuant to subsection 3077.1(a)(1)(C), shall receive a preliminary classification at a county facility prior to reception at a departmental institution.

(b) The classification process shall take into consideration the inmate's needs, interests and desires, his/her behavior and placement score in keeping with the Department and institution's/facility's program and security missions and public safety.

(c) Each determination affecting an inmate's placement within an institution/facility, transfer between facilities, program participation, privilege groups, or custody designation shall be made by a classification committee composed of staff knowledgeable in the classification process.

(d) The classification of felon inmates shall include the classification score system as established. A lower placement score indicates lesser security control needs and a higher placement score indicates greater security control needs.

(e) When possible, the inmate shall be given sufficient advance written notice of any classification committee hearing to provide the inmate reasonable preparation time to discuss the matter to be considered. An inmate appearing before a classification committee shall be informed of the inmate's next classification committee hearing date when it is known or can be anticipated.

(f) The classification of inmates shall provide the following procedural safeguards:

(1) Inmates shall be given written notice at least 72 hours in advance of a hearing which could result in an adverse effect. Adverse effect is defined as:

(A) Involuntary transfer to a higher security level institution/facility, which is not consistent with the inmate's placement score.

(B) Increase in the inmate's custody designation.

(C) Involuntary placement in segregated housing.

(D) Involuntary removal from an assigned program.

(E) Placement in a reduced work group.

(F) Involuntary transfer to another institution/facility because of the inmate's misbehavior or receipt of new information that may affect staff, inmates, the public, or the safety and security of the institution/facility, whether or not his/her placement score is consistent with the receiving institution's/facility's security level.

(G) Transfer of an inmate to a more restrictive institution or program where the security level is higher.

(2) Except as provided in subsection 3375(f)(3), the inmate shall be present at all initial classification committee hearings and at any other classification committee hearing which could result in an adverse effect upon the inmate.

(3) An in absentia (without inmate's presence) classification hearings may be held only when:

(A) The inmate refuses to appear before the committee.

(B) The inmate is physically incapable of appearing before the committee, or is determined by a psychiatrist to be mentally incompetent and cannot understand the purpose of the hearing.

(C) The purpose of the hearing is to:

1. Improve the inmate's conditions of confinement by reducing or removing a previously imposed restriction.

2. Approve an action requested in writing by the inmate.

3. Determine the need for scheduling, or to schedule, a future classification committee action.

(4) If the inmate was not previously notified and during the classification committee hearing an unanticipated adverse effect emerges, the hearing shall be postponed for at least 72 hours and the inmate shall be referred to the inmate's counselor for assistance when the inmate is illiterate, or the issues are complex unless:

(A) The hearing cannot be postponed because of safety or security factors.

(B) The inmate waives the 72-hour postponement.

(5) The inmate shall be permitted to contest the preliminary score or placement score in the hearing.

(6) Each inmate appearing before a classification committee shall be:

(A) Introduced to the committee members.

(B) Informed of the purpose of the hearing.

(C) Encouraged to participate in the hearing discussion.

(D) Informed of the committee's decision.

(7) Classification committee decisions shall be based on evaluation of available information and mutual agreement of the committee members.

(g) Every decision of a classification committee shall be documented on a CDC Form 128-G, Classification Chrono. The Security Threat Group Unit Classification Committee shall be documented on a CDCR Form 128-G1 (11/13), Security Threat Group Unit Classification Committee—Results of Hearing, which is incorporated by reference.

(1) Each classification committee's documentation shall include, but not be limited to the following:

(A) The reason or purpose for the committee hearing.

(B) The action taken.

(C) The specific reasons for the action including the information upon which the decision was based.

(D) The inmate's stated preferred action, the reasons for the preference, and his/her agreement or disagreement with the committee action.

(E) If applicable, the use of any reasonable accommodation to ensure effective communication.

(F) If during the committee discussion, a member of the committee disagrees with a decision or the basis for a decision reached by the committee, he or she may provide language to the recorder to document his or her opinion for inclusion in the CDC Form 128-G.

(G) The reason(s) for the omission of any of the classification procedural safeguards identified in subsection 3375(f).

(H) If an in absentia hearing is held, reason(s) for the inmate being absent.

(I) The name, title, and signature of the committee's chairperson.

(J) The names and titles of staff who participated in the decision.

(K) The name, title, and signature of the committee's recorder.

(L) The date of the action.

(2) In addition to the preceding, documentation for transfer reviews shall also include the following:

(A) The inmate's requested transfer preference(s) and stated reason(s) for preferring that location.

(B) The institution to which the committee recommends transfer with an alternate recommendation, if different from those requested by the inmate, and the specific reasons for both recommendations.

(C) A statement of the inmate's work group upon transfer based on adverse or non-adverse transfer circumstances.

(3) When the inmate is treated under the Mental Health Services Delivery System (MHSDS) and is at the Enhanced Outpatient Program (EOP) or the Mental Health Crises Bed (MHCB) level of care, regardless of the inmate's housing, a clinician is required as a committee member at all hearings. When the inmate is in segregated housing and treated under the MHSDS at any level of care, a clinician is required as a committee member at all hearings. Documentation shall include, but not be limited to the following:

(A) The inmate's current medical/psychiatric status/level of care.

(B) MHSDS treatment needs.

(C) The inmate's ability to understand and participate in the classification hearing.

(4) In all hearings when the inmate is treated under the MHSDS and is housed in segregated housing, documentation shall include the requirements indicated in subsection 3375(g)(3) as well as the following:

(A) A clinical assessment of the inmate's likelihood of decompensation if retained in segregated housing.

(B) A summary of the clinical information provided by the clinician when an actively decompensating mentally ill inmate is recommended for transfer to a mental health program by the clinician and the decision of the committee is to retain the inmate in segregated housing.

(5) Documentation from each institution's initial classification reviews shall include the following case factors:

(A) Date of birth or age on the date of committee.

(B) Term status (first, second, etc.)

(C) County(ies) of commitment.

(D) Commitment offense(s) (include parole revocation offense(s) resulting in good cause/probable cause findings if a parole violator.)

(E) Length of sentence.

(F) When the inmate was received by the Department for the current incarceration.

(G) County of last legal residence.

(H) Escape related conviction(s).

(I) Current or potential hold(s).

(J) Arson related arrest(s) or conviction(s).

(K) Sex-related arrest(s) or conviction(s) by date.

(L) The current placement score, security level, and custody designation.

(M) The reason(s) the inmate was transferred to the current location.

(N) Current eligibility status for special programs such as camp, minimum support facility, or community correctional facility. If not eligible, the reason for each shall be noted.

(O) Current assignments (including work group and privilege group).

(P) Enemy or STG concerns.

(Q) The existence of, and committee review of, confidential information.

(R) Any medical/psychiatric/disability concerns, including tuberculosis tracking code and date of the most current documentation.

(S) Any other pertinent case information and/or casework follow-up needed.

(6) Documentation for each classification committee review for transfer to the COCF program shall include the case factors listed in 3375(g)(5) and;

(A) Attorney consultation.

(B) Conviction history.

(h) An inmate shall be provided a copy of all non-confidential CDCR staff-generated documentation and reports placed in the inmate's central file unless otherwise requested in writing by the inmate.

(i) An inmate shall not remain at an institution/facility with a security level which is not consistent with the inmate's placement score unless approved by a Classification Staff Representative (CSR) or a staff person designated to serve in that capacity.

(j) A CDCR Form 839, (Rev. 07/12), CDCR Classification Score Sheet, shall be prepared pursuant to section 3375.3 on each newly received felon.

(1) In completing the CDCR Form 839, all relevant documents available during the reception center process shall be reviewed. The inmate shall be interviewed, informed of the purpose of the form, and allowed to contest specific item scores and other case factors on the form. Factors for which documentation is absent or conflicting shall be discussed during the interview.

(2) The inmate is responsible for providing documentation to support their challenge of any information on the CDCR Form 839.

(3) An effort shall be made to obtain verifiable documentation of all items on the CDCR Form 839. The probation officer's report (POR) shall be the document of choice to resolve any conflicting information received. Credit shall be given only upon verifiable documentation and shall not be given based solely on an inmate's statements.

(4) A corrected CDCR Form 839 shall be initiated when the inmate or another party presents verifiable documentation to support the change. When the change results in a placement score which falls into the range for a different facility security level, the inmate's case shall be referred to a CSR for transfer consideration.

(k) A CDCR Form 840 (Rev. 07/12), CDCR Reclassification Score Sheet shall be prepared pursuant to section 3375.4 as part of the regular, continuous classification process. If an inmate's recalculated placement score is not consistent with the institution/facility security level where the inmate is housed, the case shall be presented to a CSR for transfer consideration.

(1) A CDCR Form 840 shall be completed:

(A) Twelve months after the date that the inmate physically arrived in the reception center and annually thereafter.

(B) Any six-month period when favorable points are granted or unfavorable points are assessed which would cause the inmate's placement score to fall outside of the facility security level.

(C) Each time a case is presented to a CSR for placement consideration.

(2) A CDCR Form 841 (Rev. 07/12), CDCR Readmission Score Sheet, shall be completed pursuant to section 3375.5 as part of the readmission process when a parolee is returned to prison.

(*l*) An automated needs assessment tool that identifies an inmate's criminogenic needs shall be administered pursuant to Section 3375.6.

NOTE: Authority cited: Sections 5058 and 5058.3, Penal Code. Reference: Sections 1203.8, 3020, 5054, 5068 and 11191, Penal Code; Sections 8550 and 8567, Government Code; and Governor's Prison Overcrowding State of Emergency Proclamation dated October 4, 2006; *Wright* v. *Enomoto* (1976) 462 F.Supp. 397; *Stoneham* v. *Rushen* (1984) 156 Cal.App.3d 302; and *Castillo* v. *Alameida*, et al., (N.D. Cal., No. C94-2847).

HISTORY:

1. Amendment filed 1-4-88 as an emergency; operative 1-4-88 (Register 88, No. 16). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 5-3-88. For prior history, see Register 88, No. 8.
2. Certificate of Compliance as to 1-4-88 order transmitted to OAL 5-3-88; disapproved by OAL (Register 88, No. 24).
3. Amendment filed 6-2-88 as an emergency; operative 6-2-88 (Register 88, No. 24). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 9-30-88.
4. Amendment of subsection (b) filed 9-19-88 as an emergency; operative 9-19-88 (Register 88, No. 39). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 1-17-89.
5. Certificate of Compliance including amendment transmitted to OAL 9-26-88 and filed 10-26-88 (Register 88, No. 50).
6. Certificate of Compliance as to 9-19-88 order transmitted to OAL 1-18-89 and filed 2-2-89 (Register 89, No. 8).

7. Change without regulatory effect amending section filed 10-22-90 pursuant to section 100, title 1, California Code of Regulations (Register 91, No. 4).
8. Editorial correction of typing errors in subsections (b) and (g) (Register 91, No. 11).
9. Editorial correction of printing errors (Register 92, No. 5).
10. New subsection (f)(1)(F) filed 1-16-92; operative 2-17-92 (Register 92, No. 13).
11. Amendment of subsection (c) filed 5-5-95; operative 6-5-95 (Register 95, No. 18).
12. Amendment filed 10-17-97; operative 11-16-97 (Register 97, No. 42).
13. Amendment of section and Note filed 8-27-2002 as an emergency; operative 8-27-2002 (Register 2002, No. 35). Pursuant to Penal Code section 5058.3 a Certificate of Compliance must be transmitted to OAL by 2-4-2003 or emergency language will be repealed by operation of law on the following day.
14. Certificate of Compliance as to 8-27-2002 order, including further amendment of section, transmitted to OAL 1-21-2003 and filed 3-6-2003 (Register 2003, No. 10).
15. Amendment of subsection (h) and Note filed 5-25-2006; operative 5-25-2006 pursuant to Government Code section 11343.4 (Register 2006, No. 21).
16. Change without regulatory effect amending Note filed 12-4-2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 49).
17. New subsections (g)(6)–(g)(6)(B) and amendment of Note filed 10-30-2008 as an emergency; operative 10-30-2008 (Register 2008, No. 44). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 4-8-2009 or emergency language will be repealed by operation of law on the following day.
18. Amendment of subsection (a) and Note filed 2-5-2009 as an emergency; operative 2-5-2009 (Register 2009, No. 6). This filing contains a certification that the operational needs of the Department required filing of these regulations on an emergency basis and were deemed an emergency pursuant to Penal Code section 5058.3. A Certificate of Compliance must be transmitted to OAL by 7-15-2009 or emergency language will be repealed by operation of law on the following day.
19. Certificate of Compliance as to 10-30-2008 order transmitted to OAL 4-1-2009 and filed 5-12-2009 (Register 2009, No. 20).
20. Certificate of Compliance as to 2-5-2009 order transmitted to OAL 6-25-2009 and filed 7-28-2009 (Register 2009, No. 31).
21. New subsection (l) and amendment of Note filed 5-10-2012 as an emergency; operative 5-10-2012 (Register 2012, No. 19). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 10-17-2012 or emergency language will be repealed by operation of law on the following day.
22. Amendment of subsections (a)–(c), (g)(1), (g)(2)(C), (g)(3), (g)(5)(A)–(B), (g)(5)(D), (g)(5)(F), (g)(5)(L), (g)(5)(N), (h)–(k)(1) and (k)(2) and new subsection (g)(5)(S) filed 6-26-2012 as an emergency; operative 7-1-2012 (Register 2012, No. 26). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 12-10-2012 or emergency language will be repealed by operation of law on the following day.
23. New subsection (*l*) and amendment of Note refiled 10-17-2012 as an emergency; operative 10-17-2012 (Register 2012, No. 42). A Certificate of Compliance must be transmitted to OAL by 1-15-2013 or emergency language will be repealed by operation of law on the following day.
24. Editorial correction of History 23 providing corrected Certificate of Compliance date (Register 2012, No. 44).
25. Certificate of Compliance as to 6-26-2012 order transmitted to OAL 12-5-2012 and filed 1-17-2013 (Register 2013, No. 3).
26. Certificate of Compliance as to 10-17-2012 order transmitted to OAL 1-15-2013 and filed 2-25-2013 (Register 2013, No. 9).
27. Amendment of subsections (g) and (g)(5)(P) filed 10-17-2014; operative 10-17-2014 pursuant to Government Code section 11343.4(b)(3) (Register 2014, No. 42).

3375.1. Inmate Placement.

(a) Except as provided in section 3375.2, each inmate shall be assigned to a facility with a security level which corresponds to the following placement score ranges:

(1) An inmate with a placement score of 0 through 18 shall be placed in a Level I facility.

(2) An inmate with a placement score of 19 through 35 shall be placed in a Level II facility.

(3) An inmate with a placement score of 36 through 59 shall be placed in a Level III facility.

(4) An inmate with a placement score of 60 and above shall be placed in a Level IV facility.

(A) Level IV facilities, as described in section 3377(d), include 180-design and 270-design housing. An inmate with a Level IV placement score may be housed in a Level IV 180-design facility in accordance with the following criteria:

1. Inmates who have an assessed and imposed, suspended, and/or commuted determinate Security Housing Unit (SHU) term for a Division A-1, A-2, or B offense, which involves assaultive/violent behavior, weapons, or distribution of a controlled substance, pursuant to section 3323, within the last three incarcerated years, shall be excluded from Level IV 270-design housing for three years from the Minimum Eligible Release Date (MERD) or the date of the Institution Classification Committee (ICC) action suspending and/or commuting the SHU term, whichever comes first. If the inmate was not placed into Administrative Segregation Unit (ASU) for the offense, the inmate is not excluded from 270-design housing.

2. Inmates found guilty of any of the following Rules Violation Reports (RVRs) within the last a twelve months of incarceration shall be excluded from Level IV 270-design housing for one year from the MERD or the date of the ICC action suspending and/or commuting the SHU term for the most current offense, whichever occurs first. If the inmate was not placed into ASU for the offense, the inmate is not excluded from 270-design housing.

(i) One RVR for Inciting a Riot.

(ii) One RVR for Participation in a Riot with a direct Security Threat Group (STG) nexus.

(iii) Two or more RVR's for Participation in a Riot.

(iv) One RVR for Assault on Non-Inmate.

(v) One RVR for Battery on an Inmate with a direct STG nexus.

(vi) Two or more RVRs for Battery on an Inmate.

3. Inmates released from SHU or a Psychiatric Services Unit (PSU) after serving an Administrative SHU Term shall be reviewed by ICC for 180-design or 270-design housing. Inmates excluded from Level IV 270-design housing shall be excluded for two years from the date of the ICC action.

4. If during Reception Center processing, and inmate is deemed a security concern and is potentially an ongoing threat to institutional safety and security, warranting more direct and constant supervision, the inmate shall be excluded from Level IV 270-design housing for one year from the date of the Classification Staff Representative endorsement.

5. Inmates excluded from Level IV 270-design housing but requiring exceptional placement may be housed in a Level IV 270-design facility. Exceptional placements, for purposes of this subsection, are inmates who are in medical or mental health treatment programs, such as a developmental disability, Americans with Disabilities Act mobility impairment that impacts placement, or in need of specific medical programs which may not be available in Level IV 180-design facilities.

(B) The ICC may temporarily exclude an inmate from Level IV 270-design housing pending adjudication of an RVR listed in subsections 3375.1(a)(4)(A) 1 through 2.

(C) Decisions for placement of inmates into a 180-design or 270-design housing shall be documented pursuant to section 3375(g). Level IV 270-design placement eligibility/exclusion and the reason(s) for such placement shall be clearly articulated. The documentation shall also address the rationale and justification for placement of an inmate in a lesser or more restrictive environment than otherwise consistent with the inmate's case factors.

(D) The ICC may override placement of an inmate into 180-design or 270-design housing based upon: Department and institution's/facility's program security mission; public safety; and the inmate's needs and behavior.

(b) An inmate approved for transfer to a subfacility of a complex may be received and processed through a facility with a security level higher than that which is consistent with the inmate's placement score. Such cases shall be transferred to the subfacility when bed space allows or, when appropriate, recommended for an administrative determinant which prohibits movement to the lower security level facility.

(1) The case shall be presented to a classification staff representative (CSR) for evaluation within 30 days of receipt at the facility unless the inmate is on an approved waiting list maintained by the complex for placement of inmates at the approved subfacility.

(2) The transfer of an inmate for more than 30 days from one subfacility of a complex to another subfacility which has a different security level, shall require a CSR endorsement. When the subfacility's security level is consistent with the inmate's placement score, the classification and parole representative (C&PR) may act as a CSR.

NOTE: Authority cited: Sections 5058 and 5058.3, Penal Code. Reference: Sections 3020, 5054 and 5068, Penal Code; *Wright* v. *Enomoto* (1976) 462 F Supp. 397; and *Stoneham* v. *Rushen* (1984) 156 Cal. App. 3d 302.

HISTORY:

1. Renumbering and amendment of section 3375(h) to section 3375.1 filed 8-7-87 as an emergency; operative 8-7-87 (Register 87, No. 34). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 12-7-87.
2. Certificate of Compliance as to 8-7-87 order transmitted to OAL 12-4-87; disapproved by OAL (Register 88, No. 16).
3. Renumbering and amendment of section 3375(h) to section 3375.1 filed 1-4-88 as an emergency; operative 1-4-88 (Register 88, No. 16). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 5-3-88.
4. Certificate of Compliance as to 1-4-88 order transmitted to OAL 5-3-88; disapproved by OAL (Register 88, No. 24).
5. Renumbering and amendment of section 3375(h) to section 3375.1 filed 6-2-88 as an emergency; operative 6-2-88 (Register 88, No. 24). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 9-30-88.
6. Certificate of Compliance transmitted to OAL 9-26-88 and filed 10-26-88 (Register 88, No. 50).
7. Change without regulatory effect pursuant to section 100, title 1, California Code of Regulations adopting sections 3375.1, 3375.2, 3375.3, 3375.4, amending sections 3375, 3376, 3377, 3377.1 and repealing section 3375.1, filed 10-22-90; operative 11-29-90 (Register 91, No. 4).
8. Editorial correction of printing error inadvertently omitting text in subsection (a) (Register 91, No. 11).
9. Editorial correction of printing errors in subsections (a) and (b)(2) and Note (Register 92, No. 5).
10. Amendment of section and Note filed 8-27-2002 as an emergency; operative 8-27-2002 (Register 2002, No. 35). Pursuant to Penal Code section 5058.3 a Certificate of Compliance must be transmitted to OAL by 2-4-2003 or emergency language will be repealed by operation of law on the following day.
11. Certificate of Compliance as to 8-27-2002 order transmitted to OAL 1-21-2003 and filed 3-6-2003 (Register 2003, No. 10).
12. Amendment of subsections (a)(1)–(4) and (b)(1)–(2) and Note filed 6-26-2012 as an emergency; operative 7-1-2012 (Register 2012, No. 26). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 12-10-2012 or emergency language will be repealed by operation of law on the following day.
13. Certificate of Compliance as to 6-26-2012 order transmitted to OAL 12-5-2012 and filed 1-17-2013 (Register 2013, No. 3).
14. New subsections (a)(4)(A)–(D) filed 9-15-2015 as an emergency; operative 9-15-2015 (Register 2015, No. 38). This regulatory action was deemed an emergency pursuant to section 5058.3 of the Penal Code and remains in effect for 160 days. A Certificate of Compliance must be transmitted to OAL by 2-22-2016 or emergency language will be repealed by operation of law on the following day.
15. New subsections (a)(4)(A)–(D) refiled 2-18-2016 as an emergency; operative 2-18-2016 (Register 2016, No. 8). This regulatory action was deemed an emergency pursuant to section 5058.3 of the Penal Code and remains in effect for 160 days. A Certificate of Compliance must be transmitted to OAL by 7-27-2016 or emergency language will be repealed by operation of law on the following day.
16. Certificate of Compliance as to 2-18-2016 order, including further amendment of subsections (a)(4)(A)–(D), transmitted to OAL 7-13-2016 and filed 8-11-2016; amendments effective 8-11-2016 pursuant to Government Code section 11343.4(b)(3) (Register 2016, No. 33).

3375.2. Administrative Determinants.

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

(1) An inmate requires an outpatient or higher degree of medical or psychiatric care at a facility specifically staffed for the type of treatment necessary.

(2) An inmate with a history of sex crimes designated in section 3377.1(b) shall be housed in accordance with their placement score and shall not be assigned outside the security perimeter.

(3) An inmate with a history of arson shall not be housed in a facility constructed primarily of wood.

(4) An inmate with a felony hold, warrant, detainer, or the equivalent thereof filed with the Department who is likely to receive a significant period of consecutive incarceration or be deported shall not be housed in a Level I facility without perimeter gun towers.

(5) An inmate requires confidential placement in another correctional jurisdiction.

(6) An inmate serving a sentence of life without possibility of parole (LWOP) shall not be housed in a facility with a security level lower than Level III, except when authorized by the Departmental Review Board (DRB). When a Level III male inmate serving a sentence of LWOP is housed in a Level III institution, he shall be housed in a 270o-design facility (i.e., a facility allowing for a 270o field of view for control booth staff). Inmates serving LWOP in need of urgent or emergent medical or psychiatric care may be transferred to a celled in-patient medical or mental health bed pending DRB approval. The DRB shall review the case within 30 days of the transfer.

(7) An inmate identified as a serial killer shall be excluded from Level I or Level II placement even if his or her convictions for murders are prosecuted separately.

(8) An inmate serving a life term shall not be housed in a Level I facility nor assigned to a program outside a security perimeter. Exceptions may only occur when Board of Parole Hearings (BPH) grants parole, the release date is within 3 years, and the Governor's Office has completed its review and either formally approved

parole or taken no action. When all three conditions are met and the inmate is otherwise eligible for a custody reduction, the inmate shall be evaluated by an ICC for the custody reduction.

(9) An inmate serving a life term whose placement score is not consistent with a Level I or II security level shall not be housed in a Level I or Level II facility except when approved by the Departmental Review Board.

(10) An inmate whose death sentence is commuted or modified shall be transferred to a reception center for processing after which the Departmental Review Board shall determine the inmate's initial facility placement.

(11) An inmate with a case factor described in sections 3377.2(b)(2)(A), 3377.2(b)(2)(B) or 3377.2(b)(2)(C), shall be ineligible for minimum custody. An inmate with a history of one or more walkaways from nonsecure settings, not to include Drug Treatment Furlough and Community Correctional Reentry Centers, shall not be placed in minimum custody settings for at least 10 years following the latest walkaway.

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

(1) AGE. Inmate's youthfulness, immaturity or advanced age.

(2) ARS. Current conviction, prior conviction, or a sustained juvenile adjudication, as defined in subdivision (b)(26)(A), for arson.

(3) BEH. Inmate's record of behavior indicates they are capable of successful placement at a facility with a security level lower than that which is consistent with his/her placement score. This factor shall not be used for an inmate who is currently housed at a facility with a security level higher than that which is consistent with his/her placement score.

(4) CAM. Placement is recommended due to a shortage of camp qualified inmates.

(5) DEA. Inmate was formerly or is currently sentenced to death.

(6) DEP. Special placement ordered by the Departmental Review Board.

(7) DIS. Inmate's disciplinary record indicates a history of serious problems or threatens the security of the facility.

(8) ENE. Inmate has one or more enemies under the Department's jurisdiction which have been documented on a CDC Form 812 (Rev. 8/01), Notice of Critical Case Information -Safety of Persons or on a CDC Form 812-C (Rev. 8/01), Notice of Critical Information -Confidential Enemies pursuant to section 3378. This should also be used when it is probable that the inmate may be victimized due to case factors; e.g., the nature of their offense is likely to create an enemy situation at certain facilities, current Protective Housing Unit case, and those who are natural victims because of their appearance.

(9) ESC. Unusual circumstances suggest the inmate is a much greater escape risk than indicated by his/her placement score; e.g., the inmate verbalized an intent to escape.

(10) FAM. Inmate has strong family ties to a particular area where other placement would cause an unusual hardship.

(11) INA. Documentation establishes that the inmate's inactive STG status may require special attention or placement consideration.

(12) IMO. Inactive-Monitored. Documentation establishes that the inmate was released from SHU concurrent with implementation of the STG SDP through a Departmental Review Board hearing and requires special attention or placement considerations.

(13) HOL. Hold, warrant or detainer is likely to be exercised.

(14) LIF. Inmate is serving a life sentence and requires placement in a facility with a security level higher than that indicated by his/her placement score.

(15) MED. Inmate's medical condition requires treatment or continuing medical attention not available at all facilities.

(16) MON. Monitored. Documentation establishes that the offender's monitored status reflects completion of the STG SDP and requires special attention or placement considerations.

(17) OUT. Inmate requires placement at a specific facility for an out-to-court appearance. This factor shall also be used when a releasing authority appearance is nearing.

(18) POP. Shall be used only by a CSR to indicate that no beds presently exist at a facility with a security level that is consistent with the inmate's placement score.

(19) PRE. The short time remaining to serve limits or otherwise influences placement or program options for the inmate.

(20) PSY. Inmate's psychological condition requires special treatment or may severely limit placement options. This factor shall also be used for those inmates who are designated as Category B.

(21) PUB. Shall be used only by a CSR to indicate an inmate is identified as a Public Interest Case as defined in section 3000.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

HISTORY:

1. Change without regulatory effect adding section filed 10-22-90 pursuant to section 100, title 1, California Code of Regulations (Register 91, No. 4).
2. Editorial correction of printing error inadvertently omitting text in subsection (a)(6) (Register 91, No. 11).
3. Editorial correction of printing errors (Register 92, No. 5).
4. Repealer of subsection (a)(7) and amendment of subsection (a)(8) filed 1-16-92; operative 2-17-92 (Register 92, No. 13).
5. Amendment of subsection (b)(8) filed 6-17-94; operative 7-18-94 (Register 94, No. 24).
6. Repealer of subsections (b)(13), (b)(16) and (b)(22), subsection renumbering, amendment of newly designated subsection (b)(21), and new subsections (b)(22) and (b)(24) filed 9-5-95 as an emergency; operative 9-5-95 (Register 95, No. 36). A Certificate of Compliance must be transmitted to OAL by 2-12-96 (pursuant to Penal Code section 5058(e)) or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 9-5-95 order, including amendment of subsection (b)(24), transmitted to OAL 1-8-96 and filed 2-15-96 (Register 96, No. 7).
8. New subsection (b)(12), subsection renumbering, and amendment of Note filed 8-30-99 as an emergency; operative 8-30-99 (Register 99, No. 36). Pursuant to Penal Code section 5058(e), a Certificate of Compliance must be transmitted to OAL by 2-8-2000 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 8-30-99 order transmitted to OAL 2-7-2000 and filed 3-21-2000 (Register 2000, No. 12).
10. Change without regulatory effect amending subsection (b)(8) filed 10-23-2001 pursuant to section 100, title 1, California Code of Regulations (Register 2001, No. 43).
11. Amendment of subsections (b)(2) and (b)(25) and new subsections (b)(25)(A)–(C) filed 3-7-2002; operative 4-6-2002 (Register 2002, No. 10).
12. Amendment of section and Note filed 8-27-2002 as an emergency; operative 8-27-2002 (Register 2002, No. 35). Pursuant to Penal Code section 5058.3 a Certificate of Compliance must be transmitted to OAL by 2-4-2003 or emergency language will be repealed by operation of law on the following day.
13. Certificate of Compliance as to 8-27-2002 order transmitted to OAL 1-21-2003 and filed 3-6-2003 (Register 2003, No. 10).
14. Amendment of subsection (a)(2) filed 11-3-2006; operative 12-3-2006 (Register 2006, No. 44).
15. Amendment of subsection (a)(6) filed 11-14-2011 as an emergency; operative 11-14-2011 (Register 2011, No. 46). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 4-23-2012 or emergency language will be repealed by operation of law on the following day.
16. Certificate of Compliance as to 11-14-2011 order transmitted to OAL 2-29-2012 and filed 4-5-2012 (Register 2012, No. 14).
17. Amendment of subsections (a)(5)–(6), repealer and new subsection (a)(7), repealer of subsections (a)(7)(A)–(B), amendment of subsection (a)(8), new subsection (a)(11), amendment of subsections (b), (b)(2), (b)(8) and (b)(20), new subsection (b)(22), subsection renumbering and amendment of newly designated subsections (b)(26)(B)1.-(b)(26)(C) and Note filed 6-26-2012 as an emergency; operative 7-1-2012 (Register 2012, No. 26). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 12-10-2012 or emergency language will be repealed by operation of law on the following day.
18. Certificate of Compliance as to 6-26-2012 order transmitted to OAL 12-5-2012 and filed 1-17-2013 (Register 2013, No. 3).
19. Amendment of subsection (b)(18), new subsection (b)(21), subsection renumbering and amendment of newly designated subsection (b)(28) filed 10-29-2013 as an emergency; operative 10-29-2013 (Register 2013, No. 44). A Certificate of Compliance must be transmitted to OAL by 4-7-2014 or emergency language will be repealed by operation of law on the following day.
20. Certificate of Compliance as to 10-29-2013 order transmitted to OAL 4-4-2014 and filed 5-14-2014 (Register 2014, No. 20).
21. Amendment filed 10-17-2014; operative 10-17-2014 pursuant to Government Code section 11343.4(b)(3) (Register 2014, No. 42).

3375.3. CDCR Classification Score Sheet, CDCR Form 839, Calculation.

This section incorporates by reference CDCR Form 839 (Rev. 07/12), Classification Score Sheet.

The factors and related numerical weights used to determine an inmate's preliminary score are listed below. Box numbers appear to the right, but refer to the first box on the left of each field.

(a) Background factors (Boxes 30–46):

(1) Age at first arrest (Boxes 30–31).

(A) Calculate the inmate's age at first arrest based on the date of the inmate's first arrest. If there is no record of arrests prior to the commitment offense, use the date of arrest for the commitment offense as the date of the inmate's first arrest on CDCR Form 839 (Rev. 07/12), CDCR Classification Score Sheet.

(B) When the age of first arrest is determined, round down to the full year and apply that information to the Age at First Arrest matrix on CDCR Form 839.

(C) Enter the corresponding point value in boxes to the right.

(D) Enter all single digit numbers in the box to the far right.

(2) Age at Reception (Box 32).

(A) When the inmate's age at reception is determined, round down to the full year and apply that information to the Age at Reception matrix.

(B) Enter the corresponding point value in the box to the right.

(C) This is always a single digit value.

(3) Term points (term in years x 2) (Boxes 33–34):

(A) Presentence and postsentence credits shall not be subtracted from length of term. A sentence of death or life without possibility of parole shall result in a maximum score of 50. For sentences of 25 years-to-life for murder, the base term is 25 years. For sentences under Penal Code section 667.7 with a term of life without parole for 20 years, the base term is 20 years. For all other life sentences, the base term is 15 years. Any enhancements or determinate terms for other counts or offenses to be served consecutive to a life term shall be added to the base term before calculation of the term score.

(B) Enter term in whole years within the parentheses.

1. Multiply the number of years by two (2).
2. Enter this value in Boxes 33–34.
3. Any single digit value is entered in the box to the far right.
4. If the score is more than 50, then 50 shall be used as the final term score.

(C) If, subsequent to endorsement of the CDCR Form 839, the inmate receives a new term, record the change in term points, if any, on a CDCR Form 840 (Rev. 07/12), Reclassification Score Sheet, as a result of this new term. Do not correct the CDCR Form 839.

(4) Street gang/disruptive group (Boxes 35-38). For the purpose of preliminary score evaluation, if there is information that the inmate is or has been involved in gang activity, enter 6 points in Box 35.

(A) Type of street gang/disruptive group code. Apply the code that most closely identifies the inmate's gang. Enter the appropriate alpha code in Boxes 36–37.

1. CR Crip street gang/disruptive group.
2. BL Blood street gang/disruptive group.
3. NH Northern Hispanic street gang/disruptive group.

4. SH Southern Hispanic street gang/disruptive group.
5. AS Asian street gang/disruptive group.
6. BD Bulldogs street gang/disruptive group.
7. WH White supremacists, neo nazi, skinheads, etc., street gang/disruptive group.
8. BK Black street gang/disruptive group (not Crip nor Blood).
9. MC outlaw motorcycle clubs street gang/disruptive group.
10. OT other street gang/disruptive group not listed.

(B) Method of verification code (Box 38). Apply the code that is most indicative of STG activity. Enter the appropriate alpha code in Box 38:

1. Code A—Self admission. Staff shall document information about the inmate/parolee's self-admission and specific involvement with the STG/street gang. Staff shall document and disclose this information to the inmate/parolee in a written form that would not jeopardize the safety of any person or the security of the institution.

2. Code B—Tattoos and symbols. Body markings, hand signs, distinctive clothing, graffiti, etc., which have been certified by CDCR pursuant to Section 3378.1, as being used by and distinctive to specific STGs/street gangs. Staff shall describe the tattoo or symbol in detail. Staff shall document and disclose this information to the inmate/parolee in a written form that would not jeopardize the safety of any person or the security of the institution.

3. Code C—Written material. Any material or documents evidencing STG activity such as the membership or enemy lists, roll call lists, constitutions, organization structures, codes, training material, etc., of specific STGs. Staff shall document and disclose this information to the inmate/parolee in a written form that would not jeopardize the safety of any person or the security of the institution.

4. Code D—Photographs. Individual or group photographs with STG connotations such as those which include insignia, certified symbols, or validated STG affiliates. The date of the photograph shall be reasonably ascertained to be no older than four (4) years in order to be considered for a method of verification code. Any photograph being utilized as a source item that depicts STG affiliates shall be required to have at least one of the individuals previously validated by the department, or be validated by the department within six (6) months of the photograph's established or estimated date of origin. Staff shall document and disclose this information to the inmate/parolee in a written form that would not jeopardize the safety of any person or the security of the institution.

5. Code E—Staff information. Documentation of staff's visual or audible observations which reasonably indicate STG activity as described in Subsections 3314(a)(3)(L) and (M), Administrative Rules Violations, STG Contraband and Behavior; or Subsections 3315(a)(3)(Z) and (AA), Serious Rules Violations, STG Violent, Disruptive, or Controlling Behavior. Staff shall document and disclose this information to the inmate/parolee in a written form that would not jeopardize the safety of any person or the security of the institution.

6. Code F—Other agencies. Information evidencing STG affiliation provided by other agencies including, but not limited to, police reports, crime reports, or arrest reports evidencing STG conduct, which have not been submitted, considered, and incorporated within received court documents. Any information from another agency shall be documented by the staff person who receives such information, citing the source and validity of the information. Staff shall document and disclose this information to the inmate/parolee in a written form that would not jeopardize the safety of any person or the security of the institution.

7. Code G—Association. Information related to the inmate's association with validated STG affiliates. The association shall be more than a chance encounter or an innocuous association, but rather, a pattern or history of encounters that involve STG behavior and/or an occurrence of conducting STG related business. Direct contact with a validated STG affiliate is not necessary to show this association. Staff shall document and disclose this information to the inmate/parolee in a written form that would not jeopardize the safety of any person or the security of the institution.

8. Code H—Offenses. Where the circumstances of an offense indicates that the offense was committed for the benefit or promotion of, at the direction of, or in association with an STG. Staff shall document and disclose this information to the inmate/parolee in written form that would not jeopardize the safety of any person or the security of the institution.

9. Code I—Legal documents. Probation officer's report, court transcripts, or other legal documents evidencing STG activity. Staff shall assure the document containing this information is disclosed to the inmate/parolee in written form that would not jeopardize the safety of any person or the security of the institution.

10. Code J—Communications. Documentation of conversations, conversations between offenders/others, mail, greeting cards, notes, or other communication, which include coded or explicit messages evidencing STG activity. Staff shall document and disclose this information to the inmate/parolee in a written form that would not jeopardize the safety of any person or the security of the institution.

(5) Mental Illness (Box 43). Do not make an entry in Box 43 during intake processing. This box is only used during the CDCR 839 correction process to remove previously-assessed Mental Illness points.

(6) Prior sentences (Box 44). This item requires a review of the probation officer's report (POR) and the CI&I/CLETS in order to identify prior sentences of 31 days or more. Apply no more than one point.

(A) Jail or county juvenile sentence of 31+ days (Box 44).

1. Count any sentence of 31 days or more. Do not include suspended sentences or sentences for violations of Post-Release Community Supervision or parole.

2. Count any incarceration under a delinquency petition which involves a crime rather than "status offender" placements. For example, "beyond parental control" should not be counted. Burglary, however, would be counted.

3. Count CDCR placements for diagnostic evaluation pursuant to Penal Code Section 1203.03 "Z" cases, followed by a grant of probation.

(7) Prior Incarceration(s) (Boxes 45–46).

(A) Division of Juvenile Justice (formerly California Youth Authority), state or federal level juvenile, which includes state or federal facilities for juvenile offenders (Box 45).

(B) CDCR, California Rehabilitation Center, adult state, federal level (Box 46):

1. Count any state or federal level incarceration.

2. Count previous commitments to the civil addict program.

(8) Correction to CDC 839 Score Sheet (Prior to Rev. 07/02) (Boxes 47–49).

1. Use this section to correct a CDC 839 score sheet with a form revision date prior to 07/02.

2. This area shall not be used for changes or adjustments to term points.

3. Enter only the total correction to the score, either negative or positive, in the boxes provided.

(b) Prior Incarceration Behavior (Boxes 50 through 64):

(1) Last 12 months of Incarceration (Boxes 50–52). Prior incarceration behavior in any correctional agency shall include the last 12 consecutive months in custody, prior to the date that the inmate was received in CDCR, going as far back as necessary to attain a total of 12 months. This includes behavior while in county jail, after conviction, or during transportation to the reception center. For example, behavior while incarcerated in juvenile hall, federal

prison, or while serving a civil addict commitment shall also be counted.

(2) Twelve months of incarceration is also defined as 360 days. For ease and consistency of rule application, a month is considered a 30-day month.

(A) Only misbehavior which is equivalent to a serious rule violation, as defined in section 3315, shall be recorded.

(B) If the inmate has a prior incarceration for 12 months or more but adequate documentation of the inmate's behavior is not available, four (4) favorable points shall be granted.

1. If behavioral information becomes available later, these items may need to be corrected.

(3) Favorable prior behavior (Box 50):

(A) If the inmate had no serious disciplinary(s) in the last 12 months of incarceration(s), four points shall be entered in Box 50.

(B) If there is no record of unfavorable prior behavior, enter four (4) favorable points in Box 50.

(4) Unfavorable prior behavior (Boxes 51–52).

(A) For each serious disciplinary in the last 12 months of incarceration(s), four points shall be entered in Boxes 51–52.

(B) Serious Disciplinary History (Boxes 53–64).

A single serious disciplinary may result in the assessment of points on the classification score sheet for more than one factor listed in subsections 3375.3(b)(4)(C) through (H). Assess points for behavior for which the inmate was found guilty and for behavior that occurred during any prior incarceration, if the behavior meets the definitions below even if it occurred beyond the last 12 months of incarceration.

(C) For each battery on a nonprisoner or attempted battery on a nonprisoner, eight points shall be entered in Boxes 53–54.

1. Battery shall include any offense described in section 3005(d).

(D) For each battery or attempted battery on an inmate, four points shall be entered in Boxes 55–56. Assessments shall only include situations where one or more inmates are clearly the victim.

(E) For each involvement in the distribution of any controlled substance, per subsection 3323(c)(6), into a jail or correctional facility for distribution and sales, four points shall be entered in Boxes 57–58. Points shall not be assessed for incidents of personal use or possession of a small quantity of drugs.

(F) For each possession of a deadly weapon:

1. Four points shall be entered in Boxes 59–60 for each well documented incident of an inmate's manufacture or possession of a deadly weapon where apparent use was intended (does not include possession of commonly available and unmodified objects unless used as a weapon and this fact is documented in the disciplinary hearing process). Include possession of a razor blade (whether modified or not) in a segregated program-housing unit (e.g. Administrative Segregation Unit, Security Housing Unit, Psychiatric Services Unit, etc.); or,

2. Eight points shall be entered in Boxes 59–60 for each possession of a deadly weapon incident, which occurred within five years of the inmate's reception to the Department on the current term.

(G) For each instance of a leadership role in deliberate and willful behavior which might lead to violence or disorder, and any willful attempt to incite others, either verbally or in writing, or by other deliberate action, to use force or violence upon another person, as described in section 3005 (this involves a leadership role in a facility riot, racial disturbance or work strike), four points shall be entered in Boxes 61–62.

(H) For each battery that caused serious bodily injury, 16 points shall be entered in Boxes 63–64. Inmates who conspired in or ordered the battery shall also receive these points.

1. Serious bodily injury is that which is defined in section 3000.

2. Any attempt, which may have been life-threatening but circumstances such as heavy clothing prevented the homicide, shall be included.

(c) Preliminary Score (Boxes 65–67).

(1) The inmate's preliminary score is entered in Boxes 65–67 and is the result of adding the total points derived from background factors in subsection (a) with the total points derived from prior incarceration behavior in subsection (b).

(2) Right-justify the total score.

(3) Computations which result in a minus value shall be entered as zero.

(d) Mandatory Minimum Score Factor Code and Mandatory Minimum Score (Boxes 68–70):

(1) A mandatory minimum score is a score that is applied to an inmate who has a case factor that requires that he/she be housed no lower than a specific security level.

(2) A mandatory minimum score factor is a case factor that requires the application of a mandatory minimum score.

(3) A mandatory minimum score factor code is a numeric code associated with a mandatory minimum score factor.

(A) If an inmate has a case factor that requires the application of a mandatory minimum score factor code, enter the code that applies in Box 68.

(B) If one or more mandatory minimum score factors are present, determine which of the factors is associated with the highest score and enter that code in Box 68.

(C) Enter the mandatory minimum score that corresponds to the selected code in Boxes 69–70.

(e) Placement Score (Boxes 71–73).

(1) If there are no case factors that require a mandatory minimum score, enter the preliminary score as the placement score.

(2) If a mandatory minimum score has been applied, and it is greater than the preliminary score, enter the mandatory minimum score as the placement score.

(3) If a mandatory minimum score has been applied, and it is less than the preliminary score, enter the preliminary score as the placement score.

(f) Special Case Factors (Boxes 74–76).

(1) In Box 74, enter "A" if the inmate has an active felony hold, warrant, or detainer. Enter "P" if the inmate has a potential felony hold, warrant, or detainer. If the inmate has both an active and a potential felony hold, warrant, or detainer, enter "A".

(2) In Box 75, enter "A" if the inmate has an active United States Immigration and Customs Enforcement (USICE) detainer. Enter "P" if the inmate has a potential USICE detainer.

(3) In Box 76, enter "R" if the inmate meets the criteria for an "R" suffix per section 3377.1(b).

(g) Classification Staff Representative Action (Boxes 95–159):

(1) The CSR determines appropriate housing in keeping with Departmental needs, safety and security, the inmate's placement score and administrative determinants. The three-letter codes from section 3375.2 shall be used to indicate the administrative determinants.

(A) Up to five administrative determinants may be entered in Boxes 134–148.

1. Reason for any administrative or irregular placement (Boxes 157–159).

2. Entered only if the facility's security level where the inmate is placed is not consistent with his/her placement score.

(B) Enter one of the administrative determinant's three-letter code from section 3375.2.

(2) CSR approval of an administrative or irregular placement (administrative determinant) is valid only as long as the inmate's placement score remains within the same facility security level as when the approval was given.

NOTE: Authority cited: Sections 5058 and 5058.3, Penal Code. Reference: Sections 3540, 5054 and 5068, Penal Code; *Wright* v. *Enomoto* (1976) 462 F Supp. 397; *Stoneham* v. *Rushen* (1984) 156 Cal. App. 3d 302; and *Castillo* v. *Alameida*, et al. (N.D. Cal., No. C94-2847).

HISTORY:

1. Change without regulatory effect adding section filed 10-22-90 pursuant to section 100, title 1, California Code of Regulations (Register 91, No. 4).
2. Editorial correction of printing errors (Register 91, No. 11).
3. Editorial correction of printing errors (Register 92, No. 5).
4. Change without regulatory effect amending subsection (b)(2)(H)3. and subsection renumbering filed 12-15-95 pursuant to section 100, title 1, California Code of Regulations (Register 95, No. 50).
5. Amendment of section and Note and new form CDC 839 filed 8-27-2002 as an emergency; operative 8-27-2002 (Register 2002, No. 35). Pursuant to Penal Code section 5058.3 a Certificate of Compliance must be transmitted to OAL by 2-4-2003 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 8-27-2002 order, including further amendment of section and repealer and new form CDC 839, transmitted to OAL 1-21-2003 and filed 3-6-2003 (Register 2003, No. 10).
7. Amendment of subsections (a)(4)(B)1.-10. and Note filed 5-25-2006; operative 5-25-2006 pursuant to Government Code section 11343.4 (Register 2006, No. 21).
8. Amendment of section heading, section and Note and incorporation by reference of CDCR Form 839 filed 6-26-2012 as an emergency; operative 7-1-2012 (Register 2012, No. 26). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 12-10-2012 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 6-26-2012 order transmitted to OAL 12-5-2012 and filed 1-17-2013 (Register 2013, No. 3).
10. Amendment of subsections (a)(4)(B)1.-10. filed 10-17-2014; operative 10-17-2014 pursuant to Government Code section 11343.4(b)(3) (Register 2014, No. 42).

3375.4. CDCR Reclassification Score Sheet, CDCR Form 840, Calculation.

This section incorporates by reference CDCR Form 840 (Rev. 07/12), Reclassification Score Sheet.

The factors and their related numerical weights used to recalculate an inmate's preliminary score or new preliminary score are listed below. Box numbers appear to the right but refer to the first box on the left of each field.

(a) Favorable behavior since last review (Boxes 46–51). The categories below provide favorable points for six-month intervals. For an annual reclassification review, two six-month periods may be counted. When an inmate's status is interrupted during the period without inmate fault, the period shall be considered continuous.

(1) For each six-month period of continuous minimum custody, four points shall be entered in Boxes 46–47.

(2) For each six-month period since the last review with no serious disciplinary(s), two points shall be entered in Boxes 48–49.

(3) For each six-month period with an average or above performance in work, school, Career Technical Education, substance abuse treatment or Cognitive Behavioral Treatment programs, including Transitions program, two points shall be entered in Boxes 50–51.

(A) Part-time assignments which, when work/program hours are added together, are equivalent to a full-time assignment shall be combined.

(B) Favorable points shall not be granted for average or above performance for inmates who are not assigned to a program.

(b) Unfavorable behavior since last review (Boxes 52–69):

(1) For each serious misbehavior for which the inmate was found guilty during any six-month review period, apply eight points for a Division A-1 or A-2 offense; apply six points for a Division B, Division C, or Division D offense; apply four points for a Division E or Division F offense. Only misbehavior which is equivalent to a serious rule violation as defined in section 3315 shall be recorded in Boxes 52–57. This includes behavior while in the county jail or conduct that occurred while the inmate was housed in another state or federal jurisdiction.

(A) Do not include any administrative rule violations.

(B) When the serious misbehavior also includes other factors listed in subsections (2) through (7) below, assess additional points for each applicable factor.

(2) For each battery on a nonprisoner or attempted battery on a nonprisoner during any six-month review period, eight points shall be entered in Boxes 58–59.

(A) Battery means any offense as described in section 3005(d) where criminal prosecution had, or would normally have, taken place.

(3) For each battery on an inmate or attempted battery on an inmate during any six-month review period, four points shall be entered in Boxes 60–61.

(A) Refers to situations where one or more inmates are clearly the victim.

(B) Do not include mutual combat where both inmates were co-responsible.

(4) For each incident involving the distribution of any controlled substance, per subsection 3323(c)(6), in an institution/facility or contract health facility, for distribution and sales, four points shall be entered in Boxes 62–63. Points shall not be assessed for personal use or possession of a small quantity of drugs, or being under the influence.

(5) For each well-documented serious misbehavior for possession of a deadly weapon where apparent use was intended, 16 points shall be entered in Boxes 64–65. Points shall not be assessed for possession of commonly available and unmodified objects, unless they were used as weapons and that fact is documented in the disciplinary report. Include possession of a razor blade (whether modified or not) in a segregated program-housing unit (e.g., Administrative Segregation Unit, Security Housing Unit, Psychiatric Services Unit, etc.).

(6) For each serious disciplinary where the inmate led a facility riot, racial disturbance or work strike, four points shall be entered in Boxes 66–67. Include any willful and deliberate behavior which may have led to violence or disorder, and any willful attempt to incite others, either verbally or in writing, or by other deliberate action, to use force or violence upon another person, of the type described in section 3005.

(7) For each battery that caused serious bodily injury, 16 points shall be entered in Boxes 68–69. Inmates who conspired in or ordered such battery shall receive the same points.

(A) Serious bodily injury is that which is defined in Section 3000.

(B) Any attempted battery which may have been life threatening but circumstances such as heavy clothing prevented the homicide shall be included.

(c) Correction to CDC 840 Reclassification Score Sheet (Prior to Rev. 07/02) (Boxes 70–72).

(1) Use this section to correct a CDC 840 Score Sheet with a form revision date prior to 07/02.

(2) Enter only the total correction to the score, either negative or positive, in boxes provided.

(d) Prior Preliminary Score (Boxes 73–75):

(1) The prior preliminary score is the calculated score that appears on the most current classification score sheet. Enter that value in Boxes 73–75.

(2) When the most current score appears on the CDC Classification Score Sheet, CDC Form 839, (Rev. 07/02) or later, enter the value from that score sheet that is the preliminary score.

(3) When the most current score appears on the CDC Reclassification Score Sheet, CDC Form 840, (Rev 07/02) or later, enter the value from that score sheet that is the new preliminary score.

(4) When the most current score appears on the CDC Readmission Score Sheet, CDC Form 841, (Rev. 07/02) or later, enter the value from that score sheet that is the new preliminary score.

(e) Net Change in Score (Boxes 76–78):

(1) Combine the total favorable points (item C.4.) with the total unfavorable points (item D.8). Enter the total as a plus or minus value for net change in score.

(f) Preliminary Score Subtotal:

(1) The prior preliminary score subtotal is the combined value of the prior preliminary score and the net change in score.

(2) Record this value on the line provided.

(3) Computations that result in a minus value shall be entered as zero.

(g) Change in term points (Boxes 79–81):

(1) When an inmate receives a new or additional sentence to prison which changes the total term length, two points shall be added or subtracted for each year of difference between the new term and the old term. The resultant plus or minus figure is the change in term points.

(2) When the Board of Parole Hearings establishes a parole date for an inmate with a life sentence:

(A) The total projected incarceration time in years and months is the term length.

(B) Multiply the total term length in years by two (2).

(C) Determine the difference between the new term points and the old term points. The resultant plus or minus figure is the change in term points.

(3) For parole violators: If a parole violator receives a new term after the CDCR Form 841 (Rev. 07/12) has been endorsed, the prior term points shall be given a minus value and combined with new term points. The difference is the change in term points.

(4) Do not record a change in term points unless there is a change in the total term.

(h) Recalculation of the New Preliminary Score:

(1) The inmate's new preliminary score is entered in Boxes 82–84 and is the result of combining the preliminary score subtotal and any adjustments resulting from a change in term points as determined in subsection (g).

(2) Right-justify the total.

(3) Computations that result in zero or a minus value shall be entered as zero.

(i) Mandatory Minimum Score Factor Code and Mandatory Minimum Score (Boxes 85–87):

(1) A mandatory minimum score is a score that is applied to an inmate who has a case factor that requires that he/she be housed no lower than a specific security level.

(2) A mandatory minimum score factor is a case factor that requires the application of a mandatory minimum score.

(3) A mandatory minimum score factor code is a numeric code associated with a mandatory minimum score factor.

(A) If an inmate has a case factor that requires the application of a mandatory minimum score factor code, enter the code that applies in Box 85.

(B) If one or more mandatory minimum score factors are present, determine which of the factors is associated with the highest score and enter that code in Box 85.

(C) Enter the mandatory minimum score that corresponds to the selected code in Boxes 86–87.

(j) Placement Score (Boxes 88–90).

(1) If there is no case factor requiring a mandatory minimum score, enter the new preliminary score as the placement score.

(2) If a mandatory minimum score is applied, and it is greater than the new preliminary score, enter the mandatory minimum score as the placement score.

(3) If a mandatory minimum score is applied, and it is less than the new preliminary score, enter the new preliminary score as the placement score.

(4) The placement score is the primary factor used to determine the security level to which the inmate is assigned.

(k) Special Case Factors (Boxes 91–93):

(1) In Box 91, enter "A" if the inmate has an active felony hold, warrant, or detainer. Enter "P" if the inmate has a potential felony hold, warrant, or detainer. If the inmate has both an active and a potential felony hold, warrant, or detainer, enter "A".

(2) In Box 92, enter "A" if the inmate has an active United States Immigration and Customs Enforcement (USICE) detainer. Enter "P" if the inmate has a potential USICE detainer.

(3) In Box 93, enter "R" if the inmate meets the criteria for an "R" suffix per section 3377.1(b).

(4) Enter "*" to remove a previous entry in Boxes 91–93 that no longer applies.

(*l*) Classification Staff Representative (Boxes 115–188):

(1) The CSR determines appropriate housing in keeping with Departmental needs, safety and security, the inmate's placement score and administrative determinants. The three-letter codes from section 3375.2 shall be used to indicate the administrative determinants.

(A) Up to five administrative determinants may be entered in Boxes 159–177.

1. An asterisk (*) shall be placed in the box adjacent to each administrative determinant which is being removed (i.e., no longer valid).

2. Reason for administrative or irregular placement (Boxes 186–188).

(B) Entered only if the facility's security level where the inmate is placed is not consistent with the inmate's placement score.

(C) Enter one of the administrative determinant's three-letter code from section 3375.2.

(2) CSR approval of an administrative or irregular placement is only valid as long as the inmate's placement score remains within the same facility security level score range as when the approval was given.

(m) An inmate whose CDCR term has been discharged due to the conviction being vacated on appeal who is then re-convicted and returned to CDCR custody for the same crime event shall be considered for a one-time point adjustment commensurate with the net change in points attributable to positive and/or negative behavior achieved during the original associated CDCR term.

NOTE: Authority cited: Sections 5058 and 5058.3, Penal Code. Reference: Sections 5054 and 5068, Penal Code; *Wright* v. *Enomoto* (1976) 462 F.Supp. 397 ; and *Stoneham* v. *Rushen* (1984) 156 Cal.App.3d 302.

HISTORY:

1. Change without regulatory effect adding section filed 10-22-90 pursuant to section 100, title 1, California Code of Regulations (Register 91, No. 4).
2. Editorial correction of printing errors (Register 91, No. 11).
3. Amendment of section and Note and new form CDC 840 filed 8-27-2002 as an emergency; operative 8-27-2002 (Register 2002, No. 35). Pursuant to Penal Code section 5058.3 a Certificate of Compliance must be transmitted to OAL by 2-4-2003 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 8-27-2002 order, including further amendment of section and repealer and new form CDC 840,

transmitted to OAL 1-21-2003 and filed 3-6-2003 (Register 2003, No. 10).

5. Amendment of section heading, section and Note and incorporation by reference of CDCR Form 840 filed 6-26-2012 as an emergency; operative 7-1-2012 (Register 2012, No. 26). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 12-10-2012 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 6-26-2012 order, including further amendment of subsection (m), transmitted to OAL 12-5-2012 and filed 1-17-2013 (Register 2013, No. 3).
7. Amendment of subsection (a)(3) filed 10-29-2013 as an emergency; operative 10-29-2013 (Register 2013, No. 44). A Certificate of Compliance must be transmitted to OAL by 4-7-2014 or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 10-29-2013 order, including amendment of subsection (a)(3), transmitted to OAL 4-4-2014 and filed 5-14-2014; amendments effective 5-14-2014 pursuant to Government Code section 11343.4(b)(3) (Register 2014, No. 20).

3375.5. CDCR Readmission Score Sheet, CDCR Form 841, Calculation.

This section incorporates by reference CDCR Form 841 (Rev. 07/12), Readmission Score Sheet.

The factors and their related numerical weights used to recalculate an inmate's preliminary score upon readmission to the Department are listed below. Box numbers appear to the right, but refer to the first box on the left of each field.

(a) Favorable behavior since last review (Boxes 48–53). The categories below provide favorable points for six-month intervals. When an inmate's status is interrupted during the period without inmate fault, the period shall be considered continuous.

(1) For each six-month period of continuous minimum custody, four points shall be entered in Boxes 48–49.

(2) Apply one-half favorable behavior points for less than a full six-month review period.

(3) Unfavorable behavior points shall be assessed at full value.

(B) For each six-month period since the last review with no serious disciplinary, two points shall be entered in Boxes 50–51.

(C) For each six-month period with an average or above performance in work, school Career Technical Education, substance abuse treatment or Cognitive Behavioral Treatment program, including Transitions program, two points shall be entered in Boxes 52–53.

1. Part-time assignments which, when work and program hours are added together, are equivalent to a full-time assignment shall be combined.

2. Favorable points shall not be granted for average or above performance for inmates who are not assigned to a program.

(b) Unfavorable behavior since last review (Boxes 54–71):

(1) For each serious misbehavior for which the inmate was found guilty during a six-month review period, apply eight points for a Division A-1 or A-2 offense; apply six points for a Division B, Division C, or Division D offense; apply four points for a Division E or Division F offense in Boxes 54–59. Only misbehavior that is equivalent to a serious rule violation as defined in section 3315 shall be recorded. This includes behavior while in the county jail or conduct that occurred while the inmate was housed in another state or federal jurisdiction.

(A) Do not include any administrative rule violations.

(B) When the serious misbehavior also includes other factors listed in subsection (2) through (7) below, assess additional points for each applicable factor.

(2) For each battery on a non-prisoner or attempted battery on a non-prisoner during any six-month review period, eight points shall be entered in Boxes 60–61.

(3) Battery means any offense as described in section 3005(d) where criminal prosecution had, or would normally have taken place.

(4) For each battery on an inmate or attempted battery on an inmate during any six-month review period, four points shall be entered in Boxes 62–63.

(A) Refers to situations where one or more inmates are clearly the victim.

(B) Do not include mutual combat where both inmates were co-responsible.

(5) For each incident involving the distribution of any controlled substance, per subsection 3323(c)(6), in an institution/facility or contract health facility, for distribution and sales, four points shall be entered in Boxes 64–65. Points shall not be assessed for personal use or possession of a small quantity of drugs, or being under the influence.

(6) For each well-documented serious disciplinary for possession of a deadly weapon where apparent use was intended, 16 points shall be entered in Boxes 66–67. Points shall not be assessed for possession of commonly available and unmodified objects, unless they were used as weapons and that fact is documented in the disciplinary report. Include possession of a razor blade (whether modified or not) in a segregated program-housing unit (e.g., Administrative Segregation Unit, Security Housing Unit, Psychiatric Services Unit, etc.).

(7) For each serious disciplinary where the inmate led a facility riot, racial disturbance or work strike, four points shall be entered in Boxes 68–69. Include any willful and deliberate behavior that may have led to violence or disorder, and any willful attempt to incite others, either verbally or in writing, or by other deliberate action, to use force or violence upon another person, of the type described in section 3005.

(8) For each battery that caused serious bodily injury, 16 points shall be entered in Boxes 70–71. Inmates who conspired in or ordered the battery shall receive the same points.

(A) Serious bodily injury is that which is defined in Section 3000.

(B) Any attempted battery which may have been life threatening but circumstances such as heavy clothing prevented the homicide shall be included.

(c) Prior Preliminary Score (Boxes 75–77):

(1) The prior preliminary score is the calculated score that appears on the most current classification score sheet. Enter that value in Boxes 75–77.

(2) When the most current score appears on the CDC Form 839 (Rev. 07/02) or later, CDC Classification Score Sheet, enter the value from that score sheet that is the preliminary score.

(3) When the most current score appears on the CDC Form 840, (Rev. 07/02) or later, CDC Reclassification Score Sheet, enter the value from that score sheet that is the new preliminary score.

(4) When the most current score appears on the CDC Form 841, (Rev 07/02) or later, CDC Readmission Score Sheet, enter the value from that score sheet that is the new preliminary score.

(d) Net Change in Score (Boxes 78–80):

Combine the total favorable points (item C.4.) with the total unfavorable points (item D.8.). Enter the total as a plus or minus value for net change in score.

(e) Preliminary Score Subtotal:

(1) The prior preliminary score subtotal is the combined value of the prior preliminary score and net change in score.

(2) Record this value on the line provided.

(3) Computations that result in a minus value shall be entered as zero.

(f) Change in term points (Boxes 81–83):

(1) If, during reception center processing, the inmate has been designated as a PVRTC, do not enter a value. This area is left blank for an inmate who has returned as a parole violator without a new term.

(2) If, subsequent to reception center processing, the parole violator receives a new term, record the change in term points, if any, on a CDCR Form 840 (Rev. 07/12), Reclassification Score Sheet, as a result of this new term. Do not correct the CDCR Form 841.

(3) If, during reception center processing, the inmate has been designated as a PVWNT, the prior term points shall be given a minus value and combined with the new term points. To determine the new term points, multiply the number of whole years times two. Drop months from the calculation.

(4) Any term point adjustments that may have been recorded on a previous CDC Form 840 or CDC Form 841 must also be taken into consideration to determine the final total change in term points.

(5) Determine the difference between the new term points and the old term points. The resultant plus or minus figure is the change in term points.

(6) A change in the term points is recorded only if there is a change in the total term length.

(g) New Preliminary Score (Boxes 84–86):

(1) The inmate's new preliminary score is the result of combining the preliminary score subtotal with the change in term points (if any).

(2) Right-justify the total.

(3) Computations that result in zero or a minus value shall be entered as zero.

(h) Mandatory Minimum Score Factor Code and Mandatory Minimum Score (Boxes 87–89):

(1) A mandatory minimum score is a score that is applied to an inmate who has a case factor that requires that he/she be housed no lower than a specific security level.

(2) A mandatory minimum score factor is a case factor that requires the application of a mandatory minimum score.

(3) A mandatory minimum score factor code is a numeric code associated with a mandatory minimum score factor.

(A) If an inmate has a case factor that requires the application of a mandatory minimum score factor code, enter the code that applies in Box 87.

(B) If one or more mandatory minimum score factors is present, determine which of the factors is associated with the highest score and enter that code in Box 87.

(C) Enter the mandatory minimum score that corresponds to the selected code in Boxes 88–89.

(i) Placement Score (Boxes 90–92):

(1) If there are no case factors that require a mandatory minimum score, enter the new preliminary score as the placement score.

(2) If a mandatory minimum score has been applied, and it is greater than the new preliminary score, enter the mandatory minimum score as the placement score.

(3) If a mandatory minimum score has been applied, and it is less than the new preliminary score, enter the new preliminary score as the placement score.

(4) The placement score is the primary factor that is used to determine the security level to which the inmate is assigned.

(j) Special Case Factors (Boxes 93–95):

(1) In Box 93, enter "A" if the inmate has an active felony hold, warrant, or detainer. Enter "P" if the inmate has a potential felony hold, warrant, or detainer. If the inmate has both an active and a potential felony hold, warrant, or detainer, enter "A".

(2) In Box 94, enter "A" if the inmate has an active United States Immigration and Customs Enforcement (USICE) detainer. Enter "P" if the inmate has a potential USICE detainer.

(3) In Box 95, enter "R" if the inmate meets the criteria for an "R" suffix per section 3377.1(b).

(k) Classification Staff Representative (Boxes 117–181):

(1) The CSR determines appropriate housing in keeping with Departmental needs, safety and security, the inmate's placement score and administrative determinants.

(A) The three-letter codes from section 3375.2 shall be used to indicate the administrative determinants. Up to five administrative determinants may be entered in Boxes 156–170.

(B) Reason for administrative or irregular placement (Boxes 179–181).

1. Entered only if the facility's security level where the inmate is placed is not consistent with his/her placement score.

2. Enter one of the administrative determinant's three-letter codes from section 3375.2.

3. CSR approval of an administrative or irregular placement is valid only as long as the inmate's placement score remains within the same facility security level as when the approval was given.

NOTE: Authority cited: Sections 5058 and 5058.3, Penal Code. Reference: Section 5054, Penal Code.

HISTORY:

1. New section and new form CDC 841 filed 8-27-2002 as an emergency; operative 8-27-2002 (Register 2002, No. 35). Pursuant to Penal Code section 5058.3 a Certificate of Compliance must be transmitted to OAL by 2-4-2003 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 8-27-2002 order, including further amendment of section and repealer and new form CDC 841, transmitted to OAL 1-21-2003 and filed 3-6-2003 (Register 2003, No. 10).
3. Amendment of section heading, section and Note and incorporation by reference of form CDCR Form 841 filed 6-26-2012 as an emergency; operative 7-1-2012 (Register 2012, No. 26). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 12-10-2012 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 6-26-2012 order transmitted to OAL 12-5-2012 and filed 1-17-2013 (Register 2013, No. 3).
5. Amendment of subsection (a)(3)(C) filed 10-29-2013 as an emergency; operative 10-29-2013 (Register 2013, No. 44). A Certificate of Compliance must be transmitted to OAL by 4-7-2014 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 10-29-2013 order, including amendment of subsection (a)(3)(C), transmitted to OAL 4-4-2014 and filed 5-14-2014; amendments effective 5-14-2014 pursuant to Government Code section 11343.4(b)(3) (Register 2014, No. 20).

3375.6. Automated Needs Assessment Tool.

(a) A validated automated needs assessment tool, as defined in Section 3000, will identify criminogenic needs which are most predictive of criminal behavior. The tool identifies a needs value that demonstrates the level of need from high to low and shall be utilized to assist in placing the inmate in a rehabilitative program. Currently the automated needs assessment tool that is being utilized is the Correctional Offender Management Profiling For Alternative Sanctions (COMPAS) (copyright version 2009), which is hereby incorporated by reference. This tool is subject to change in the future, due to proprietary licensing rights, software version updates, and the department's agreement with the licensed authority.

(1) An automated needs assessment tool shall be administered during the reception center process for all inmates.

(2) An automated needs assessment tool shall be administered during the initial or annual review process for inmates who do not have a completed automated needs assessment tool.

(3) The automated needs assessment tool evaluates the inmate's criminogenic needs in categories such as substance abuse, Career

Technical Education, educational, criminal personality, family criminality, and anger/violence.

(b) The results of the automated needs assessment tool shall be evaluated during committee actions to assist in determining the inmate's placement and sequencing into rehabilitative programs. The automated needs assessment tool results shall be placed in the inmate's central file.

NOTE: Authority cited: Sections 5058 and 5058.3, Penal Code. Reference Sections 3020, 5054 and 5068, Penal Code.

HISTORY:

1. New section filed 5-10-2012 as an emergency; operative 5-10-2012 (Register 2012, No. 19). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 10-17-2012 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 10-17-2012 as an emergency; operative 10-17-2012 (Register 2012, No. 42). A Certificate of Compliance must be transmitted to OAL by 1-15-2013 or emergency language will be repealed by operation of law on the following day.
3. Editorial correction of History 2 providing corrected Certificate of Compliance date (Register 2012, No. 44).
4. Certificate of Compliance as to 10-17-2012 order transmitted to OAL 1-15-2013 and filed 2-25-2013 (Register 2013, No. 9).
5. Amendment of subsection (a)(3) filed 10-29-2013 as an emergency; operative 10-29-2013 (Register 2013, No. 44). A Certificate of Compliance must be transmitted to OAL by 4-7-2014 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 10-29-2013 order transmitted to OAL 4-4-2014 and filed 5-14-2014 (Register 2014, No. 20).

3376. Classification Committees.

(a) The following terms are defined for the purposes of this section:

(1) Camp means the type of subfacility of an institution which is normally located in a rural area and which has no secure (fenced or walled) perimeter. Camp inmates are generally assigned to conservation and/or road details.

(2) Community-access facility (CAF) means any facility located in the community, administrated by the Division of Adult Parole Operations, where inmates have access to the community for work or training and which has no secure (fenced or walled) perimeter.

(3) Community correctional facility (CCF) means a facility located in the community, administrated by the Parole and Community Services Division, where inmates do not have unsupervised access to the community and which has a secure (fenced) perimeter.

(4) Facility means any institution, community-access facility, community correctional facility, or any camp or other subfacility of an institution under the jurisdiction of the department.

(5) Institution means a large facility or complex of subfacilities with a secure (fenced or walled) perimeter headed by a warden.

(b) Each facility shall establish classification committees as provided herein. A quorum for any committee at a CAF shall be a minimum of two persons who shall be the chairperson and recorder. A quorum at all other facilities shall be a minimum of three persons who shall be the chairperson, recorder and any other member.

(c) Composition of committees:

(1) Initial and Unit Classification Committees shall consist of:

(A) Facility captain, correctional captain, or CAF/CCF manager (chairperson).

(B) Correctional counselor III, parole administrator I, parole agent III, or assistant CAF/CCF manager; or, for CAF/CCFs only, designated supervisory peace officer at the rank of correctional lieutenant, or above (alternate chairperson).

(C) Correctional counselor II, correctional counselor I, or parole agent II (recorder).

(D) Assignment lieutenant (initial classification), program lieutenant (unit classification), or CAF/CCF inmate assignment/program coordinator.

(E) Educational or Career Technical Education program representative.

(F) Other staff as required.

(2) Institution Classification Committees (ICC) and Facility Classification Committees (FCC) shall consist of:

(A) Warden, regional parole administrator, deputy warden, or deputy regional parole administrator (chairperson).

(B) Correctional administrator or parole administrator I (alternate chairperson).

(C) Psychiatrist or physician.

(D) Facility captain.

(E) Correctional captain.

(F) Correctional counselor III, parole agent III, correctional counselor II, or parole agent II (recorder).

(G) Assignment lieutenant or CAF/CCF inmate assignment/program coordinator.

(H) Educational or Career Technical Education program representative.

(I) Other staff as required.

(3) Camp Classification Committee shall consist of:

(A) Correctional lieutenant (chairperson).

(B) Correctional counselor I (alternate chairperson, recorder).

(C) Correctional sergeant.

(D) Staff representative of camp contracting agency.

(4) Security Threat Group (STG) Unit Classification Committee shall consist of:

(A) Captain (Chairperson).

(B) Correctional Counselor II (Recorder).

(C) Correctional Counselor I.

(D) Other staff as required.

(d) Classification committee functions:

(1) Initial Classification Committees shall:

(A) Evaluate case factors and assist the inmate to understand facility expectations, available programs, and resources.

(B) Initiate an education, Career Technical Education program, or work program; designate a credit earning and privilege group; and assign a custody designation for each inmate.

(C) Refer complex cases to the ICC or FCC.

(D) Recommend transfer of a new arrival determined to be inappropriately placed.

(E) Grant work credits to which the inmate is entitled while in transit.

(2) Unit Classification Committees shall:

(A) Review each inmate's case at least annually to consider the accuracy of the inmate's classification score, custody designation, program, work and privilege group, and facility placement, including recommendation for transfer. A parole violator's first annual review may be delayed for up to five months so that it will coincide with classification score updates.

(B) Change in inmate's work/privilege group.

(C) Conduct post board classification on an inmate within 15 days of receipt of official notice of a Board of Parole Hearings' decision regarding the inmate.

(D) Act on an inmate's request for restoration of forfeited credits for less than Division C offenses in accordance with section 3327.

(3) Institution and Facility Classification Committees shall:

(A) Recommend transfer of inmates.

(B) Act on cases referred by lower committees.

(C) Review inmate requests for meritorious sentence reduction to determine compliance with Penal Code section 2935.

(D) Make referrals and recommendations through the chief, classification services, for cases requiring Departmental Review Board (DRB) decisions.

(E) Change an inmate's work/privilege group.

(F) For validated STG cases:

1. Review the Validation Package and the CDCR Form 128-G1 (11/13), Security Threat Group Unit Classification Committee-Results of Hearing, which is incorporated by reference.

2. Determine a validated STG inmate's housing and program needs. ICC maintains discretion in evaluating an affiliate's overall disciplinary record and case factors in determining placement in the SDP or continued management within a general population setting in accordance with Section 3378.4(c).

(4) Camp classification committees shall perform all functions designated above for unit and initial classification committees.

(5) Security Threat Group Unit Classification Committee shall:

(A) Review all STG validation packages for accuracy, compliance, and to ensure due process requirements have been met.

(B) Review Dropout status affiliate's new disciplinary behavior for documented nexus to STG behavior as noted in the RVR, or other source items of intelligence.

(C) Review information or intelligence received from outside law enforcement agencies or which occurred outside CDCR jurisdiction to ensure disciplinary processes or formal documentation were applied, when appropriate.

(D) Refer validated STG cases to ICC for placement consideration in the Step Down Program.

NOTE: Authority cited: Sections 3303 and 3309, Welfare and Institutions Code; and Sections 5058 and 6252, Penal Code. Reference: Sections 2933, 5054 and 5068, Penal Code.

HISTORY:

1. Repealer and new section filed 8-7-87 as an emergency; operative 8-7-87 (Register 87, No. 34). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 12-7-87.
2. Certificate of Compliance as to 8-7-87 order transmitted to OAL 12-4-87; disapproved by OAL (Register 88, No. 16).
3. Repealer and new section filed 1-4-88 as an emergency; operative 1-4-88 (Register 88, No. 16). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 5-3-88.
4. Certificate of Compliance as to 1-4-88 order transmitted to OAL 5-3-88; disapproved by OAL (Register 88, No. 24).
5. Repealer and new section filed 6-2-88 as an emergency; operative 6-2-88 (Register 88, No. 24). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 9-30-88.
6. Certificate of Compliance transmitted to OAL 9-26-88 and filed 10-26-88 (Register 88, No. 50).
7. Change without regulatory effect amending section filed 10-22-90 pursuant to section 100, title 1, California Code of Regulations (Register 91, No. 4).
8. Editorial correction of printing error in subsection (b)(3)(D) (Register 92, No. 5).
9. Repealer of subsection (b)(2)(C), subsection relettering, and amendment of subsection (b)(3)(E) filed 5-5-95; operative 6-5-95 (Register 95, No. 18).
10. Amendment of subsection (b)(2)(C) and repealer of subsection (b)(3)(E) and subsection relettering pursuant to Penal Code section 5058(e) filed 3-20-96 as an emergency; operative 3-20-96 (Register 96, No. 12). A Certificate of Compliance must be transmitted to OAL by 8-27-96 or emergency language will be repealed by operation of law on the following day.
11. Certificate of Compliance as to 3-20-96 order transmitted to OAL 7-25-96 and filed 9-5-96 (Register 96, No. 36).
12. Amendment of section and Note filed 5-1-97; operative 5-31-97 (Register 97, No. 18).
13. Amendment of subsection (d)(2)(A) filed 7-28-97 as an emergency; operative 7-28-97 (Register 97, No. 31). Pursuant to Penal Code section 5058(e), a Certificate of Compliance must be transmitted to OAL by 1-5-98 or emergency language will be repealed by operation of law on the following day.
14. Certificate of Compliance as to 7-28-97 order transmitted to OAL 10-27-97 and filed 12-8-97 (Register 97, No. 50).
15. Amendment of subsection (d)(2)(A), new subsection (d)(2)(B), subsection relettering and amendment of subsection (d)(3)(E) filed 1-9-2004 as an emergency; operative 1-9-2004 (Register 2004, No. 2). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 6-17-2004 or emergency language will be repealed by operation of law on the following day.
16. Amendment of subsection (d)(2)(A), new subsection (d)(2)(B), subsection relettering and amendment of subsection (d)(3)(E) refiled 6-17-2004 as an emergency; operative 6-17-2004 (Register 2004, No. 25). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 11-24-2004 or emergency language will be repealed by operation of law on the following day.
17. Certificate of Compliance as to 6-17-2004 order transmitted to OAL 11-16-2004 and filed 12-29-2004 (Register 2004, No. 53).
18. Change without regulatory effect amending subsection (d)(2)(C) filed 3-11-2013 pursuant to section 100, title 1, California Code of Regulations (Register 2013, No. 11).
19. Amendment of subsections (c)(1)(E), (c)(2)(H) and (d)(1)(B) filed 10-29-2013 as an emergency; operative 10-29-2013 (Register 2013, No. 44). A Certificate of Compliance must be transmitted to OAL by 4-7-2014 or emergency language will be repealed by operation of law on the following day.
20. Change without regulatory effect amending subsection (a)(2) filed 1-8-2014 pursuant to section 100, title 1, California Code of Regulations (Register 2014, No. 2).
21. Certificate of Compliance as to 10-29-2013 order transmitted to OAL 4-4-2014 and filed 5-14-2014 (Register 2014, No. 20).
22. New subsections (c)(4)–(c)(4)(D), (d)(3)(F)–(d)(3)(F)2. and (d)(5)–(d)(5)(D) filed 10-17-2014; operative 10-17-2014 pursuant to Government Code section 11343.4(b)(3) (Register 2014, No. 42).
23. Amendment of subsection (d)(5)(B) filed 6-2-2016 as an emergency; operative 6-2-2016 (Register 2016, No. 23). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 11-9-2016 or emergency language will be repealed by operation of law on the following day.
24. Certificate of Compliance as to 6-2-2016 order transmitted to OAL 11-7-2016 and filed 12-22-2016 (Register 2016, No. 52).

3376.1. Departmental Review Board.

The Departmental Review Board (DRB) provides the Secretary's final review of classification issues which are referred by an institution head for a resolution or decision at the headquarters level. The DRB decision serves as the Secretary's level decision which is not appealable and concludes the inmate/parolee's departmental administrative remedy of such issues.

(a) Composition of the DRB:

(1) The director or deputy director of the Division of Adult Institutions (chairperson).

(2) The director or deputy director of the Division of Adult Parole Operations.

(3) The chief of classification services (shall abstain on DRB issues resulting from a difference of opinion between an institution head and the chief of classification services).

(4) The chief of health services.

(b) Two members shall constitute a quorum.

(c) The DRB shall meet at the call of the chairperson.

(d) Referrals shall be made to the DRB when:

(1) An institution head is unable to resolve a difference of opinion with the chief of classification services.

(2) An institution head believes a clarification of departmental policy of statewide importance is required.

(3) An institution head believes a DRB level decision for placement of an inmate is required because of an unusual threat to the safety of persons or public interest in the case; e.g., commuted or modified death sentence.

(4) A difference between a Board of Parole Hearing's program placement order and the department's policies cannot be resolved.

(5) An out-of-state or federal prison placement is recommended by the institution classification committee for a Western Interstate Corrections Compact (WICC), PC Section 11190, an Interstate Corrections Compact (ICC), PC Section 11189, or a Federal Placement, PC Section 2911. A California Out-of-State Correctional Facility (COCF) transfer shall not require a DRB review or institution classification committee action.

(6) Meritorious credit is recommended by an institution classification committee to reduce an inmate's period of confinement pursuant to Penal Code Section 2935.

(7) The inmate's current placement was ordered by the DRB and there is no documentation in the inmate's central file to indicate that the DRB has relinquished responsibility for the inmate's placement.

(8) An inmate has completed Steps 1-4 of the Step Down Program and the institution head believes a transfer to an alternate Level IV institution or out-of-level placement is warranted, the institution head will refer the case to the DRB for decision.

(9) The UCC has recommended that an inmate be validated as a STG-I member, the ICC shall ensure there is sufficient evidence to warrant validation at the level of member. ICC will review the validation documents and all other case factors in their determination of appropriate housing. Any disagreement by the ICC with a STG I member's validation and/or placement into the SDP shall be referred to the DRB for resolution.

(10) The ICC has evaluated and determined a validated affiliate has demonstrated that they are not progressing through Steps 1 or 2 of the SDP, and/or case factors such as medical or mental health needs have changed, which would warrant consideration of alternate custody/housing. DRB will conduct a case-by-case review of all case factors to determine if continued SHU placement is warranted or if alternate placement options are appropriate.

(e) Decisions of the DRB shall be in writing and implemented within 30 calendar days after the decision is made.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 5054, 5068 and 11191, Penal Code; Sections 8550 and 8567, Government Code; Governor's Prison Overcrowding State of Emergency Proclamation dated October 4, 2006; *Sandin* v. *Connor* (1995) 515 U.S. 472; and *Madrid* v. *Gomez* (N.D. Cal. 1995) 889 F.Supp. 1146.

HISTORY:

1. New section filed 1-16-92; operative 2-17-92 (Register 92, No. 13).
2. Amendment of subsection (d)(3) and Note filed 8-30-99 as an emergency; operative 8-30-99 (Register 99, No. 36). Pursuant to Penal Code section 5058(e), a Certificate of Compliance must be transmitted to OAL by 2-8-2000 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 8-30-99 order transmitted to OAL 2-7-2000 and filed 3-21-2000 (Register 2000, No. 12).
4. Amendment of subsection (d)(5) and amendment of Note filed 10-30-2008 as an emergency; operative 10-30-2008 (Register 2008, No. 44). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 4-8-2009 or emergency language will be repealed by operation of law on the following day.
5. Amendment of first paragraph and subsections (a)(1)–(2) and (d)(4) filed 12-9-2008; operative 1-8-2009 (Register 2008, No. 50).
6. Certificate of Compliance as to 10-30-2008 order transmitted to OAL 4-1-2009 and filed 5-12-2009 (Register 2009, No. 20).
7. Change without regulatory effect amending subsection (a)(1) filed 1-8-2014 pursuant to section 100, title 1, California Code of Regulations (Register 2014, No. 2).
8. Amendment of subsection (d)(3) and new subsections (d)(8)–(10) filed 10-17-2014; operative 10-17-2014 pursuant to Government Code section 11343.4(b)(3) (Register 2014, No. 42).

3377. Facility Security Levels.

Each camp, facility, or area of a facility complex shall be designated at a security level based on its physical security and housing capability. Reception centers are not facilities of assignment and are exempt from the security level designations except for the assignment of permanent work crew inmates. The security levels are:

(a) Level I facilities and camps consist primarily of open dormitories with a low security perimeter.

(b) Level II facilities consist primarily of open dormitories with a secure perimeter, which may include armed coverage.

(c) Level III facilities primarily have a secure perimeter with armed coverage and housing units with cells adjacent to exterior walls.

(d) Level IV facilities have a secure perimeter with internal and external armed coverage and housing units described in section 3377(c), or cell block housing with cells non-adjacent to exterior walls. A Level IV 180-design facility utilizes housing units comprised of two wings; each wing is partitioned into three self-contained "pods", each "pod" has its own dayroom and control room. Each wing is linked by a dining facility and ancillary functions. The design of the housing unit allows a 180 degree view of all cells and dayrooms from the control room. A Level IV 270-design facility utilizes housing units comprised of three connected sections and one dayroom. Portions of first and third sections extend back behind the blind side of the control room. The design of the housing unit places cells within a 270 degree circumference of a circle with the control room in the center of the circle.

NOTE: Authority cited: Sections 5058 and 5058.3, Penal Code. Reference: Sections 5054 and 5068, Penal Code.

HISTORY:

1. New section filed 8-7-87 as an emergency; operative 8-7-87 (Register 87, No. 34). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 12-7-87.
2. Certificate of Compliance as to 8-7-87 order transmitted to OAL 12-4-87; disapproved by OAL (Register 88, No. 16).
3. New section filed 1-4-88 as an emergency; operative 1-4-88 (Register 88, No. 16). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 5-3-88.
4. Certificate of Compliance as to 1-4-88 order transmitted to OAL 5-3-88; disapproved by OAL (Register 88, No. 24).
5. New section filed 6-2-88 as an emergency; operative 6-2-88 (Register 88, No. 24). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 9-30-88.
6. Certificate of Compliance including amendment transmitted to OAL 9-26-88 and filed 10-26-88 (Register 88, No. 50).
7. Change without regulatory effect amending section filed 10-22-90 pursuant to section 100, title 1, California Code of Regulations (Register 91, No. 4).
8. Editorial correction of printing errors (Register 91, No. 11).
9. Editorial correction of printing error in subsection (b) (Register 92, No. 5).
10. Amendment of section heading, first paragraph and Note filed 8-27-2002 as an emergency; operative 8-27-2002 (Register 2002, No. 35). Pursuant to Penal Code section 5058.3 a Certificate of Compliance must be transmitted to OAL by 2-4-2003 or emergency language will be repealed by operation of law on the following day.

11. Certificate of Compliance as to 8-27-2002 order transmitted to OAL 1-21-2003 and filed 3-6-2003 (Register 2003, No. 10).
12. Amendment of subsection (d) filed 9-15-2015 as an emergency; operative 9-15-2015 (Register 2015, No. 38). This regulatory action was deemed an emergency pursuant to section 5058.3 of the Penal Code and remains in effect for 160 days. A Certificate of Compliance must be transmitted to OAL by 2-22-2016 or emergency language will be repealed by operation of law on the following day.
13. Amendment of subsection (d) refiled 2-18-2016 as an emergency; operative 2-18-2016 (Register 2016, No. 8). This regulatory action was deemed an emergency pursuant to section 5058.3 of the Penal Code and remains in effect for 160 days. A Certificate of Compliance must be transmitted to OAL by 7-27-2016 or emergency language will be repealed by operation of law on the following day.
14. Certificate of Compliance as to 2-18-2016 order transmitted to OAL 7-13-2016 and filed 8-11-2016 (Register 2016, No. 33).

3377.1. Inmate Custody Designations.

(a) Designation of a degree of an inmate's custody shall be reasonably related to legitimate penological interests. The CDCR uses the following inmate custody designations to establish where an inmate shall be housed and assigned, and the level of staff supervision required to ensure institutional security and public safety:

Maximum Custody,
Close A Custody,
Close B Custody,
Medium A Custody,
Medium B Custody,
Minimum A Custody,
Minimum B Custody,

(1) Maximum Custody.

(A) Housing shall be in cells in an approved segregated program housing unit as described in CCR section 3335 and CCR subsections 3341.5(b) and 3341.5(c).

(B) Assignments and activities shall be within the confines of the approved segregated program housing unit.

(C) An inmate designated as Maximum Custody shall be under the direct supervision and control of custody staff.

(2) Close A Custody Male Inmates.

(A) Housing shall be in cells within Level III and Level IV facilities in housing units located within an established facility security perimeter.

(B) Close A Custody inmates shall be permitted to participate in program assignments and activities scheduled within the hours of 0600 hours to 1800 hours unless hours are extended by the Warden to no later than 2000 hours when it is determined that visibility is not compromised in areas located within the facility security perimeter. Bases for the extended hours include operational necessity, daylight savings time, or availability of high mast lighting. Close A Custody inmates are not permitted beyond the work change area.

(C) Custody staff supervision shall be direct and constant. In addition to regular institutional counts, Close A Custody male inmates shall be counted at noon each day.

(3) Close A Custody Female Inmates.

(A) Housing shall be in cells or in a designated Close Custody dormitory.

(B) Close A Custody female inmates shall be permitted to participate in program assignments and activities scheduled within the hours of 0600 hours to 1800 hours unless hours are extended by the Warden to no later than 2000 hours when it is determined that visibility is not compromised in areas located within the facility security perimeter and the work change area. Bases for the extended hours include operational necessity, daylight savings time, or availability of high mast lighting.

(C) Custody staff supervision shall be direct and constant. In addition to regular institutional counts, Close A Custody female inmates shall be counted at noon each day.

(4) Close B Custody Male Inmates.

(A) Housing shall be in cells within designated institutions in housing units located within an established facility security perimeter.

(B) Close B Custody inmates shall be permitted to participate in program assignments and activities during the hours of 0600 hours to 2000 hours in areas located within the facility security perimeter including beyond the work change area in a designated Level II, Level III or Level IV institution. Close B Custody inmates may participate in designated work program assignments until 2200 hours when the work program is in an assigned housing unit located within the facility security perimeter. Close B Custody inmates may participate in limited evening activities after 2000 hours until the general evening lockup and count when the limited activity is in a designated housing unit located within the facility security perimeter.

(C) The work supervisor shall provide direct and constant supervision of Close B Custody inmates during the inmate's assigned work hours.

(D) Custody staff shall provide direct and constant supervision of Close B Custody inmates at all times.

(5) Close B Custody Female Inmates.

(A) Housing shall be in cells or in a designated Close Custody dormitory located within an established facility security perimeter.

(B) Close B Custody female inmates shall be permitted to participate in program assignments and activities during the hours of 0600 hours to 2000 hours in areas located within the facility security perimeter, including beyond the work change area, in designated Level II, Level III and Level IV institutions.

Close B Custody female inmates may participate in work program assignments until 2200 hours when the work program is in an assigned housing unit located within the facility security perimeter. Close B Custody female inmates may participate in limited evening activities after 2000 hours until the general evening lockup and count when the limited activity is in an assigned housing unit located within the facility security perimeter.

(C) The work supervisor shall provide direct and constant supervision of Close B Custody inmates during the inmates' assigned work hours.

(D) Custody staff shall provide direct and constant supervision of Close B Custody inmates at all times.

(6) Medium A Custody.

(A) Housing shall be in cells or dormitories within the facility security perimeter.

(B) Assignments and activities shall be within the facility security perimeter.

(C) Supervision shall be frequent and direct.

(7) Medium B Custody.

(A) Housing shall be in cells or dormitories within the facility security perimeter.

(B) Assignments and activities shall be within the facility security perimeter. Inmates may be given daytime assignments outside the facility security perimeter but must remain on facility grounds.

(C) Custody staff shall provide frequent and direct supervision inside the facility security perimeter. Custody staff shall provide direct and constant supervision outside the facility security perimeter.

(8) Minimum A Custody.

(A) Housing shall be in cells or dormitories within the facility security perimeter.

(B) Assignments and activities may be inside or outside the facility security perimeter.

(C) Staff supervision shall consist of at least hourly observation if assigned outside the facility security perimeter. Sufficient staff supervision of the inmate shall be provided to ensure the inmate is present if assigned inside the facility security perimeter.

(9) Minimum B Custody.

(A) Housing may be in cells or dormitories on facility grounds, in a camp, in a Minimum Support Facility (MSF) or in a community based facility such as a Community Correctional Facility.

(B) Assignments and activities include eligibility for work or program assignments located either on or off institutional grounds.

(C) Sufficient staff supervision shall be provided to ensure the inmate is present.

(b) An "R" suffix shall be affixed to an inmate's custody designation to ensure the safety of inmates, correctional personnel, and the general public by identifying inmates who have a history of specific sex offenses as outlined in Penal Code (PC) Section 290.

(1) The "R" suffix shall be affixed during reception center processing if one of the following four criteria applies:

(A) The inmate is required to register per PC Section 290.

(B) The inmate's parole was revoked by the Board of Parole Hearings (BPH) formerly known as the Board of Prison Terms/Parole Hearing Division, Good Cause/Probable Cause Finding of an offense that is equivalent to an offense listed in PC Section 290.

(C) The inmate had a BPH formerly known as California Youth Authority/Youth Offender Parole Board sustained adjudication of an offense that is equivalent to an offense listed in PC Section 290.

(D) The inmate had a valid "R" suffix evaluation as defined in this section, resulting in the "R" suffix being affixed.

(2) Inmates with a prior "R" suffix evaluation inconsistent with Section 3377.1(b)(5) shall not have an "R" suffix applied. An "R" suffix evaluation must be completed at the receiving institution.

(3) Within six months of reception or at any time during an incarceration, inmates with records of arrest, detention, or charge of any offenses listed in PC Section 290, shall appear before a classification committee to determine the need to affix an "R" suffix to the inmate's custody designation. The committee shall consider the arrest reports and district attorney's comments related to each arrest.

(A) An inmate found guilty in a disciplinary hearing of a Division A-1, A-2, or B offense that is equivalent to an offense listed in PC Section 290 shall have an "R" suffix evaluation completed by a classification committee.

(4) The receiving institution's initial classification committee shall affix the "R" suffix designation to an inmate's custody during initial classification committee review when it is determined the "R" suffix was not applied at the reception center and the inmate meets one of the criteria listed in Subsection 3377.1(b)(1).

(5) When completing an "R" suffix evaluation, the classification committee shall consider the arrest report(s) and district attorney's comments. However, a classification committee may affix an "R" suffix if the arrest report(s) are available and the district attorney's comments are unavailable. The classification committee shall document in a CDC Form 128-G the attempts/steps taken to obtain the required documentation.

(A) An "R" suffix shall not be affixed when the required documentation is not available for review, unless approved by Departmental Review Board (DRB) decision. If the arrest report is unavailable, the district attorney's comments or any other court or official documents shall be considered if available.

(B) DRB approval is required to affix an "R" suffix to an inmate's degree of custody if the required relevant documents are not available to complete an "R" suffix evaluation.

(6) If a Unit Classification Committee (UCC) finds that an inmate may no longer require an "R" suffix, the committee shall refer the case to the Institution Classification Committee (ICC) for review.

(7) Should a different facility UCC at the same institution disagree with the initial UCC's decision to either affix or not affix the "R" suffix, the committee must refer the case to ICC for review.

(8) ICC can reverse an "R" suffix evaluation by a previous institution's ICC only if new and compelling information is obtained. Otherwise, the case shall be referred for a DRB decision.

(9) An "R" suffix shall not be applied if the inmate was acquitted/found not guilty of the sex related charges in a court of law even if BPH Good Cause/Probable Cause Finding revoked his/her parole for those sex related charges.

(10) Inmates with "R" suffixes shall be housed in accordance with their placement score and shall not be assigned outside the security perimeter.

(11) Inmates who have obtained a valid Certificate of Rehabilitation pursuant to PC Section 4852.01 shall not have an "R" suffix affixed.

(12) An inmate whose "R" suffix has been removed shall be eligible for any housing or assignment for which they otherwise would qualify had the "R" suffix never been designated.

(13) The following terms are defined for the purposes of the "R" suffix custody designation:

(A) Institution means a large facility or complex of subfacilities with a secure (fenced or walled) perimeter headed by a warden.

(B) Facility means a subfacility of an institution headed by a facility captain.

(c) An "S" suffix may be affixed by a classification committee to the inmate's custody designation to alert staff of an inmate's need for single cell housing. The classification committee's decision to affix the "S" suffix shall be based on documented evidence that the inmate may not be safely housed in a double cell or dormitory situation based on a recommendation by custody staff or a health care clinician.

(d) A "D" suffix may be affixed by an Institutional Classification Committee (ICC) to a male inmate's Close Custody designation to indicate the inmate may be housed within a dormitory environment. A mental health clinician or physician shall be present during the ICC classification hearing for placement or removal of a D Suffix to an inmate-patient's custody designation.

(1) A "D" suffix shall only be affixed by ICC if the inmate meets one of the following criteria and the ICC determines the inmate can safely program in dormitory housing based on a review of the inmate's case factors:

(A) Inpatient mental health treatment is deemed clinically necessary and health care staff have determined that required care cannot be provided in a celled environment.

(B) Placement in a specialized medical bed has been deemed clinically necessary and the Health Care Placement Oversight Program staff have determined the required care cannot be provided in a celled environment.

(2) Other security precaution requirements set forth in Section 3377.1 for Close Custody still apply to inmates with a "D" suffix.

(3) The "D" suffix shall be removed when either of the following occur:

(A) A determination is made by health care staff that the in-patient mental health treatment is no longer necessary and/or can be provided within a celled environment.

(B) A determination is made by health care staff that the in-patient medical care is no longer necessary and/or the Health Care Placement Oversight Program staff have determined appropriate celled housing is available.

NOTE: Authority cited: Section 5058, Penal Code, Reference: Sections 290, 4852.01, 5054 and 5068, Penal Code; Americans With Disability Act (ADA) , 42 U.S.C. § 12131, et seq.; and Pennsylvania Department of *Corrections* v. *Yeskey* (1998) 524 U.S. 206.

HISTORY:

1. New section filed 8-7-87 as an emergency; operative 8-7-87 (Register 87, No. 34). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 12-7-87.
2. Certificate of Compliance as to 8-7-87 order transmitted to OAL 12-4-87; disapproved by OAL (Register 88, No. 16).
3. New section filed 1-4-88 as an emergency; operative 1-4-88 (Register 88, No. 16). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 5-3-88.
4. Certificate of Compliance as to 1-4-88 order transmitted to OAL 5-3-88; disapproved by OAL (Register 88, No. 24).
5. New section filed 6-2-88 as an emergency; operative 6-2-88 (Register 88, No. 24). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 9-30-88.
6. Certificate of Compliance transmitted to OAL 9-26-88 and filed 10-26-88 (Register 88, No. 50).
7. Change without regulatory effect amend section filed 10-22-90 pursuant to section 100, title 1, California Code of Regulations (Register 91, No. 4).
8. Editorial correction of printing error inadvertently omitting text (Register 91, No. 11).
9. Editorial correction of printing error in subsection (a)(9)(B) (Register 92, No. 5).
10. Amendment filed 3-27-2000 as an emergency; operative 3-27-2000 (Register 2000, No. 13). Pursuant to Penal Code section 5058(e), a Certificate of Compliance must be transmitted to OAL by 9-5-2000 or emergency language will be repealed by operation of law on the following day.
11. Certificate of Compliance as to 3-27-2000 order transmitted to OAL 9-5-2000; disapproval and order of repeal and deletion reinstating section as it existed prior to emergency amendment by operation of Government Code 11346.1(f) filed 10-18-2000 (Register 2000, No. 42).
12. Amendment filed 10-19-2000 deemed an emergency pursuant to Penal Code section 5058(e); operative 10-19-2000 (Register 2000, No. 42). Pursuant to Penal Code section 5058(e), a Certificate of Compliance must be transmitted to OAL by 3-27-2001 or emergency language will be repealed by operation of law on the following day.
13. Certificate of Compliance as to 10-19-2000 order, including further amendment of subsections (a), (a)(2)(B) and (a)(3)(B) and amendment of Note, transmitted to OAL 3-27-2001 and filed 5-3-2001 (Register 2001, No. 18).
14. Amendment of subsections (b)–(b)(1)(D), repealer of subsections (b)(1)(E)–(K), amendment of subsections (b)(2)–(3), new subsection (b)(3)(A), amendment of subsections (b)(4)–(5), new subsections (b)(5)(A)–(b)(13)(B) and amendment of Note filed 11-3-2006; operative 12-3-2006 (Register 2006, No. 44).
15. New subsections (d)–(d)(3)(B) filed 11-14-2011 as an emergency; operative 11-14-2011 (Register 2011, No. 46). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 4-23-2012 or emergency language will be repealed by operation of law on the following day.
16. Certificate of Compliance as to 11-14-2011 order transmitted to OAL 2-29-2012 and filed 4-5-2012 (Register 2012, No. 14).
17. Editorial correction of subsection (a)(5)(B) (Register 2013, No. 28).
18. Change without regulatory effect amending subsection (a) filed 1-8-2014 pursuant to section 100, title 1, California Code of Regulations (Register 2014, No. 2).

3377.2. Criteria for Assignment of Close Custody.

(a) Upon review of an inmate's case factors and need for supervision, a classification committee shall establish a Close Custody designation in accordance with the case factor criteria established in section 3377.2(b).

(1) Upon completing the minimum time requirement for Close Custody as established in 3377.2(b) and being without any finding of guilt for a serious Rules Violation Report for the past 12 months, an inmate's custody shall be considered for reduction by a classification committee.

(2) Departmental Review Board (DRB) approval is required to assign a Close Custody designation to an inmate who does not meet the case factor criteria established in section 3377.2(b).

(3) An ICC may temporarily assign a Close Custody designation to an inmate, for a maximum of 90 days, pending receipt of documents or verification of information needed to make a final determination.

A classification committee may also temporarily assign a Close Custody designation to an inmate who has postponed the disciplinary hearing of a Rules Violation Report (RVR) that qualifies for Close Custody designation pursuant to section 3377.2(b) pending referral for criminal prosecution until the RVR is adjudicated, not to exceed the minimum requirements for Close Custody as established in sections 3377.2(a)(1) and 3377.2(b). Upon adjudication of the RVR, the case shall be returned to a classification committee within 30 days for custody review.

(4) The period of time during which an inmate is Unclassified or designated at Maximum Custody shall not count toward fulfilling the required minimum time period to be served at Close Custody as established in section 3377.2(b).

(5) A period of time during which an inmate is not in the custody of the Department, as defined in section 3000, shall not count toward fulfilling the required minimum time period to be served at Close Custody as established in section 3377.2(b), with an exception granted for inmates housed at a California Out-of-state Correctional Facility (COCF).

(6) Incarceration time served in the Division of Juvenile Justice (DJJ), prior to the inmate's placement in CDCR during the inmate's current term, shall be counted toward fulfilling the required minimum time period to be served at Close Custody. Staff shall apply the provisions described in sections 3377.2(a)(1) and 3377.2(b) to determine the appropriate custody designation.

(7) An inmate who meets more than one Close A Custody case factor shall be designated Close A Custody for the longest required amount of time before becoming eligible for Close B Custody consideration.

(8) An inmate who meets more than one case factor for Close B Custody shall serve the longest required amount of time before he or she is to be eligible for consideration of further custody reduction.

(9) When an inmate paroles or discharges prior to fulfilling the required minimum time period for Close Custody per section 3377.2(b) and later returns to prison, any time remaining to fulfill his Close Custody requirements from his prior term shall not be reimposed. Close Custody shall only be designated based on current case factors, and no credit shall be given for time spent at Close Custody on the prior CDCR term.

(10) When an inmate's judgment (commitment) is vacated or recalled and the inmate is subsequently re-sentenced for the same crime event, resulting in discharge of the original CDCR term and re-commitment to CDCR, the new sentence shall be evaluated for Close Custody eligibility. If the inmate's case factors associated with the new sentence require Close Custody, an ICC shall grant credit for time served at Close Custody and/or a lower custody on the discharged CDCR term. If the inmate has not completely fulfilled the required minimum time period for Close A Custody and/or Close B Custody, the inmate shall be required to serve the remaining Close Custody time as specified in 3377.2(b).

(11) Upon discovery of a custody designation error wherein an inmate should have been designated as Close Custody but was not, or was erroneously reduced from Close Custody, a classification committee shall grant credit for time served at the lower custody

toward fulfilling the required minimum time period for Close A Custody and/or Close B Custody. After granting credit for time served at the lower custody, if the inmate has not completely fulfilled the required minimum time period for Close A Custody and/or Close B Custody, the ICC shall evaluate the totality of the inmate's case factors to determine whether to impose the remaining Close Custody obligation or allow the inmate to remain at the lower custody designation. The factors used in the ICC's determination not to impose the remaining Close Custody obligation shall be clearly documented in the classification action. If a subsequent ICC has a difference of opinion regarding the initial waiver of Close Custody under this provision, the case shall be presented to DRB.

(12) On a case-by-case basis, an ICC may waive the Close Custody designation for an inmate who otherwise meets the criteria per section 3377.2(b) if, after an evaluation of the individual's case factors, it is determined the inmate has a permanent and severe physical limitation which diminishes the need for direct and constant supervision.

(A) If the inmate's condition improves and/or the inmate subsequently demonstrates a need for direct and constant supervision, ICC shall grant credit for time served at the lower custody toward fulfilling the required minimum time period for Close A Custody and/or Close B Custody. After granting credit for time served at the lower custody, if the inmate has not completely fulfilled the required minimum time period for Close A Custody and/or Close B Custody, the ICC shall impose the appropriate Close Custody designation and the inmate shall fulfill the remaining time at Close Custody as established in section 3377.2(b).

(B) If a subsequent ICC has a difference of opinion regarding the initial waiver of Close Custody under this provision, the case shall be presented to DRB.

(b) Close Custody Case Factor Criteria:

(1) Lengthy Sentence.

(A) Upon initial classification and custody designation for the current sentence, an inmate serving a sentence of Life Without the Possibility of Parole (LWOP), or serving multiple life terms, or who has 40 years or more remaining to serve as of the date of the initial classification, shall serve at least 3 years at Close A Custody. The inmate shall serve at least 7 years at Close B Custody thereafter.

(B) Upon initial classification and custody designation for the current sentence, an inmate serving a single life term, or who has at least 25 years but less than 40 years remaining to serve as of the date of the initial classification, shall serve at least 1 year at Close A Custody. The inmate shall serve at least 4 years at Close B Custody thereafter.

(C) When a court action, subsequent to an inmate's initial classification and custody designation for the original sentence, increases the inmate's remaining time to serve, and the inmate's time to serve previously did not warrant Close Custody or now requires a longer minimum time period to be served at Close Custody, a classification committee shall grant credit for time served at the lower custody toward fulfilling the required minimum time period for Close A Custody and/or Close B Custody. After granting credit for time served at the lower custody, if the inmate has not completely fulfilled the required minimum time period for Close A Custody and/or Close B Custody, an ICC shall evaluate the totality of the inmate's case factors to determine whether to impose the remaining Close Custody obligation or allow the inmate to remain at the lower custody designation. The inmate's remaining time to serve shall be computed from the date of the classification committee hearing that initially considers the court action. If a subsequent ICC has a difference of opinion regarding the imposition or waiver of Close Custody under this provision, the case shall be presented to DRB.

(D) When a court action, subsequent to an inmate's initial classification and custody designation for the original sentence, decreases the inmate's remaining time to serve, and the time to serve previously warranted Close Custody but no longer does or now requires a shorter minimum time period to be served at Close Custody, a classification committee shall evaluate the inmate for custody reduction within 30 days. The inmate's remaining time to serve shall be computed from the date of the classification committee hearing that initially considers the court action.

(E) Close Custody designation and required minimum time periods for Close Custody shall not be affected by losses and restorations of credit as a result of the Rules Violation Report adjudication process, nor by changes in work group credit earning status.

(F) When a verified administrative error in the computation of the inmate's time to serve is discovered and corrected, which results in the inmate now warranting Close Custody or requiring a longer minimum time period to be served at Close Custody, a classification committee shall grant credit for time served at the lower custody toward fulfilling the required minimum time period for Close A Custody and/or Close B Custody. After granting credit for time served at the lower custody, if the inmate has not completely fulfilled the required minimum time period for Close A Custody and/or Close B Custody, an ICC shall evaluate the totality of the inmate's case factors to determine whether to impose the remaining Close Custody obligation or allow the inmate to remain at the lower custody designation. The inmate's remaining time to serve shall be computed from the date of the classification committee hearing that initially considers the corrected release date. If a subsequent ICC has a difference of opinion regarding the imposition or waiver of Close Custody under this provision, the case shall be presented to DRB.

(2) Escape History. For Close Custody purposes only, an inmate who leaves a non-secure facility without permission and without force and who fails to return is not considered to have escaped.

(A) An inmate convicted of, or whose commitment offense includes, or who is found guilty of a disciplinary report by any law enforcement agency for, Escape With Force or Attempted Escape With Force from any correctional setting or armed escort shall serve at least 8 years at Close A Custody upon the date of return to CDCR, or upon the initial custody classification, or upon the date of release from segregated housing, whichever occurs later. The inmate shall serve at least 5 years at Close B Custody thereafter.

(B) An inmate convicted of, or whose commitment offense includes, or who is found guilty of a disciplinary report by any law enforcement agency for, Escape Without Force or Attempted Escape Without Force from a correctional setting other than a non-secure facility as defined in section 3000, or from an armed escort shall serve at least 5 years at Close A Custody upon the date of return to CDCR, or upon the initial custody classification, or upon the date of release from segregated housing, whichever occurs later. The inmate shall serve at least 5 years at Close B Custody thereafter.

(C) An inmate convicted, or found guilty of a disciplinary report by any law enforcement agency, for plotting or planning to escape from a correctional setting other than a non-secure facility as defined in section 3000 or from an armed escort shall serve at least 2 years at Close A Custody from the date of the conviction or administrative finding of guilt, or upon the initial custody classification, or upon the date of release from segregated housing, whichever occurs later. The inmate shall serve at least 5 years at Close B Custody thereafter.

(3) Detainers. An inmate with an active law enforcement detainer for an offense with a possible penalty of death, lifetime incarceration, or a total term of 50 years or more shall serve at least 3 years at Close A Custody upon placement of the detainer.

Thereafter, the inmate shall be assigned no less restrictive custody than Close B Custody until the detainer is removed.

(4) Disciplinary History.

(A) An inmate convicted of, or whose commitment offense includes, or who is found guilty of a disciplinary report by any law enforcement agency for, an in-custody Murder of A Non-Inmate shall be designated Close A Custody. Custody shall not be reduced from Close A Custody.

(B) An inmate convicted of, or whose commitment offense includes, or who is found guilty of a disciplinary report by any law enforcement agency for, an in-custody Murder of an Inmate within the last 10 years shall serve at least 6 years at Close A Custody. The inmate shall serve at least 4 years at Close B Custody thereafter.

(C) An inmate found guilty of a Division A-1 or Division A-2 serious RVR, as set forth in CCR Section 3323, shall serve at least 1 year at Close A Custody. The inmate shall serve at least 2 years at Close B Custody thereafter.

(5) A validated inmate currently housed in a security housing unit and who has their custody reduced from Maximum (MAX) due to reclassification as Inactive, Monitored, or Inactive-Monitored shall serve one year at Close B custody, unless other case factors require a more restrictive designation of Close A. Under no circumstances shall a validated affiliate be released/housed in a minimum security facility or Level I placement.

(6) Security Concern. When the ICC determines the inmate is a Security Concern as defined in section 3000, the ICC shall assign a Close B Custody designation. The ICC shall review the case and evaluate the need to continue the Security Concern designation no less than annually. Upon designation as a Security Concern, ICC shall refer the case to a Classification Staff Representative for application of the SEC administrative determinant. If an inmate has been designated as a Security Concern for two years and upon ICC review the committee determines continued Close B Custody is necessary, the case shall be referred to DRB for approval.

(c) An inmate received into CDCR on or before June 30, 2012, shall be subject to the Close Custody criteria established July 1, 2012 in section 3377.2 as follows in this subsection. In addition, any new case information received on or after July 1, 2012, or RVR adjudicated on or after July 1, 2012, shall be subject to the Close Custody criteria established July 1, 2012 in section 3377.2.

(1) An inmate who is unclassified on July 1, 2012, shall be subject to the Close Custody criteria established July 1, 2012 in section 3377.2.

(2) An inmate who is Minimum Custody or Medium Custody on July 1, 2012, shall not be increased to Close Custody solely due to the implementation of the Close Custody regulations established July 1, 2012 in section 3377.2.

(3) An inmate who is Close B Custody on July 1, 2012, shall be granted credit for time served at that custody toward fulfilling the required minimum time period for Close B Custody, as established in the Close Custody criteria established July 1, 2012 in section 3377.2(b). If the Close B Custody criteria established July 1, 2012 in section 3377.2(b) require the inmate to serve a greater time period of Close B Custody, the inmate shall serve the time period required pursuant to the Close B Custody criteria established July 1, 2012. An inmate designated as Close B Custody shall not be increased to Close A Custody solely due to the implementation of the Close Custody regulations established July 1, 2012.

(4) An inmate who is Close A Custody on July 1, 2012, shall be granted credit for time served at that custody toward fulfilling the required minimum time period for Close A Custody, as established in the Close Custody criteria established July 1, 2012 in section 3377.2(b). If the Close A Custody criteria established July 1, 2012 in section 3377.2(b) require the inmate to serve a greater time period of Close A Custody, the inmate shall serve the time period required pursuant to the Close A Custody criteria established July 1, 2012.

(5) An inmate who is Maximum Custody on July 1, 2012, for a reason that does not require Close Custody, shall be subject to section 3377.2(c)(1) through section 3377.2(c)(4) during the first classification committee review reducing the inmate from Maximum Custody. The inmate's custody designation prior to the Maximum Custody designation shall be considered with the applicable section [3377.2(c)(1) through 3377.2(c)(4)].

An inmate who is Maximum Custody on July 1, 2012, for a reason that requires Close Custody, shall be subject to the Close Custody criteria established July 1, 2012 in section 3377.2 during the first classification committee review reducing the inmate from Maximum Custody.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 5054 and 5068, Penal Code; *Americans With Disability Act (ADA)*, 42 U.S.C. § 12131, et seq.; and *Pennsylvania Department of Corrections* v. *Yeskey* (1998) 524 U.S. 206.

HISTORY:

1. New section filed 3-27-2000 as an emergency; operative 3-27-2000 (Register 2000, No. 13). Pursuant to Penal Code section 5058(e), a Certificate of Compliance must be transmitted to OAL by 9-5-2000 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 3-27-2000 order transmitted to OAL 9-5-2000; disapproval and order of repeal and deletion repealing section by operation of Government Code 11346.1(g) filed 10-18-2000 (Register 2000, No. 42).
3. New section filed 10-19-2000 deemed an emergency pursuant to Penal Code section 5058(e); operative 10-19-2000 (Register 2000, No. 42). Pursuant to Penal Code section 5058(e), a Certificate of Compliance must be transmitted to OAL by 3-27-2001 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 10-19-2000 order, including further amendment of section and Note, transmitted to OAL 3-27-2001 and filed 5-3-2001 (Register 2001, No. 18).
5. Amendment filed 6-26-2012 as an emergency; operative 7-1-2012 (Register 2012, No. 26). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 12-10-2012 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 6-26-2012 order, including further amendment of subsections (a)(10), (c) and (c)(2), transmitted to OAL 12-5-2012 and filed 1-17-2013; amendments operative 1-17-2013 pursuant to Government Code section 11343.4(b)(3) (Register 2013, No. 3).
7. Editorial correction of History 6 (Register 2013, No. 7).
8. Repealer and new subsection (b)(5) filed 10-17-2014; operative 10-17-2014 pursuant to Government Code section 11343.4(b)(3) (Register 2014, No. 42).

3378. Security Threat Group Identification, Prevention, and Management.

(a) Any information regarding an offender which is or may be critical to the safety of persons inside or outside an institution shall be documented as required below on a CDCR Form 812 (Rev. 11/13), Notice of Critical Case Information -Safety of Persons (Nonconfidential Enemies), which is incorporated by reference and CDCR Form 812-C (Rev. 8/01), Notice of Critical Information -Confidential Enemies. The CDCR Form 812, and CDC Form 812-C and all documents referred to on the forms shall be filed in the central file of each identified offender. Any confidential material affecting the critical case factors of an offender shall conform to the provisions of section 3321. Entries on these forms shall not be a substitute for detailed documentation required elsewhere in the central file.

(b) A CDCR Form 812, and when applicable a CDC Form 812-C, shall be completed for each newly committed or returned offender.

(1) The CDCR Form 812 and CDC Form 812-C shall be updated as any critical information becomes known and is documented in the offender's central file. The forms shall also be reviewed and updated at the time of any change in the offender's status or placement.

(2) Any offender who claims enemies shall provide sufficient information to positively identify the claimed enemy. Any offender identified as an enemy shall be interviewed unless such interview would jeopardize an investigation or endanger any person. The results of the interview or investigation which supports, verifies or disproves the information shall be documented on a CDC Form 128-B, General Chrono.

(3) Notations on the CDCR Form 812 and CDC Form 812-C, or absence thereof, shall not be the sole basis for a staff decision or action which may affect the safety of any person.

(c) Gang involvement allegations shall be investigated by a gang coordinator/investigator or their designee.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 5054 and 5068, Penal Code; *Sandin* v. *Connor* (1995) 515 U.S. 472; *Madrid* v. *Gomez* (N.D. Cal. 1995) 889 F.Supp. 1146; *Toussaint* v. *McCarthy* (9th Cir. 1990) 926 F.2d 800; *Toussaint* v. *Yockey* (9th Cir. 1984) 722 F.2d 1490; and *Castillo* v. *Alameida*, et al. (N.D. Cal., No. C94-2847).

HISTORY:

1. New section filed 8-7-87 as an emergency; operative 8-7-87 (Register 87, No. 34). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 12-7-87.
2. Certificate of Compliance as to 8-7-87 order transmitted to OAL 12-4-87; disapproved by OAL (Register 88, No. 16).
3. New section filed 1-4-88 as an emergency; operative 1-4-88 (Register 88, No. 16). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 5-3-88.
4. Certificate of Compliance as to 1-4-88 order transmitted to OAL 5-3-88; disapproved by OAL (Register 88, No. 24).
5. New section filed 6-2-88 as an emergency; operative 6-2-88 (Register 88, No. 24). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 9-30-88.
6. Certificate of Compliance transmitted to OAL 9-26-88 and filed 10-26-88 (Register 88, No. 50).
7. Amendment of section heading and text and repealer and new forms filed 6-17-94; operative 7-18-94 (Register 94, No. 24).
8. Amendment of subsections (c)(2)–(3) filed 6-1-95 as an emergency; operative 6-1-95 (Register 95, No. 22). A Certificate of Compliance must be transmitted to OAL by 11-8-95 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 6-1-95 order including amendment of subsection (c)(3) transmitted to OAL 11-3-95 and filed 12-18-95 (Register 95, No. 51).
10. Editorial correction of History 8 (Register 97, No. 12).
11. Amendment of subsections (a) and (c)(2), new subsections (c)(3)–(c)(5), subsection renumbering, amendment of newly designated subsections (c)(6) and (c)(8), new subsections (d)–(f)(3) and amendment of Note filed 8-30-99 as an emergency; operative 8-30-99 (Register 99, No. 36). Pursuant to Penal Code section 5058(e), a Certificate of Compliance must be transmitted to OAL by 2-8-2000 or emergency language will be repealed by operation of law on the following day.
12. Certificate of Compliance as to 8-30-99 order transmitted to OAL 2-7-2000 and filed 3-21-2000 (Register 2000, No. 12).
13. Change without regulatory effect amending subsection (a) and repealing and adopting new forms 812 and 812-C filed 10-23-2001 pursuant to section 100, title 1, California Code of Regulations (Register 2001, No. 43).
14. Amendment of section and Note filed 5-25-2006; operative 5-25-2006 pursuant to Government Code section 11343.4 (Register 2006, No. 21).
15. Amendment of subsections (c)(3)–(4), (c)(6)(C)–(E), (c)(8)(B), (c)(8)(D), (c)(8)(F) and (g) filed 6-2-2011; operative 7-2-2011 (Register 2011, No. 22).
16. Amendment of section heading and section, including repealer of forms and incorporation by reference of new forms, filed 10-17-2014; operative 10-17-2014 pursuant to Government Code section 11343.4(b)(3) (Register 2014, No. 42).

3378.1. Security Threat Group Certification Process.

The California Department of Corrections and Rehabilitation (CDCR) prohibits offenders from creating, promoting, or participating in any Security Threat Group (STG). Any offender engaging in STG related behavior may be subject to criminal prosecution, in addition to any administrative sanctions imposed as a result of CDCR's disciplinary process.

(a) Definitions.

(1) Certification of an STG-I or recognition of an STG-II means the formal designation of a group or gang as a security threat group based upon a STG Threat Assessment conducted by the Office of Correctional Safety (OCS). Prison gangs, disruptive groups and/or street gangs may be reviewed, categorized, and certified/recognized as a STG. Initial certification will be based upon the documented severity of the threat to the security of the institution and safety of staff and offenders.

(2) STG Threat Assessment means an official assessment conducted by the OCS for use in the STG certification process. This assessment will specifically identify the reason a STG, based on documented evidence of violence, threat of violence and/or other serious STG behaviors, poses an immediate clear and present danger to the safety of any person or the security of the prison.

(b) Security Threat Group Certification Criteria includes the following:

(1) Information from any federal, state, county, or city correctional or law enforcement agency, identifying the propensity for violence or disruptive nature of the potential STG group being considered for certification.

(2) Consideration with regard to whether the group meets the definition of a STG as defined in section 3000.

(3) History of STG behavior in the community.

(4) Evidence that the group presents a potential threat to the security of the institution and safety of staff and offenders.

(5) History of threatening behavior to staff or offenders safety involving such acts as riots, group disturbances, possession or manufacture of weapons, assault/battery, trafficking of narcotics, extortion and/or coercion of other individuals or groups.

(6) Documentation of violent and/or illegal activities which may also include planning, organizing, threatening, financing, soliciting, or committing unlawful acts.

(7) Group evolution, structure, formalized procedures or bylaws, and/or membership characteristics.

(8) Information concerning group meetings and membership criteria.

(9) Chronology of events or other information evidencing a threat to institutional security or safety of staff and offenders through group activities, associations, and potential security alignments.

(10) Tattoo, symbols, and graffiti documentation.

(11) Group association evidence, including offender and staff interviews.

(12) Available information concerning group philosophy and affiliations.

(c) Security Threat Group Designation Levels.

(1) Security Threat Group-I consists of groups, gangs, and/or historically based prison gangs that the CDCR has determined to be the most severe threat to the security of the institutions and communities based on a history and propensity for violence and/or influence over other groups. Based upon their individual threat, clandestine operations, and/or influence over other STG affiliates, inmates who are validated as STG-I members may be placed in the Step Down Program (SDP) and housed in a SHU based solely upon their validation. Validated STG-I associates will normally remain housed in general population, or similar specialized housing, unless confirmed STG behavior, as defined in section 3000, are present. If these behaviors are present, the STG-I associate will be considered by the Institution Classification Committee (ICC) for placement into the SDP pursuant to section 3378.4.

(2) Security Threat Group-II consists of other groups or gangs such as street gangs or disruptive groups comprised of members and associates who may be determined to be in a subservient role to the more dominant STG-I groups. Validated STG-II members or associates will remain housed in general population, or similar specialized housing, unless two or more occurrences of serious STG behaviors, which are reflected in section 3341.5(c)(9) SHU Term Assessment Chart, are present. If there is confirmed STG behavior present, the STG-II member or associate will be considered by ICC for placement into the SDP pursuant to section 3378.4. Groups identified as STG-II are not required to be certified, as described in this section.

(d) Requests for Certification of a Group at the STG-I level shall include the following:

(1) Staff shall prepare a CDCR Form 128-B8, Security Threat Group Certification Worksheet (11/13), which is incorporated by reference, requesting that a STG Threat Assessment be initiated of the identified group. The completed document shall be routed through the chain of command prior to submission to OCS.

(2) The Chief, OCS shall assign staff to complete an official STG Threat Assessment and determine whether the group should be recommended for certification as a STG-I. If recommended for STG-I certification, a STG Administrative Directive will be prepared and routed to the Secretary, CDCR, for review and approval/disapproval.

(3) Re-certification of STG-I Designations.

(A) The CDCR shall review its certification of STG-I designations at least every four years utilizing criteria in accordance with section 3378.1(b).

(B) Information used in the re-certification process shall be no more than four years old.

(C) OCS shall document the results of the re-certification review on a STG Administrative Directive and route to the Secretary, CDCR, and shall request either re-certification or decertification, based upon the level of threat and STG activity noted from the group during the previous four years.

(e) Requests for Recognition of a Group at the STG-II level shall include the following:

(1) Institution Staff or Division Staff shall prepare a memorandum requesting that a STG Threat Assessment be initiated of the identified group. The memorandum shall be routed through the chain of command prior to submission to OCS.

(2) The Chief, OCS shall assign staff to complete a review of the request. The Chief, OCS, shall review all of the information to approve or deny the request for recognition as a STG-II. The Chief, OCS shall sign the memo.

(f) Certification of STG Related Symbols: The process staff will utilize to request certification of a STG related sign or symbol is:

(1) The Hiring Authority/designee of the requesting institution, parole region, or OCS unit, shall seek certification of a sign/symbol by forwarding a written request to OCS.

(2) The request must detail the reason certification of the sign/symbol is warranted and must include:

(A) Description, drawing, photo of sign or symbol.

(B) Translation or meaning of the sign or symbol to the specific STG.

(C) Relevance of the sign or symbol to the specific STG.

(D) Evidence the sign or symbol has been adopted/accepted by the specific STG.

(E) Means by which the information was obtained.

(F) A listing of all corresponding documentation indicative of the sign or symbol being recognized by the specific STG.

(3) The Chief, OCS, or designee shall review the submitted documents and approve/deny the request.

(A) If the certification request is approved, dissemination of the newly certified sign or symbol will be made to DAI Wardens, OCS Agents, the inmate population, and all other interested parties.

(B) Should the request be denied, a response reflecting the details of the denial will be forwarded to the Hiring Authority.

(4) The CDCR shall review its certification of STG related signs and symbols at least every four years utilizing criteria outlined in this section.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 5054 and 5068, Penal Code.

HISTORY:

1. New section filed 8-30-99 as an emergency; operative 8-30-99 (Register 99, No. 36). Pursuant to Penal Code section 5058(e), a Certificate of Compliance must be transmitted to OAL by 2-8-2000 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 8-30-99 order transmitted to OAL 2-7-2000 and filed 3-21-2000 (Register 2000, No. 12).
3. Amendment of subsections (b) and (c) filed 12-29-2009; operative 1-28-2010 (Register 2010, No. 1).
4. Renumbering of former section 3378.1 to new section 3378.5(a)–(d) and new section 3378.1 filed 10-17-2014; operative 10-17-2014 pursuant to Government Code section 11343.4(b)(3) (Register 2014, No. 42).

3378.2. Security Threat Group Validation Process.

The formal and objective process for identifying and documenting Security Threat Group (STG) affiliates. Validation is the term used to describe the quality control and due process review of STG identifications. The validation process is a strategy for identifying and documenting STG Members, Associates, Suspects, or Dropouts as defined in section 3000.

(a) STG Coordinators/Investigators, the Office of Correctional Safety (OCS), and the STG Unit Classification Committee shall be responsible to initiate, investigate, and affirm/reject the validation of an STG affiliate.

(b) The validation process delineates the formal objective criteria utilized by an STG Investigator to determine an individual's affiliation with a certified or recognized STG. Each factor is determined by a weighted point system in order to conclude whether the information taken as a whole is sufficient to establish a nexus to the STG.

Validation process for identifying and documenting STG members, associates, or suspects, which are defined as follows:

Member: Any offender or any person who, based on documented evidence, has been accepted into membership by a STG. STG members will be identified by the STG Investigator through the validation process, reviewed by OCS, and affirmed by the STG Unit Classification Committee.

Initial Validation of an offender as a member requires at least three (3) independent source criteria items with a combined value of 10 points or greater coupled with information/activity indicative of a member.

Validation of an offender as a member of a STG-I shall also require that at least one of the criteria source items be a direct link to a current or former validated member or associate of the STG, or to an offender or any person who is validated by the Department within six months of the established or estimated date of activity identified in the evidence considered.

An upgrade from associate to member requires at least three (3) independent source criteria items, that were not previously used in a validation, with a combined value of 10 points or greater coupled with at least three (3) of the items of information/activity being indicative of a member.

Associate: Any offender or any person who, based on documented evidence, is involved periodically or regularly with the members or associates of a STG. STG associates will be identified by the STG Investigator through the validation process, reviewed by OCS, and affirmed by the STG Unit Classification Committee. Initial validation of an offender as an associate requires at least three independent source criteria items with a combined value of 10 points or greater coupled with information/activity indicative of an associate.

Validation of an offender as an associate of a STG-I shall also require that at least one source criteria item be a direct link to a current or former validated member or associate of the STG, or to an offender or any person who is validated by the Department within six months of the established or estimated date of activity identified in the evidence considered.

Suspect: Any offender or any person who, based on documented evidence, is involved periodically or regularly with the members or associates of a STG. The STG suspect is tracked by STG Investigative staff pending validation. Suspects have attained two or more points of validation and would not be officially validated but tracked for intelligence purposes.

A direct link, as defined in Section 3000, may be established by unilateral action by either party or by the subject's possession of any item connecting the subject to a validated STG affiliate; or for purposes of establishing a direct link, it shall not be necessary for CDCR to demonstrate that the subject had knowledge, actual or implied, of the validated STG affiliate's STG involvement.

Although placement into the Security Housing Unit / Step Down Program (SHU/SDP) is based upon behavior with a nexus to a certified or recognized STG, validation of an STG affiliate can occur based upon the sole use of source criteria items or based upon a combination of source criteria items and STG behavior that is reported and adjudicated via the disciplinary process. The STG validation process may take into account source criteria items that may have occurred at any time in an individual's personal STG history. The determination for placement into the SHU/SDP by an Institution Classification Committee must be based upon serious STG behavior, except as provided for members in section 3378.2(e), which occurred during the preceding four years and has been adjudicated through the inmate disciplinary process.

Validation Source Criteria is documented on the CDCR Form 128-B3 (11/13), Security Threat Group Identification Score Sheet, which is incorporated by reference. This document is completed by the STG Investigator.

Multiple sources providing information about a single STG related act or conduct shall constitute a single source item. One may support the other but will only count as one item toward the validation with the others listed as support documents.

Staff shall articulate the basis for determining the content or conduct at issue is STG related.

The source items shall be based on the following criteria:

(1) Symbols (Two Points): Hand signs, distinctive clothing, graffiti, etc., which have been certified by CDCR in accordance with Section 3378.1(f) as being used by and distinctive to specific STGs. Staff shall describe the symbol in detail. Staff shall document and disclose this information to the offender in a written form that would not jeopardize the safety of any person or the security of the institution.

(2) Association (Three Points) Information related to the offender's association with validated STG affiliates. The association shall be more than a chance encounter or an innocuous association, but rather, a pattern or history of encounters that involve STG behavior and/or an occurrence of conducting STG related business. Direct contact with a validated STG affiliate is not necessary to demonstrate this association. Staff shall articulate the basis for determining the conduct is credible evidence of association with the STG. Staff shall document and disclose this information to the offender in a written form that would not jeopardize the safety of any person or the security of the institution.

(3) Informants (Three Points): Documentation of information evidencing STG affiliation from an informant shall indicate the date of the information, whether the information is confidential or non-confidential, and an evaluation of the informant's reliability. Confidential material shall also meet the requirements established in section 3321. Staff shall articulate how the information specifically relates to the offender's involvement with the STG. The information may be used as a source of validation if the informant provides specific knowledge of how he/she knew the offender to be involved with the STG. Multiple confidential sources providing information regarding a single STG related incident or behavior shall constitute one (1) source item. Exclusive reliance on hearsay information provided by informants will not be used for validation purposes. Staff shall document and disclose this information to the offender in a written form that would not jeopardize the safety of any person or the security of the institution.

(4) Debrief Reports (Three Points): Only information referencing specific STG related acts or conduct shall be considered as a source item when utilizing information from another offender's debriefing. Confidential material obtained from a debrief report shall also meet the requirements established in section 3321. Multiple sources of information relative to a single STG related act or conduct shall be considered a single source of validation. Exclusive reliance on hearsay information provided by debriefing inmate will not be used for validation purposes. Staff shall document and disclose this information to the offender in a written form that would not jeopardize the safety of any person or the security of the institution.

(5) Written Materials (Offender identified in written material not in his possession-Two Points; Personal Possession-Four Points): Any material or documents evidencing STG activity such as the membership or enemy lists, roll call lists, constitutions, organizational structures, codes, training material, etc., of specific STGs or addresses, names, identities of validated STG affiliates. Although the item by itself may not evidence STG activity, when considered with other STG activity/behavior, it gives credence to a STG nexus. Staff shall articulate why, based on either the explicit or coded content, the written material is reliable evidence of affiliation with the STG. Staff shall document and disclose this information to the offender in a written form that would not jeopardize the safety of any person or the security of the institution.

(6) Photographs (Four Points): Individual or group photographs with STG connotations such as those which include insignia, certified symbols, or other validated STG affiliates. The date or age of a photograph shall be reasonably ascertained prior to any photo being relied upon for inclusion as a source item. No photograph shall be considered for validation purposes that is estimated to be older than four (4) years. Any photograph being utilized as a source item that depicts STG affiliates shall require that at least one of the individuals be previously validated by the Department, or validated by the

Department within six (6) months of the photograph's established or estimated date of origin. Staff shall document the validation date for any individual in the photograph who was validated within six months of the photograph's established or estimated date of origin. Staff shall document and disclose this information to the offender in a written form that would not jeopardize the safety of any person or the security of the institution.

(7) Staff Information (Four Points): Documentation of staff's visual or audible observations which reasonably indicate STG activity as described in Subsections 3314 (a)(3)(L) and (M), Administrative Rules Violations, STG Contraband and Behavior; or Subsections 3315 (a)(3)(Z) and (AA), Serious Rules Violations, STG Violent, Disruptive, or Controlling Behavior. Staff shall articulate the basis for determining the content or conduct at issue is STG related. Staff shall document and disclose this information to the offender in a written form that would not jeopardize the safety of any person or the security of the institution.

(8) Other Agencies (Four Points): Information identifying STG affiliation provided by other agencies including, but not limited to, police reports, crime reports, or arrest reports evidencing STG conduct, which have not been submitted, considered, and incorporated within received court documents. Any information received from another agency shall be documented by the staff person who receives such information, citing the source and validity of the information. Staff shall document and disclose this information to the offender in a written form that would not jeopardize the safety of any person or the security of the institution.

(9) Visitors (Four Points): Visits from persons or entities that are documented as willfully promoting, furthering or assisting STG affiliates in activities associated with the STG. Staff shall articulate the basis for concluding the relationship between the visitor(s) and offender is STG related in nature or that the visitor(s) and offender engaged in conduct related to the STG. Staff shall articulate the basis for identifying the visitor(s) as associated with the STG. Staff shall document and disclose this information to the offender in a written form that would not jeopardize the safety of any person or the security of the institution.

(10) Communications (Four Points): Documentation of conversations, conversations between offenders/others, mail, notes, greeting cards, or other communication, which include explicit or coded messages evidencing STG activity. Staff shall articulate why, based on either the explicit or coded content, the communication is reliable evidence of affiliation with the STG. Staff shall document and disclose this information to the offender in a written form that would not jeopardize the safety of any person or the security of the institution.

(11) Self Admission (Five Points): Staff shall document information about an offender's verbal or written admission as an STG affiliate and/or specific involvement with the STG. Staff shall document and disclose this information to the offender in a written form that would not jeopardize the safety of any person or the security of the institution.

(12) Offenses (Six Points): When circumstances of an offense conclude that the offense was committed for the benefit or promotion of, at the direction of, or in association with an STG. Staff shall articulate the basis for determining an offense to be STG related. Multiple sources of information relative to a single incident or offense will be considered one (1) source of validation. Staff shall document and disclose this information to the offender in a written form that would not jeopardize the safety of any person or the security of the institution.

(13) Tattoos and/or Body Markings (Six Points): Tattoos and/or body markings depicting symbols that have been certified by CDCR in accordance with Section 3378.1(f) as being used by and distinctive to a specific STG. Staff shall describe the tattoo and/or body marking in detail. Staff shall document and disclose this information to the offender in a written form that would not jeopardize the safety of any person or the security of the institution.

(14) Legal Documents (Seven Points): Court transcripts, probation officer reports, or other legal documents evidencing STG conduct. Staff shall document and disclose this information to the offender in a written form that would not jeopardize the safety of any person or the security of the institution.

(c) The validation process is a critical component of identifying and curtailing STG behavior. Once an offender has been identified as a STG affiliate and vetted through the validation process, CDCR staff shall track their movement, monitor their conduct, and take interdiction action, as necessary.

(1) All source criteria items referenced in the validation package shall be disclosed to the offender utilizing a CDCR Form 128-B4 (Rev. 06/14), Evidence Disclosure and Interview Notification, which is incorporated by reference. Staff shall identify which of the source items is being utilized as the direct link on the CDCR Form 128-B4. The identity of the individual being used as a direct link shall be disclosed unless it compromises the individual's safety or the safety of others. The offender shall be given copies of all non-confidential documents unless otherwise requested in writing by the offender. Confidential information used in the validation package shall be disclosed to the offender via a CDCR Form 1030 (Rev. 11/13), Confidential Information Disclosure Form, which is incorporated by reference.

(2) Offenders shall be given at least 72 hours advance notice of the validation interview. The interview with the STG Investigator or designee may be held earlier if the offender waives, in writing, the 72-hour preparation period.

(3) The offender's mental health status and/or need for staff assistance shall be evaluated prior to the interview. Staff assistance shall be assigned per guidelines set forth in section 3318.

(4) Prior to submission of a validation package to OCS, the subject of the investigation shall be interviewed by the STG Investigator, or designee, and given a meaningful opportunity to be heard in regard to the source items used in the validation.

(D)(5) The interview shall be documented to include an evaluation and conclusion on each item for which the inmate has provided a rebuttal. The assigned staff shall record this information, via CDCR Form 128-B5 (11/13), Security Threat Group Validation Chrono, which is incorporated by reference. If through the review and interview process, a source item is determined to not have merit, the assigned staff shall document that further investigation shows no merit on the CDCR Form 128-B5. Staff will provide a copy to the subject within 14 calendar days and prior to submission of the validation package to the OCS.

(6) The CDCR Form 128-B5 shall be submitted with the validation package to OCS for a recommendation to affirm or reject the validation.

(7) The recommendation for validation or rejection of evidence relied upon shall be documented on a CDCR Form 128-B2 (Rev. 06/14), Security Threat Group Validation/Rejection Review, which is incorporated by reference, and be forwarded to the facility or parole region of origin for processing. If the inmate is currently housed in a CDCR institution, the CDCR Form 128-B2 will be reviewed by the STG Unit Classification Committee. Upon receipt of the CDCR Form 128-B2, the Classification and Parole Representative or Parole Administrator I, or their designee, shall clearly note in some permanent manner upon the face of every document whether or not the item met validation requirements.

(d) STG Unit Classification Committee. The STG Investigator via the assigned counselor shall schedule the offender for appearance before the STG Unit Classification Committee within 30 days

of receipt of the CDCR Form 128-B2, in accordance with subsection 3376(d)(5).

An investigative employee shall be assigned by the STG Unit Classification Chairperson to assist the inmate with preparation for the STG Unit Classification Committee. The duties and functions of a staff member assigned to assist an inmate in the hearing on a validation will be as described in Sections 3318 and 3341 for a disciplinary hearing. When an inmate requests witnesses at this hearing, the investigative employee's duties and functions will be as described in Section 3318 and 3341 for predisciplinary hearing investigations. In screening prospective witnesses, the investigative employee will do so in accordance with the information to be considered in the classification hearing. The investigative employee is designated to gather information for the STG Unit Classification Chairperson and will submit a written report to the Chairperson which may include witness statements and a summary of the information collected.

The STG Unit Classification Committee shall review the validation package noting the recommendations of OCS and make the final determination on acceptance of the validation package based on the totality of the information.

(1) If the STG affiliate is validated as an STG-I Member, the offender shall be referred to the Institution Classification Committee (ICC) for transfer and placement in Step 1 of the Step Down Program (SDP) in the Security Housing Unit (SHU) and Classification Staff Representative (CSR) for transfer consideration.

(2) If the STG affiliate is validated as an STG-I Associate, and has one STG related serious Rules Violation Report (RVR) as listed in the section 3378.4(a) STG Disciplinary Matrix and which is also identified in section 3341.5(c)(9) SHU Term Assessment Chart that is being used as a validation source item, the offender shall be referred to ICC for transfer consideration to Step 1 of the SDP in the SHU.

(3) If the STG affiliate is validated as an STG-II Member or Associate, and has two STG related serious RVRs as listed in the section 3378.4(a) STG Disciplinary Matrix and which are also identified in section 3341.5(c)(9) SHU Term Assessment Chart, the offender shall be referred to ICC for program review and consideration of placement in Step 1 of the SDP in the SHU.

(4) An inmate who is housed in the Administrative Segregation Unit pending validation, whose validation is rejected, and who does not have documented STG behavior or whose behavior is determined to be non-STG related, shall be scheduled for ICC for release to appropriate general population housing unless other case factors warrant retention.

(5) An inmate who is housed in general population, validated as a STG-I Associate or any STG-II affiliate and who does not have a serious STG related RVRs as listed in section 3378.4(a) STG Disciplinary Matrix or identified in section 3341.5(c)(9) SHU Term Assessment Chart, may not require referral to ICC and may be retained in appropriate general population housing.

(6) An inmate who is housed in general population, whose validation is rejected, and who does not have documented STG behavior, shall not require referral to ICC.

(e) Institution Classification Committee. When the UCC has recommended that an inmate be validated as a STG-I member, the ICC shall ensure there is sufficient evidence to warrant validation at the level of member. ICC will review the validation documents and all other case factors in their determination of appropriate housing. Any disagreement by the ICC with a STG I member's validation and/or placement into the SDP shall be referred to the DRB for resolution. If the ICC concurs with the validation, the inmate's housing needs will be as follows:

(1) STG-I Member: Placement in Step 1 of the SDP at a SHU, as determined appropriate by ICC.

(2) STG-I Associate.

(A) If the validation source items include serious documented STG behavior or activity as listed in section 3378.4(a) STG Disciplinary Matrix and which is also identified in section 3341.5(c)(9) SHU Term Assessment Chart requires referral for transfer to Step 1 of the SDP at a SHU and endorsement by the Classification Services Representative (CSR).

(B) If the inmate has been found to be accountable for serious STG related behavior, as listed in section 3378.4(a) STG Disciplinary Matrix and which is also identified in Section 3341.5(c)(9) SHU Term Assessment Chart, which occurred since the date of the Validation Interview, this will require consideration of referral for transfer to Step 1 of the SDP at a SHU and if necessary, endorsement by the CSR.

(C) If the validation source items do not meet the designated behavioral criteria for SDP placement release to general population unless the placement score or case factors have changed and the inmate requires further housing consideration.

(3) STG-II Member or Associate.

(A) If the validation source items include two occurrences, both of which have occurred within four years of the validation date, of serious documented STG behavior or activity, as listed in section 3378.4(a) STG Disciplinary Matrix and which are also identified in Section 3341.5(c)(9) SHU Term Assessment Chart requires referral for transfer to Step 1 of the SDP at a SHU and endorsement by the CSR.

(B) If the inmate has been found to be accountable for serious STG related behavior, as listed in section 3378.4(a) STG Disciplinary Matrix and which is also identified in Section 3341.5(c)(9) SHU Term Assessment Chart, which occurred since the date of the Validation Interview, this will require consideration of referral for transfer to Step 1 of the SDP at a SHU and if necessary, endorsement by the CSR.

(C) If the validation source items do not meet the designated behavioral criteria for SDP placement release to general population unless the placement score or case factors have changed and the inmate requires further housing consideration.

(4) The date of the ICC's assessment and imposition of an Administrative SHU term for the SDP shall establish the start date toward completion of Step 1 of the SDP at a SHU. Applicable privileges, in accordance with Section 3044(i) shall be initiated upon the inmate's arrival at the SHU facility.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 5054 and 5068, Penal Code; *Sandin* v. *Connor* (1995) 515 U.S. 472; *Madrid* v. *Gomez* (N.D. Cal. 1995) 889 F.Supp. 1146; *Toussaint* v. *McCarthy* (9th Cir. 1990) 926 F.2d 800; *Toussaint* v. *Yockey* (9th Cir. 1984) 722 F.2d 1490; and *Castillo* v. *Alameida*, et al. (N.D. Cal., No. C94-2847).

HISTORY:

1. New section filed 8-30-99 as an emergency; operative 8-30-99 (Register 99, No. 36). Pursuant to Penal Code section 5058(e), a Certificate of Compliance must be transmitted to OAL by 2-8-2000 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 8-30-99 order transmitted to OAL 2-7-2000 and filed 3-21-2000 (Register 2000, No. 12).
3. Renumbering of former section 3378.2 to new section 3378.5(e) and new section 3378.2 filed 10-17-2014; operative 10-17-2014 pursuant to Government Code section 11343.4(b)(3) (Register 2014, No. 42).

3378.3. Security Threat Group Step Down Program.

(a) The Step Down Program (SDP) is an incentive based multi-step process for the management of Security Threat Group (STG) affiliates. The SDP is designed to monitor affiliates and assist with transition for return to a general population program setting.

(1) Participation in each step of the SDP shall require staff to provide the offender with CDCR Form 128B SDP1 (Rev. 06/14), Step Down Program Notice of Expectations (Step 1); CDCR Form 128B SDP2 (Rev. 06/14), Step Down Program Notice of Expectations (Step 2); CDCR Form 128B SDP3 (Rev. 06/14), Step Down Program Notice of Expectations (Step 3); CDCR Form 128B SDP4 (Rev. 06/14), Step Down Program Notice of Expectations (Step 4); or CDCR Form 128B SDP5 (11/13), Notice of Conditions of Monitored Status (Step 5), all of which are incorporated by reference. The expectations shall outline the goals, expectations for successful completion, and potential consequences for failure to fully participate and complete each step.

(2) Regression in the SDP requires a finding of guilt for an STG related Rules Violation Report or failure to participate in SDP program activities.

(3) Each program step provides progressive programs and privileges and it is the responsibility of the affiliate to demonstrate they can be released to a less restrictive environment while abstaining from STG behaviors. Participation in program activities is required to progress forward within the SDP. Failure to participate in the SDP, in and of itself, will not be cause to generate a Rules Violation Report.

(4) If the offender chooses not to progress through any step of the program, the offender may be returned, by ICC, to one of the previous steps until they demonstrate appropriate behavior for movement into the next step. At any time the inmate wishes to begin participating in the SDP, they may notify their assigned counselor who will schedule their appearance before the ICC within 30 days.

(5) Information gleaned through inmate participation in program activities is not intended to be used to validate an inmate, initiate an investigation into STG related behavior, or identify/corroborate the involvement of other STG participants. However, information specifically intended to convey to staff the occurrence of past, present, or future STG threats of violence or disruption may be evaluated to maintain institutional and public safety.

(b) An offender's placement in the SDP is outlined in Section 3378.2(a). The offender's participation is voluntary; however, their progression through the SDP is dependent upon their active participation in the SDP.

(1) Validated affiliates in steps 1 and 2 shall be scheduled for appearance before the Institution Classification Committee (ICC) at least every 180 days for assessment of case factors and program participation to ensure appropriate step placement within the SDP. Steps 1 and 2 are designed to be completed in 12 months each, but may be accelerated by ICC at the 180 day review. Criteria for the inmate to be retained in the step at the 180 day ICC review are as follows: 1) the inmate has not completed all required program components; and/or 2) the inmate has been found guilty of a RVR for STG-related behavior. Successful completion of these steps will require program participation, compliance with program expectations, and completion of all required components/curriculum. Steps 1 and 2 are primarily intended as periods of observation.

(2) Validated affiliates in step 3 shall be scheduled for appearance before the ICC at least every 180 days for assessment of case factors and program participation to ensure appropriate step placement within the SDP. Successful completion of Step 3 will require a minimum of 12 months program participation, compliance with program expectations, completion of all required components/curriculum, and the inmate remaining free of STG disciplinary behavior.

(3) Validated affiliates in step 4 shall be scheduled for appearance before the ICC at least every 90 days for assessment of case factors and program participation to ensure appropriate step placement within the SDP. Successful completion of Step 4 will require a minimum of 12 months program participation, compliance with program expectations, completion of all required components/curriculum, and the inmate remaining free of STG disciplinary behavior.

(4) Validated offenders who fail to comply with requirements of the SDP may be reviewed by ICC and may be subject to disciplinary sanctions and/or program step adjustment in accordance with section 3378.4(b).

(5) Upon successful completion of step 4, as determined by ICC and based on individual affiliate's behavior, a male offender shall be referred to the Classification Staff Representative (CSR) for endorsement to a Level IV facility, for a 12-month observation period (Step 5) regardless of the offender's placement score. When an inmate has completed the SDP and the institution head believes a transfer to an alternate Level IV institution or out of level placement is warranted, the institution head will refer the case to the DRB for decision.

(6) Upon the successful completion of step 4, as determined by ICC, a female offender will be reviewed by ICC for release to the general population for 12 months of observation and monitoring (step 5).

(7) Validated affiliates shall transition from SDP in a SHU to Step 5 and shall be identified as Monitored Status with a custody designation of Close B, as described in Section 3377.1, during the first 12 months assigned to the designated General Population facility or similar specialized housing, unless other case factors require a higher level of custody.

(A) Offenders shall receive orientation at the designated Step 5 institution. The orientation shall include, but not be limited to:

1. STG Investigator interview.
2. Referral to Mental Health.
3. Unit orientation.
4. Mandatory Urinary Analysis Testing (initial 12 months).
5. Initial Classification Committee to include attendance by the STG Investigator with consideration for rehabilitative program enrollment as identified through departmentally approved assessment tools (i.e., TABE), education, and STG management needs.
6. Establishment of 12-month observation period.

(B) Upon completion of the 12-month observation period (Step 5) with no documented evidence of continued STG behavior, the offender shall be referred to ICC for consideration of transfer to an appropriate facility consistent with his/her placement score and case factors.

(8) Upon transfer to appropriate housing, offenders shall continue to be identified as Monitored Status for potential recurrence of STG behavior or activities for an indefinite period of time. Monitored Status affiliates are subject to the following:

(A) Enhanced cell search occurrences as determined necessary.

(B) Enhanced mail scan.

(C) Enhanced telephone call monitoring.

(D) Periodic STG Investigator interviews.

(9) Participation in the SDP affords STG affiliates the opportunity to earn enhanced privileges consistent with their ability to reintegrate, effectively interact with others, and refrain from STG behavior/activities. STG affiliates participating in the SDP shall be placed in privilege group "S1" through "S4" in accordance with section 3044(i). Monitored Status affiliates (Step 5) will be allowed privileges associated with their assigned privilege group.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 5054 and 5068, Penal Code.

HISTORY:

1. New section filed 12-29-2009; operative 1-28-2010 (Register 2010, No. 1).
2. Renumbering of former section 3378.3 to new section 3378.7 and new section 3378.3 filed 10-17-2014; operative 10-17-2014 pur-

suant to Government Code section 11343.4(b)(3) (Register 2014, No. 42).

3378.4. Security Threat Group Behavior or Activity.

CDCR inmates shall not participate in STG activity or behavior. For validated affiliates, the consequences of continued confirmed STG behavior are outlined in the STG Disciplinary Matrix below. STG behaviors or activities included in the STG Disciplinary Matrix are separated into Administrative Rule Violations and Serious Rule Violations.

(a) The STG Disciplinary Matrix in conjunction with the SDP Placement Options addresses four categories of impacted affiliates:

• Validated STG-I Associates Initial Placement into the SDP from general population.

• STG-II Members or Associates Initial Placement into the SDP from general population.

• Validated STG affiliates assigned in the SDP, demonstrating continued STG behavior or activities.

• Validated STG affiliates on Monitored Status, Inactive Status, Inactive-Monitored Status, or Dropout Status.

Condemned inmates are subject to section 3378.4(a).

The following behaviors and activities qualify as STG behavior, when a nexus has been established between the behavior and an identified STG. The nexus shall be clearly articulated in the specific act, as well as clearly described within the narrative of the associated Rules Violation Report and Findings of the Senior Hearing Officer/Hearing Officer. If the Specific Act Section of the Rules Violation Report and subsequent Fact Findings and Disposition do not clearly identify a nexus to STG behavior, the disciplinary process will proceed in accordance with Sections 3314 or 3315.

STG DISCIPLINARY MATRIX

Behavior/Activity With Nexus to STG	Administrative or Serious	SDP Placement Options* (Section 3378.4(b)
Section 1:	Serious	3378.4(b)(2)
a) Murder, attempted murder, solicitation of murder, or voluntary manslaughter of a non-offender or offender;		3378.4(b)(3)
b) Assault or battery capable of causing serious injury; assault or battery with a deadly weapon or caustic substance capable of causing serious injury, solicitation for offense;		3378.4(b)(6)
c) Taking a hostage;		3378.4(b)(7)
d) Possession of a firearm, explosive device, or weapon which has been manufactured or modified so as to have the obvious intent or capability of inflicting traumatic injury, and which is under the immediate or identifiable control of the offender;		
e) Escape or attempted escape with force or violence		
f) Rape, sodomy, or oral copulation against the victim's will.		
Section 2:	Serious	3378.4(b)(2)
a) Introduction, trafficking, or distribution of any Controlled Substance (as defined in Section 3000);		3378.4(b)(3)
b) Arson involving damage to a structure or causing serious bodily injury.		3378.4(b)(5)
c) Possession of flammable, explosive, or combustible material with intent to burn any structure or property;		3378.4(b)(6)
d) Extortion or threat by means of force or violence, including requiring payment for protection/insurance or intimidating any person on behalf of the STG;		3378.4(b)(7)
e) Threatening to kill or cause serious bodily injury to a public official, their immediate family, their staff, or their staff's immediate family;		
f) Any other felony involving violence or injury to a victim and not specifically identified on this chart.		
Section 3:	Serious	3378.4(b)(2)
a) Battery on a Peace Officer or non-offender not involving use of a weapon;		3378.4(b)(3)
b) Assault on a Peace Officer or non-offender by any means likely or not likely to cause great bodily injury;		3378.4(b)(5)
c) Assault or battery on a prisoner with no serious injury;		3378.4(b)(6)
d) Destruction of state property valued in excess of $400 dollars during a riot or disturbance;		3378.4(b)(7)
e) Theft, embezzlement, arson, destruction, or damage to another's personal property, state funds, or state property valued in excess of $400;		
f) Any felony not involving violence or the use of a weapon not listed in this schedule with a direct nexus to STG Behavior.		
Section 4:	Serious	3378.4(b)(2)
a) Bribery of a non-offender;		3378.4(b)(3)
b) Leading/Inciting a disturbance, riot, or strike;		3378.4(b)(4)
c) Participation in, or attempting to cause conditions likely to threaten institution security;		3378.4(b)(5)
d) Willfully resisting, delaying, or obstructing any peace officer in the performance of duties;		3378.4(b)(7)
e) Possession of cell phone or components;		
f) Acting in a leadership role displaying behavior to organize and control other offenders within the STG;		
Section 5:	Serious	3378.4(b)(2)
a) Gambling;		3378.4(b)(4)
b) Tagging, or otherwise defacing state property valued at less than $950, with symbols or slogans intended to promote affiliation with a STG.		3378.4(b)(7)
Section 6:	Serious	3378.4(b)(2)
a) STG-related tattoos and/or body markings (new since most recent arrival in CDCR and not previously documented);		3378.4(b)(4)
b) Recording/documentation of conversations evidencing STG behavior;		3378.4(b)(7)
c) Harassment of another person, group or entity either directly or indirectly through the use of the mail, telephone, or other means;		
d) Communications between offenders/others evidencing STG behavior;		
e) Leading STG roll call;		
f) Directing cadence for STG group exercise;		
g) In personal possession of STG-related written material, including membership or enemy list, roll call lists, constitution, organizational structures, codes, training material, etc.;		
h) In personal possession of mail, notes, greeting cards or other communication (electronic or non-electronic) which include coded or explicit messages evidencing STG behavior;		
Section 7:	Serious	Identified in Section 3378.4(b)
Except as otherwise specified in this section, proven attempts to commit or an offender who conspires to commit any of the above listed offenses shall receive the term range specified for that offense.		
Section 8:	Administrative	3378.4(b)(1)
a) Participation in STG roll call;		3378.4(b)(4)
b) Participating in STG group exercise;		3378.4(b)(7)
c) Using hand signs, gestures, handshakes, slogans, distinctive clothing, graffiti which specifically relate to an STG;		
d) Wearing, possessing, using, distributing, displaying, or selling any clothing, jewelry, emblems, badges, certified symbols, signs, or other STG items which promote affiliation in a STG;		
e) In possession of artwork, mail, notes, greeting cards, letters or other STG items clearly depicting certified STG symbols;		
f) In possession of photographs that depict STG association. Must include STG connotations such as insignia, certified symbols, or other validated STG affiliates.		
g) In possession of contact information (i.e., addresses, telephone numbers, etc.) for validated STG affiliates or individuals who have been confirmed to have assisted the STG in illicit behavior.		

* SDP placement is not applicable to the condemned population.

(b) SDP Placement Options provide direction for placement into and movement within the SDP subsequent to initial validation based upon being found guilty of STG related behavior. Staff shall utilize the SDP Placement Options Column of the STG Disciplinary Matrix to determine the options available for consideration by the Institution Classification Committee (ICC). The date of the ICC's assessment and imposition of an administrative term of confinement shall commence counting toward completion of the specified step of the SDP.

(1) Initial Placement (subsequent to validation): ICC shall consider initial placement in the SDP when the validated affiliate has been found guilty of two STG related administrative rules violations within the preceding 12 months. ICC maintains discretion in evaluating an affiliate's overall disciplinary record and case factors in determining placement in the SDP or continued management within a general population setting. If ICC determines placement in the SDP is warranted, the offender shall be placed at the beginning of Step 1.

(2) Initial Placement (subsequent to validation): ICC shall consider initial placement in the SDP when the validated affiliate has been found guilty of one STG related serious rules violation. ICC maintains discretion in evaluating an affiliate's overall disciplinary record and case factors in determining placement in the SDP or continued management within a general population setting. If ICC determines placement in the SDP is warranted, the offender shall be placed at the beginning of Step 1.

(3) Initial Placement (subsequent to validation): ICC shall consider initial placement in the SDP when the validated affiliate has been found guilty of two STG related serious rules violations which are also included in Section 3341.5(c)(9). ICC maintains discretion in evaluating an affiliate's overall disciplinary record and case factors in determining placement in the SDP or continued management within a general population setting. If ICC determines placement in the SDP is warranted, the offender shall be placed at the beginning of Step 1.

(4) Active SDP Violators: ICC shall consider regression within the current step (1 & 12 months) upon a guilty finding for STG related behavior. Placement may be at any month within the current step to allow for completion of the balance of the step prior to moving forward to the next step.

(5) Active SDP Violators: If appropriate, assess and suspend SHU term (as authorized in Section 3341.5). ICC shall consider regression to the previous step (1 to 12 months) upon a guilty finding for STG related behavior. Placement may be at any month within the previous step to allow for completion of the balance of the step prior to moving forward to the next step.

(6) Active SDP Violators: If appropriate, assess and suspend SHU term (as authorized in Section 3341.5) upon a guilty finding for STG related behavior. ICC shall consider regression to Step 1 (1 to 12 months). Placement may be at any month within Step 1 to allow for completion of the balance of the step prior to moving forward to the next step.

(7) Monitored, Inactive, or Inactive-Monitored Status Violators: Placement at the beginning of Step 1. If appropriate, assess and suspend SHU term (as authorized in Section 3341.5). ICC shall consider placement in the SDP when the validated affiliate has been found guilty of two STG related administrative rules violations within the preceding 12 months or one STG related serious rule violation. ICC maintains discretion in evaluating an affiliate's overall disciplinary record and case factors in determining placement in the SDP or continued management within a general population setting. If ICC determines placement in the SDP is warranted, the offender shall be placed at the beginning of Step 1.

If offender has completed the SDP previously, he/she must normally serve 2 years in Step 1 of the SDP.

(c) ICC shall consider placement in the SDP when the identified behavioral criteria has been met. ICC maintains discretion in evaluating an affiliate's overall disciplinary record and case factors in determining placement in the SDP or continued management within a general population setting. If ICC determines placement in the SDP is warranted, the affiliate shall be placed at the beginning of Step 1. The STG Disciplinary Matrix shall be applied as follows:

(1) ICC shall consider a validated STG-I associate housed in the general population for one of the following with a demonstrated nexus to an STG:

(A) Being found guilty of two Administrative Rules Violation Reports identified in the STG Disciplinary Matrix within the preceding 12 months.

(B) Being found guilty of one Serious Rules Violation Report identified in the STG Disciplinary Matrix.

(2) ICC shall consider a validated STG-II affiliate housed in the general population for the following with a demonstrated nexus to an STG: Being found guilty of two Serious Rules Violation Reports identified in Section 3378.4(a) STG Disciplinary Matrix which are also identified in Section 3341.5(c)(9) SHU Term Assessment Chart. Both behaviors must have occurred within the last four years.

(3) The STG Unit Classification Committee and ICC shall consider a dropout status affiliate housed in the general population for one of the following with a demonstrated nexus to an STG:

(A) Being found guilty of two Administrative Rules Violation Reports identified in the STG Disciplinary Matrix within the preceding 12 months.

(B) Being found guilty of one Serious Rules Violation Report identified in the STG Disciplinary Matrix.

(C) The STG related behavior must have occurred after the dropout status affiliate's release from a Transitional Housing Unit (THU). In addition, the behavior or activity must identify the inmate as an active STG member or associate of the same STG with which the inmate was previously validated. If the STG related behavior or activity demonstrates a connection to a different STG, the information may be considered in the validation process and/or the disciplinary process, but shall not be used as the sole basis for placement of the inmate into the SDP.

(4) ICC shall consider a monitored status affiliate housed in the general population for one of the following with a demonstrated nexus to an STG:

(A) Being found guilty of two Administrative Rules Violation Reports identified in the STG Disciplinary Matrix within the preceding 12 months.

(B) Being found guilty of one Serious Rules Violation Report identified in the STG Disciplinary Matrix.

(5) ICC shall consider an inactive status affiliate or inactive-monitored status affiliate housed in the general population for one of the following with a demonstrated nexus to an STG:

(A) Being found guilty of two Administrative Rules Violation Reports identified in the STG Disciplinary Matrix within preceding last 12 months.

(B) Being found guilty of one Serious Rules Violation Report identified in the STG Disciplinary Matrix.

(6) ICC shall consider a validated affiliate for placement into Step 1 of the SDP at a SHU if all of the following are present:

(A) Behavior, activity or intelligence items as identified in section 3378.2(b) totaling at least 10 additional source points and identified subsequent to the initial validation process. This process shall only be utilized if the circumstances cannot otherwise be addressed through the disciplinary process; and

(B) STG related behavior is identified to have occurred while an inmate has been discharged, is on parole/probation, is out to court,

is in federal/municipal custody, or otherwise outside of the CDCR's jurisdiction; and

(C) The source points must have a nexus to the STG to which the inmate was formally validated, and have occurred within the preceding four years.

(7) For confirmed STG behavior that is identified to have occurred while an offender is outside the jurisdiction of the CDCR, has been discharged, is on parole/probation, is out to court, or is in federal/municipal custody:

(A) A STG affiliate with confirmed STG behavior or intelligence from an outside law enforcement agency or which occurred outside the jurisdiction of the department or formal disciplinary process shall be documented in a CDC Form 128-B (Rev. 4/74), General Chrono, (marked "confidential", if appropriate), which is incorporated by reference. The activity or behavior must have occurred within the last four years. Investigators shall establish reliability per section 3321 when confidential information is used and shall be recorded within the chrono.

(B) Confirmed STG behavior may be used in the initial validation process of an inmate and/or be used to establish continued STG behavior of a validated affiliate that may warrant placement into the SDP.

(C) Investigative Staff shall be responsible to initiate or update a CDCR Form 128-B3 (11/13), Security Threat Group Identification Score Sheet, which is incorporated by reference, anytime confirmed STG behavior occurs and cannot be addressed through the disciplinary process.

(D) Confirmed STG behavior, activity, or intelligence items as identified in section 3378.2(b) Validation Source Criteria, which accumulates a total of at least 10 additional source points during the preceding four years, and identified subsequent to the initial validation process, is subject to STG Unit Classification Committee and/or ICC review for placement into the SDP.

(8) A validated STG affiliate who was paroled or discharged from CDCR jurisdiction and returns to custody shall be addressed as follows:

(A) An inmate who was previously paroled or discharged with maximum (MAX) custody due to pending validation and is returned to CDCR's custody shall be placed in the Administrative Segregation Unit (ASU). The STG Investigator shall obtain the validation package to determine the status of validation and housing at time of parole/discharge. The validation process shall be completed, as necessary. After review by the STG Unit Classification Committee is completed, the inmate will be referred to ICC for appropriate housing determination.

(B) A validated STG affiliate who was previously paroled or discharged with MAX custody and is returned to CDCR's custody shall be placed in ASU. The STG Investigator will determine if there has been STG-related behavior while the inmate was outside CDCR jurisdiction. The inmate will be referred to the STG Unit Classification Committee in accordance with section 3376(d)(5) or ICC in accordance with section 3341.5(c)(11), as appropriate.

(C) A validated STG affiliate who was previously paroled or discharged and was designated either inactive, inactive-monitored, monitored, or dropout status and returns to the custody of the CDCR shall be assigned housing based upon current case factors. The STG Investigator will determine if there has been STG-related behavior while the inmate was outside CDCR jurisdiction. The inmate will be referred to the STG Unit Classification Committee in accordance with section 3376(d)(5) or ICC in accordance with section 3341.5(c)(11), as appropriate.

(9) STG affiliates actively participating in the SDP, who are found guilty of a Rules Violation Report identified in the STG Disciplinary Matrix shall be reviewed by ICC within 14 days of completion of the disciplinary process.

(d) Offenders who are found guilty of a serious rule violation and assessed a determinate SHU term, shall be removed from the SDP and required to complete the determinate SHU term. ICC may give consideration to suspending the remaining SHU term at each scheduled review.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 5054 and 5068, Penal Code; *Sandin* v. *Connor* (1995) 515 U.S. 472; *Madrid* v. *Gomez* (N.D. Cal. 1995) 889 F.Supp. 1146; *Toussaint* v. *McCarthy* (9th Cir. 1990) 926 F.2d 800; *Toussaint* v. *Yockey* (9th Cir. 1984) 722 F.2d 1490; and *Castillo* v. *Alameida*, et al. (N.D. Cal., No. C94-2847).

HISTORY:

1. New section filed 10-17-2014; operative 10-17-2014 pursuant to Government Code section 11343.4(b)(3) (Register 2014, No. 42).

3378.5. Debriefing Process.

(a) Debriefing is the process by which a STG coordinator/investigator determines whether an offender (subject) has dropped out of a STG. A subject shall be debriefed only upon his or her request, although staff may ask a subject if he or she wants to debrief. Debriefing may include a two-step process that consists of an interview phase and an observation phase. An evaluation of the need for the observation phase will be based upon individual case factors including the STG affiliate's housing prior to beginning the debriefing process. ICC may elect to bypass placement in the Transitional Housing Unit (THU) if the offender was housed in general population. Offenders who were housed in segregated housing will normally complete the THU. Female offenders who complete the interview phase of the debriefing process shall complete the observation phase in a general population institution.

(b) The purpose of the debriefing interview is to provide staff with information about the STG's structure, activities, and affiliates. A debriefing is not for the purpose of acquiring incriminating evidence against the subject. The object of a debriefing is to learn enough about the subject and the subject's current STG to: (1) allow staff to reasonably conclude that the subject has dropped out of the STG, and (2) allow staff to reclassify the subject based upon the offender's needs in conjunction with the security of the institution, as well as, the safety and security of staff and other offenders. A requirement of the interview phase is that the offender provides staff a written autobiography of their STG involvement, which is then verified by staff for completeness and accuracy.

(c) Offenders undergoing the debriefing process may be subject to a period of observation in a housing setting with other offenders who are also undergoing the debriefing process. The period of observation shall be up to 6 months in duration.

(d) Upon completion of the debriefing process, the offender shall be housed in a facility commensurate with the offender's safety needs. In the absence of safety needs, the offender shall be housed in a facility consistent with his or her placement score and other case factors.

(e) A waiver of the right against self-incrimination is not a precondition of an offender (subject) undergoing a debriefing since the information is provided for administrative purposes. A subject shall not be required to complete the debriefing process and the subject is free to terminate the debriefing at any time. If, during a debriefing, a subject makes a statement that tends to incriminate the subject in a crime, the Security Threat Group (STG) coordinator/investigator may stop any discussion about the matter and continue on with another topic. Prior to questioning the subject about the incriminating matter, the subject must waive the right against self-incrimination. The decision by the subject to exercise the right against self-incrimination shall not affect the determination of whether the subject successfully participated in the debriefing.

(f) Condemned inmates are subject to the debriefing process as outlined in this section.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 5054 and 5068, Penal Code; *Sandin* v. *Connor* (1995) 515 U.S. 472; *Madrid* v. *Gomez* (N.D. Cal. 1995) 889 F.Supp. 1146; and *Toussaint* v. *McCarthy* (9th Cir. 1990) 926 F.2d 800.

HISTORY:

1. Renumbering and amendment of former section 3378.1 to new section 3378.5(a)–(d), renumbering and amendment of former section 3378.2 to new section 3378.5(e) and new subsection (f) filed 10-17-2014; operative 10-17-2014 pursuant to Government Code section 11343.4(b)(3) (Register 2014, No. 42).

3378.6. Review and Action Following Receipt of Debrief Reports.

Upon receipt of a completed Debrief Report by institution staff, the following process will be followed:

(a) STG investigative staff will review the report to identify inmates (other than the debriefing inmate) who are addressed in the report and currently housed at the institution.

(1) STG behavior or activity by the identified inmate which is documented in the Debrief Report shall be investigated by STG staff or their designee to establish facts in corroboration of the information being provided.

(2) Staff shall document the findings of the investigation in a CDC Form 128-B General Chrono (Rev. 4/74), which is incorporated by reference, marked "Confidential", or in memorandum. Staff shall prepare a CDCR Form 1030 (11/13), Confidential Information Disclosure Form, which is incorporated by reference, as appropriate, documenting as much information as can be disclosed without identifying the source.

(3) STG behavior or activity determined to have occurred within CDCR jurisdiction and within the previous four (4) years shall be reviewed by the STG Lieutenant or an appropriate Lieutenant to determine if the activity/behavior warrants issuance of Rules Violation Report, in accordance with section 3378.4(a) STG Disciplinary Matrix.

(4) Staff shall prepare an RVR, as appropriate, documenting the information as received from the confidential source and any pertinent information gleaned through the investigation.

(5) The disciplinary process will proceed as outlined in Sections 3310 through 3326, Inmate Discipline.

(6) Dependent upon the STG status/designation of the inmate, the completed RVR shall be referred to the STG Unit Classification Committee in accordance with section 3376(d)(5) or ICC in accordance with section 3378.6(c) for review of the inmate's activities/behavior.

(b) STG behavior or activity determined to have occurred outside the jurisdiction of the department or formal disciplinary process shall be documented in a CDCR Form 128-B (4/74), General Chrono. The completed CDC Form 128-B shall be referred to the STG Lieutenant for consideration of validation and/or referral to appropriate staff for the inmate's placement in the SDP in accordance with section 3378.4(c)(7).

(c) The ICC will consider information obtained from approved Debrief Reports as follows:

(1) STG related behavior or activities must have occurred within the last 4 years to be considered in making housing determinations.

(2) If the inmate is already in the SDP and the behavior occurred while he/she was in the SDP, utilize the SDP Placement Options as described in section 3378.4(b) to determine appropriate movement within the SDP.

(3) If the inmate is already in the SDP and the behavior occurred prior to his/her placement in the SDP, the inmate may be eligible for consideration of the Determinate SHU Term; however, there shall be no impact to the inmate's SDP placement.

(4) If the inmate is not in the SDP, addressing the behavior and/or housing needs will be in accordance with section 3378.4(c)

(d) Condemned inmates are subject to procedures outlined in section 3378.6.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 5054 and 5068, Penal Code; *Sandin* v. *Connor* (1995) 515 U.S. 472; *Madrid* v. *Gomez* (N.D. Cal. 1995) 889 F.Supp. 1146; and *Toussaint* v. *McCarthy* (9th Cir. 1990) 926 F.2d 800.

HISTORY:

1. New section filed 10-17-2014; operative 10-17-2014 pursuant to Government Code section 11343.4(b)(3) (Register 2014, No. 42).
2. Amendment of subsections (a)(4) and (a)(6) filed 6-2-2016 as an emergency; operative 6-2-2016 (Register 2016, No. 23). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 11-9-2016 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 6-2-2016 order transmitted to OAL 11-7-2016 and filed 12-22-2016 (Register 2016, No. 52).

3378.7. Transitional Housing Unit.

The Transitional Housing Unit (THU) shall provide a program of observation to evaluate that an inmate has successfully disassociated from STG activity and is capable of programming in a general population (GP) setting. Inmates must have completed the debriefing process from a validated STG, as described in section 3378.5, in order to be placed into the THU. Placement into the THU can be from either a Security Housing Unit or from GP. THU inmates shall be housed separately from other GP inmates due to potential safety concerns.

(a) The debriefing process is designed to review, monitor and evaluate each individual and ensure that the inmate participating in the debriefing process is not a threat to staff or other inmates, and has sincerely renounced all STG related activities. A period of observation and adjustment may follow the debriefing process to ensure that an inmate will be able to program in a GP setting with inmates of diverse backgrounds, as well as other disassociated STG members/associates. STG affiliates housed in general population or similar specialized housing prior to beginning the debriefing process may bypass placement in the Transitional Housing Unit, as authorized by ICC. Female offenders who complete the interview phase of the debriefing process, shall complete the observation phase in a general population institution. The minimum eligible criteria to be placed into the THU shall consist of:

(1) The formal debriefing process as set forth in section 3378.5 must be satisfactorily completed at the Institutional level through the STG Coordinator/Investigator, and approved through the Office of Correctional Safety (OCS) via a completed CDC Form 128-B (4/74), General Chrono, which is incorporated by reference.

(2) The inmate must be willing to commit to personal change, pursuant to section 3378.5.

(b) The THU program shall be up to 6 months in duration consisting of components to include, but not be limited to, conflict resolution, anger control, substance abuse education, communication skills, individual counseling, educational skills, and group exercises. Inmates will be evaluated by the instructors throughout the program based on participation, behavior, and review of completed assignments.

(c) Upon arrival at the designated THU institution, THU inmates shall be housed in a THU orientation section for a period not to exceed 14 days. The inmate's placement in THU shall be reviewed by a classification committee for affirmation of the inmate's endorsement and consideration of appropriate housing. Inmates shall be advised of program/behavioral expectations, and the requirement

that they must attend and actively participate in all assignments and activities.

(1) During the orientation period, inmate's program activities will be primarily limited to housing unit activities.

(2) Inmates shall be advised that participation in all assignments and activities is mandatory, and STG related activity or behavior will not be tolerated. Any disciplinary behavior for which the inmate is found to be accountable through the disciplinary process, shall result in referral to the Institution Classification Committee for program review.

(A) If the behavior identified in section 3378.7(c)(2) had a nexus to the STG and was identified in section 3378.4(a) STG Disciplinary Matrix, consideration shall be given to removal of the inmate from the THU and return to Step 1 of the SDP in the SHU.

(B) If the behavior identified in section 3378.7(c)(2) did not demonstrate a nexus to the STG, consideration shall be given by the ICC to removal of the inmate from the THU and return to the step in the SDP where he was upon entering the debriefing process or being removed from SHU. If the inmate had not begun the SDP, he will be placed in Step 1 of the SDP in the SHU.

(3) If the inmate elects to discontinue participation in the THU for non-disciplinary related reasons, the inmate shall be scheduled for ICC. ICC shall review the circumstances of the request and the inmate's case factors in determining appropriate placement in the SDP.

(d) Upon completion of the orientation period, participants shall be placed in the THU GP portion of the program for approximately 5 months and 2 weeks. Inmates will be assigned work group/privilege group A-1.

(1) Inmates shall be required to double cell in accordance with the Department's Integrated Housing Policy as set forth in section 3269.1.

(2) Inmates must participate in one or more of the offered self help activities, and any assigned work or educational programs.

(3) Inmates shall be allowed special purchases, canteen draw, and allowed to attend religious services when offered within the THU area.

(4) Inmates shall be eligible for work assignments as THU mentors to other THU inmates, THU housing unit porters, or THU clerks.

(e) Upon satisfactory completion of the THU program, inmates shall be referred to a classification committee for transfer consideration. Inmates failing to satisfactorily complete the THU program shall be referred to classification committee for determination of future program and housing needs.

NOTE: Authority cited: section 5058, Penal Code. Reference: Sections 5054 and 5068, Penal Code.

HISTORY:

1. Renumbering and amendment of former section 3378.3 to new section 3378.7 filed 10-17-2014; operative 10-17-2014 pursuant to Government Code section 11343.4(b)(3) (Register 2014, No. 42).

3378.8. Termination of Security Threat Group (STG) Validation Status.

STG-I or STG-II Associates:

(1) A validated STG-I or STG-II associate released from Security Housing Unit (SHU) to Step 5; those cases determined to be inactive or dropout status; or those remaining in any type of general population housing, who remains free of STG disciplinary behavior for a period of six (6) consecutive years, while incarcerated within CDCR, may be eligible to have their STG Validation Status terminated. The six years will begin counting toward completion of the required time period as follows:

(A) Validated Associates released from SHU to Step 5: the date committee approved release from segregation.

(B) Validated inmates released from SHU as Inactive or Inactive-Monitored: the date of the Departmental Review Board (DRB).

(C) Validated Associates who remain in general population housing: the date of initial validation.

(D) Dropout status inmates: the date of the CDCR Form 128-B2 (Rev. 06/14) Security Threat Group Validation/Rejection Review, which is incorporated by reference, changing their status to "Dropout".

(2) The criteria for consideration of terminating an STG Validation Status include: within the most recent six consecutive years (while incarcerated within CDCR institutions) with no guilty findings of STG related behavior or additional source criteria items totaling 10 points (as described in section 3378.2.)

(3) Termination of the STG Validation Status will be evaluated during the next regularly scheduled Annual Review. The assigned counselor will review central file and notify the STG Investigator that the inmate is being scheduled for consideration of terminating the STG Validation status. If eligible, the inmate shall be referred to ICC for assessment and determination of terminating the STG status.

(4) Upon ICC terminating an inmate's validation status, the institution shall submit a copy of the CDC Form 128-G (10/89), Classification Chrono, which is incorporated by reference, to the Office of Correctional Safety (OCS), who shall generate an updated CDCR Form 128-B2 (Rev. 06/14), Security Threat Group Validation/Rejection Review, which is incorporated by reference, reflecting "Terminated". The original CDCR Form 128-B2 shall be returned to the institution. Review by the STG Unit Classification Committee will not be required to review/approve this document.

(5) Inmates who have had their STG status terminated shall be eligible to participate in any recognized housing/programs consistent with other general population inmates with similar case factors. If additional STG related activity or behavior is subsequently discovered, a new validation package shall be required to change the inmate's STG status.

(b) STG-I or STG-II Members:

(1) A validated STG-I or STG-II member released from SHU to Step 5; those cases determined to be inactive or dropout status; or those remaining in any type of general population housing, who remains free of STG disciplinary behavior for a period of eleven (11) consecutive years, while incarcerated within CDCR, may be eligible to have their STG Validation Status terminated. The eleven years will begin counting toward completion of the required time period as follows:

(A) Validated Members released from SHU to Step 5: the date committee approved release from segregation.

(B) Validated inmates released from SHU as Inactive or Inactive-Monitored: the date of the Departmental Review Board (DRB) hearing.

(C) Validated Members who remain in general population housing: the date of initial validation.

(D) Dropout status inmates: the date of the CDCR Form 128-B2 changing their status to "Dropout".

(2) The criteria for consideration of terminating an STG Validation Status include: within the most recent eleven consecutive years while incarcerated within CDCR institutions there have been no guilty findings of STG related behavior or additional source criteria items totaling 10 points (as described in section 3378.2).

(3) Termination of the STG Validation Status will be evaluated during the next regularly scheduled Annual Review. The assigned counselor will review central file and notify the STG Investigator that the inmate is being scheduled for consideration of terminating the STG Validation status. If eligible, the inmate shall be referred to ICC for assessment and determination of terminating the STG status.

(4) Upon ICC terminating an inmate's validation status, the institution shall submit a copy of the CDC Form 128-G, Classification Chrono, to OCS, who shall generate an updated CDCR Form 128-B2 reflecting "Terminated". The original CDCR Form 128-B2 shall be returned to the institution. Review by the STG Unit Classification Committee will not be required to review/approve this document.

(5) Inmates, who have had their STG status terminated, shall be eligible to participate in any recognized housing/programs consistent with other general population inmates with similar case factors. If additional STG related activity or behavior is subsequently discovered, a new validation package shall be required to change the inmate's STG status.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 5054 and 5068, Penal Code.

HISTORY:

1. New section filed 10-17-2014; operative 10-17-2014 pursuant to Government Code section 11343.4(b)(3) (Register 2014, No. 42).

3379. Inmate Transfers.

(a) Transfer requirements.

(1) Any inmate transfer from a facility other than a reception center shall require a classification committee action and endorsement by a classification staff representative (CSR). In the cases of illegal aliens transferring for the purpose of deportation proceedings, the Classification and Parole Representative (C&PR) may endorse such cases following the classification committee action.

(2) An inmate for whom a recall of commitment report under provisions of Penal Code Section 1170(d) is required, shall not be transferred, unless for emergency medical treatment, until the report is completed. Reception center process cases shall be excluded from this provision.

(3) Except in emergencies or for special housing, inmates shall not be transferred within 90 days of their release date, or within 90 days of a Board of Parole Hearings (BPH) appearance. If a case requires transfer within the 90-day period, the appropriate BPH report shall be completed by the sending institution prior to the transfer.

(4) A warden or superintendent may temporarily suspend a scheduled inmate transfer. Such suspension shall constitute a classification action and be recorded on a chrono as provided by section 3375(a)(2) of these regulations, including the reason for the action and a recommendation for an alternative program assignment.

(5) If an inmate has not transferred within 30 days of CSR endorsement, the sending institution shall report that fact to the Chief, Classification Services who shall either direct the institution to proceed with the transfer or present the case to the next CSR for alternative action.

(6) Transfer to another state. Transfer of a California prison inmate to an out-of-state prison facility shall not occur prior to the inmate signing a CDC Form 294, Interstate Compact Placement Agreement, witnessed by the institution head or delegate.

(7) Transfer to a federal prison. Transfer of a California prison inmate to a federal prison facility shall not occur until:

(A) The inmate has been informed of the right to private consultation with an attorney their choice concerning rights and obligations pursuant to Penal Code section 2911.

(B) The warden or superintendent or delegate has witnessed the inmate's signing of a Federal Prison System Placement Agreement consent form and an acknowledgement of having been informed regarding rights and obligations.

(8) An inmate may, prior to scheduled transfer, revoke their consent to transfer to out-of-state or federal prison.

(9) California Out-of-State Correctional Facility (COCF) Transfers. Every male inmate is potentially eligible for a COCF transfer. Every male inmate shall be reviewed for transfer eligibility to the COCF program during Reception Center processing, at initial classification committees, and at any classification committee when any temporary ineligibility for COCF transfer has been resolved. COCF transfers may occur voluntarily or involuntarily.

(A) Eligibility. A CDCR male inmate is eligible to be transferred to COCF if the inmate:

1. Has remaining time to serve of no less than 6 months and no more than 30 years at the time of CSR endorsement.

2. Is Security level I-III.

3. Has a degree of custody established at or potentially eligible for Medium A, Medium B or Close B Custody.

(B) Ineligibility. A CDCR inmate is ineligible to be transferred if:

1. The inmate has a custody designation level established at or is potentially eligible for Minimum A, Minimum B, or Close A.

2. In CDCR's discretion, considerations such as disciplinary history, security concerns, or other case factors make the transfer of an inmate inappropriate.

(C) Any California inmate who volunteers or is notified that he is eligible for involuntarily transfer to COCF shall be informed of the opportunity to seek legal consultation with an attorney:

1. Prior to the completion of the Institutional Staff Recommendation Summary (ISRS) for Reception Center inmates.

2. Prior to a classification committee for non-Reception Center inmates.

3. Inmates shall have the ability to waive the attorney consultation.

(D) The notification of eligibility, and the notification of opportunity for attorney consultation and interpreter needs, shall be documented on the CDC Form 128-B (Rev 4/74), General Chrono.

(E) The information regarding the attorney consultation or waiver of such consultation by the inmate shall be documented:

1. At the Reception Centers, on the ISRS.

2. For all non-Reception Center inmates, on the CDC Form 128-G (Rev. 10/89), Classification Chrono.

(F) Voluntary Transfer. An inmate who is eligible for transfer to COCF and volunteers for such a transfer shall sign a CDCR Form 2169 (Rev. 8/08), Out Of State Placement Agreement, which is hereby incorporated by reference. Notwithstanding subdivision (a)(6), COCF inmates are not required to sign a CDC Form 294 (Rev. 7/88). Upon notification of potential involuntary transfer, inmates shall no longer be eligible for voluntary transfer.

1. An inmate who volunteers for transfer to COCF may waive his opportunity to consult with an attorney by signing a CDCR Form 2168 (Rev. 08/08), Attorney Waiver Statement, which is hereby incorporated by reference.

2. Inmates with serious medical or dental conditions as determined by designated Health Care staff, or inmates having any other applicable serious medical condition which appropriately designates them under the supervision of the medical Receiver may volunteer for a COCF transfer upon executing written consent. Those inmates who are presently within the Mental Health Services Delivery System at any level of care may not volunteer for a COCF transfer even upon executing written consent, until and unless their transfer is permitted by court order. An inmate for whom appropriate care out of state is available and for whom such transfer will not have a detrimental impact on the healthcare needs of the inmate, and who has executed written consent to transfer to COCF, will be considered for transfer on a case-by-case basis by designated Health Care staff.

(G) Involuntary Transfer. An inmate is not eligible for involuntary transfer if:

1. The inmate has a serious medical or dental condition as determined by designated Health Care Staff, or the inmate has a serious medical condition as determined by designated Health care Staff operating as applicable under the supervision of the medical Receiver.

2. The inmate has a serious mental disorder as defined by the class certification order (executed October 23, 1991) and Revised Program Guide (2009 Revision, Chapter 1, Section D.1., page 12-1-6) of *Coleman* v. *Schwarzenegger* and who is a present member of the Mental Health Services Delivery System at any level of care.

3. The inmate is a class member under the federal court decree in *Clark* v. *Schwarzenegger* at the level of DD1, DD2 or DD3.

4. The inmate is a class member under the federal court decree in *Armstrong* v. *Schwarzenegger* and has a medical condition related to a disability that renders extended travel unsafe and/or requires active medical intervention.

5. The inmate is a class member under the federal court decree in *Armstrong* v. *Schwarzenegger* and cannot perform daily living tasks including eating, dressing, and hygiene without personal assistance. Inmates in this group may be housed in Outpatient Housing Units or medical facilities. Inmates who merely require assistance such as another person to carry a tray at meals or read written documents are specifically not excluded from transfer.

6. The inmate is a class member under the federal court decree in *Armstrong* v. *Schwarzenegger* and is on dialysis.

(H) Involuntary transfer priorities include but are not limited to the following:

1. Inmates who have been previously deported by the federal government and are criminal aliens subject to immediate deportation; or have been convicted of an aggravated felony as defined by federal statute 8 USC section 1101(a)(43) and are subject to deportation. Inmates in these groups are eligible for involuntary transfer when they have an active hold placed by Immigration and Customs Enforcement (ICE) or they have been referred to ICE by CDCR for a determination of whether ICE will place an active hold on them.

2. Inmates who are paroling outside of California.

3. Inmates who are unassigned and had no visit with an immediate family member as defined in Section 3000 during the one year period prior to the date that the eligibility list with the inmate's name is generated.

4. Inmates in any job assignment, as determined by CDCR, and had no visit with an immediate family member during the one year period prior to the date that the eligibility list with the inmate's name is generated.

5. Inmates who are unassigned. Visiting history will not affect a transfer decision.

6. Inmates in any job assignment, as determined by CDCR. Visiting history will not affect a transfer decision.

7. Any other inmate who is not in any of the groups above but is potentially eligible for a COCF transfer.

(I) Inmates transferred to a COCF program remain under the legal custody of the CDCR and shall be subject to the rules, rights and privileges of the CDCR in accordance with the California Code of Regulations (CCR), Division 3, Title 15.

(10) Reentry Hub transfers. Every inmate shall be reviewed for Reentry Hub eligibility during Reception Center processing, at Initial, Annual, and Transfer classification committees, or at any classification committee when any temporary ineligibility for Reentry Hub transfer has been resolved. Inmates eligible for Reentry Hub placement shall be transferred to a Reentry Hub after the committee has evaluated all the inmate's case factors to ensure the transfer is appropriate.

(A) An inmate with the following case factors shall be given priority for placement at a Reentry Hub:

1. No more than four years, but no less than one year remaining to serve.

2. A California Static Risk Assessment risk score of moderate or high.

3. A medium or high need for one or more rehabilitative treatment programs as indicated by a validated automated needs assessment tool.

(B) An inmate with either of the following case factors is ineligible for placement at a Reentry Hub:

1. Active felony hold, warrant, or detainer which may result in additional incarceration following release date.

2. Active Immigration and Customs Enforcement hold, which would result in deportation.

(11) Long Term Offender Program (LTOP) Transfers. Inmates who meet the criteria for placement into an LTOP may receive a temporary transfer to an institution operating an LTOP, pursuant to subsection 3040.2(f)(5). Upon completion of the program, they shall be transferred back to the sending institution unless case factors preclude the transfer.

(b) Placement in level. An inmate endorsed for any level placement and transferred to an institution with several levels shall be placed in the endorsed level facility within 60 days of arrival or shall be referred to the next scheduled CSR for alternative action. A warden or superintendent may temporarily place an inmate in a facility of an institution for which the inmate has not otherwise been endorsed. Such placement shall not exceed 30 days without CSR review and approval. Reasons for such placement may include protection or medical needs of the inmate, an incompleted investigation, disciplinary action, court proceedings, or a pending transfer.

(c) Disciplinary and security factors. Prior to transfer of an inmate, the sending institution shall resolve any matters related to incomplete disciplinary punishment or establishment of a determinate period to be served in a SHU at the receiving facility. Disciplinary detention shall be completed, suspended, or commuted to time served. If a transfer related to misbehavior does not require SHU placement but the inmate is transferred to an institution of higher level than indicated by the inmate's classification score, the endorsing CSR shall establish a date for follow-up review by the receiving institution.

(d) Medical and psychiatric transfer.

(1) The sending institution shall, prior to any medical or psychiatric transfer, determine whether the inmate has enemies or might be in danger at the receiving facility, and shall:

(A) Inform staff of the receiving facility by telephone prior to the transfer regarding any precautions needed to protect the inmate.

(B) Make an alternate institutional transfer arrangement which will not jeopardize the inmate.

(2) An inmate transferred to CMF for psychiatric treatment because of acute mental illness requiring inpatient psychiatric hospitalization or because of the recency of a major mental illness or when in partial remission of such illness, is entitled to a hearing regarding the necessity for transfer. Upon arrival at CMF, such inmate shall be served with the CDC Form 1011 (Rev. 07/88), Notice of Transfer to California Medical Facility for Mental Health Treatment, which is incorporated by reference, and shall explain the inmate's rights. The inmate may sign the notice waiving his right to a hearing or if opposed to the transfer, may request a hearing.

(3) The hearing shall be held within seven days from arrival at CMF. If the hearing cannot be held within seven days, the inmate shall be informed in writing of that fact, the reason for the delay, and of an estimated date he may expect the hearing. The hearing

shall consist of a classification committee review of the case and shall include the following:

(A) Determination that the inmate has received written notice of the transfer to CMF stating that the inmate has a right to a hearing and that such hearings are normally held within seven days after arrival at CMF.

(B) The information relied upon in ordering the transfer to CMF shall be disclosed to the inmate. The inmate shall be heard in person and be permitted to present evidence, including witnesses, in his behalf.

(C) One member of the classification committee shall be a psychiatrist employed by the Department of Corrections and Rehabilitation. This person shall be an independent decision maker and shall not be the inmate's treating psychiatrist at either the sending or receiving institution.

(D) Following the hearing, the independent decision maker shall inform the inmate in writing of the committee's decision and the information relied upon in arriving at the decision.

(E) The inmate may appeal the decision. A ruling on such appeal shall be returned within 20 working days.

(4) Periodic clinical progress reports on a CDC Form 128-C shall be made at least quarterly. A summary CDC Form 128-C report, classification action and CSR endorsement are required when an inmate's program category is changed.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 2911, 5025, 5054, 5068, 5080 and 11191, Penal Code; Sections 8550 and 8567, Government Code; Governor's Prison Overcrowding State of Emergency Proclamation dated October 4, 2006; *Armstrong* v. *Schwarzenegger*, United States District Court, N.D. Cal., No. C-94-2307 CW, Stipulation and Proposed Order issued November 30, 2006; *Coleman* v. *Schwarzenegger*, United States District Court, E.D. Cal., No. CIV-S-90-0520 LKK JFM P, Order issued November 6, 2006; and *Whitaker* v. *Rushen* (9th Cir. 1983) 720 F.2d 1132, 1135.

HISTORY:

1. New section filed 8-7-87 as an emergency; operative 8-7-87 (Register 87, No. 34). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 12-7-87.
2. Certificate of Compliance as to 8-7-87 order transmitted to OAL 12-4-87; disapproved by OAL (Register 88, No. 16).
3. New section filed 1-4-88 as an emergency; operative 1-4-88 (Register 88, No. 16). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 5-3-88.
4. Certificate of Compliance as to 1-4-88 order transmitted to OAL 5-3-88; disapproved by OAL (Register 88, No. 24).
5. New section filed 6-2-88 as an emergency; operative 6-2-88 (Register 88, No. 24). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 9-30-88.
6. Certificate of Compliance including amendment transmitted to OAL 9-26-88 and filed 10-26-88 (Register 88, No. 50).
7. Editorial correction of printing errors in subsection (b), CDC Form 294 and CDC Form 802 (Register 92, No. 5).
8. Amendment of subsection (a)(1) and Note filed 1-30-96 as an emergency; operative 1-30-96 (Register 96, No. 5). A Certificate of Compliance must be transmitted to OAL by 5-29-96 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 1-30-96 order, including further amendment of subsection (a)(1) and Note, transmitted to OAL 5-14-96 and filed 6-25-96 (Register 96, No. 26).
10. Change without regulatory effect amending subsection (c) filed 3-18-97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 12).
11. New subsections (a)(9)–(a)(9)(I) and amendment of Note filed 10-30-2008 as an emergency; operative 10-30-2008 (Register 2008, No. 44). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 4-8-2009 or emergency language will be repealed by operation of law on the following day.
12. Certificate of Compliance as to 10-30-2008 order, including further amendment of section and Note, transmitted to OAL 4-1-2009 and filed 5-12-2009 (Register 2009, No. 20).
13. Editorial correction of subsection (a)(9)(G)6. (Register 2009, No. 23).
14. Change without regulatory effect amending subsections (a)(3) and (d)(3)(C) filed 3-11-2013 pursuant to section 100, title 1, California Code of Regulations (Register 2013, No. 11).
15. New subsections (a)(10)–(a)(10)(B)2. filed 10-29-2013 as an emergency; operative 10-29-2013 (Register 2013, No. 44). A Certificate of Compliance must be transmitted to OAL by 4-7-2014 or emergency language will be repealed by operation of law on the following day.
16. Change without regulatory effect amending subsection (d)(2) and incorporating Form CDC 1011 by reference filed 1-8-2014 pursuant to section 100, title 1, California Code of Regulations (Register 2014, No. 2).
17. Certificate of Compliance as to 10-29-2013 order transmitted to OAL 4-4-2014 and filed 5-14-2014 (Register 2014, No. 20).
18. Change without regulatory effect amending subsection (a)(1) filed 4-22-2015 pursuant to section 100, title 1, California Code of Regulations (Register 2015, No. 17).
19. New subsection (a)(11) filed 2-18-2016 as an emergency; operative 2-18-2016 (Register 2016, No. 8). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 7-27-2016 or emergency language will be repealed by operation of law on the following day.
20. Certificate of Compliance as to 2-18-2016 order transmitted to OAL 7-26-2016 and filed 9-6-2016 (Register 2016, No. 37).

STATE OF CALIFORNIA
CDC 294 (7/88)

DEPARTMENT OF CORRECTIONS

INTERSTATE COMPACT PLACEMENT AGREEMENT

I, _____ _____ _____ _____, of my own free will and accord do hereby agree to accept transfer from an institution of the California Department of Corrections to an institution of the State of _____.

I am aware that prior to scheduled transfer I may revoke my consent to transfer.(CCR 3379)

I am aware that I may be entitled to revoke my consent and transfer to an institution within California at any time more than five (5) years after transfer. In such case, the transfer shall occur within the next 30 days.

I am aware of my right to private consultation with an attorney of my choice concerning my rights and obligations under California Penal Code Section 11191 prior to consenting to such a transfer.

I have exercised that right: Yes _____, No _____.

I waive my right to consultation with an attorney: Yes _____, No _____.

I understand that I am expected to remain in an institution within the state to which I am transferred until my release unless I am returned to California by the California Department of Corrections.

I understand that the security, treatment, training and care for me will be in keeping with the standards for such programs as administered in California.

I understand that my hearings for parole consideration and determination of sentence will be conducted on the same basis as if I were in a California institution.

Inmate's Signature ▶		Witness' Signature ▶
CDC Number	Date	Date

Distribution:

Inmate's Central File
Transporting officer (for the receiving institution)

SAMPLE

STATE OF CALIFORNIA
CDC 802 (7/88)

DEPARTMENT OF CORRECTIONS

FEDERAL PRISON SYSTEM PLACEMENT AGREEMENT

I, _____, of my own free will and accord do hereby agree to accept transfer from an institution of the California Department of Corrections to an institution of the Federal Prison System.

I am aware of my right to private consultation with an attorney of my choice concerning my rights and obligations under California Penal Code Section 2911 prior to consenting to such a transfer.

I have exercised that right: Yes _____, No _____.

I waive my right to consultation with an attorney: Yes _____, No _____.

I am aware that prior to scheduled transfer I may revoke my consent to transfer. (CCR 3379)

I understand that I am expected to remain in an institution of the Federal Prison System until discharged or paroled unless I am returned to California by the Department of Corrections.

I understand that the security, treatment, training and care for me will be in keeping with the standards for such programs as administered in California by the Department of Corrections.

I understand that my hearings for parole consideration and determination of sentence will be conducted on the same basis as if I were in a California institution.

Inmate's Signature		Witness' Signature
CDC Number	Date	Date

Distribution:

Inmate's Central File
Transporting officer (for the receiving institution)

SAMPLE

SUBCHAPTER 5. PERSONNEL

Article 1. Wardens, Superintendents, Parole Region Administrators

3380. Chief Executive Officer.

(a) The warden or superintendent of an institution of the department is the chief executive officer of that institution, and is responsible for the custody, treatment, training and discipline of all inmates under his or her charge.

(b) Parole region administrators are the chief executive officer of their respective parole regions, and are responsible for the supervision of all parolees and furloughees assigned to the region, and to the districts, units and community correctional centers under the region's jurisdiction.

(c) Subject to the approval of the Secretary of Corrections and Rehabilitation, wardens, superintendents and parole region administrators will establish such operational plans and procedures as are required by the Secretary for implementation of regulations and as may otherwise be required for their respective operations. Such procedures will apply only to the inmates, parolees and personnel under the administrator.

(d) Copies of institution and parole region operational plans and procedures requiring the Secretary's review and approval will be submitted to central office on a scheduled basis. A copy of each currently approved plan will be maintained in the department's policy documentation files. Operational procedures which do not require the Secretary's review and approval do not need to be submitted to central office unless requested. In compliance with the Public Records Act, departmental regulations and procedures, as well as institution and parole region operational plans and procedures of a nonconfidential nature, will be made available for public examination at any administrative office of the department where such information is maintained.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code and Section 6253, Government Code.

HISTORY:

1. Amendment of subsection (d) filed 8-22-79; effective thirtieth day thereafter (Register 79, No. 34).
2. Change without regulatory effect amending subsections (c) and (d) filed 3-11-2013 pursuant to section 100, title 1, California Code of Regulations (Register 2013, No. 11).

3381. Absence.

Wardens, superintendents and parole region administrators will obtain the director's approval before voluntarily absenting themselves from duty for more than one regular state workday. Each warden, superintendent and parole region administrator will submit for the director's approval the names and titles of three top-ranking subordinates who will serve in the administrator's place during temporary absences. The persons named will be designated as first, second and third alternate, to serve as acting warden, superintendent or region administrator. While so acting, the person designated has the same authority and power as the warden, superintendent or region administrator.

Comment: Former DP-5102, absence from institution.

3382. Incident Reports.

(a) Any event or activity occurring within the jurisdiction of institutions or parole regions which may be of immediate interest or concern to the department, or of special interest to other governmental agencies or the news media, will be immediately reported by institution and region staff by telephone to the office of the Secretary or to the departmental duty officer. Wardens and superintendents will submit a written report of the incident to the Secretary within 24 hours of the verbal notice. Parole regions will submit written reports in accordance with timelines established by the Director, Division of Adult Parole Operations.

(b) Incidents to be reported include, but are not limited to, all serious crimes such as homicide or severe assaults upon or by inmates, parolees or employees, escapes, and sensational activities or events such as riots, strikes, demonstrations, disturbances, or disruption of essential services, and significant damage or destruction of state property.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.

HISTORY:

1. Amendment filed 2-24-77; effective thirtieth day thereafter (Register 77, No. 9).
2. Amendment of subsections (a) and (b) and new Note filed 12-9-2008; operative 1-8-2009 (Register 2008, No. 50).

3383. State of Emergency.

(a) A state of emergency shall exist when the institution head or regional parole administrator/deputy director, Division of Adult Parole Operations (DAPO), temporarily suspends any nonessential operation, procedure, service or function, and the normal time limits or schedules for such activity in order to prevent, contain or control a disturbance.

(b) The Assistant Secretary, Office of Correctional Safety, shall be contacted by any of the persons specified in section 3383(a), or their designee, when a state of emergency is declared.

(c) Approval of the Secretary or Secretary's designee is required when:

(1) A lockdown or modified program of all housing units/sub-facilities within a facility's security perimeter is to exceed 24 hours.

(2) A lockdown or modified program of fewer than all housing units/sub-facilities within a facility's security perimeter is to exceed 72 hours.

(3) The suspension of a facility's major program or operation is to exceed 72 hours; e.g., an academic or Career Technical Education program, visiting program, yard operation, or dining room operation.

(d) During a state of emergency the institution head or regional parole administrator/deputy director, DAPO, may authorize the postponement of nonessential administrative decisions, actions, and the normal time requirements for such decisions and actions as deemed necessary because of the emergency. This may include, but is not limited to, classification committee hearings, disciplinary proceedings, and the review and action on appeals.

(e) During a state of emergency, the cause and effect shall be constantly reviewed and evaluated by the institution head or regional parole administrator/deputy director, DAPO, through appropriate staff. The facility's affected areas, programs, and operations shall be returned to normal as soon as the institution head or regional parole administrator/deputy director, DAPO, determines that it is safe to do so. Upon termination of a state of emergency, the normal schedules and time frames for administrative decisions and actions pertaining to affected inmates will resume.

NOTE: Authority cited: Section 5058, Penal Code; and Section 11152, Government Code. Reference: Section 5054, Penal Code.

HISTORY:

1. New section filed 3-22-78; effective thirtieth day thereafter (Register 78, No. 12).
2. Change without regulatory effect amending section and adding Note filed 3-21-95 pursuant to section 100, title 1, California Code of Regulations (Register 95, No. 12).
3. Amendment filed 10-16-97; operative 11-15-97 (Register 97, No. 42).

4. Amendment of subsections (a)–(b) and (c)–(d) filed 12-9-2008; operative 1-8-2009 (Register 2008, No. 50).
5. New subsection (b) and subsection relettering filed 5-26-2011; operative 6-25-2011 (Register 2011, No. 21).
6. Amendment of subsections (c)(1)–(2) filed 6-14-2011; operative 7-14-2011 (Register 2011, No. 24).
7. Amendment of subsection (c)(3) filed 10-29-2013 as an emergency; operative 10-29-2013 (Register 2013, No. 44). A Certificate of Compliance must be transmitted to OAL by 4-7-2014 or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 10-29-2013 order transmitted to OAL 4-4-2014 and filed 5-14-2014 (Register 2014, No. 20).

3384. Administrative Visitation.

Wardens and superintendents or a designated staff member acting in that capacity, the chief custodial officer, the chief medical officer, and other administrative and management staff, will visit institution living and activity areas at least weekly.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.

HISTORY:

1. New section filed 4-18-80; effective thirtieth day thereafter (Register 80, No. 16).

Article 2. Employees

3390. Background Investigations.

(a) Background investigations on applicants for non-peace officer classifications shall be limited to applicants applying for the following classifications:

(1) Dentist.
(2) Chief dentist.
(3) Supervising dentist
(4) Staff psychiatrist.
(5) Senior psychiatrist.
(6) Chief psychiatrist, correctional facility.
(7) Staff psychologist (counseling or clinical).
(8) Senior psychologist.
(9) Chief psychologist.
(10) Physician and surgeon.
(11) Chief physician and surgeon.
(12) Chief medical officer, correctional institution.
(13) Assistant superintendent, psychiatric services, correctional facility.
(14) Deputy superintendent, clinical services, correctional facility.
(15) Chief, medical services, correctional program.
(16) Correctional case records (complete series).

(b) Background investigation clearances are not required prior to appointment to classifications in (a) above.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.

HISTORY:

1. New section filed 11-30-93; operative 12-30-93 (Register 93, No. 49). For prior history, see Register 85, No. 26).
2. Change without regulatory effect adding subsection (a)(3) and renumbering subsections filed 8-11-2010 pursuant to section 100, title 1, California Code of Regulations (Register 2010, No. 33).

3391. Employee Conduct.

(a) Employees shall be alert, courteous, and professional in their dealings with inmates, parolees, fellow employees, visitors and members of the public. Inmates and parolees shall be addressed by their proper names, and never by derogatory or slang reference. Prison numbers shall be used only with names to summon inmates via public address systems. Employees shall not use indecent, abusive, profane, or otherwise improper language while on duty. Irresponsible or unethical conduct or conduct reflecting discredit on themselves or the department, either on or off duty, shall be avoided by all employees.

(b) An allegation by a non-inmate of misconduct by a departmental peace officer as defined in section 3291(b) is a citizen's complaint pursuant to Penal Code section 832.5. Citizen's complaints alleging misconduct of a departmental peace officer shall be filed within twelve months of the alleged misconduct.

(c) Persons other than an inmate, parolee or staff who allege misconduct of a departmental peace officer shall submit a written complaint to the institution head or parole administrator of the area in which the peace officer is employed.

(d) Citizens filing complaints alleging misconduct of a departmental peace officer employed by this department are required to read and sign the following statement:

YOU HAVE THE RIGHT TO MAKE A COMPLAINT AGAINST A POLICE OFFICER [this includes a departmental peace officer] FOR ANY IMPROPER POLICE [or peace] OFFICER CONDUCT. CALIFORNIA LAW REQUIRES THIS AGENCY TO HAVE A PROCEDURE TO INVESTIGATE CITIZENS' [or inmates'/parolees'] COMPLAINTS. YOU HAVE A RIGHT TO A WRITTEN DESCRIPTION OF THIS PROCEDURE. THIS AGENCY MAY FIND AFTER INVESTIGATION THAT THERE IS NOT ENOUGH EVIDENCE TO WARRANT ACTION ON YOUR COMPLAINT; EVEN IF THAT IS THE CASE, YOU HAVE THE RIGHT TO MAKE THE COMPLAINT AND HAVE IT INVESTIGATED IF YOU BELIEVE AN OFFICER BEHAVED IMPROPERLY. CITIZEN [or inmate/parolee] COMPLAINTS AND ANY REPORTS OR FINDINGS RELATING TO COMPLAINTS MUST BE RETAINED BY THIS AGENCY FOR AT LEAST FIVE YEARS.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 148.6, 832.5, 5054 and 6250–6253, Penal Code, *Chaker* v. *Crogan* (9th Cir 2005) 428 F. 3d 1215.

HISTORY:

1. Amendment filed 2-8-88; operative 3-9-88 (Register 88, No.7).
2. Editorial correction of History 1 (Register 96, No. 52).
3. Amendment of section heading, amendment adding new subsection (a) designator, renumbering and amendment of old subsections 3084.7(h)(2) and (h)(3) to new subsection 3391(b) and (c), new subsection (d), and amendment of Note filed 12-23-96 as an emergency; Operative 12-23-96 (Register 96, No. 52). Pursuant to Penal Code section 5058(e), a Certificate of Compliance must be transmitted to OAL by 6-2-97, or emergency language will be repealed by operation of law on the following day.
4. Amendment of section heading, amendment adding new subsection (a) designator, renumbering and amendment of old subsections 3084.7(h)(2) and (h)(3) to new subsections 3391(b) and (c), new subsection (d), and amendment of Note refilled 5-29-97 as an emergency; operative 6-2-97 (Register 97, No. 22). A Certificate of Compliance must be transmitted to OAL by 9-30-97 or emergency language will be repealed by operation of law on the following day.
5. Editorial correction of History 4 (Register 97, No. 24).
6. Certificate of Compliance as to 5-29-97 order, including amendment of subsections (b) and (d), transmitted to OAL 9-25-97 and filed 11-7-97 (Register 97, No. 45).
7. Amendment of subsection (d) and amendment of Note filed 11-3-2006 as an emergency; operative 11-3-2006 (Register 2006, No. 44). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 4-12-2007 or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 11-3-2006 order transmitted to OAL 3-12-2007 and filed 4-19-2007 (Register 2007, No. 16).

3392. Punctuality.

Employees must report for duty promptly at the time directed and not leave work assignments before completion of their scheduled workday or tour of duty, except with their supervisor's permission. If for any reason an employee is unable to report for duty, the employee must notify his or her supervisor at the earliest possible moment.

Comment: Former DR-5203, punctuality of employees.

3393. Uniforms, Badges, and Insignia.

(a) All peace officer personnel shall wear uniforms and insignia as prescribed by the Secretary, unless specifically exempted by the warden, superintendent, or regional parole administrator. Personnel shall not wear a department uniform into any bar, tavern, gambling hall or night club, except in the performance of assigned duties.

(b) Uniformed peace officer personnel shall wear the official department badge as a standard item of uniform attire. Exceptions may be authorized by the warden, superintendent, regional parole administrator, or department division head to whom such employees report. All personnel appointed to positions designated as peace officers in Section 3291 are authorized to possess and carry an official California Department of Corrections and Rehabilitation badge. It is unlawful for any person, including a department employee who is not a peace officer, to wear, exhibit or use the department badge or a facsimile of the badge without specific authority to do so.

(c) All uniformed peace officer personnel shall wear a clearly displayed nameplate as a standard item of uniform attire. Any employees having contact with inmates and the general public may also be required to wear a nameplate while on duty, as determined by the warden, superintendent, division head, or regional parole administrator to whom the employee reports.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 830.10, Penal Code.

HISTORY:

1. Amendment filed 7-29-76; effective thirtieth day thereafter (Register 76, No. 31).
2. Repealer of subsection (d) and new subsections (d), (e) and (f) filed 3-22-78; effective thirtieth day thereafter (Register 78, No. 12).
3. Amendment of subsection (d), repealer of subsection (e) and amendment and renumbering of subsection (f) to subsection (e) filed 8-22-79; effective thirtieth day thereafter (Register 79, No. 34).
4. Amendment filed 2-16-88; operative 3-17-88 (Register 88, No. 9).
5. Editorial correction of printing errors in subsections (b) and (c) (Register 92, No. 5).
6. Amendment filed 12-9-2008; operative 1-8-2009 (Register 2008, No. 50).

3394. Distractions.

Employees assigned to security post positions or to direct supervision and control of inmates or parolees will not read, listen to a private radio, or engage in any distracting amusement or activity while on assignment except such authorized reading as may be required in the proper performance of their assigned duties.

Comment: Former DR-5205, reading or distraction while on duty.

3395. Alertness.

Employees must not sleep or be less than alert and in full possession of all faculties while on duty.

Comment: Former DR-5206, sleeping while on duty.

3396. Address and Telephone.

Employees must promptly report any change in their address or telephone number to their supervisor and to the personnel office. If an employee does not have a telephone, the employee must furnish his or her supervisor and the personnel office with information on how the employee can be promptly reached.

Comment: Former DR-5207, change of address or telephone.

3397. Emergencies.

Regardless of an employee's class of service, in an emergency any employee must perform any service, including custodial functions, if so directed by the warden, regional administrator or his or her delegate. At any time an employee is contacted by telephone or is otherwise informed of an emergency situation at the institution or facility to which they are assigned, the employee must report without delay to the officer-in-charge.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.

HISTORY:

1. Amendment of section and new Note filed 5-26-2011; operative 6-25-2011 (Register 2011, No. 21).

3398. Visiting.

Employees must not receive personal visits while on duty except with the permission of the employee's supervisor.

Comment: Former DR-5209, visiting of employees.

3399. Transactions.

Employees shall not directly or indirectly trade, barter, lend or otherwise engage in any other personal transactions with any inmate, parolee or person known by the employee to be a relative of an inmate or parolee. Employees shall not, directly or indirectly give to or receive from any inmate, parolee or person known by the employee to be a relative of an inmate or parolee, anything in the nature of a tip, gift or promise of a gift.

NOTE: Authority cited: section 5058, Penal Code. Reference: Sections 2541 and 5054, Penal Code.

HISTORY:

1. Amendment filed 4-10-89; operative 5-10-89 (Register 89, No. 15).
2. Editorial correction of printing errors (Register 92, No. 5).

3400. Familiarity.

Employees must not engage in undue familiarity with inmates, parolees, or the family and friends of inmates or parolees. Whenever there is reason for an employee to have personal contact or discussions with an inmate or parolee or the family and friends of inmates and parolees, the employee must maintain a helpful but professional attitude and demeanor. Employees must not discuss their personal affairs with any inmate or parolee.

Comment: Former DR-5211, undue familiarity.

3401. Employee and Inmate/Parolee Relations.

(a) Except as provided in (e) below, employees shall not take, deliver or otherwise transmit, either to or from any inmate or member of an inmate's family; any verbal or written message, document, item, article or substance.

(b) Except as provided in (e) below, employees shall not contact, correspond or otherwise communicate with any inmate, parolee or member of an inmate's or parolee's family.

(c) If an employee is contacted by any inmate, parolee or member of an inmate's or parolee's family, other than under circumstances specified in (e) below, the employee shall immediately notify, in writing, the employee's institution head or director/assistant secretary of that fact.

(d) Any employee asked, coerced or otherwise contacted by any person to transmit, take or relay any message, item or substance, either to or from, any inmate, parolee or member of an inmate's or

parolee's family, by other than approved means or circumstances, shall immediately notify, in writing, their institution head or director/assistant secretary of that fact.

(e) Exceptions to the above prohibitions are as follows:

(1) In the execution of their assigned duties, employees shall issue, or receive from inmates any mail, packages, supplies and other items due or permitted them according to department policy and local procedures.

(2) In the execution of their assigned duties, employees shall interact with any inmate, parolee or member of an inmate's or parolee's family as necessary.

(3) While off-duty, and only in accordance with this regulation, departmental employees may conduct relationships with any inmate, parolee or member of an inmate's or parolee's family who is either the employee's immediate family member, as defined in section 3000, or the employee's aunt, uncle, niece, nephew, or first cousin.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.

HISTORY:

1. Amendment of section heading and section, including renumbering and amendment of former section 3403 to new subsections (b) and (c), and new Note filed 9-13-96 as an emergency; operative 9-13-96. A Certificate of Compliance must be transmitted to OAL by 2-24-97 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 9-13-96 order transmitted to OAL 11-22-96 and filed 1-6-97 (Register 97, No. 2).
3. Amendment of subsections (c)–(d) filed 12-9-2008; operative 1-8-2009 (Register 2008, No. 50).

3401.5. Staff Sexual Misconduct.

(a) For the purposes of this section, staff sexual misconduct means any sexual behavior by a departmental employee, volunteer, agent or individual working on behalf of the Department of Corrections and Rehabilitation, which involves or is directed toward an inmate or parolee. The legal concept of "consent" does not exist between departmental staff and inmates/parolees; any sexual behavior between them constitutes sexual misconduct and shall subject the employee to disciplinary action and/or to prosecution under the law. Sexual misconduct includes, but is not limited to:

(1) Influencing or offering to influence an inmate's/parolee's safety, custody, housing, privileges, parole conditions or programming, or offering goods or services, in exchange for sexual favors; or

(2) Threatening an inmate's/parolee's safety, custody, housing, privileges, work detail, parole conditions or programming because the inmate/parolee has refused to engage in sexual behavior; or

(3) Engaging in sexual act(s) or contact, including:

(A) Sexual intercourse; or

(B) Sodomy; or

(C) Oral Copulation; or

(D) Penetration of genital or anal openings by a foreign object, substance, instrument or device for the purpose of sexual arousal, gratification, or manipulation; or

(E) Rubbing or touching of the breasts or sexual organs of another or of oneself, in the presence of and with knowledge of another, for the purpose of sexual arousal, gratification, or manipulation; or

(F) Invasion of privacy, beyond that reasonably necessary to maintain safety and security; or disrespectful, unduly familiar, or sexually threatening comments directed to, or within the hearing of, an inmate/parolee.

(4) Display by staff, in the presence of an inmate, of the staff person's uncovered genitalia, buttocks, or breast;

(5) Voyeurism by a staff person including volunteers or independent contractors. Voyeurism is defined as an invasion of privacy of an offender by staff for reasons unrelated to official duties.

(b) Penalties. All allegations of staff sexual misconduct shall be subject to investigation, which may lead to disciplinary action and/or criminal prosecution.

(c) Reporting Requirements. Any employee who observes, or who receives information from any source concerning staff sexual misconduct, shall immediately report the information or incident directly to the hiring authority, unit supervisor, or highest-ranking official on duty. Failure to accurately and promptly report any incident, information or facts which would lead a reasonable person to believe sexual misconduct has occurred may subject the employee who failed to report it to disciplinary action.

(d) Confidentiality. Alleged victims who report criminal staff sexual misconduct falling into one of the Penal Code section set forth in Government Code Section 6254(f)(2) shall be advised that their identity may be kept confidential pursuant to Penal Code Section 293.5, upon their request.

(e) Retaliation Against Employees. Retaliatory measures against employees who report incidents of staff sexual misconduct shall not be tolerated and shall result in disciplinary action and/or criminal prosecution. Such retaliatory measures include, but are not limited to, unwarranted denials of promotions, merit salary increases, training opportunities, or requested transfers; involuntary transfer to another location/position as a means of punishment; or unsubstantiated poor performance reports.

(f) Retaliation Against Inmates/Parolees. Retaliatory measures against inmates/parolees who report incidents of staff sexual misconduct shall not be tolerated and shall result in disciplinary action and/or criminal prosecution. Such retaliatory measures include, but are not limited to, coercion, threats of punishment, or any other activities intended to discourage or prevent an inmate/parolee from reporting sexual misconduct.

(g) Protection Measures. Multiple protection measures shall be considered to protect inmate victims who report staff sexual misconduct or cooperate with staff sexual misconduct investigations including but not limited to housing changes or transfers for inmate victims, removal of alleged staff from contact with victims, and emotional support services for inmates or staff who fear retaliation for reporting staff sexual misconduct or sexual harassment or for cooperating with investigations.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 289.6, 293.5 and 5054, Penal Code; and Section 6254, Government Code; and 28 CFR Section 115.67.

HISTORY:

1. New section filed 6-21-2000 as an emergency; operative 6-21-2000 (Register 2000, No. 25). Pursuant to Penal Code section 5058(e), a Certificate of Compliance must be transmitted to OAL by 11-28-2000 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 6-21-2000 order transmitted to OAL 10-5-2000 and filed 11-6-2000 (Register 2000, No. 45).
3. Amendment of subsection (d) and repealer of subsection (g) filed 3-20-2002; operative 4-19-2002 (Register 2002, No. 12).
4. Change without regulatory effect amending subsection (a) filed 3-11-2013 pursuant to section 100, title 1, California Code of Regulations (Register 2013, No. 11).
5. Amendment of section heading and subsection (a), new subsections (a)(4)–(5), amendment of subsections (b)–(f), new subsection (g) and amendment of Note filed 10-20-2016; operative 10-20-2016 pursuant to Government Code section 11343.4(b)(3) (Register 2016, No. 43).

3401.6. Staff Sexual Harassment.

(a) Staff Sexual Harassment. For the purpose of the Prison Rape Elimination Act policy, staff sexual harassment means repeated verbal comments or gestures of a sexual nature to an offender by a staff member, volunteer, or contractor, including demeaning references to gender, sexually suggestive or derogatory comments about body or clothing, or obscene language or gestures.

(b) Penalties. All allegations of staff sexual harassment shall be subject to review and investigation, and when appropriate, to disciplinary action and/or criminal prosecution.

(c) Reporting Requirements. Any employee who observes, or who receives information from any source concerning staff sexual harassment shall immediately report the information or incident directly to the hiring authority, unit supervisor, or highest-ranking official on duty. Failure to accurately and promptly report any incident, information or facts which would lead a reasonable person to believe staff sexual harassment has occurred may subject the employee who failed to report it to disciplinary action.

(d) Retaliation Against Inmates/Parolees. Retaliatory measures against inmates/parolees who report incidents of staff sexual harassment shall not be tolerated and shall result in disciplinary action and/or criminal prosecution. Such retaliatory measures include, but are not limited to, coercion, threats of punishment, or any other activities intended to discourage or prevent an inmate/parolee from reporting sexual harassment.

(e) Protection Measures. Multiple protection measures may be considered to protect inmate victims who report staff sexual harassment or cooperate with staff sexual harassment investigations including but not limited to housing changes or transfers for inmate victims, removal of alleged staff from contact with victims, and emotional support services for inmates or staff who fear retaliation for reporting staff sexual harassment or for cooperating with investigations.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 289.6, 293.5 and 5054, Penal Code; Section 6254, Government Code; and 28 CFR Sections 115.67 and 115.76.

HISTORY:

1. New section filed 10-20-2016; operative 10-20-2016 pursuant to Government Code section 11343.4(b)(3) (Register 2016, No. 43).

3402. Central File.

(a) Within the scope of their assigned duties, employees are encouraged to consult an inmate's central file for assistance in better understanding the inmate. The contents of the inmate's file are private and privileged information. It will not be discussed with other persons except as is necessary for professional reasons, and will not be the subject of banter between employees or between employees and the inmate to whom it pertains or with other inmates. Information in an inmate's central file may be confidential by law or for reasons relating to institution security and the safety of persons. Such confidential or restricted information must not be disclosed to persons who are not authorized by law and departmental policy and procedures to receive such information.

(b) The central file of a parolee or an inmate may not be removed from the appropriate case records office or an institution without the prior knowledge and approval of the supervising records officer who is responsible for the control and maintenance of the file. Temporary transfer of a central file to another agency for any reason also requires the prior approval of the supervising records officer.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.

HISTORY:

1. Amendment filed 2-24-77; effective thirtieth day thereafter (Register 77, No. 9).
2. Amendment filed 12-9-2008; operative 1-8-2009 (Register 2008, No. 50).

3403. Communications.

Repealed.

HISTORY:

1. Renumbering and amendment of former section 3403 to new subsections 3401(b) and 3401(c), and repealer of Comment filed 9-13-96 as an emergency; operative 9-13-96. A Certificate of Compliance must be transmitted to OAL by 2-24-97 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 9-13-96 order transmitted to OAL 11-22-96 and filed 1-6-97 (Register 97, No. 2).

3404. Hiring of Ex-Offenders.

(a) The Secretary's written approval is required for appointment of an ex-offender.

(b) Ex-offenders shall not, without the Secretary's written approval, be assigned to areas which enable them to access:

(1) Employee records.

(2) Inmate personal or medical information.

(c) An ex-offender shall not be appointed to any position requiring a background clearance until such clearance is received.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.

HISTORY:

1. Former section 3404 renumbered to section 3404.1 and new section filed 11-30-93; operative 12-30-93 (Register 93, No. 49).
2. Change without regulatory effect amending subsections (a) and (b) filed 3-11-2013 pursuant to section 100, title 1, California Code of Regulations (Register 2013, No. 11).

3404.1. Approval of Ex-Offender Employee Transactions.

Relationships involving business and financial transactions between ex-offender employees and other employees shall require the advance approval of each person's hiring authority and also of the regional parole administrator with jurisdiction over any employee on parole.

NOTE: Authority cited: section 5058, Penal Code. Reference: section 5054, Penal Code.

HISTORY:

1. Renumbering and amendment of former section 3404 to new section 3404.1 filed 11-30-93; operative 12-30-93 (Register 93, No. 49).

3405. Legal Assistance to Inmates and Parolees.

Employees must not assist an inmate or parolee in the preparation of any legal document, or give any form of legal advice or service, except as specifically authorized by the warden, superintendent or regional administrator. Employees should help inmates and parolees to find qualified assistance for their legal problems.

Comment: Former DR-5216, petitions and writs.

3406. Committed Relatives and Friends of Employees.

If an employee becomes aware that any relative or person with whom the employee has or has had either a personal or business relationship, has been committed to or transferred to the jurisdiction of the department, the employee shall notify in writing, the employee's institution head or appropriate director/assistant secretary of that fact.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.

HISTORY:

1. Amendment of section heading and section, repealer of Comment, and new Note filed 9-13-96 as an emergency; operative 9-13-96. A Certificate of Compliance must be transmitted to OAL by 2-24-97

or emergency language will be repealed by operation of law on the following day.

2. Certificate of Compliance as to 9-13-96 order transmitted to OAL 11-22-96 and filed 1-6-97 (Register 97, No. 2).
3. Amendment filed 12-9-2008; operative 1-8-2009 (Register 2008, No. 50).

3407. State Supplies.

Employees may not consume or use food or supplies purchased or produced for an inmate or parolee's use, except as required by the employee's assigned duties or as specifically approved by the warden or superintendent or regional parole administrator.

Comment: Former DR-5218, use of state supplies.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.

HISTORY:

1. Amendment of section and new Note filed 12-9-2008; operative 1-8-2009 (Register 2008, No. 50).

3408. Vehicles.

Employees must use state vehicles for official business only and as specifically authorized by the warden, superintendent, or regional parole administrator. Employees must not allow an inmate to drive a vehicle on a public road, except in extreme emergency, and must report such instance to the employee's supervisor immediately following the emergency.

Comment: Former DR-5219, use of vehicles.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.

HISTORY:

1. Amendment of section and new Note filed 12-9-2008; operative 1-8-2009 (Register 2008, No. 50).

3409. Gratuities.

Employees must not solicit, accept or receive directly or indirectly, any fee, commission, gratuity or gift from any person or business organization doing or seeking to do business with the state.

Comment: Former DR-5220, gifts or gratuities.

3410. Intoxicants and Drugs.

(a) Employees must not come upon the grounds of an institution or community correctional facility or otherwise report for duty under the influence of intoxicants or drugs. Use of alcohol or drugs to the extent that it interferes with job performance is grounds for dismissal from service.

(b) It is the duty of every employee to promptly report to the warden, superintendent, or regional parole administrator the presence of any person, including an employee on duty, in any correctional facility who is or appears to be under the influence of intoxicants or drugs.

(c) Employees must not bring any kind of alcoholic beverage or any kind of drugs upon the grounds of an institution, community correctional center or camp unless specifically authorized to do so by the warden, superintendent or regional parole administrator. Such authorization may be given for medical or religious sacramental purposes, and for possession by employees who live in state-owned residences outside the security area for their personal use within their assigned residences.

(d) Any employee obtaining for, or delivering to, an inmate or parolee any alcoholic preparations of any kind, or a drug of any type, except as specifically authorized by the warden, superintendent or regional parole administrator, will be subject to dismissal from service and to prosecution by the district attorney.

Comment: Former DR-5221, use of intoxicants or drugs and DR-5222, bringing intoxicants or drugs on institution grounds.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.

HISTORY:

1. Amendment of subsections (b)–(d) and new Note filed 12-9-2008; operative 1-8-2009 (Register 2008, No. 50).

3410.1. Search of Employees, Contractors, Attorneys, and Volunteers for Contraband and Illegal Drugs.

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

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

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

HISTORY:

1. New section filed 10-2-2014 as an emergency; operative 10-2-2014 (Register 2014, No. 40). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 3-11-2015 or emergency language will be repealed by operation of law on the following day.
2. Amendment of section heading, section and Note filed 10-8-2014 as an emergency; operative 10-8-2014 (Register 2014, No. 41). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 3-17-2015 or emergency language will be repealed by operation of law on the following day.
3. Amendment of section heading and section refiled 3-17-2015 as an emergency; operative 3-17-2015 (Register 2015, No. 12). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 6-15-2015 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 10-2-2014 order transmitted to OAL 3-4-2015 and filed 4-16-2015 (Register 2015, No. 16).
5. Certificate of Compliance as to 3-17-2015 order, including further amendment of section heading and section and amendment of Note, transmitted to OAL 6-15-2015 and filed 7-27-2015; amendments effective 7-27-2015 pursuant to Government Code section 11343.4(b)(3) (Register 2015, No. 31).

3410.2. Passive Alert Canine Searches of Employees, Contractors, Attorneys, and Volunteers.

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

(b) Direct searches of employees, employees of other government agencies, contract employees, contractors and their

employees, volunteers, and attorneys or legal organizations as identified in section 3141(c)(9) authorized to practice law in California, another state, or the District of Columbia by Canine Units.

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

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

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

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

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

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

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

(1) A passive air scan search may be conducted in open areas where groups of employees, employees of other government agencies, contract employees, contractors and their employees, volunteers, or attorneys or legal organizations as identified in section 3141(c)(9) authorized to practice law in California, another state, or the District of Columbia are walking and/or congregated, e.g., main entrances, administration buildings, in service training areas, sallyports, hallways, housing units, visiting rooms, or yards, etc.

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

(d) Positive Canine Alert.

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

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

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

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

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

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

(A) Once the pre-booking process has been completed by CDCR staff, the arrestee(s) shall be transported by CDCR personnel or by

the local police/sheriff's department to a designated detention facility. Arrestee(s) shall not be held at the pre-booking area beyond a reasonable amount of time necessary to complete the process.

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

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

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

HISTORY:

1. New section filed 10-8-2014 as an emergency; operative 10-8-2014 (Register 2014, No. 41). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 3-17-2015 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-17-2015 as an emergency; operative 3-17-2015 (Register 2015, No. 12). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 6-15-2015 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 3-17-2015 order, including amendment of section heading and section and amendment of Note, transmitted to OAL 6-15-2015 and filed 7-27-2015; amendments effective 7-27-2015 pursuant to Government Code section 11343.4(b)(3) (Register 2015, No. 31).

3411. Reporting of Arrest or Conviction, Change in Weapons or Driving Status.

If an employee is arrested or convicted of any violations of law, the employee must promptly notify the institution head or appropriate director/assistant secretary of that fact. Misconduct which impairs an employee's ability to do his or her job, or affects or involves the department, may be cause for disciplinary action. Suspension, revocation, or restrictions to an employee's driving privilege which prohibit the employee from performing any of their job duties, shall be reported to the institution head or appropriate director/assistant secretary. An employee shall also report any change in eligibility to own, possess and have custody/control of any firearm or other weapon authorized by the department.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code; and Sections 921, 922 and 926, Title 18, United States Code.

HISTORY:

1. Amendment of section heading and section and new Note filed 12-10-98; operative 1-9-99 (Register 98, No. 50).
2. Amendment filed 12-9-2008; operative 1-8-2009 (Register 2008, No. 50).

3412. Personal Firearms.

NOTE: Authority cited: section 5058, Penal Code. Reference: section 5054, Penal Code.

HISTORY:

1. Repealer filed 9-24-81; effective thirtieth day thereafter (Register 81, No. 39).

3413. Incompatible Activity.

(a) Employees of the department shall not engage in any other employment or activity inconsistent or incompatible with employment by the department. Conduct deemed to fall in such categories includes, but is not limited to the following:

(1) Using the prestige or influence of the state or the department for private gain or advantage.

(2) Employment or participation in any activity of an illegal nature.

(3) Any employment or other activity which will prevent the employee from doing his or her job as an employee of the department in an efficient and capable manner, or represents a potential conflict of interest or the appearance of a conflict of interest with his or her job.

(4) Employment which will prevent a prompt response to a call to report to duty in an emergency or when otherwise required to be present by his or her supervisor or the warden or superintendent.

(5) Using for private gain the time, facilities, equipment or supplies of the state.

(6) Using workgroup computer technologies to do any of the following:

(A) Publish, display, or transmit information that:

1. Violates or infringes on the rights of other persons, including the right of privacy.

2. Contains defamatory, intentionally false, obscene, pornographic, profane, sexually harassing, threatening, racially offensive, or other unlawfully discriminatory material.

3. Encourages the use of controlled substances.

(B) Conduct activities not related to the mission or work tasks of the department.

(C) Solicit the performance of activities prohibited by law.

(D) Transmit material, information, or software in violation of departmental policies, or local, State, or Federal Law.

(E) Conduct electioneering or engage in political activities.

(F) Engage in non-government related fund raising or public relations activities.

(G) Conduct personal business activities or activities for personal monetary gain.

(H) Purchase or sell unauthorized goods or services.

(7) Providing confidential information to persons to whom issuance of such information has not been authorized, or using such information for private gain or advantage.

(8) Receiving or accepting money or any other consideration from anyone other than the state for performance of an act which the employee would be required or expected to render in the regular course or hours of his or her employment, or as part of his or her duties as a state employee.

(9) Receiving or accepting, directly or indirectly, any gift, including money, any service, gratuity, favor, entertainment, hospitality, loan, or any other thing of value, from anyone who is doing or is seeking to do business of any kind with the state or whose activities are regulated or controlled in anyway by the state, under circumstances from which it reasonably could be inferred that the gift was intended as a reward or for the purpose of influencing any official action on the employee's part.

(10) Consulting or testifying as a specialist or an expert witness, based on expertise gained in the course of their duties, in any administrative, civil, or criminal action without having given reasonable notice, as defined in section 3413(a)(10)(A), to the chief deputy general counsel of the office of legal affairs.

(A) An employee who is contacted by a fellow employee and/or their representative and/or attorney regarding ongoing or anticipated administrative, civil, or criminal proceedings for the purpose of eliciting expert testimony, as defined in Evidence Code section 720, shall, within one business day, notify in writing the chief deputy general counsel of the office of legal affairs. The written notification shall include all relevant information concerning the contact and a synopsis of their anticipated testimony. The employee whose testimony is sought shall also forward any subpoena served upon them within one business day of service.

(B) The chief deputy general counsel or designee retains the discretion to seek to quash the subpoena on any substantive or procedural grounds before the judicial body through whose authority the subpoena was issued.

(C) This subsection shall not apply when an employee has been requested to testify regarding an event or transaction which he or she has perceived or investigated in the course of his or her duties or when an employee has been requested to testify as an expert witness by the department.

(b) Before engaging in any outside employment, activity or enterprise, including self-employment, the employee must submit a statement to his or her division administrator or to the warden or superintendent, naming the prospective employer, if any, the employer's address and phone number, and an outline of the proposed duties or activities. This must be in sufficient detail to enable the division administrator or the warden or superintendent to determine whether the proposed activity falls in the prohibited class. The division administrator or the warden or superintendent must notify the employee of findings.

(c) Violation of these provisions may result in disciplinary actions up to and including termination of employment with the department or civil action. Criminal prosecution may result from conduct, which violates Penal Code section 502.

NOTE: Authority Cited: section 5058, Penal Code. Reference: section 19572, Government Code; section 5054, Penal Code.

HISTORY:

1. New subsections (a)(7)–(a)(7)(H), subsection renumbering, new subsection (c), repealer of Comment, and new Note filed 2-7-97 as an emergency; operative 2-7-97 (Register 97, No. 6). Pursuant to Penal Code section 50598(e), a Certificate of Compliance must be transmitted to OAL by 7-17-97 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 2-7-97 order transmitted to OAL 5-7-97 and filed 6-16-97 (Register 97, No. 25).
3. New subsection (a)(11) filed 12-8-99; operative 1-7-2000 (Register 99, No. 50).
4. Amendment filed 12-19-2006; operative 12-19-2006 pursuant to Government Code section 11343.4 (Register 2006, No. 51).

3413.1. Compensation for Witnesses.

(a) Pursuant to Government Code section 68097.2(a), any state employee who is obliged by a subpoena to attend as a witness before any court or other tribunal in any civil action or proceeding in connection with a matter, event, or transaction which they have expertise gained in the course of their duties, shall receive the salary or other compensation to which they are normally entitled from the department during the time the employee travels to and from the place where the court or other tribunal is located and while they are required to remain at the place pursuant to the subpoena. The employee shall also receive from the department the actual necessary and reasonable traveling expenses incurred in complying with the subpoena.

(b) Pursuant to Government Code section 68097.2(b), the department shall require:

(1) The amount of one hundred fifty dollars ($150), to accompany the subpoena upon delivery to the person accepting the subpoena for each day that the state employee is required to remain in attendance pursuant to the subpoena. This amount shall be in the form of a check or money order made payable to the California Department of Corrections and Rehabilitation.

(2) The party at whose request the subpoena is issued to reimburse the department for the full cost incurred in paying the state employee their salary or other compensation and traveling expenses for each day that the employee is required to remain in attendance pursuant to the subpoena.

(c) Any employee who meets the requirements of subsection (a) shall submit to their immediate supervisor an itemized travel expense claim within two business days following his or her testimony.

(d) Any employee who is subpoenaed to testify as to what they witnessed, not for their expertise gained in the course of their employment with the department and received witness fees pursuant to Government Code section 68093, shall relinquish those fees to the department if the employee has been on pay status during the duration of their testimony.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 19572, 68093, 68097.1, 68097.2(a) and (b) Government Code; Section 5054, Penal Code; Title 2, Division 5, Section 18674; and *Fox* v. *State Personnel Board* (1996) 49 Cal.App.4th 1034.

HISTORY:

1. New section filed 12-19-2006; operative 12-19-2006 pursuant to Government Code section 11343.4 (Register 2006, No. 51).

3414. Identification Card.

Every employee will be issued a departmental identification card. Employees must, while on duty, carry such card upon their person and produce the card upon request. An employee must promptly report the loss of his or her identification card to the warden or superintendent, or regional parole administrator.

Comment: Former DR-5226, employee identification card.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.

HISTORY:

1. Amendment of section and new Note filed 12-9-2008; operative 1-8-2009 (Register 2008, No. 50).

3415. Employees of Other Agencies.

Persons who are not employed by the Department of Corrections and Rehabilitation, but who are assigned to or engaged in work at any department facility must observe all rules, regulations and laws governing the conduct of employees at that facility. Failure to do so may lead to exclusion from department facilities.

Comment: Former DR-5227, employees of other agencies.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.

HISTORY:

1. Change without regulatory effect amending section and adding Note filed 3-11-2013 pursuant to section 100, title 1, California Code of Regulations (Register 2013, No. 11).

3416. Conflict of Interest Code.

NOTE: Authority cited: Sections 87300 and 87302, Government Code; and Section 5058, Penal Code. Reference: Section 87300 and 87302, Government Code; and Section 5054, Penal Code.

HISTORY:

1. New section filed 8-22-79; effective thirtieth day thereafter (Register 79, No. 34). For prior history, see Register 77, No. 27.

2. Repealer and new section (including Appendix) filed 2-26-81; effective thirtieth day thereafter. Approved by Fair Political Practices Commission 12-1-80 (Register 81, No. 9).
3. Order of Repeal filed 6-3-85 by OAL pursuant to Government Code section 11349.7; effective thirtieth day thereafter (Register 85, No. 26).
4. New section filed 3-31-87; effective thirtieth day thereafter. Approved by Fair Political Practices Commission 3-9-87 (Register 87, No. 14).
5. Editorial correction of printing errors in Appendices A and B (Register 92, No. 5).
6. Repealer of section and appendices A and B filed 7-12-2006; operative 8-11-2006. Approved by Fair Political Practices Commission 5-24-2006 (Register 2006, No. 28).

Article 3. Employee Services

3420. General Policy.

The only services to be supplied to employees are those officially established by the warden or superintendent and equally available to all employees.

Comment: Former DP-5301, policy, general.

3421. Employee Associations.

HISTORY:

1. Order of Repeal filed 6-3-85 by OAL pursuant to Government Code section 11349.7; effective thirtieth day thereafter (Register 85, No. 26).

3422. Institution Services.

Subject to the limitations of the law, institutions of the department may furnish to employees, for the convenience of the state, the following services. These services are rendered at the employee's own risk. The institution and the department cannot assume any liability for loss, damage, or destruction of the employee's property:

(a) House and room rentals.

(b) Electricity, water, gas and ice, for employees living on institutional grounds.

(c) Minor household repairs to furniture and appliances.

(d) Firewood from salvage operations only.

(e) Meals at employees' dining rooms.

(f) Laundry and dry cleaning.

(g) Shoe and saddle repair.

(h) Barber shop services.

(i) Beauty shop services.

Comment: Former DP-5303, services furnished by institutions.

3423. Operational Plans.

Subject to all applicable law and the approval of the director, wardens, superintendents and regional administrators will establish procedures to govern the operation and use of such services as are made available to employees. Institutional operational plans may provide for services such as laundry, dry cleaning and shoe repair for employees and for dependent members of the employee's family who reside with the employee. However, no service will be provided to nonemployees, which requires their physical presence, except that, when accompanied by an employee, nonemployees may use the services of the employees' dining room and snack bar.

Comment: Former DP-5304, institution regulations to be established for employee services.

3424. State Products.

The direct sale or disposal to an employee of any article, materials, or supplies owned, produced, or manufactured by the department is prohibited except where specifically authorized by law.

Comment: Former DP-5305, sale of institution products.

3425. Gifts, Tips.

No gift, tip or reward will be offered by an employee or be accepted for or by an inmate.

Comment: Former DP-5036, tips, gifts, or rewards.

3426. Employee Early Intervention Program.

(a) The Early Intervention Program (EIP) is a voluntary employee benefit available to all departmental employees, who have sustained an industrial injury/illness. The EIP is designed to provide employees with information regarding the assessment and processing of qualified industrial injury/illness claims, as referenced in subdivision (b), and the available choices regarding benefit options and compensability. The Office of Environmental Health and Safety (OEHS), within the Department, shall administer the EIP.

(b) All employees who have sustained the following qualified injury/illness shall be eligible for an Early Intervention Counselor (EIC) visit, as referenced in (d)(4):

(1) Psychological stress;

(2) Stress-related injuries, including but not limited to, hypertension, cardiac, gastrointestinal; or

(3) Trauma-induced stress, including but not limited to, assault, blood borne pathogen exposure or infectious disease exposure.

(c) All employees with a claimed injury/illness who have an actual or anticipated long-term disability of thirty (30) days or more, or who have an undeterminable or disputed injury shall be eligible for EIC.

(d) Definitions.

(1) Adjusting Agency, means the entity, under a State of California Interagency Agreement with the California Department of Human Resources that administers workers' compensations claims on behalf of the Department.

(2) Early Intervention Selection Committee (EISC) means a local committee at the institution(s) comprised of the Director's representatives in a number equal to the number of Employee Representative Associations who bargain with the Department on behalf of employee bargaining units, one representative from each of those Associations, and a non-voting chairperson.

(3) Agreed Medical Panel Doctor (AMPD), means a Physician as defined in Labor Code 3209.3, or a Physician holding a valid license to practice medicine in an adjoining state when services will be rendered in that state, who is authorized by the EISC to provide evaluations and treatment within the scope of the EIP.

(4) Early Intervention Counselor (EIC), means an independent, non-departmental employee, authorized by the EISC, who provides information to qualified injured/ill employees regarding workers' compensation and other employee entitlement benefit options.

(5) Return-to-Work Coordinator (RTWC) means a State employee who is the Department's local representative, entrusted with the responsibility of coordinating the EIP at the local level. The RTWC shall be the chairperson of the EISC.

(e) The EIP shall:

(1) Provide for a qualified injured/ill employee to receive an initial EIC visit, regarding workers' compensation benefit options and other entitlement benefits when referred by the RTWC.

(2) Provide for a qualified injured/ill employee to be referred to an AMPD by the RTWC regarding disputed compensability claims.

(3) Ensure all employee medical and personnel records are kept confidential at all times.

(f) The EISC shall:

(1) Review resumes of qualifications, as referenced in (g)(1), and authorize individuals to provide EIC services within the scope of the EIP for a term of three (3) years;

(2) Review and investigate any verbal or written complaint filed against an EIC, within 120 days of receipt;

(3) Issue a written statement within 30 days of completion of the review to the complainant if complaint is found to be invalid;

(4) Issue a written Notice of Decision via Certified U.S. Mail within 30 days of completion of the review if the complaint is found to have merit. The Notice shall include:

(A) A written statement of charges addressing complaint; and

(B) A written statement informing the EIC of his or her right to appeal within 30 days of mailing of the Notice of Decision; and

(C) A written corrective action order. For purposes of this section, a corrective action order may include, but is not limited to, a written notice to the EIC to provide an explanation of inaccurate EIP information provided to the employee; or a written notice to correct any inaccurate billing statement; or a written notice to cease any unprofessional conduct during the course of an EIC visit. The written corrective action order shall include a time frame during which the matter must be corrected, and a means by which the EIC must notify the EISC of the required corrections; or

(D) A written statement of Intent to Revoke Authorization to provide EIC services.

(5) Conduct a meeting to hear an appeal within 60 days of a request by the EIC, giving the EIC an opportunity to present a defense to any complaint prior to revoking the EIC's authority to provide EIP services.

(6) Make a final determination within 14 days of the appeal, either sustaining, modifying or revoking the Decision after an appeal is heard. The authorization of an EIC to provide services shall be revoked if it is determined that the following has occurred:

(A) Upon investigation of a serious complaint filed against the EIC, the complaint is found to have merit by the EISC. For the purposes of this section, a serious complaint means an alleged crime or act performed by an EIC, which includes but not limited to those involving theft, fraud, fiscal dishonesty, or sexual misconduct.

(B) The EIC fails to notify the EISC by written statement certifying charges set forth in the corrective action order have been corrected;

(C) The EISC determines inadequate EIC performance due to neglect of duty, misconduct, or illegal or unprofessional conduct.

(D) The EIC fails to appeal the complaint within the 30-day appeal process.

(7) Issue a written Final Decision to the EIC via Certified U.S. Mail.

(8) Base decisions on a simple majority of the members in attendance. The decision of the EISC is final and is not appealable beyond the 30-day appeal process.

(g) The EIC shall:

(1) Submit a resume of qualifications to the RTWC, including, but not limited to, a demonstration of knowledge and experience regarding worker's compensation laws and other employee entitlement benefits;

(2) Respond within seven (7) working days of receipt of a referral by the local RTWC and shall:

(A) Contact the injured/ill employee by telephone at the number provided by the RTWC, or contact the injured/ill employee by Certified U.S. Mail;

(B) Inform the employee about the EIP; and

(C) Schedule an EIC visit, if requested by the employee.

(3) Notify the local RTWC of the scheduled visit with the injured/ill employee within three (3) working days of contact with the employee, if the employee requests an EIC visit;

(4) Explain all benefit options to injured/ill employee during the EIC visit;

(5) Obtain prior approval from the local RTWC for additional telephone calls or visits to the injured/ill employee;

(6) Attend training, if requested, by the OEHS;

(7) Submit billings for early intervention services to the RTWC in accordance with the following:

(A) All billings for casework provided are to be itemized in tenths of an hour.

(B) All EIC visits and casework provided are to be billed at the Professional Hourly Rate of $65.

1. Billable costs include, but are not limited to, initial file review; scheduling contact with employee; contact with employee; meeting with employee; assessment of employee needs; counseling; and guidance. Any file review or consultation with the employee that exceeds two (2) hours shall include a report providing documentation in support of the need for the extended time.

2. Non-billable costs include, but are not limited to, postage, clerical services, photocopies, in-house waiting time, attempted telephone contacts, and in-house staffing.

(C) All reimbursement for mileage are to be billed at the travel rate of $32.50 per hour and $0.31 per mile.

(h) The EIC shall not have access to an employee's confidential medical and personnel records.

(i) The AMPD shall provide medical, psychological, and psychiatric treatment under Labor Code 4600, and provide written opinions or evaluations to assist in decisions regarding compensability pursuant to CCR, Title 8, Section 9785, at the request of the RTWC.

(j) The RTWC shall:

(1) Serve as local EIP coordinator;

(2) Coordinate local EISC meetings at the institution(s) and participate as a non-voting chairperson;

(3) Refer the qualified injured/ill employee to an EIC within three (3) working days of knowledge of the employee's EIP eligibility;

(4) Review, authorize, and forward itemized billings submitted by the EIC for payment to the Adjusting Agency; and

(5) Maintain a log of injured/ill worker EIC referrals and submit to the OEHS by the 10th of every month.

(k) The Adjusting Agency shall:

(1) Compile reports and statistical data as requested by the Department;

(2) Refer departmental injured/ill employees to a Physician for any additional medical, psychological, and psychiatric evaluations as needed to determine compensability for disputed claims; and

(3) Pay itemized bills for EIP services submitted by the RTWC.

NOTE: Authority cited: Sections 5058 and 5058.3, Penal Code; and Section 3214, Labor Code. Reference: Section 5054, Penal Code; Sections 139.2, 3209.3, 3214, 4600 and 5307.1, Labor Code; CCR, Title 2, Section 714; CCR, Title 8, Sections 9785, 10132 and 10132.1; CCR, Title 15, Div. 3, Section 3434; Section 8547.2(b), Government Code; and State of California, Interagency Agreement, A9450207, AM-IV.

HISTORY:

1. New section filed 8-19-2002; operative 9-18-2002 (Register 2002, No. 34).
2. Amendment of subsections (d)(2), (d)(5) and (j)(2) and amendment of Note filed 1-27-2004 as an emergency; operative 1-27-2004 (Register 2004, No. 5). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 7-6-2004 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 1-27-2004 order transmitted to OAL 4-7-2004 and filed 5-18-2004 (Register 2004, No. 21).
4. Change without regulatory effect amending subsection (d)(1) filed 1-8-2014 pursuant to section 100, title 1, California Code of Regulations (Register 2014, No. 2).

Article 4. General Personnel Regulations

3430. General Policy.

To successfully meet the challenges and discharge the responsibilities of the department, each institution and parole region requires a skilled and dedicated staff of employees working in close cooperation with a high degree of morale. The department will encourage a high esprit de corps by enabling employees to improve their skills through training, by constant effort to make working conditions safe and pleasant, and by protecting the rights and privileges of employees under civil service laws and rules. Full information regarding rights and responsibilities of employees under civil service may be found at institution personnel offices, the personnel office of the Division of Adult Parole Operations, the departmental personnel office, and the offices of the California Department of Human Resources.

Comment: Former DP-5401, policy, general.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.

HISTORY:

1. Amendment of section and new Note filed 12-9-2008; operative 1-8-2009 (Register 2008, No. 50).
2. Change without regulatory effect amending section filed 1-8-2014 pursuant to section 100, title 1, California Code of Regulations (Register 2014, No. 2).

3431. Civil Service.

HISTORY:

1. Order of Repeal filed 6-3-85 by OAL pursuant to Government Code section 11349.7; effective thirtieth day thereafter (Register 85, No. 26).

3432. Hours of Employment.

Hours of employment will be in accordance with state civil service rules. The wardens, superintendents, and regional parole administrators, with the approval of the Secretary, will determine the hours of employment for all employees under their jurisdiction.

Comment: Former DP-5403, hours of employment.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.

HISTORY:

1. Amendment of section and new Note filed 12-9-2008; operative 1-8-2009 (Register 2008, No. 50).

3433. Vacations.

Employee vacations will be granted at times convenient to the institution, departmental division, and parole region, subject to the approval of the warden, superintendent, or regional parole administrator.

Comment: Former DP-5404, vacations.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.

HISTORY:

1. Amendment of section and new Note filed 12-9-2008; operative 1-8-2009 (Register 2008, No. 50).

3434. Grievances.

All employees have the right to appeal to the director from any grievance relating to their employment with the department. Such grievances must be submitted through the departmental grievance procedure. This in no way interferes with the right of a civil service employee to appeal or otherwise contest actions as provided by law, the California Department of Human Resources, or civil service regulations.

Comment: Former DP-5405, grievances.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.

HISTORY:

1. Change without regulatory effect amending section and adding new Note filed 1-8-2014 pursuant to section 100, title 1, California Code of Regulations (Register 2014, No. 2).

3435. In-Service Training.

All new employees will be given prescribed orientation training upon the commencement of their employment. All employees are required to participate in the in-service training program as directed. When work schedules permit, employees may attend in-service training classes on state time during their regular working hours.

Comment: Former DP-5406, in-service training.

3436. Limited Term Light Duty Assignments.

(a) The Hiring Authority may utilize Limited Term Light Duty assignments to allow employees with documented medical limitations to work. The Hiring Authority shall place the employee in a vacant budgeted position within the employee's bargaining unit, or allow the employee to continue working in their current position, while temporarily waiving the essential functions of the job.

(b) No position will be permanently identified as a "light duty" position. Limited Term Light Duty for any one employee shall not extend beyond 60 days in a 6-month period for any medical condition(s). In addition, Limited Term Light Duty shall only be offered for the duration of the vacant budgeted position (not to exceed 60 days).

NOTE: Authority cited: Sections 5054, 5058 and 5058.3, Penal Code. Reference: Section 5058, Penal Code.

HISTORY:

1. New section filed 1-31-2005 as an emergency; operative 1-31-2005 (Register 2005, No. 5). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 7-11-2005 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 1-31-2005 order, including amendment of section, transmitted to OAL 6-21-2005 and filed 8-3-2005 (Register 2005, No. 31).

3439. Research.

NOTE: Authority cited: Sections 3509.5, 3517, and 5058, Penal Code. Reference: Sections 3500 through 3524, and 5054, Penal Code.

HISTORY:

1. New section filed 4-7-95; operative 5-8-95 (Register 95, No. 14).
2. Change without regulatory effect adding new article 9.1 (section 3369.5) and renumbering former section 3439 to new section 3369.5 filed 8-1-96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 31).

Article 5. Camp Regulations

Repealed.

3440. Officer-In-Charge.

Repealed.

HISTORY:

1. Repealer of article 5 (Sections 3440–3444) and section filed 10-27-93; operative 11-26-93 (Register 93, No. 44).

3441. Camp Counts.

Repealed.

HISTORY:

1. Repealer filed 10-27-93; operative 11-26-93 (Register 93, No. 44).

3442. Camp Log.

Repealed.

HISTORY:
1. Repealer filed 10-27-93; operative 11-26-93 (Register 93, No. 44).

3443. Transporting Inmates.

Repealed.

HISTORY:
1. Repealer filed 10-27-93; operative 11-26-93 (Register 93, No. 44).

3444. Escorting Inmates.

Repealed.

HISTORY:
1. Renumbering and amendment of former section 3444 to section 3015(c) and repealer of former section 3444 filed 10-27-93; operative 11-26-93 (Register 93, No. 44).

Article 6. Information Practices

3450. Personal Information Record Access and Amendment.

(a) Any person on whom the department maintains a record or file containing personal information has the right to inspect their record or authorize any person to inspect such records on their behalf and to request amendment to correct outdated, inaccurate or incomplete information.

(1) Requests to inspect a record shall be submitted in writing to the office or official responsible for maintaining the record.

(2) Requests to amend a record or file shall be submitted in writing, including documentary evidence to support the proposed amendment, to the source of the contested information, or if the source is not available, to the office or official responsible for maintaining the record.

(b) The denial of a request to amend information may be appealed in writing first to the institution head or headquarters' division head and then to the director, and shall include all documentation pertaining to the requested amendment. Inmates and parolees may appeal the denial of a request using the inmate/parolee appeal process established in these regulations.

(c) When an individual's appeal of the request decision is denied, they may submit to the office or official responsible for maintaining the record a statement of disagreement for placement in the record or file. The statement shall normally be limited to three pages and shall remain a part of the record for as long as the disputed information is retained.

(d) No inmate or parolee shall prepare, handle, or destroy any portion of a departmental record containing confidential information as that term is defined in section 3321.

(e) No inmate or parolee shall prepare, handle, or destroy any portion of a departmental record containing personal information except:

(1) As provided for in section 3041(e), or

(2) Their copies of such records provided to them by the Department.

NOTE: Authority cited: section 5058, Penal Code. Reference: section 5054, Penal Code; section 1798.20, Civil Code.

HISTORY:
1. Repealer of article 6 (Sections 3450–3459) and new article 6 (Sections 3450–3453) filed 8-22-79; effective thirtieth day thereafter (Register 79, No. 34).
2. Repealer and new section filed 11-9-92; operative 12-9-92 (Register 92, No. 46).
3. Amendment of subsection (d) and new subsections (e)–(e)(2) filed 2-22-95; operative 3-24-95 (Register 95, No. 8).

3451. Methadone Patient Consent for Disclosure.

A methadone patient's written consent to disclosure of their personal or confidential information shall not be revocable until the treatment period for which it was given has concluded or 60 days after signing of the consent, whichever is greater.

NOTE: Authority cited: section 5058, Penal Code. Reference: section 5054, Penal Code.

HISTORY:
1. Repealer and new section filed 11-9-92; operative 12-9-92 (Register 92, No. 46).

3452. Access and Amendment of Records.

NOTE: Authority cited: section 5058, Penal Code. Reference: Sections 1798.30–1798.42, Civil Code.

HISTORY:
1. Repealer filed 11-9-92; operative 12-9-92 (Register 92, No. 46).

3453. Notice.

NOTE: Authority cited: section 5058, Penal Code. Reference: section 1798.17, Civil Code.

HISTORY:
1. Order of Repeal filed 6-3-85 by OAL pursuant to Government Code section 11349.7; effective thirtieth day thereafter (Register 85, No. 26).

Article 7. Selection of Professional Consulting Services

3454. Selection of Professional Consulting Services.

(a) The services of private architectural, engineering, and other firms, as defined in section 4525(a) of the Government Code, shall be secured on the basis of demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services required.

NOTE: Authority cited: section 5058, Penal Code; and section 4526, Government Code. Reference: Sections 5054 and 7000 et seq., Penal Code; and section 4525, et seq. Government Code.

HISTORY:
1. New Article 7 (Sections 3454–3463) filed 7-12-82; effective thirtieth day thereafter (Register 82, No. 29).
2. Change without regulatory effect amending section filed 10-29-90 pursuant to section 100, Title 1, California Code of Regulations (Register 91, No. 6).
3. Editorial correction of printing error misstating section Title (Register 91, No. 11).
4. Editorial correction of printing error in History 1. (Register 92, No. 5).
5. Amendment of subsection (a), repealer of subsection (b), and amendment of Note filed 9-8-97; operative 10-8-97 (Register 97, No. 37).
6. Amendment of article heading and section heading filed 7-12-2002; operative 8-11-2002 (Register 2002, No. 28).

3455. Definitions.

NOTE: Authority cited: section 5058, Penal Code; and section 4526, Government Code. Reference: Sections 5054 and 7000 et seq., Penal Code; and section 4525, et seq. Government Code.

HISTORY:
1. Editorial correction filed 2-19-85 (Register 85, No. 8).
2. Change without regulatory effect repealing section filed 10-29-90 pursuant to section 100, Title 1, California Code of Regulations (Register 91, No. 6).
3. Amendment of Note filed 9-8-97; operative 10-8-97 (Register 97, No. 37).

3456. Procuring Services.

(a) Notice of Announcement. Where services subject to this article are identified, a statewide notice of announcement shall be

made by the director, or designee, through publications of the respective professional societies.

(b) The notice of announcement shall also be advertised in two major California daily newspapers and in the California State Contracts Register.

(c) Failure of the professional societies or newspapers to publish the notice of announcement shall not operate to invalidate any contract.

(d) Firms selected may be retained for one year or longer, if needed to complete the services.

(e) The announcement in the California State Contracts Register shall include information as identified in section 14825.1, Government Code.

(f) All announcements in professional societies or newspapers shall contain the following minimal information:

(1) The nature of the work;

(2) The criteria upon which the award shall be made; and,

(3) The time within which statements of interest, qualification and performance data will be received.

NOTE: Authority cited: section 5058, Penal Code; and section 4526 and 4527, Government Code. Reference: Sections 5054 and 7000 et seq., Penal Code; section 14825.1, Government Code.

HISTORY:

1. Amendment of section and Note filed 9-8-97; operative 10-8-97 (Register 97, No. 37).
2. Amendment of subsections (a) and (d) and amendment of Note filed 7-12-2002; operative 8-11-2002 (Register 2002, No. 28).

3457. Establish Criteria.

The director, or designee, shall establish criteria which will comprise the basis for selection which shall include such factors as professional excellence, demonstrated competence, specialized experience of the firm, education and experience of key personnel, specialized staff capability, workload, ability to meet schedules and budgets, principals to be assigned, nature and quality of completed work, reliability and continuity of the firm, location, professional awards and other considerations deemed relevant. Such factors shall be weighted by the director, or designee, according to the nature of the work to be performed, the needs of the state and complexity and special requirements of the specific work.

NOTE: Authority cited: section 5058, Penal Code; and section 4526, Government Code. Reference: Sections 5054 and 7000 et seq., Penal Code; and Sections 4526 and 4527, Government Code.

HISTORY:

1. Amendment of section and Note filed 9-8-97; operative 10-8-97 (Register 97, No. 37).
2. Amendment filed 7-12-2002; operative 8-11-2002 (Register 2002, No. 28).

3458. Selection of Architects or Engineers.

After expiration of the period stated in the publications, the director, or designee, shall evaluate statements of qualifications and performance data submitted by interested firms and on file in the department. The director, or designee, shall conduct discussions with no less than three firms regarding anticipated concepts and the relative utility of alternative methods of approach for furnishing the required service. From the firms with which the director, or designee, holds discussions, the director, or designee shall select no less than three, in order of preference, based upon the established criteria, whom the director deems to be the most highly qualified to provide the services required. In the event there are fewer than three qualifying submittals, the director, or designee, will make a finding as to whether it is in the best interest of the state to proceed or re-advertise.

NOTE: Authority cited: section 5058, Penal Code; and section 4526, Government Code. Reference: Sections 5054 and 7000 et seq., Penal Code; and Sections 4526 and 4527, Government Code.

HISTORY:

1. Amendment of Note filed 9-8-97; operative 10-8-97 (Register 97, No. 37).
2. Amendment filed 7-12-2002; operative 8-11-2002 (Register 2002, No. 28).

3459. Estimate of Value of Services.

Before any discussion with any firm concerning fees, the director, or designee, shall cause an estimate of the value of such services to be prepared. Such estimate shall be, and remain, confidential until award of contract or abandonment of any further procedure for the services to which it relates.

NOTE: Authority cited: section 5058, Penal Code; and section 4526, Government Code. Reference: Sections 5054 and 7000 et seq., Penal Code; and Sections 4526 and 4527, Government Code.

HISTORY:

1. Amendment of Note filed 9-8-97; operative 10-8-97 (Register 97, No. 37).
2. Amendment filed 7-12-2002; operative 8-11-2002 (Register 2002, No. 28).

3460. Negotiation.

The director, or designee, shall attempt to negotiate a contract with the best qualified firm. Should the director, or designee, be unable to negotiate a satisfactory contract with the firm considered to be the most qualified at fair and reasonable compensation, negotiations with that firm shall be terminated. The director, or designee, shall then undertake negotiations with the second most qualified firm. Failing accord, negotiations shall be terminated. The director shall then undertake negotiations with the third most qualified firm. Failing accord, negotiations shall be terminated. Should the director be unable to negotiate a satisfactory contract with any of the selected firms, the director, or designee, may select additional firms in order of their competence and qualifications and continue negotiations in the manner prescribed until an agreement is reached.

NOTE: Authority cited: section 5058, Penal Code; and section 4526, Government Code. Reference: Sections 5054 and 7000 et seq., Penal Code; and Sections 4526 and 4527, Government Code.

HISTORY:

1. Amendment of Note filed 9-8-97; operative 10-8-97 (Register 97, No. 37).
2. Amendment filed 7-12-2002; operative 8-11-2002 (Register 2002, No. 28).

3461. Amendments.

In instances where the state effects a necessary change in the work during the course of performance of the contract, the firm's compensation may be adjusted by mutual written agreement in a reasonable amount where the amount of work to be performed by the firm is changed from that which existed previously in the contemplation of the parties.

NOTE: Authority cited: section 5058, Penal Code; and section 4526, Government Code. Reference: Sections 5054 and 7000 et seq., Penal Code; and Sections 4526 and 4527, Government Code.

HISTORY:

1. Amendment of Note filed 9-8-97; operative 10-8-97 (Register 97, No. 37).

3462. Contracting in Phases.

Should the director, or designee, determine that it is necessary or desirable to have the work performed in phases, it will not be necessary to negotiate the total contract price in the initial instance, provided that the director, or designee, shall have determined that

the firm is best qualified to perform the work at reasonable cost, and the contract contains provisions that the state, at its option, may utilize the firm for other phases and the firm will accept a fair and reasonable price for subsequent phases to be later negotiated, mutually-agreed upon and reflected in a subsequent written instrument. The procedure with regard to estimates and negotiation shall otherwise be applicable.

NOTE: Authority cited: section 5058, Penal Code; and section 4526, Government Code. Reference: Sections 5054 and 7000 et seq., Penal Code; and Sections 4526 and 4527, Government Code.

HISTORY:
1. Amendment of Note filed 9-8-97; operative 10-8-97 (Register 97, No. 37).
2. Amendment filed 7-12-2002; operative 8-11-2002 (Register 2002, No. 28).

3463. Small Business Participants.

The director, or designee, shall endeavor to provide to all small business firms who have indicated an interest in receiving such, a copy of each announcement for services for which the director, or designee, concludes that small business firms could be especially qualified. The director, or designee, shall assist firms in attempting to qualify for small business status. A failure of the director, or designee, to send a copy of an announcement to any firm shall not operate to invalidate any contract.

NOTE: Authority cited: section 5058, Penal Code; and section 4526, Government Code. Reference: Sections 5054 and 7000 et seq., Penal Code; and Sections 4526 and 4527, Government Code.

HISTORY:
1. Amendment of Note filed 9-8-97; operative 10-8-97 (Register 97, No. 37).
2. Amendment filed 7-12-2002; operative 8-11-2002 (Register 2002, No. 28).

3464. Applicability of this Article.

This article shall not apply where the director, or designee, determines that:

(a) The services needed are more of a technical nature, and

(b) The services needed involve little professional judgment; and

(c) Requiring bids would be in the public interest.

NOTE: Authority cited: section 5058, Penal Code, and section 4526, Government Code. Reference: section 4529, Government Code.

HISTORY:
1. New section filed 9-8-97; operative 10-8-97 (Register 97, No. 37).
2. Amendment of first paragraph filed 7-12-2002; operative 8-11-2002 (Register 2002, No. 28).

Article 8. Disabled Veteran Business Enterprise Program

3475. Disabled Veteran Business Enterprise Goal.

(a) The disabled veteran business enterprise goal established in Public Contract Code section 10115(c) applies to the overall annual expenditures of the department. The goal shall be used for specific contracts unless the department determines that a more appropriate disabled veteran business enterprise goal shall be used for a specific contract based on one or more of the following conditions:

(1) The contract is for an amount of $15,000 or less.

(2) The department has determined that there are no disabled veteran business enterprises within a reasonable market area.

(3) The department has determined that the project or contract contains no opportunity for subcontracting.

(4) The department has determined that an emergency exists involving the public health, welfare, safety, or security of a facility and/or the public.

(5) The department has determined that the contract for services to be supplied exclusively by an individual or business concern involves minor or insignificant incidental services or supplies.

(6) The department has determined that the contract will result in the state being a user of services normally provided to the public at large, e.g., electricity, gas, water, garbage collection, use of common carriers, and/or over-night accommodations.

(7) The department has determined that there is only one person or entity that can reasonably and effectively perform the required services for which there is minor, insignificant, or no opportunity for subcontracting.

(8) The department has determined that extraordinary circumstances exist which make it impossible for the potential contractor or the department to comply with the Disabled Veteran Business Enterprise requirements.

(9) An amendment to an existing contract is either based on one or more of the above conditions or the amendment will not materially change the scope of services, as determined by the department.

(10) The work is to be performed pursuant to a change order or amendment to an existing construction contract.

(b) When it is necessary for the department to establish a more appropriate disabled veteran business enterprise goal for a specific contract, the department shall identify disabled veteran business enterprises and involve them in the contracting process to the extent reasonably possible.

NOTE: Authority cited: section 5058, Penal Code; and section 10115.3(b), Public Contract Code. Reference: Sections 10115 and 10115.11, Public Contract Code.

HISTORY:
1. Amendment of article heading and renumbering and amendment of former section 3476 opening paragraph to new section 3475 filed 10-18-93 as an emergency; operative 10-18-93 (Register 93, No. 43). A Certificate of Compliance must be transmitted to OAL by 2-15-94 or emergency language will be repealed by operation of law on the following day. For prior history, see Register 91, No. 6.
2. Certificate of Compliance as to 10-18-93 order transmitted to OAL 2-15-94 and filed 3-16-94 (Register 94, No. 11).
3. Change without regulatory effect amending subsection (a)(1) filed 3-27-95 pursuant to section 100, Title 1, California Code of Regulations (Register 95, No. 13).
4. Amendment of article heading, section heading, and subsections (a), (a)(2), (a)(8) and (b) filed 11-13-98 as an emergency; operative 11-13-98 (Register 98, No. 46). A Certificate of Compliance must be transmitted to OAL by 3-15-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 11-13-98 order transmitted to OAL 2-10-99 and filed 3-8-99 (Register 99, No. 11).

3476. Disabled Veteran Business Enterprise Bid and Sole Source Requirements.

(a) Within the time frames specified by the department's bid or sole source package, potential contractors shall be required to provide the department with either (1) or (2) below:

(1) Documentation, as required in the department's bid or sole source package, that they have met the disabled veteran business enterprise goals established in the respective package which shall include, but not be limited to, the names of their subcontractors; certification pursuant to section 3477; and dollar amounts of the subcontracts.

(2) Documentation, as required in the department's bid or sole source package pursuant to section 3478 of their good faith effort

to meet the disabled veteran business enterprise goal established in the department's bid or sole source package.

(b) For the purpose of this article, a disabled veteran business enterprise must perform a commercially useful function. A disabled veteran business enterprise is considered to be performing a commercially useful function when it meets both of the following criteria:

(1) The business concern is responsible for the execution of a distinct element of the work of the contract; carrying out its obligation by actually performing, managing, or supervising the work involved; and performing work that is normal for its business services and functions.

(2) The business concern is not further subcontracting a greater portion of the work than would be expected by normal industry practices.

NOTE: Authority cited: section 5058, Penal Code; and section 10115.3(b), Public Contract Code. Reference: Sections 10115, 10115.2 and 10115.3, Public Contract Code.

HISTORY:

1. Renumbering and amendment of former section 3477 opening paragraph to new section 3476, amendment of section heading and Note: filed 10-18-93 as an emergency; operative 10-18-93 (Register 93, No. 43). A Certificate of Compliance must be transmitted to OAL by 2-15-94 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 10-18-93 order transmitted to OAL 2-15-94 and filed 3-16-94 (Register 94, No. 11).
3. Amendment of subsections (a)(1) and (a)(2) filed 11-22-96 as an emergency; operative 11-22-96 (Register 96, No. 47). A Certificate of Compliance must be transmitted to OAL by 5-1-97 pursuant to Penal Code section 5058(e) or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 11-22-96 order, including amendment of subsection (b), transmitted to OAL 3-20-97 and filed 5-1-97 (Register 97, No. 18).
5. Amendment of section heading and subsections (a)(1)–(b)(1) filed 11-13-98 as an emergency; operative 11-13-98 (Register 98, No. 46). A Certificate of Compliance must be transmitted to OAL by 3-15-99 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 11-13-98 order transmitted to OAL 2-10-99 and filed 3-8-99 (Register 99, No. 11).

3477. Certification of a Disabled Veteran Business Enterprise.

(a) As specified in the department's bid or sole source package, potential contractors shall be required to provide the department with certification documentation that a business concern is certified as a disabled veteran business enterprise as defined in section 3000.

NOTE: Authority cited: section 5058, Penal Code; and section 10115.3(b), Public Contract Code. Reference: Sections 2050–2053 and 10115.1, Public Contract Code.

HISTORY:

1. Amendment of subsection (a), new section heading, subsection (b) and Note filed 10-18-93 as an emergency; operative 10-18-93 (Register 93, No. 43). A Certificate of Compliance must be transmitted to OAL by 2-15-94 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 10-18-93 order transmitted to OAL 2-15-94 and filed 3-16-94 (Register 94, No. 11).
3. Amendment of subsection (a) filed 11-22-96 as an emergency; operative 11-22-96 (Register 96, No. 47). A Certificate of Compliance must be transmitted to OAL by 5-1-97 pursuant to Penal Code section 5058(e) or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 11-22-96 order, including amendment of section heading, transmitted to OAL 3-20-97 and filed 5-1-97 (Register 97, No. 18).
5. Amendment of section heading and subsection (a) and repealer of subsection (b) filed 11-13-98 as an emergency; operative 11-13-98 (Register 98, No. 46). A Certificate of Compliance must be transmitted to OAL by 3-15-99 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 11-13-98 order transmitted to OAL 2-10-99 and filed 3-8-99 (Register 99, No. 11).

3478. Good Faith Effort Documentation.

A potential contractor shall be considered to have made a good faith effort when he/she submits, within specified time limits, documentary evidence, as required in the department's bid or sole source package, that all of the following actions were taken:

(a) Contact was made with the department to identify disabled veteran business enterprise business concerns.

(b) Contact was made with other federal and state agencies and local disabled veteran business enterprise organizations to identify disabled veteran business enterprises.

(c) Advertising was published in trade papers and disabled veteran business enterprise focus papers, as specified in the bid or sole source package, unless time limits imposed by the department did not permit such advertising. Trade papers and disabled veteran business enterprise focus papers, as defined in section 3000, must be acceptable to the department.

(d) Invitations to bid were submitted to potential disabled veteran business enterprise contractors.

(e) Bids submitted by disabled veteran business enterprises were fairly considered.

NOTE: Authority cited: section 5058, Penal Code; and section 10115.3(b), Public Contract Code. Reference: Sections 10115.2–10115.4, Public Contract Code.

HISTORY:

1. Renumbering and amendment of former section 3477(b) to new section 3478, new section heading, subsection (e) and Note filed 10-18-93 as an emergency; operative 10-18-93 (Register 93, No. 43). A Certificate of Compliance must be transmitted to OAL by 2-15-94 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 10-18-93 order transmitted to OAL 2-15-94 and filed 3-16-94 (Register 94, No. 11).
3. Amendment filed 11-13-98 as an emergency; operative 11-13-98 (Register 98, No. 46). A Certificate of Compliance must be transmitted to OAL by 3-15-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 11-13-98 order transmitted to OAL 2-10-99 and filed 3-8-99 (Register 99, No. 11).

3479. Monitoring Disabled Veteran Business Enterprise Goals.

(a) The department shall monitor adherence to the disabled veteran business enterprise goal established in Public Contract Code section 10115(c).

(b) Such monitoring may include, but is not limited to, visiting sites and requiring reports from contractors on disabled veteran business enterprise participation.

NOTE: Authority cited: section 5058, Penal Code; and section 10115.3(b), Public Contract Code. Reference: Sections 10115 and 10115.3, Public Contract Code.

HISTORY:

1. New section filed 10-18-93 as an emergency; operative 10-18-93 (Register 93, No. 43). A Certificate of Compliance must be transmitted to OAL by 2-15-94 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 10-18-93 order transmitted to OAL 2-15-94 and filed 3-16-94 (Register 94, No. 11).
3. Amendment of section heading and section filed 11-13-98 as an emergency; operative 11-13-98 (Register 98, No. 46). A Certifi-

cate of Compliance must be transmitted to OAL by 3-15-99 or emergency language will be repealed by operation of law on the following day.

4. Certificate of Compliance as to 11-13-98 order transmitted to OAL 2-10-99 and filed 3-8-99 (Register 99, No. 11).

Article 9. Joint Venture Program

3480. Joint Venture Program.

The secretary shall establish Joint Venture Program operations in state prison facilities pursuant to the Prison Inmate Labor Initiative of 1990 (PILI). This program shall allow employers to employ inmates for the purpose of producing goods or services that may be sold to the public. The purpose of the program shall include preparing offenders for return to society by offering relevant job skills and work habits to increase success on parole, thereby benefiting society at large.

NOTE: Authority cited: Sections 2717.3 and 5058, Penal Code. Reference Sections 2717.2 and 5058, Penal Code.

HISTORY:

1. New section filed 12-3-90 as an emergency; operative 12-3-90 (Register 91, No. 6). A Certificate of Compliance must be transmitted to OAL by 4-2-91 or emergency language will be repealed by operation of law on the following day.
2. Editorial correction of printing error inadvertently omitting text (Register 91, No. 11).
3. Certificate of Compliance as to 11-28-90 order transmitted to OAL 3-21-91 and filed 4-22-91 (Register 91, No. 20).
4. Renumbering of former section 3480 to new section 3480.1 and new section 3480 filed 9-13-2005; operative 9-13-2005 pursuant to Government Code section 11343.4 (Register 2005, No. 37).

3480.1. Joint Venture Policy Advisory Board.

The Joint Venture Policy Advisory Board, established in the department by Penal Code section 2717.4, shall serve to advise the secretary of policies that further the purposes of the Prison Inmate Labor Initiative of 1990. The board shall meet at the call of the chairperson. The secretary shall serve as the chairperson of the board.

NOTE: Authority cited: Sections 2717.3 and 5058, Penal Code. Reference: Sections 2717.4 and 5054, Penal Code.

HISTORY:

1. Renumbering and amendment of former section 3480 to new section 3480.1 filed 9-13-2005; operative 9-13-2005 pursuant to Government Code section 11343.4 (Register 2005, No. 37).

3481. Joint Venture Employer Selection Criteria.

(a) A Joint Venture Employer (JVE) shall be selected on the basis of their ability to further the purpose of the PILI. The secretary shall consider the employer's ability to:

(1) Provide inmates with the means to reimburse the state from earned wages for a portion of the cost of the inmate's room and board.

(2) Provide inmates with the means of paying restitution and compensation to the victims of crime from wages earned.

(3) Employ inmates in productive work and provide them with the opportunity to earn money while encouraging and maintaining safe prison operations.

(4) Provide inmates with the means to support their families to the extent possible.

(5) Teach inmates skills and work habits that may be used upon their release from prison by patterning the operation after those operations outside of prison.

(6) Assist inmates in their rehabilitation.

(7) Assist with retaining or reclaiming jobs for California, supporting new or developing California industries, or creating jobs for a deficient labor market as determined in cooperation with the Employment Development Department.

(b) The secretary shall consider whether the operation will have an adverse impact upon California's labor force.

(c) The secretary shall consider the operation's effect on public safety, security of the institution, and applicable worker safety standards.

(d) The secretary shall consider the financial status and stability of the prospective Joint Venture Employer company prior to the execution of a contract with the Joint Venture Employer.

NOTE: Authority cited: Sections 2717.3 and 5058, Penal Code. Reference: Sections 2717.2, 2717.5 and 5054, Penal Code; and Section 5, Article XIV of the State Constitution.

HISTORY:

1. New section filed 12-3-90 as an emergency; operative 12-3-90 (Register 91, No. 6). A Certificate of Compliance must be transmitted to OAL by 4-2-91 or emergency language will be repealed by operation of law on the following day.
2. Editorial correction of printing error inadvertently omitting text (Register 91, No. 11).
3. Certificate of Compliance as to 11-28-90 order transmitted to OAL 3-21-91 and filed 4-22-91 (Register 91, No. 20).
4. Editorial correction of printing error in subsection (a) (Register 92, No. 5).
5. Amendment of subsections (a), (a)(5), (b) and (c) and new subsection (d) filed 9-13-2005; operative 9-13-2005 pursuant to Government Code section 11343.4 (Register 2005, No. 37).

3482. Joint Venture Program Contracts.

(a) In addition to state contract requirements, each Joint Venture Program (JVP) contract shall include, but not be limited to, the following:

(1) A detailed description of the Joint Venture Employer's program operation, including but not limited to, the Joint Venture Employer's type of business and products produced.

(2) The conditions and requirements under which the Joint Venture Employer's non-inmate employees shall be admitted onto or excluded from departmental or departmentally leased property.

(3) A provision for Joint Venture Employer non-inmate employee orientation training which shall consist of those items necessary for employees to operate the industry within the institution in a consistent, secure and effective manner. Ongoing training shall be scheduled as directed by the institution head.

(4) A requirement that inmate-employees shall be paid "comparable wages" as defined by PC section 2717.8. "Comparable wages" means that compensation of inmate-employees by the Joint Venture Employer shall be comparable to the wages paid by the Joint Venture Employer to non-inmate employees performing the same or similar work for that employer. If the Joint Venture Employer does not employ such non-inmate employees in the same or similar work, compensation shall be comparable to wages paid for work of a similar nature in the locality in which the work is to be performed. These wages are subject to the deductions listed in Section 3485(h) and the mandatory savings listed in Section 3485(i).

(5) A provision that the administrator of the JVP shall monitor the wage rates paid to inmate-employees for compliance with the comparable wage requirement of PC section 2717.8.

(6) Hours of inmate employment and work schedule.

(7) Minimum and maximum inmate workforce requirements.

(8) Contraband items.

(9) Work-site security.

(10) Communications.

(11) Utilities.

(12) Responsibilities of the Joint Venture Employer, specifically those regarding:

(A) Obligation to pay inmate-employees comparable wages as required by PC section 2717.8.

(B) Compliance with all applicable record-keeping requirements set forth in the California Labor Code and applicable Industrial Welfare Commission Wage Orders.

(C) General Liability, Fire, Legal, and Automobile Liability Insurance.

(D) Maintenance of production equipment.

(E) Providing production supplies, materials, and equipment.

(F) Adherence to applicable federal, state, and local health and safety laws and regulations.

(G) Inmate-employee benefits.

(H) Notification to inmate-employees of their rights under PC section 2717.8 and relevant Labor Code provisions.

(I) Compliance with the requirements of the department's approved inmate appeal procedures as required by Title 15, California Code of Regulations (CCR) Sections 3084 through 3084.9 or relevant Labor Code provisions.

(J) A Security Bond, or equivalent security, posting requirement shall be included in the contract. The amount of the bond, or its equivalent, shall be not less than two months wages for the workforce contemplated by the Joint Venture Employer after six months of operation, and shall be determined on a case-by-case basis based on, but not limited to, the size of the inmate workforce and the size of space leased by the Joint Venture Employer. The bond, or its equivalent shall be retained by the department for the duration of the contract and may be used by the department in the event a Joint Venture Employer fails to submit payroll or defaults on any of its obligations to the State. The department shall apply the bond first to pay past due wages to inmate-employees and thereafter, the bond shall be available to pay unpaid obligations to the State, including, but not limited to, rent, utilities, workers' compensation, and custody costs.

(K) A requirement that the Joint Venture Employer prepare and submit to the administrator of the JVP for its review and approval:

1. Prior to commencing business, a detailed job description for each job to be performed at the facility;

2. At the time additional jobs are created, a detailed job description for each new job;

3. A revised job description when there is a twenty-five percent or more change in job duties;

4. If there are non-inmate employees performing the same or similar work for that employer, a detailed job description, wage rate, and a wage plan for its non-inmate workforce with documentation; or

5. Annually, an updated, detailed job description for all jobs at the Joint Venture Employer's operation. Duty statements shall include a description of tasks to be performed, machines used, and skills required for each job and shall be certified as to the accuracy of the job description under oath by the JVE.

(L) A requirement that the Joint Venture Employer prepare and submit to the department for its review and approval:

1. Prior to initial start-up of the Joint Venture Employer's operation, a wage plan detailing the comparable wage rate for each position, taking into account seniority, tenure, training, technical nature of the work being performed, or other factors; and

2. Annually, the Joint Venture Employer's current wage plan.

(M) Hiring of eligible inmate-employees, which is a decision within the sole determination of the Joint Venture Employer.

(N) Inmate-employee time keeping.

(O) Workers' Compensation Rate.

(P) Agreement that the Joint Venture Employer's business will not result in the displacement of any non-inmate workers performing the same work.

(Q) The process used by JVE for final selection of inmate-employees.

(R) Sole responsibility of Joint Venture Employer to comply with all applicable federal, state, and local laws and regulations. (Nothing in this section should be construed to modify the responsibility of the State as defined in the California Code Regulations, Title 15, Division 3, Chapter 1, Subchapter 5, Article 9, Section 3484.)

(S) Inmate-employee performance evaluations.

(T) Requirement to post notices of employee rights.

(U) Provision of all applicable inmate-employee payroll data.

(13) Responsibilities of the department/facility, specifically those regarding:

(A) Designation of a Coordinator by the facility.

(B) Lockdowns, modified programs, fog lines and other circumstances under which inmate-employees may be restricted from work.

(C) Right of entry and searches of the area leased by the Joint Venture Employer.

(D) Inmate-employee discipline.

(E) Program evaluation.

(F) Initial screening of potential inmate-employee pool for security purposes.

(b) No Joint Venture Program contract shall be executed by the department that will initiate employment by inmates in the same job classification as non-in-mate employees of the same employer who are on strike or subject to lockout as defined in PC section 2717.6.

(c) The Joint Venture Employer and any and all agents and employees of the Joint Venture Employer shall act in an independent capacity and not as officers or employees of the State. "Joint Venture Program" is merely the colloquial name of the program, and does not create or connote a "joint venture" or partnership relationship between the parties as a matter of law. Nothing in this program shall be construed as constituting the parties herein as partners or joint venturers as those terms are defined under California law or any other law.

(d) Nothing in these regulations is intended to establish an employer/employee relationship between any inmate participating in the Joint Venture Program and the State of California, the department, or any individual agency or office of the State of California.

NOTE: Authority cited: Sections 2717.3 and 5058, Penal Code. Reference: Sections 2717.5, 2717.6, 2717.8, and 5054, Penal Code; Section 5, Article XIV of the State Constitution; and *Vasquez* v. *State of California*, 105 Cal.App.4th 849 (2003), Stipulated Injunction and Order, Superior Court of San Diego County, Case No. GIC-740832.

HISTORY:

1. New section filed 11-28-90 as an emergency; operative 11-28-90 (Register 91, No. 6). A Certificate of Compliance must be transmitted to OAL by 3-28-91 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 11-28-90 order transmitted to OAL 3-21-91 and filed 4-22-91 (Register 91, No. 20).
3. Amendment filed 9-13-2005; operative 9-13-2005 pursuant to Government Code section 11343.4 (Register 2005, No. 37).
4. Change without regulatory effect amending subsection (a)(12)(R) filed 1-25-2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 4).
5. Amendment of subsections (a), (a)(4)–(5) and (a)(12)(K) and amendment of Note filed 10-18-2007 as an emergency; operative 10-18-2007 (Register 2007, No. 42). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 3-26-2008 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 10-18-2007 order transmitted to OAL 2-4-2008 and filed 3-18-2008 (Register 2008, No. 12).

7. Amendment of subsection (a)(12)(I) filed 12-13-2010 as an emergency; operative 1-28-2011 (Register 2010, No. 51). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 7-7-2011 or emergency language will be repealed by operation of law on the following day.
8. Amendment of subsection (a)(13)(B) filed 6-14-2011; operative 7-14-2011 (Register 2011, No. 24).
9. Certificate of Compliance as to 12-13-2010 order transmitted to OAL 6-15-2011 and filed 7-28-2011 (Register 2011, No. 30).

3483. Joint Venture Lease.

(a) The State of California, acting through the Department of General Services, with the approval of the department, shall enter into a lease with all Joint Venture Employer businesses.

(b) In addition to state leasing requirements, each Joint Venture Program lease shall include, but not be limited to, the following:

(1) Description of the leased space.
(2) Lease terms.
(3) Rent to be paid to Department of General Services.
(4) Utility rates.
(5) Maintenance of leased space.
(6) Prohibited/contraband items.
(7) Environmental Compliance.

NOTE: Authority cited: Sections 2717.3 and 5058, Penal Code. Reference: Sections 2717.2 and 5054, Penal Code.

HISTORY:

1. New section filed 12-3-90 as an emergency; operative 12-3-90 (Register 491, No. 6). A Certificate of Compliance must be transmitted to OAL by 4-2-91 or emergency language will be repealed by operation of law on the following day.
2. Editorial correction of printing error inadvertently omitting text (Register 91, No. 11).
3. Certificate of Compliance as to 11-28-90 order transmitted to OAL 3-21-91 and filed 4-22-91 (Register 91, No. 20).
4. Renumbering of former section 3483 to new section 3485 and new section 3483 filed 9-13-2005; operative 9-13-2005 pursuant to Government Code section 11343.4 (Register 2005, No. 37).

3484. Monitoring Comparable Wages and Wage Plans.

(a) The JVP shall monitor the wage rates and wage plans submitted by the Joint Venture Employer for compliance with PC section 2717.8. Monitoring shall include, but not be limited to, unannounced on-site visits to determine the accuracy of the job descriptions and to assess compliance with wage plan requirements including compliance with PC section 2717.8. The JVP shall develop a written protocol for these visits and retain a copy of the on-site visit reports for at least five years.

(b) The JVP shall obtain wage data, applicable Standard Occupational Codes (SOC), and survey data from Occupational Employment Surveys (OES) for each inmate-employee job description from the Employment Development Department annually, upon the creation of any new JVE job position, upon the alteration of any existing position, or upon the establishment of any new JVP business.

(c) The JVE job descriptions and wage plans shall be reviewed annually, upon the creation of any new JVE job position, upon the alteration of any existing position, or upon establishment of a new JVP business.

(d) The JVP shall maintain a database which includes each inmate's date of hire, hourly wage, hours worked and the SOC code for each inmate position.

(e) The JVP shall conduct desk audits every ninety days of a randomly selected ten percent of the inmate workforce and shall review salary levels to verify that the comparable wage rates are being paid.

NOTE: Authority cited: 2717.3 and 5058, Penal Code. Reference: Sections 2717.3, 2717.4, 2717.8 and 5054, Penal Code; and *Vasquez* v. *State of California*, 105 Cal.App.4th 849 (2003), Stipulated Injunction and Order, Superior Court of San Diego County, Case No. GIC-740832.

HISTORY:

1. New section filed 9-13-2005; operative 9-13-2005 pursuant to Government Code section 11343.4 (Register 2005, No. 37).
2. Amendment of section and Note filed 10-18-2007 as an emergency; operative 10-18-2007 (Register 2007, No. 42). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 3-26-2008 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 10-18-2007 order transmitted to OAL 2-4-2008 and filed 3-18-2008 (Register 2008, No. 12).

3485. Inmate Joint Venture Program Participation.

(a) Inmate employment is "at will" and as such is at the discretion of the employer. The Joint Venture Employer may lawfully terminate inmate-employees at any time with or without cause but not for unlawful reasons. The department may remove inmate-employees from participation in the Joint Venture Program at any time with or without cause.

(b) As a condition of employment, all inmate-employees agree to participate in random urine testing.

(c) Earned wages paid by the Joint Venture Employer will be distributed to inmates by the department once a month, regardless of the frequency the employer issues payroll.

(d) Inmate participation in the Joint Venture Program shall be voluntary as evidenced by their written consent on the department's CDCR Form 1872, (Rev. 9/05) Inmate Participation Agreement—Joint Venture Program (JVP). The Joint Venture Employer shall provide to all inmates hired written information on the conditions of their participation in the Joint Venture Program. Such information shall include, but not be limited to:

(1) Hours of work and the requirements that comparable wages be paid.

(2) Job description.

(3) Right to file complaints regarding claimed violations of their rights under PC section 2717.8, relevant provisions of the Labor Code, and applicable Industrial Welfare Commission Wage Orders.

(4) Inmates shall not be subject to retaliation, as specified in Title 15, CCR, Section 3084.1(d), by the department for their use of the inmate appeal process, to address Joint Venture Employer-related matters. Neither the Joint Venture Employer nor the department shall retaliate against inmates for exercising rights guaranteed under the State Labor Code or elsewhere in law to address Joint Venture Employer-related matters.

(e) The Joint Venture Employer shall post at the worksite and provide to each inmate-employee a notice of applicable employment laws and relevant Labor Code provisions.

(f) The total daily hours worked by inmate-employees in the same job classification as non-inmate employees of the same Joint Venture Employer who are on strike or subject to lockout shall not exceed, for the duration of the strike, the average daily hours worked for the preceding six months, or if the Joint Venture Program has been in operation for less than six months, for the period of the operations. If the secretary determines upon receipt of written notification by the union representing the non-inmate employees on strike or subject to lockout that such a condition exists, the limitation on inmate-employee work hours shall be implemented within 48 hours.

(g) A separate inmate waiting list shall, if necessary, be maintained for each Joint Venture Program operation.

(1) An inmate's inclusion on any waiting list for a Joint Venture Program operation shall not affect their status on any other waiting

lists maintained by the facility until such time as the inmate is employed by the Joint Venture Employer.

(2) If the inmate refuses to work, quits, or is removed from the Joint Venture Program, they shall be immediately returned to their housing unit, temporarily unassigned and referred to a classification committee for placement either on a facility waiting list or, if they refuse to work, in a non-credit earning group pursuant to Title 15, CCR Section 3375.

(h) Wages earned by each inmate participating in a Joint Venture Program operation shall be subject to the following deductions, which shall not exceed 80 percent of the inmate's gross wages:

(1) Federal, state and local taxes.

(2) Twenty percent of the inmate's net wages after taxes shall be for any lawful restitution fine or contributions to any fund established by law compensate the victims of crime.

(3) Twenty percent of the inmate's net wages after taxes shall be for costs of room and board which shall be remitted to the department.

(4) Twenty percent of the inmate's net wages after taxes for allocations for support of family pursuant to state statute, court order, or agreement of the inmate. If the inmate chooses not to send money to a family member, and there is no court-ordered withholding, these funds will be deposited in mandatory savings.

(i) In addition to (h) of 3485, twenty percent of the inmate's net wages after taxes shall be retained for the inmate in mandatory savings under the control of the department.

(1) Funds retained for an inmate's mandatory savings shall be deposited in an interest bearing account.

(2) Inmate-employees who terminate from Joint Venture Program with a savings account balance of $500 or less may voluntarily elect to close their account and have the balance forwarded to their institutional trust account in order to avoid account fees.

(3) Each inmate's savings, plus the interest accrued by their savings, shall be provided to the inmate upon their release. Inmate-employee savings accounts are intended solely for the deposit of wages earned from employment with the JVE. Institution heads may authorize an earlier withdrawal of up to 50% of an inmate's savings in cases where the inmate is sentenced to 15 years or more and the inmate has accrued $6,500 or more from Joint Venture wages in their account.

NOTE: Authority cited: Sections 2717.3 and 5058, Penal Code. Reference: Sections 2717.8 and 5054, Penal Code.

HISTORY:

1. Renumbering and amendment of former section 3483 to new section 3485 and new form CDC 1872 filed 9-13-2005; operative 9-13-2005 pursuant to Government Code section 11343.4 (Register 2005, No. 37).
2. Amendment of subsections (i)(2)–(3) filed 10-18-2007 as an emergency; operative 10-18-2007 (Register 2007, No. 42). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 3-26-2008 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 10-18-2007 order transmitted to OAL 2-4-2008 and filed 3-18-2008 (Register 2008, No. 12).

3486. Compliance.

If a JVE is found to be in non-compliance with PC section 2717.8 or the provisions of sections 3482(a)(4) and 3482(a)(12)(K), the JVP administrator shall issue a written notice requiring the JVE, within 30 days, to comply with the JVP contract. After 30 days, if the JVE remains non-compliant with the contract, the administrator shall issue to the JVE a written 30-day cancellation notice indicating that the JVE is in material breach of contract. Any bonds held pursuant to 3483(a)(12)(J) shall be forfeited if the JVE is found to be non-compliant. At the close of the 30-day cancellation notice, if the JVE has not come into compliance with the contract, the JVE shall be terminated from the JVP.

NOTE: Authority cited: 2717.3 and 5058, Penal Code. Reference: Sections 2717.8 and 5054, Penal Code; and *Vasquez* v. *State of California*, 105 Cal.App.4th 849 (2003), Stipulated Injunction and Order, Superior Court of San Diego County, Case No. GIC-740832.

HISTORY:

1. New section filed 10-18-2007 as an emergency; operative 10-18-2007 (Register 2007, No. 42). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 3-26-2008 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 10-18-2007 order transmitted to OAL 2-4-2008 and filed 3-18-2008 (Register 2008, No. 12).

SUBCHAPTER 6. ADULT PAROLE

Article 1. Parole Supervision

3500. General Policy.

(a) Pursuant to the provisions of Penal Code (PC) section 3000, when an inmate is sentenced under PC section 1168 or 1170 by a court, the California Department of Corrections and Rehabilitation (CDCR) shall release the inmate on parole unless it is waived by the Board of Parole Hearings.

(b) Release on parole means the legal and physical transfer of an inmate from confinement in an institution to the supervision of a parole agent of the CDCR, Division of Adult Parole Operations.

(c) The function of parole is:

(1) To provide for the supervision and surveillance of parolees, including the judicious use of revocation actions.

(2) To provide educational, vocational, family and personal counseling necessary to assist in the transition between imprisonment and discharge, when feasible.

(d) Public safety and security.

(1) Consistent effort will be made to ensure that the public is protected and the effectiveness of inmate/parolee treatment programs are within the framework of departmental security and safety.

(2) Each CDCR employee within the parole process will be trained to understand how employee behavior, supervision levels, personnel, and operative procedures affect the maintenance of public safety and security.

(3) The requirement of compliance with conditions of parole, the law, and the need to protect the public will take precedence over all other considerations in the operation of all programs and activities of the parole process.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 1168, 1170, 3000 and 5054, Penal Code.

HISTORY:

1. New Subchapter 6 (Articles 1–7, Sections 3500–3562, not consecutive) filed 5-13-77; effective thirtieth day thereafter (Register 77, No. 20).
2. Repealer of Subchapter 6 (Articles 1–7, Sections 3500–3560, not consecutive) and new Subchapter 6 (Article 1, section 3500) filed 3-2-83; effective thirtieth day thereafter (Register 83, No. 12). For prior history, see Registers 79, No. 34; 79, No. 8; 78, No. 29 and 77, No. 40.
3. Editorial correction of printing errors (Register 92, No. 5).
4. Amendment of subchapter and article headings, renumbering of former section 3500 to section 3501 and new section 3500 filed 6-17-2009; operative 7-17-2009 (Register 2009, No. 25).

3501. Rules and Regulations.

Persons committed to the department who are allowed to go upon and remain upon parole or outpatient status, shall conform to the

applicable rules established by or under the authority of the Board of Parole Hearings as set forth in Title 15, Divisions 2 and 5 of the California Code of Regulations.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 3052 and 5076.2, Penal Code; and Sections 3151 and 3156, Welfare and Institutions Code.

HISTORY:

1. New section filed 3-11-2002; operative 4-10-2002 (Register 2002, No. 11).
2. Renumbering of former section 3501 to section 3730 and renumbering of former section 3500 to section 3501, including amendment of section heading and section, filed 6-17-2009; operative 7-17-2009 (Register 2009, No. 25).

3502. Prerelease Referral.

An inmate's case shall be referred to the parole region for supervised parole program development 150 days prior to the expected release date, or immediately if less time remains.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.

HISTORY:

1. Change without regulatory effect renumbering former section 3604 to new section 3502 filed 7-30-2008 pursuant to section 100, title 1, California Code of Regulations (Register 2008, No. 31).
2. Amendment filed 6-17-2009; operative 7-17-2009 (Register 2009, No. 25).
3. Amendment filed 1-25-2010 as an emergency pursuant to Penal Code section 5058.3(a)(2); operative 1-25-2010 (Register 2010, No. 5). Pursuant to Penal Code section 5058.3(c), a Certificate of Compliance must be transmitted to OAL by 7-6-2010 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 1-25-2010 order transmitted to OAL 6-17-2010 and filed 7-13-2010 (Register 2010, No. 29).

3503. Assignment to Parole Agent. [Reserved]

3504. Parole Assessment.

(a) For the purpose of this section, the following definitions shall apply:

(1) High Control means the highest level of supervision based on commitment offense(s) and prior criminal history. Cases designated high control shall be reserved for persons with violent felony commitments as described in Penal Code (PC) section 667.5(c), PC section 290 registrants; cases generating extensive media or public attention; or cases involving membership in Security Threat Group (STG), as stated on CDCR Form 128-B2, (Rev. 06/14) Security Threat Group Validation/Rejection Review, which is incorporated by reference. The following minimum contact requirements shall apply to these cases:

(A) Face-to-face contact by the first working day following release from custody, but no later than the third working day following release. In most cases it is expected that this contact will take place at the office.

(B) Each month one field contact at the parolee's residence. The first face-to-face residential contact shall be within seven working days following release from custody.

(C) Each thirty days one collateral contact.

(D) If anti-narcotic testing applies, a minimum testing schedule of one test per month.

(E) Case review, thirty calendar days after assignment to this category and, if retained in this category, each sixty calendar days thereafter.

(2) High Service means the level of supervision based on service needs and behavioral patterns and is primarily utilized for the placement of civil addicts, or individuals requiring special assistance such as individuals with severe mental or psychiatric problems. The following minimum contact requirements shall apply to these cases:

(A) Face-to-face contact by the first working day following release from custody, but no later than the third working day following release. In most cases it is expected that this contact will take place at the office.

(B) Each month one field contact at the parolee's residence. The first face-to-face residential contact shall be within seven working days following release from custody.

(C) Each thirty days one collateral contact.

(D) With the exception of civil addicts, if anti-narcotic testing applies, a minimum testing schedule of one test per month. Civil addicts shall be tested weekly; two of which tests must be random/surprise urinalysis tests. One of the two random/surprise tests shall be in the field.

(E) Case review thirty calendar days after assignment to this category and, if retained in this category, each sixty calendar days thereafter.

(3) Control Services means the level of supervision based on commitment offense(s) and prior criminal history, or service needs and behavioral patterns that do not meet the specifications of high control as described in subsection (a)(1) and high service as described in subsection (a)(2). The following minimum contact requirements shall apply for these cases:

(A) Face-to-face contact by the first working day following release from custody and, when possible, the initial interview will be conducted no later than the third working day following release. In most cases, it is expected that this contact will take place at the office.

(B) Two face-to-face contacts per quarter, with at least one being at the parolee's residence. One face-to-face contact at the parolee's residence within fifteen workdays following release from custody.

(C) Each quarter one collateral contact.

(D) If anti-narcotic testing applies, felon parolees shall be tested twice every quarter and non-felon parolees two time each thirty days.

(E) Parolees who complete 180-days of satisfactory parole will automatically be assigned to the minimum supervision category. Exceptions to the automatic reduction shall include violent felony commitments described in PC section 667.5, PC section 290 registrants, cases generating extensive media or public attention, and STG members, as documented on CDCR Form 128-B2 (Rev. 06/14) Security Threat Group Validation/Rejection Review, which is incorporated by reference.

(4) Minimum Supervision means the level of supervision based on commitment offense(s) and prior criminal history, and service needs and behavioral patterns. With the exception of parole outpatient clinic attendees and those cases/parolees identified in subsections (a)(1) and (a)(2), felon parolees who complete 180 days of satisfactory parole under control services supervision, absent a case review, shall be assigned to the minimum supervision level category unless the unit supervisor retains the case at the control services level.

One face-to-face contact shall be conducted in the month prior to discharge. If retained on parole, there shall be two field contacts annually.

(5) Collateral Contact means any communication with an individual concerning a parolee. Collateral contacts may be completed in person, via telephone, or by written or electronic medium.

(b) Upon their initial release from an institution/facility, parolees shall not be placed on the minimum supervision level category. Upon their initial release, parolees shall be placed in one of the following categories:

(1) High Control.

(2) High Service.
(3) Control Services.
(4) Non-revocable parole, as described in section 3000.

(c) Civil addicts shall remain in the high service supervision level category until they complete 180 days of continuous drug-free outpatient or civil addict parole.

(d) Exceptions to placement in any of the supervision level categories or reduction in any of the supervision level categories described in subsections (a)(1) through (a)(4) may be made by the unit supervisor on a case-by-case basis.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 290, 667.5(c), 3000.03 and 5054, Penal Code; and Sections 3151 and 3152, Welfare and Institutions Code.

HISTORY:
1. Change without regulatory effect renumbering former section 3605 to new section 3504 filed 7-30-2008 pursuant to section 100, title 1, California Code of Regulations (Register 2008, No. 31).
2. Amendment of subsection (b), new subsection (b)(4) and amendment of Note filed 1-25-2010 as an emergency pursuant to Penal Code section 5058.3(a)(2); operative 1-25-2010 (Register 2010, No. 5). Pursuant to Penal Code section 5058.3(c), a Certificate of Compliance must be transmitted to OAL by 7-6-2010 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 1-25-2010 order transmitted to OAL 6-17-2010 and filed 7-13-2010 (Register 2010, No. 29).
4. Amendment of subsections (a)(1) and (a)(3)(E) filed 10-17-2014; operative 10-17-2014 pursuant to Government Code section 11343.4(b)(3) (Register 2014, No. 42).

3504.1. Determination of Highest Control or Risk Classification.

(a) Any person released on parole who meets the following criteria, is defined as being within the highest control or risk classification:

(1) Is required to register as a sex offender pursuant to Penal Code sections 290 through 290.023.

(2) Has a California Static Risk Assessment (CSRA) risk number value of 5 as provided in California Code of Regulations, Title 15, Division 3, section 3768.1.

(b) If a CSRA risk number value is not available at the time of release on parole, the person shall be assigned a risk number value of 5 for the purposes of release. After release on parole, a CSRA risk number value shall be provided within five business days.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 3060.7 and 5054, Penal Code.

HISTORY:
1. New section filed 12-13-2011; operative 1-12-2012 (Register 2011, No. 50).

3504.2. Highest Control or Risk Classification Parole Reporting Requirements.

(a) Inmates meeting the criteria for assignment to the highest control or risk classification as provided in subsections 3504.1(a)–(a)(2), upon release from confinement in a State facility, are required to report to their assigned parole unit within two days (48 hours) from time of release.

(1) Inmates shall not be released to the community from a State facility on a Friday or the day before a legal holiday.

(2) If the inmate's release date falls on a Friday or the day before a legal holiday, the inmate shall have his or her scheduled release date adjusted.

(b) For the purposes of subsection 3504.2(a)(1) above, recognized legal holidays are:

(1) New Years Day
(2) Martin Luther King Day
(3) President's Day
(4) Cesar Chavez Day
(5) Memorial Day
(6) Independence Day
(7) Labor Day
(8) Veteran's Day
(9) Thanksgiving Day
(10) Day after Thanksgiving
(11) Christmas Day

(c) Any scheduled release date that is adjusted to a date that would not permit the inmate to report to his or her assigned parole unit within 48 hours of release during normal business hours, will require the inmate to be seen by a parole agent during a weekend or holiday, within 48 hours of release.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 3060.7 and 5054, Penal Code.

HISTORY:
1. New section filed 12-13-2011; operative 1-12-2012 (Register 2011, No. 50).

3505. Non-Revocable Parole.

(a) Inmate/parolees who meet the following criteria shall be placed on non-revocable parole, as described in section 3000, and pursuant to Penal Code (PC) section 3000.03:

(1) Is not required to register as a sex offender pursuant to Chapter 5.5 (commencing with section 290) of Title 9 of Part 1 of the PC.

(2) Does not have a commitment offense that is a serious felony as defined in PC sections 1192.7 and 1192.8, or a violent felony, as defined in PC section 667.5.

(3) Does not have a prior conviction for a serious felony as defined in PC sections 1192.7 and 1192.8, or a violent felony, as defined in PC section 667.5.

(4) Does not have a current or prior conviction for a sexually violent offense as defined in Welfare and Institutions Code, section 6600(b).

(5) Has not been found guilty of a serious disciplinary offense as defined in this section.

(6) Is not validated as a STG-I member or associate as defined in section 3000.

(7) Has signed a notification of parole requirements which include, but are not limited to an agreement to search by law enforcement pursuant to PC section 3067.

(8) Has a low or moderate probability of felony arrest after release to parole upon assessment of risk pursuant to section 3768.1.

(b) Notwithstanding any other provision of this Title, the department is not required to provide services or programs for parolees on non-revocable parole.

(c) For purposes of this section, a serious disciplinary offense is defined as an act of misconduct during the current term of imprisonment, with the exception of possession of inmate manufactured alcohol, which resulted in a finding of guilt for a Division A through C offense pursuant to section 3323(a) through (e).

NOTE: Authority cited: Section 5058.3, Penal Code. Reference: Sections 3000.03, 3067 and 5054, Penal Code.

HISTORY:
1. New section filed 1-25-2010 as an emergency pursuant to Penal Code section 5058.3(a)(2); operative 1-25-2010 (Register 2010, No. 5). Pursuant to Penal Code section 5058.3(c), a Certificate of Compliance must be transmitted to OAL by 7-6-2010 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 1-25-2010 order transmitted to OAL 6-17-2010 and filed 7-13-2010 (Register 2010, No. 29).

3. Amendment of subsection (a)(6) filed 10-17-2014; operative 10-17-2014 pursuant to Government Code section 11343.4(b)(3) (Register 2014, No. 42).

3506. [Reserved]

3507. [Reserved]

3508. [Reserved]

3509. [Reserved]

3510. [Reserved]

3511. [Reserved]

Article 2. Preventing Parolee Crime Program

3520. Preventing Parolee Crime Program.

The California Department of Corrections and Rehabilitation (CDCR) operates Preventing Parolee Crime Program operations within the department pursuant to Penal Code (PC) section 3068. The program allows providers to provide parolees with housing, sustenance, literacy training, drug treatment networks, job placement assistance, and other services as provided in this article. The purpose of the program is to prepare parolees for a return to society by offering services that increase success while on parole.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 3068 and 5054, Penal Code.

HISTORY:

1. New article 2 (sections 3520–3527) and section filed 3-3-2011; operative 4-2-2011 (Register 2011, No. 9).

3521. Preventing Parolee Crime Program Components.

The Preventing Parolee Crime Program includes, but is not limited to, the following Component Programs:

(a) Parolee Service Center Program.

(b) Residential Multi-Service Center Program.

(c) Day Reporting Center Program.

(d) Computer Literacy Learning Center Program.

(e) Drug Treatment Network Program.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 3068 and 5054, Penal Code.

HISTORY:

1. New section filed 3-3-2011; operative 4-2-2011 (Register 2011, No. 9).

3521.1. Parolee Service Center Program.

The Parolee Service Center (PSC) Program assists parolees in becoming productive citizens through transitional housing, and connecting parolees to community resources and support services.

(a) PSC facilities are used for residential placement of eligible parolees on a non-sanctioned basis, meaning that the placement was not the result of an adjudicated parole violation. PSC facilities may be used for residential placement of eligible parolees on a sanctioned basis, meaning that the placement was the result of an adjudicated parole violation at the parole unit level, or as a result of an action and referral by the parole authority. PSC facilities provide services to newly paroled inmates that do not have available resources, as well as homeless parolees and parolees seeking a positive change to their current situation.

(b) All parolees are eligible for placement in the PSC Program who voluntarily agree to participate in the program, except the following parolees who shall be excluded:

(1) Parolees who are required to register pursuant to PC section 290 (sex offenders) or PC section 457.1 (arson offenders).

(2) Parolees who are in custody pending local criminal charge(s) which could result in continued incarceration.

(3) Parolees currently in need of detoxification.

(4) Parolees with a felony hold.

(5) Parolees with pending felony criminal charges.

(6) Interstate parolees. "Interstate parolees" is defined to mean felons from other states who are in California being supervised under the provisions of the Interstate Compact for Adult Offender Supervision, as provided in PC section 11180.

(7) Inmates released to non-revocable parole as provided in section 3505.

(c) The following parolees will be considered on a case-by-case basis for participation in the PSC Program:

(1) Parolees who have a past or current violent felony conviction pursuant to PC section 667.5(c).

(2) Parolees who have a current felony conviction pursuant to PC section 1192.7(c) and/or 1192.8.

(3) Parolees with a misdemeanor hold.

(4) Parolees who are designated high notoriety.

(5) Parolees who have a restraining order/court order and/or victim notification in the county of the PSC facility.

(6) Street gang members.

(7) Validated prison gang members.

(d) The PSC Program has an initial placement of 90-days, with the maximum stay not to exceed one year in accordance with subsection 3522(a)(1).

(e) Parolees remain on active parole status while participating in the PSC Program.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 3000.03, 3068 and 5054, Penal Code.

HISTORY:

1. New section filed 3-3-2011; operative 4-2-2011 (Register 2011, No. 9).
2. Amendment of subsection (a), repealer of subsection (c)(3) and subsection renumbering filed 7-17-2014 as an emergency; operative 7-17-2014 (Register 2014, No. 29). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 12-24-2014 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 7-17-2014 order transmitted to OAL 11-7-2014 and filed 12-22-2014 (Register 2014, No. 52).

3521.2. Residential Multi-Service Center Program.

(a) The Residential Multi-Service Center (RMSC) Program's primary goal is to reduce parolee failures and their subsequent return to prison by providing a variety of services to homeless parolees and those in at-risk living environments.

(b) The RMSC Program offers a variety of services to male and female parolees that include housing, drug counseling, literacy training, job preparation/placement, anger management classes, as well as individual and group counseling. The program offers a standard placement of up to six months of residence with participation in a 90-day aftercare program. Parolees may be allowed to stay in residence up to a maximum of one year, as provided in subsection 3522(a)(1).

(c) All parolees are eligible for placement in the RMSC Program who voluntarily agree to participate in the program, except the following parolees who shall be excluded:

(1) Parolees who are required to register pursuant to PC section 290 (sex offenders) or PC section 457.1 (arson offenders).

(2) Parolees who are in custody pending local criminal charge(s) which could result in continued incarceration.

(3) Parolees currently in need of detoxification.

(4) Parolees with a felony hold.

(5) Parolees with pending felony criminal charges.

(6) Interstate parolees as defined in subsection 3521.1(b)(6).

(7) Inmates released to non-revocable parole as provided in section 3505.

(d) The following parolees will be considered on a case-by-case basis for participation in the RMSC Program:

(1) Parolees who have a past or current violent felony conviction pursuant to PC section 667.5(c).

(2) Parolees who have a current felony conviction pursuant to PC section 1192.7(c) and/or 1192.8.

(3) Parolees with a misdemeanor hold.

(4) Parolees who are designated as a Public Interest Case.

(5) Parolees who have a restraining order/court order and/or victim notification in the county of the RMSC facility.

(6) Street gang members.

(7) Validated prison gang members.

(e) Parolees remain on active parole status while participating in the RMSC Program.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 3000.03, 3068 and 5054, Penal Code.

HISTORY:

1. New section filed 3-3-2011; operative 4-2-2011 (Register 2011, No. 9).
2. Amendment of subsection (d)(5) filed 6-26-2012 as an emergency; operative 7-1-2012 (Register 2012, No. 26). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 12-10-2012 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 6-26-2012 order transmitted to OAL 12-5-2012 and filed 1-17-2013 (Register 2013, No. 3).
4. Repealer of subsection (d)(3) and subsection renumbering filed 7-17-2014 as an emergency; operative 7-17-2014 (Register 2014, No. 29). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 12-24-2014 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-17-2014 order transmitted to OAL 11-7-2014 and filed 12-22-2014 (Register 2014, No. 52).

3521.3. Day Reporting Center Program.

The Day Reporting Center (DRC) Program provides "one-stop" parolee resource centers. The DRC Program conducts a comprehensive intake evaluation and assessment on referral parolees to determine their specific needs.

(a) Where available under the DRC Program, transitional housing shall be made available to eligible parolees who have no existing housing arrangement, or are living in an environment which is not conducive to maintaining a drug, alcohol, and/or crime-free lifestyle. Parolee housing may be dormitory style or individual rooms. The transitional living environment must be clean and conducive to alcohol and drug-free living.

(b) All Parolees are eligible for placement in the DRC Program who voluntarily agree to participate in the program, except the following parolees who shall be considered on a case-by-case basis:

(1) Parolees who are required to register pursuant to PC section 290 (sex offenders).

(2) Parolees who have a current or prior conviction for arson pursuant to PC sections 451(a), 451(b) or 451.5.

(c) Parolees remain on active parole status while participating in the DRC Program.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 3068 and 5054, Penal Code.

HISTORY:

1. New section filed 3-3-2011; operative 4-2-2011 (Register 2011, No. 9).

3521.4. Computer Literacy Learning Center Program.

The Computer Literacy Learning Center (CLLC) Program is a computer-assisted instructional program designed to increase the literacy skills of parolees, resulting in increased parolee employability and parole success. The primary educational focuses are: to identify the reading level and reading deficits of the parolees enrolled in the program; provide a user friendly training methodology; provide life skills training; and to provide employment competency training. All parolees are eligible for placement in the CLLC Program who voluntarily agree to participate in the program.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 3068 and 5054, Penal Code.

HISTORY:

1. New section filed 3-3-2011; operative 4-2-2011 (Register 2011, No. 9).

3521.5. Drug Treatment Network Program.

The Drug Treatment Network Program utilizes an education based program designed to provide substance abuse and relapse prevention instruction to parolees in need of substance abuse education. The Drug Treatment Network Program utilizes, but is not limited to, the Substance Abuse Treatment and Recovery (STAR) Program. All Parolees are eligible for placement in the Drug Treatment Network Program who voluntarily agree to participate in the program.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 3068 and 5054, Penal Code.

HISTORY:

1. New section filed 3-3-2011; operative 4-2-2011 (Register 2011, No. 9).

3521.6. [Reserved]

3522. Preventing Parolee Crime Program Placement.

(a) Placement into a Preventing Parolee Crime Program Component Program will vary depending upon the needs of the parolee, and type of program that is required.

(1) For residential placement programs, placement times may vary. Some are for 90 days and others are for 180 days. Parolees may be allowed to stay longer, up to a maximum of one year, as determined on a case-by-case basis.

(2) Placement in non-residential programs will vary depending upon program availability.

(b) Staff shall not require that a parolee attend Alcoholics Anonymous, Narcotics Anonymous, or any other religious based program if the parolee refuses to participate in such a program for religious reasons. Under these circumstances, the parolee shall be referred to a program that is a non-religious based program. To facilitate program participation, it may be necessary to transfer the parolee to another county, as provided in subsection 3523(b).

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 3068 and 5054, Penal Code.

HISTORY:

1. New section filed 3-3-2011; operative 4-2-2011 (Register 2011, No. 9).

3523. Procedures for Placing Parolees in a Component Program of the Preventing Parolee Crime Program.

(a) Parole agents may place parolees in a Component Program of the Preventing Parolee Crime Program utilizing the CDCR Form 1502 (Rev. 10/06), Activity Report.

(b) Placement into some Component Programs of the Preventing Parolee Crime Program may require placement into a county outside of the parolee's county of last legal residence, as defined in PC

section 3003. When reviewing a transfer outside of the county of last legal residence, the parolee's compliance with the requirements of PC section 3003 must be considered.

(c) A parolee's continued presence in a Component Program of the Preventing Parolee Crime Program is contingent upon the parolee participating in the program and is at the discretion of the Component Program facilitator and the parole agent. The parole unit supervisor will consider all case factors and the parolee's overall adjustment into the community and make the final decision on any issues that cannot be resolved between the Component Program facilitator and the parole agent.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 3003, 3068 and 5054, Penal Code.

HISTORY:

1. New section filed 3-3-2011; operative 4-2-2011 (Register 2011, No. 9).

3524. [Reserved]

3525. Preventing Parolee Crime Program Site Restriction.

(a) All Preventing Parolee Crime Program Component Programs, as described in section 3521, shall ensure that the property line of any new program facility meets the following site restriction criteria:

(1) Compliance with all local ordinance zoning restrictions.

(2) The property line of the facility is no closer than 300 feet from a school, park, daycare facility, or place where children regularly gather.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 3068 and 5054, Penal Code.

HISTORY:

1. New section filed 3-3-2011; operative 4-2-2011 (Register 2011, No. 9).

3526. Status While Participating in the Preventing Parolee Crime Program.

Parolees shall remain on active parole status while participating in the Preventing Parolee Crime Program.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 3068 and 5054, Penal Code.

HISTORY:

1. New section filed 3-3-2011; operative 4-2-2011 (Register 2011, No. 9).

3527. Evaluation.

The Preventing Parolee Crime Program will be continually monitored to examine the program's impact upon the supervision, control, and sanction of parolees under the jurisdiction of the sampled parole units.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 3068 and 5054, Penal Code.

HISTORY:

1. New section filed 3-3-2011; operative 4-2-2011 (Register 2011, No. 9).

Article 3. Electronic Monitoring

3540. Continuous Electronic Monitoring Technology.

(a) The Department of Corrections and Rehabilitation (department) may use continuous electronic monitoring technology to monitor the whereabouts of a parolee who requires electronic surveillance. The use of continuous electronic monitoring technology may be utilized:

(1) As an additional supervision tool for parolees who are identified as requiring a higher level of supervision pursuant to section 3545.

(2) To verify compliance with parole conditions, and to investigate suspicious patterns of behavior;

(3) As an alternative tool for addressing remedial sanctions in lieu of a revocation proceeding and return of a parolee into custody.

(4) To monitor all parolees who require Global Positioning System (GPS) monitoring, as described in section 3560, while under parole supervision.

(b) Any use of continuous electronic monitoring shall have as its primary objective, to enhance public safety through the reduction in the number of people and property being victimized by crimes committed by a parolee.

NOTE: Authority cited: Sections 5058 and 5058.3, Penal Code. Reference: Sections 3004, 3010, 3010.1, 3010.2, 3010.3, 3010.4, 3010.5, 3010.6, 3010.7, 3010.8, 3010.9 and 5054, Penal Code.

HISTORY:

1. New article 3 (sections 3540-3548) and section filed 2-16-2010 as an emergency; operative 2-16-2010 (Register 2010, No. 8). Pursuant to Penal Code section 5058.3(c), a Certificate of Compliance must be transmitted to OAL by 7-26-2010 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 2-16-2010 order transmitted to OAL 7-1-2010 and filed 8-13-2010 (Register 2010, No. 33).

3541. Required Functionality of Continuous Electronic Monitoring Devices.

(a) The continuous electronic monitoring device shall:

(1) Be designed to be worn on the ankle by the parolee. The parole agent, at his or her discretion, may request modifications to the placement of the device as an alternative form of continuous electronic monitoring. The modification request shall be considered for approval by the Director or designee, Division of Adult Parole Operations, on a case-by-case basis. The modifications may include the parolee carrying the monitoring device on his or her person at all times (fanny pack, back pack, belt etc.) and must be kept within reach when showering or sleeping. The device may be attached to any object which would enable a non-ambulatory parolee the ability to move around, i.e., a wheel chair;

(2) Emit a signal as a person is moving or is stationary. The signal shall be capable of being received and tracked across large urban or rural areas, statewide, and be received from within structures, vehicles, and other objects to the degree technically feasible in light of the associated costs and design.

(b) The device shall function 24 hours a day, seven days a week.

NOTE: Authority cited: Sections 5058 and 5058.3, Penal Code. Reference: Sections 3004, 3010, 3010.1, 3010.2, 3010.3, 3010.4, 3010.5, 3010.6, 3010.7, 3010.8, 3010.9 and 5054, Penal Code.

HISTORY:

1. New section filed 2-16-2010 as an emergency; operative 2-16-2010 (Register 2010, No. 8). Pursuant to Penal Code section 5058.3(c), a Certificate of Compliance must be transmitted to OAL by 7-26-2010 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 2-16-2010 order transmitted to OAL 7-1-2010 and filed 8-13-2010 (Register 2010, No. 33).

3542. Notification of Parole Violations by Continuous Electronic Monitoring System.

(a) A continuous electronic monitoring system has the capacity to pinpoint the parolee's location, compliance with curfews, orders to stay away from predetermined locations, and compliance with other special conditions of parole. The system may immediately notify the department of predetermined faults, parameters, and

system indicators that may indicate actual or possible violations of the terms and conditions of parole.

(b) This information, including geographic location and tampering, may be used as evidence to prove a violation of the terms and conditions of parole.

NOTE: Authority cited: Sections 5058 and 5058.3, Penal Code. Reference: Sections 3010, 3010.1, 3010.2, 3010.3, 3010.4, 3010.5, 3010.6, 3010.7, 3010.8, 3010.9 and 5054, Penal Code.

HISTORY:

1. New section filed 2-16-2010 as an emergency; operative 2-16-2010 (Register 2010, No. 8). Pursuant to Penal Code section 5058.3(c), a Certificate of Compliance must be transmitted to OAL by 7-26-2010 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 2-16-2010 order transmitted to OAL 7-1-2010 and filed 8-13-2010 (Register 2010, No. 33).

3543. Public Safety Standards for Minimum Time Between Transmission and Accuracy of Information.

The department establishes the following minimum performance standards for a continuous electronic monitoring system to enhance public safety:

(a) On a case-by-case basis, determining the minimum time interval between transmissions of information about the location of the individual parolee under parole supervision shall be based on the following, which shall include, but not be limited to:

(1) The resources of the department.

(2) The criminal history and case factors of the parolee under parole supervision.

(3) The safety of the victim of the parolee under parole supervision.

(4) The most current technology available to the department.

(b) The standard for the accuracy of the information identifying the location of the parolee under parole supervision shall be based on the following, which shall include, but not be limited to:

(1) The need to identify the location of the parolee proximate to the location of the parolee's residence or location of a crime.

(2) Resources of the department.

(3) The need to avoid false indications of continuous electronic monitoring violations.

NOTE: Authority cited: Sections 5058 and 5058.3, Penal Code. Reference: Sections 3010, 3010.1, 3010.2, 3010.3, 3010.4, 3010.5, 3010.6, 3010.7, 3010.8, 3010.9 and 5054, Penal Code.

HISTORY:

1. New section filed 2-16-2010 as an emergency; operative 2-16-2010 (Register 2010, No. 8). Pursuant to Penal Code section 5058.3(c), a Certificate of Compliance must be transmitted to OAL by 7-26-2010 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 2-16-2010 order transmitted to OAL 7-1-2010 and filed 8-13-2010 (Register 2010, No. 33).

3544. Prohibitions Against Unauthorized Access to and Use of Continuous Electronic Monitoring.

(a) No private or public entities, shall have access to, and use of, electronic signals transmitted in any fashion by equipment utilized for continuous electronic monitoring. Unauthorized access to, and use of, electronic signals includes signals transmitted in any fashion by equipment utilized for continuous electronic monitoring. Only those entities with the express written consent of the department shall be allowed access, and only for the terms and conditions stated in writing.

(b) Devices used pursuant to this Article shall not be used to eavesdrop or record any conversation, except a conversation between the parolee and the supervising parole agent. The continuous electronic monitoring technology is to be utilized solely for the purposes of voice identification and verification of the parolee's geographic location in the community.

NOTE: Authority cited: Sections 5058 and 5058.3, Penal Code. Reference: Sections 3010, 3010.1, 3010.2, 3010.3, 3010.4, 3010.5, 3010.6, 3010.7, 3010.8, 3010.9 and 5054, Penal Code.

HISTORY:

1. New section filed 2-16-2010 as an emergency; operative 2-16-2010 (Register 2010, No. 8). Pursuant to Penal Code section 5058.3(c), a Certificate of Compliance must be transmitted to OAL by 7-26-2010 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 2-16-2010 order transmitted to OAL 7-1-2010 and filed 8-13-2010 (Register 2010, No. 33).

3545. Persons to Participate in Continuous Electronic Monitoring.

(a) Violation of parole or violation of the law is not a prerequisite for the implementation of continuous electronic monitoring technology for the purpose of subsections 3545(b) or (c) below.

(b) Adjudicated violations of parole, as provided for in the Parole Violation Decision Making Instrument, as described in section 3768, may subject the parolee to continuous electronic monitoring as authorized by this article.

(c) The following target population may be eligible for continuous electronic monitoring:

(1) Parolees classified with a risk number value of 1, 2, 3, 4, or 5, as described in section 3768.1.

(2) Parolees who commit minor violations of the law.

(3) Interstate cases.

(4) STG-I members.

(5) Serious and/or violent offenders.

(6) Any offenders not already subject to Global Positioning System (GPS) supervision.

(d) Participation in continuous electronic monitoring of an eligible parolee may require the following, unless otherwise stated:

(1) Shall be on active parole in the community.

(2) Prior to placement, the parolee shall have a special condition of parole imposed that requires participation utilizing continuous electronic monitoring technology.

(3) Placement may require the written recommendation of the Parole Agent and written approval of the Unit Supervisor.

(4) Any curfew imposed on the parolee while on continuous electronic monitoring shall be in writing and a document articulating the curfew imposed shall be provided to the parolee. The document, the CDCR Form 1515-EID (01/10), Electronic In-Home Detention (EID) Special Conditions of Parole, which is incorporated by reference, shall be signed by the parolee. The curfew imposed shall include a start and stop date for the participation of in-home confinement restrictions imposed.

(5) The parolee shall be informed that non-compliance with the special condition of parole for continuous electronic monitoring is a violation of parole and may result in a referral to the Board of Parole Hearings for revocation consideration.

(6) The parolee's signature on the CDCR Form 1515-EID will acknowledge in writing, the parolee's responsibility for the safe return of the continuous electronic monitoring equipment when discharged from parole or released from the requirement from electronic monitoring. This will also acknowledge that upon failure to return the electronic monitoring equipment, the parolee may be charged the full replacement cost of each item of equipment not returned or returned damaged.

(7) No parolee shall be required to participate in continuous electronic monitoring authorized by this article for any period of time longer than the term of parole.

NOTE: Authority cited: Sections 5058 and 5058.3, Penal Code. Reference: Sections 3004, 3010, 3010.1, 3010.2, 3010.3, 3010.4, 3010.5, 3010.6, 3010.7, 3010.8, 3010.9 and 5054, Penal Code.

HISTORY:

1. New section filed 2-16-2010 as an emergency; operative 2-16-2010 (Register 2010, No. 8). Pursuant to Penal Code section 5058.3(c), a Certificate of Compliance must be transmitted to OAL by 7-26-2010 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 2-16-2010 order transmitted to OAL 7-1-2010 and filed 8-13-2010 (Register 2010, No. 33).
3. Repealer of subsection (c)(3) and subsection renumbering filed 7-17-2014 as an emergency; operative 7-17-2014 (Register 2014, No. 29). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 12-24-2014 or emergency language will be repealed by operation of law on the following day.
4. Amendment of subsection (c)(4) filed 10-17-2014; operative 10-17-2014 pursuant to Government Code section 11343.4(b)(3) (Register 2014, No. 42).
5. Certificate of Compliance as to 7-17-2014 order, including amendment of subsection (c)(4), transmitted to OAL 11-7-2014 and filed 12-22-2014; amendments effective 12-22-2014 pursuant to Government Code section 11343.4(b)(3) (Register 2014, No. 52).

3546. Revocation of Continuous Electronic Monitoring.

Upon approval from the unit supervisor, a parole agent may deem the use of continuous electronic monitoring as inappropriate and revoke the continuous electronic monitoring of any participating parolee unless mandated by the law.

NOTE: Authority cited: Sections 5058 and 5058.3, Penal Code. Reference: Sections 3010, 3010.1, 3010.2, 3010.3, 3010.4, 3010.5, 3010.6, 3010.7, 3010.8, 3010.9 and 5054, Penal Code.

HISTORY:

1. New section filed 2-16-2010 as an emergency; operative 2-16-2010 (Register 2010, No. 8). Pursuant to Penal Code section 5058.3(c), a Certificate of Compliance must be transmitted to OAL by 7-26-2010 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 2-16-2010 order transmitted to OAL 7-1-2010 and filed 8-13-2010 (Register 2010, No. 33).

3547. Noncompliance with Rules or Conditions of Parole.

Upon approval from the unit supervisor, whenever a parole agent supervising a parolee has reasonable cause to believe that the parolee is not complying with the rules or special conditions of parole set forth for the use of continuous electronic monitoring as a supervision tool, the parole agent, without a warrant of arrest, may take the parolee into custody for a violation of parole.

NOTE: Authority cited: Sections 5058 and 5058.3, Penal Code. Reference: Sections 3010, 3010.1, 3010.2, 3010.3, 3010.4, 3010.5, 3010.6, 3010.7, 3010.8, 3010.9 and 5054, Penal Code.

HISTORY:

1. New section filed 2-16-2010 as an emergency; operative 2-16-2010 (Register 2010, No. 8). Pursuant to Penal Code section 5058.3(c), a Certificate of Compliance must be transmitted to OAL by 7-26-2010 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 2-16-2010 order transmitted to OAL 7-1-2010 and filed 8-13-2010 (Register 2010, No. 33).

3548. Payments of Certain Costs by Parolees.

(a) Any person released on parole who is required to participate in continuous electronic monitoring, may be required to pay for that electronic surveillance upon a finding by the department of the ability of the parolee to pay those costs. However, the department shall waive any or all of that payment upon a finding of an inability to pay.

(1) Ability to pay means the overall capability of the person to reimburse the actual costs or portion of the costs, of providing continuous electronic monitoring.

(2) Overall capability of the person to reimburse the actual costs shall be determined by the Unit Supervisor or designee on a case-by-case basis. Factors to consider are employment status, income level, supplemental income sources and total monthly household expenses.

(3) The department shall consider any remaining amounts a person has been ordered to pay in fines, assessments and restitution fines, fees and orders, and shall give priority to the payment of those items before requiring that the person pay for the continuous electronic monitoring.

(b) If the parolee disagrees with the department's finding that the parolee has the ability to pay for the costs associated with the continuous electronic monitoring, the parolee may file an appeal by submitting a CDC Form 602 (rev 12/87), Inmate/Parolee Appeal form to the departmental appeals coordinator.

NOTE: Authority cited: Sections 5058 and 5058.3, Penal Code. Reference: Sections 3004, 3006, 3010.8 and 5054, Penal Code.

HISTORY:

1. New section filed 2-16-2010 as an emergency; operative 2-16-2010 (Register 2010, No. 8). Pursuant to Penal Code section 5058.3(c), a Certificate of Compliance must be transmitted to OAL by 7-26-2010 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 2-16-2010 order transmitted to OAL 7-1-2010 and filed 8-13-2010 (Register 2010, No. 33).

3549. [Reserved]

Article 4. Global Positioning System Program Establishment

3560. Global Positioning System Program Establishment.

Departmental use of Global Positioning System (GPS) technology is designed to monitor the whereabouts of persons on parole by use of continuous electronic monitoring. The GPS program is for parolees who are identified as requiring a high level of supervision, as described in section 3561. By placing a GPS tracking device on a parolee, a parole agent receives information about a parolee's whereabouts, verifies the parolee's compliance with parole conditions, and is able to investigate suspicious behavior patterns.

NOTE: Authority cited: Sections 5058 and 5058.3, Penal Code. Reference: Sections 3004, 3010, 3010.1, 3010.2, 3010.3, 3010.4, 3010.5, 3010.6, 3010.7, 3010.8, 3010.9 and 5054, Penal Code.

HISTORY:

1. New article 4 (sections 3560-3565) and section filed 2-16-2010 as an emergency; operative 2-16-2010 (Register 2010, No. 8). Pursuant to Penal Code section 5058.3(c), a Certificate of Compliance must be transmitted to OAL by 7-26-2010 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 2-16-2010 order transmitted to OAL 7-1-2010 and filed 8-13-2010 (Register 2010, No. 33).

3561. Global Positioning System Technology on Eligible Parolees Designated as High Risk.

(a) The California Department of Corrections and Rehabilitation (department) shall evaluate all parolees' criminal history and identify those parolees who require a high level of supervision, due to the risk of victimizing the public by committing new crimes while on parole.

(b) Parolees who are deemed to require a high level of supervision and subject to Global Positioning System (GPS) supervision include, but are not limited to:

(1) Any parolee who is required to register as a sex offender pursuant to the Sex Offender Registration Act, codified in Penal Code (PC) sections 290 through 290.023.

(2) Any validated STG member or associate as indicated on the CDCR Form 812 (Rev. 11/13), Notice of Critical Case Information-Safety of Persons (Non-confidential Enemies) or CDCR Form 128-B2, (Rev. 06/14) Security Threat Group Validation/Rejection Review, which is incorporated by reference.

(3) A high control offender as defined in section 3504.

(4) When any parolee's case factors include unavailability for supervision, history of absconding parole supervision, escalating parole violations, or other such factors that would indicate the parolee is likely to re-offend, and where prevention of reoffending and knowledge of the whereabouts of the parolee is a high priority for maintaining public safety.

(5) Any parolee who received a return to custody assessment by the Board of Parole Hearings (BPH), with a BPH final recommendation that the duration of the return to custody assessment be served in the community, utilizing GPS monitoring.

NOTE: Authority cited: Sections 5058 and 5058.3, Penal Code. Reference: Sections 3004, 3010, 3010.1, 3010.2, 3010.3, 3010.4, 3010.5, 3010.6, 3010.7, 3010.8, 3010.9 and 5054, Penal Code.

HISTORY:

1. New section filed 2-16-2010 as an emergency; operative 2-16-2010 (Register 2010, No. 8). Pursuant to Penal Code section 5058.3(c), a Certificate of Compliance must be transmitted to OAL by 7-26-2010 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 2-16-2010 order transmitted to OAL 7-1-2010 and filed 8-13-2010 (Register 2010, No. 33).
3. Amendment of subsection (b)(2) filed 10-17-2014; operative 10-17-2014 pursuant to Government Code section 11343.4(b)(3) (Register 2014, No. 42).

3562. Global Positioning System Monitoring Device Placement Criteria.

Placement of a Global Positioning System (GPS) Monitoring device on an eligible parolee shall require the following:

(a) The parolee shall be on active parole in the community.

(b) Prior to placement, the parolee shall have a special condition of parole imposed which requires his or her participation in GPS monitoring.

(c) The parolee shall be informed that noncompliance with the special condition of parole for GPS monitoring is a violation of parole and may result in a referral to the Board of Parole Hearings for revocation consideration.

NOTE: Authority cited: Sections 5058 and 5058.3, Penal Code. Reference: Sections 3004, 3010, 3010.1, 3010.2, 3010.3, 3010.4, 3010.5, 3010.6, 3010.7, 3010.8, 3010.9 and 5054, Penal Code.

HISTORY:

1. New section filed 2-16-2010 as an emergency; operative 2-16-2010 (Register 2010, No. 8). Pursuant to Penal Code section 5058.3(c), a Certificate of Compliance must be transmitted to OAL by 7-26-2010 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 2-16-2010 order transmitted to OAL 7-1-2010 and filed 8-13-2010 (Register 2010, No. 33).

3563. Global Positioning System—Payments of Certain Costs by Parolees.

(a) Parolees who are required to participate in continuous electronic monitoring by Global Positioning System (GPS) pursuant to the law shall be required to pay for the costs associated with the GPS system. However, the department shall waive any or all of that payment upon a finding of an inability to pay. The department shall consider any remaining amounts the parolee has been ordered to pay in fines, assessments and restitution fines, fees, and orders, and shall give priority to the payment of those items before requiring that the parolee pay for the global positioning monitoring.

(1) Ability to pay means the overall capability of the person to reimburse the actual costs or portion of the costs, of providing global positioning system monitoring.

(2) Overall capability of the person to reimburse the actual costs shall be determined by the Unit Supervisor or designee on a case-by-case basis. Factors to consider are employment status, income level, and other supplemental income sources.

(3) The department shall consider any remaining amounts a person has been ordered to pay in fines, assessments and restitution fines, fees and orders, and shall give priority to the payment of those items before requiring that the person pay for the global positioning system monitoring.

(b) If the parolee disagrees with the department's finding that the parolee has the ability to pay for the costs associated with the global positioning system monitoring, the parolee may file an appeal by submitting a CDC Form 602 (Rev. 12/87), Inmate/Parolee Appeal form to the departmental appeals coordinator.

NOTE: Authority cited: Sections 5058 and 5058.3, Penal Code. Reference: Sections 3004, 3010, 3010.1, 3010.2, 3010.3, 3010.4, 3010.5, 3010.6, 3010.7, 3010.8, 3010.9 and 5054, Penal Code.

HISTORY:

1. New section filed 2-16-2010 as an emergency; operative 2-16-2010 (Register 2010, No. 8). Pursuant to Penal Code section 5058.3(c), a Certificate of Compliance must be transmitted to OAL by 7-26-2010 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 2-16-2010 order transmitted to OAL 7-1-2010 and filed 8-13-2010 (Register 2010, No. 33).

3564. Requirement for Lifetime Global Positioning System Monitoring.

(a) Any parolee who has been convicted for a felony violation of a sex offense described in subdivision (c) of Penal Code section 290 or any attempt to commit any of those offenses, released from custody on or after November 8, 2006, shall be subject to lifetime Global Positioning System (GPS) monitoring. GPS monitoring shall commence within 48 hours of release from a state correctional facility, or during the first contact with a parole agent, whichever is sooner.

(b) The California Department of Corrections and Rehabilitation shall maintain GPS monitoring for the entire period of parole supervision. Responsibility for lifetime supervision on GPS monitoring will be transferred to another agency upon discharge from parole supervision and termination of departmental jurisdictional authority.

(c) An active parolee subject to lifetime GPS monitoring shall remain on continuous GPS monitoring for the duration of parole unless the parolee is in federal, state, or local custody pending criminal charges or serving an imposed sentence.

NOTE: Authority cited: Sections 5058 and 5058.3, Penal Code. Reference: Sections 3004 and 5054, Penal Code.

HISTORY:

1. New section filed 2-16-2010 as an emergency; operative 2-16-2010 (Register 2010, No. 8). Pursuant to Penal Code section 5058.3(c), a Certificate of Compliance must be transmitted to OAL by 7-26-2010 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 2-16-2010 order transmitted to OAL 7-1-2010 and filed 8-13-2010 (Register 2010, No. 33).

3565. Transitioning Sex Offenders from Global Positioning System Monitoring to Local Law Enforcement Monitoring.

(a) An active parolee subject to lifetime Global Positioning System (GPS) monitoring upon release from custody shall be monitored by the California Department of Corrections and Rehabilitation until discharged from parole and departmental jurisdiction.

(b) Between 90–60 days prior to the parolee's controlling discharge date, Division of Adult Parole Operations staff shall notify, in writing, the assuming agency of the pending discharge. Divisional staff shall:

(1) Make the parolee available to the assuming agency within five working days prior to the controlling discharge date to transition the parolee from departmental GPS equipment to the assuming agency's equipment.

(2) Notify the assuming agency if the parolee is to be discharged directly from custody.

(c) If no other agency assumes GPS monitoring prior to the parolee's discharge from departmental jurisdiction, the departmental GPS equipment will be removed and recovered from the parolee upon reaching the parolee's Controlling Discharge Date.

NOTE: Authority cited: Sections 5058 and 5058.3, Penal Code. Reference: Sections 3004 and 5054, Penal Code.

HISTORY:

1. New section filed 2-16-2010 as an emergency; operative 2-16-2010 (Register 2010, No. 8). Pursuant to Penal Code section 5058.3(c), a Certificate of Compliance must be transmitted to OAL by 7-26-2010 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 2-16-2010 order transmitted to OAL 7-1-2010 and filed 8-13-2010 (Register 2010, No. 33).

Article 5. Sex Offenders [Reserved]

3570. Assessments. [Reserved]

3571. Sex Offender Residence Restrictions.

Parolees who are required to register as sex offenders pursuant to Penal Code (PC) sections 290 through 290.023, inclusive, are subject to residence restrictions as specified in this section.

(a) Definitions. For the purposes of this section, the following terms are defined:

(1) Park means an outdoor public area used primarily for recreational purposes. A determination of whether an area is a park shall not be limited to a consideration of whether the area includes a play structure, athletic field or court, or any other particular characteristic, but shall be based on an overall evaluation of whether the area is used for recreational purposes.

(2) Regularly means occurring on a recurring basis.

(3) Gather means to congregate or come together with one another.

(4) Park where children regularly gather means a park, as described in section 3571(a)(1), where persons under the age of 18 congregate or come together with one another either with or without parental or guardian supervision.

(5) Public Area means an area that any governmental entity owns, operates, leases, rents, or otherwise legally controls as if owned by the governmental entity. "Governmental entity," for the purposes of this section, includes, but is not limited to: the United States, any state, any county, any city, any special district, or any subdivision thereof.

(b) A person released on parole who is required to register pursuant to PC Sections 290 through 290.023, inclusive, may not, during the period of parole, reside in any single family dwelling with any other person also required to register as a sex offender, unless those persons are legally related by blood, marriage, or adoption.

(1) A residential facility located within a single family dwelling which serves six or fewer persons shall be excluded from this restriction.

(c) A person released on parole on or after November 8, 2006, who is required to register pursuant to PC sections 290 through 290.023, inclusive, shall not reside within 2,000 feet of any public or private school, kindergarten through 12th grade, or park where children regularly gather.

(d) A person released on parole on or before November 7, 2006, who is required to register pursuant to PC sections 290 through 290.023, inclusive, shall not be subject to a residence restriction in addition to subsection (b) above, or required by section 3582, unless that residence restriction is supported by circumstances found in the parolee's criminal history.

(e) Residence Verification and Approval. The Division of Adult Parole Operations (DAPO) shall monitor compliance with the residence restrictions contained in this section.

(1) Parolees subject to residence restrictions are responsible for finding compliant housing.

(2) During the initial interview between the parolee and the parole agent upon release from custody, and before any change of residence while under parole supervision, the parolee shall provide his or her parole agent with the address where he or she intends to reside upon verification and approval of the parole agent.

(3) The parole agent shall utilize available resources to identify any public or private schools, and parks where children regularly gather, located approximately within 2,000 feet of the parolee's proposed residence. Available resources that may be considered include, but are not limited to:

(A) The California Department of Education's website which lists public, private and charter (a category of public) schools.

(B) Telephone directories (white and yellow pages) which list public schools by district, including city and/or county public school directories.

(C) Listings provided by city halls that include local schools and parks.

(D) Resources available on the internet, such as satellite maps.

(E) Observations from site visits or familiarity with the community.

(4) If any public or private school, or park where children regularly gather, is identified approximately within 2,000 feet of the parolee's proposed residence, the parole agent shall use a Global Positioning System (GPS) handheld device to determine whether any boundary of the public or private school, or park where children regularly gather, is within 2,000 feet of the threshold of the primary entrance of the proposed residence "as the crow flies," as a direct point-to-point aerial transit path, not as a street or path route.

(5) Parolees shall be advised whether the proposed residence is compliant. If the residence is noncompliant based on the GPS verification, the actual distance and name of the prohibited public or private school, or park where children regularly gather, and method of measurement shall be disclosed to the parolee upon his or her request.

(f) DAPO shall report to the Board of Parole Hearings any parolee who is reasonably believed to have violated a residence restriction contained in this section.

NOTE: Authority cited: Sections 5058 and 5058.3, Penal Code. Reference: Sections 3003.5, 3053(a) and 5054, Penal Code; *Doe* v. *Schwarzenegger* (2007) 476 F.Supp.2d. 1178; *In re E.J.* (2010) 47 Cal.4th 1258; *People* v. *Lent* (1975) 15 Cal.3d 481; and *People* v. *Dominguez* (1967) 256 Cal.App.2d 623.

HISTORY:

1. New section filed 6-15-2011 as an emergency; operative 6-15-2011 (Register 2011, No. 24). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 11-22-2011 or emergency language will be repealed by operation of law on the following day.
2. Repealed by operation of Government Code section 11346.1(g) (Register 2011, No. 48).
3. New section refiled 12-1-2011 as an emergency; operative 12-1-2011 (Register 2011, No. 48). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 2-29-2012 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 12-1-2011 order, including amendment of subsections (a)(1)–(2) and (a)(4), transmitted to OAL 2-27-2012 and filed 4-2-2012 (Register 2012, No. 14).

Article 6. High Risk Sex Offenders [Reserved]

3580. Definitions. [Reserved]

3581. Assessments. [Reserved]

3582. High Risk Sex Offender Residence Restrictions.

Parolees who are required to register as sex offenders pursuant to Penal Code (PC) sections 290 through 290.023, inclusive, and who have been designated as high risk sex offenders by the California Department of Corrections and Rehabilitation (CDCR), are subject to residence restrictions as specified in this section.

(a) Definition. High risk sex offender means a sex offender who, pursuant to PC section 290.04, has been assessed and deemed by the CDCR to pose a high risk to commit a new sex offense.

(b) A high risk sex offender released on parole who is required to register pursuant to PC sections 290 through 290.023, inclusive, may not, during the period of parole, reside in any single family dwelling with any other person also required to register as a sex offender, unless those persons are legally related by blood, marriage, or adoption. A residential facility located within a single family dwelling which serves six or fewer persons shall be excluded from this restriction.

(c) A high risk sex offender released on parole on or after November 8, 2006 who is required to register pursuant to PC sections 290 through 290.023, inclusive, and who has a current or prior conviction for a violation of PC section 288, inclusive of any subsection, or PC section 288.5, may not reside within one-half mile of any public or private school, kindergarten through grade 12, inclusive, and may not reside within 2,000 feet of a park where children regularly gather, as described in section 3571(c).

(d) A high risk sex offender released on parole on or after November 8, 2006 who is required to register pursuant to PC sections 290 through 290.023, inclusive, and who does not have a current or prior conviction for a violation of PC section 288, inclusive of any subsection, or PC section 288.5, shall be subject to the residency restriction described in section 3571(c). Any restriction on this parolee's residence in addition to this subsection and subsection (b) above is allowed only if that residence restriction is supported by circumstances found in the parolee's criminal history.

(e) A high risk sex offender released on parole on or before November 7, 2006 who is required to register pursuant to PC sections 290 through 290.023, inclusive, and who has a current or prior conviction for a violation of PC section 288, inclusive of any subsection, or PC section 288.5, may not reside within one-half mile of any public or private school, kindergarten through grade 12, inclusive.

(f) A high risk sex offender released on parole on or before November 7, 2006 who is required to register pursuant to PC sections 290 through 290.023, inclusive, and who does not have a current or prior conviction for a violation of PC section 288, inclusive of any subsection, or PC section 288.5, shall not be subject to a residence restriction in addition to subsection (b) above unless that residence restriction is supported by circumstances found in the parolee's criminal history.

(g) Residence Verification and Approval. The Division of Adult Parole Operations (DAPO) shall monitor compliance with the residence restrictions contained in this section.

(1) Parolees subject to residence restrictions are responsible for finding compliant housing.

(2) During the initial interview between the parolee and the parole agent upon release from custody, and before any change of residence while under parole supervision, the parolee shall provide his or her parole agent with the address where he or she intends to reside upon verification and approval of the parole agent.

(3) In addition to the residence verification and approval process described in section 3571(e) to determine whether the parolee's proposed residence is located within 2,000 feet of a public or private school or park where children regularly gather, the parole agent shall utilize available resources to identify any public or private schools located approximately within one-half mile of the parolee's proposed residence. Available resources that may be considered include, but are not limited to:

(A) The California Department of Education's website which lists public, private and charter (a category of public) schools.

(B) Telephone directories (white and yellow pages) which list public schools by district, including city and/or county public school directories.

(C) Listings provided by city halls that include local schools.

(D) Resources available on the internet, such as satellite maps.

(E) Observations from site visits or familiarity with the community.

(4) If any public or private school is identified approximately within one-half mile of the parolee's proposed residence, the parole agent shall use a Global Positioning System (GPS) handheld device to determine whether any boundary of the public or private school is within one-half mile of the threshold of the primary entrance of the proposed residence "as the crow flies," as a direct point-to-point aerial transit path, not as a street or path route.

(5) Parolees shall be advised whether the proposed residence is compliant. If the residence is noncompliant based on the GPS verification, the actual distance and name of the prohibited public or private school and method of measurement shall be disclosed to the parolee upon his or her request.

(h) DAPO shall report to the Board of Parole Hearings any parolee who is reasonably believed to have violated a residence restriction contained in this section.

NOTE: Authority cited: Sections 5058 and 5058.3, Penal Code. Reference: Sections 3003(g), 3003.5, 3053(a) and 5054, Penal Code; *Doe* v. *Schwarzenegger* (2007) 476 F.Supp.2d. 1178; *In re E.J.* (2010) 47 Cal.4th 1258; and *People* v. *Lent* (1975) 15 Cal.3d 481.

HISTORY:

1. New section filed 6-15-2011 as an emergency; operative 6-15-2011 (Register 2011, No. 24). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 11-22-2011 or emergency language will be repealed by operation of law on the following day.
2. Repealed by operation of Government Code section 11346.1(g) (Register 2011, No. 48).
3. New section refiled 12-1-2011 as an emergency; operative 12-1-2011 (Register 2011, No. 48). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 2-29-2012 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 12-1-2011 order, including amendment of subsection (b), repealer of subsection (b)(1), redesigna-

tion and amendment of former subsection (c)(1) as subsection (d), subsection relettering, redesignation of former subsection (d)(1) as subsection (f) and subsection relettering, transmitted to OAL 2-27-2012 and filed 4-2-2012 (Register 2012, No. 14).

Article 6.5. Transient Sex Offender Supervision

3590. Transient and Residence Determination.

(a) To establish a residence pursuant to Penal Code (PC) section 290.011, a parolee must regularly reside at a location or locations. The complete set of circumstances will be considered to determine whether a parolee has established a residence or whether the parolee is a transient sex offender as defined in section 3000. For the purposes of this section, a parolee who spends one day or one night in a shelter or structure that can be located by a street address, including but not limited to houses, apartment buildings, motels, hotels, homeless shelters, and recreational and other vehicles, may be determined to have established a residence if other circumstances are present. These circumstances include, but are not limited to:

(1) The parolee resides one day or night at the same address every week, for multiple consecutive weeks, thus establishing a pattern of residency.

(2) The parolee resides two or more consecutive days or nights at the same address, or two or more days or nights at the same address in a period that would appear to establish a pattern of residency.

(3) The parolee is in possession of a key to an address where he or she is located and there is evidence of a pattern of residency.

(4) Upon contacting the parolee at an address where he or she is located or has been residing, evidence exists that he or she has established residency. Evidence would include, but is not limited to, clothing in a closet or drawer, toiletries in a bathroom, or information from occupants and/or neighbors. Such evidence may establish a pattern of residency.

(b) When determining whether a residence has been established, the parole agent shall utilize all available resources and information. If the review of the complete set of circumstances indicates residency has been established, and a reasonable and prudent parole agent reviewing the same information would draw the same conclusion, then a residence has been established. After a transient sex offender establishes a residence, he or she is no longer recognized as transient, and:

(1) Continues to have a lifetime obligation to register as a sex offender, but is subject to the registration requirements as provided under PC section 290.010.

(2) May be subject to one or more residency restrictions as described in sections 3571 and 3582.

NOTE: Authority cited: Sections 5058 and 5058.3, Penal Code. Reference: Sections 290.010, 290.011(g), 3003(g), 3003.5(b) and 5054, Penal Code.

HISTORY:

1. New article 6.5 (sections 3590–3590.3) and section filed 6-15-2011 as an emergency; operative 6-15-2011 (Register 2011, No. 24). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 11-22-2011 or emergency language will be repealed by operation of law on the following day.
2. Repealed by operation of Government Code section 11346.1(g) (Register 2011, No. 48).
3. New article 6.5 (sections 3590–3590.3) and section refiled 12-1-2011 as an emergency; operative 12-1-2011 (Register 2011, No. 48). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 2-29-2012 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 12-1-2011 order transmitted to OAL 2-27-2012 and filed 4-2-2012 (Register 2012, No. 14).

3590.1. Approved Regular Entrance at an Address.

Transient sex offenders are permitted the following repeated and regular entries at an address and such entries shall not be considered as establishing residency:

(a) For the purpose of charging the Global Positioning System (GPS) device paroled sex offenders are required to wear as described in section 3561.

(b) For the purpose of approved employment.

(c) For the purpose of conducting legitimate business in a licensed business, professional, or government building.

(d) For the purpose of obtaining care, treatment or other services provided by licensed providers.

NOTE: Authority cited: Sections 5058 and 5058.3, Penal Code. Reference: Section 5054, Penal Code.

HISTORY:

1. New section filed 6-15-2011 as an emergency; operative 6-15-2011 (Register 2011, No. 24). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 11-22-2011 or emergency language will be repealed by operation of law on the following day.
2. Repealed by operation of Government Code section 11346.1(g) (Register 2011, No. 48).
3. New section refiled 12-1-2011 as an emergency; operative 12-1-2011 (Register 2011, No. 48). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 2-29-2012 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 12-1-2011 order, including repealer of subsection (a) designator and redesignation of former subsections (a)(1)–(4) as new subsections (a)–(d), transmitted to OAL 2-27-2012 and filed 4-2-2012 (Register 2012, No. 14).

3590.2. Transient Sex Offender Location Restrictions.

(a) Transient sex offenders staying at locations without street addresses, including but not limited to bridges, transient encampments, and bus stops, which may be near schools, parks, or areas where children regularly gather as described in section 3571(a), are not subject to residence restrictions established in statute, as these locations are not defined as residences that are located by a street address as provided in section 3590.

(b) The locations described in subsection 3590.2(a) may not be acceptable for a parolee to reside at or to frequent based upon his or her existing special conditions of parole, criminal history, and/or local community ordinances. Special conditions of parole may be imposed when warranted to address these circumstances.

NOTE: Authority cited: Sections 5058 and 5058.3, Penal Code. Reference: Section 3003(g), 3003.5(b), 3053(a) and 5054, Penal Code; and *People* v. *Lent* (1975) 15 Cal.3d 481.

HISTORY:

1. New section filed 6-15-2011 as an emergency; operative 6-15-2011 (Register 2011, No. 24). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 11-22-2011 or emergency language will be repealed by operation of law on the following day.
2. Repealed by operation of Government Code section 11346.1(g) (Register 2011, No. 48).
3. New section refiled 12-1-2011 as an emergency; operative 12-1-2011 (Register 2011, No. 48). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 2-29-2012 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 12-1-2011 order transmitted to OAL 2-27-2012 and filed 4-2-2012 (Register 2012, No. 14).

3590.3. Supervision of Transient Sex Offenders.

(a) Transient sex offenders are subject to parole supervision contact requirements as described in section 3504, except that: Instead

of completing the required face-to-face residence contact, the parole agent shall contact the parolee at either his or her place of employment (if employed) or "in the field," within the community where the parolee is located. This may include a residence where the parolee appears to be residing. All contacts shall be documented by the parole agent on a CDCR Form 1650-D (Rev. 07/10), Record of Supervision, which is incorporated by reference.

(b) Transient sex offenders shall be required to disclose the locations where they have slept, or intend to sleep at night, during any contact with the parole agent.

(c) During case reviews, the parole unit supervisor shall ensure that the parole agent is meeting current contact case supervision specifications as described in section 3504.

NOTE: Authority cited: Sections 5058 and 5058.3, Penal Code. Reference: Sections 3003, 3003.5 and 5054, Penal Code.

HISTORY:

1. New section filed 6-15-2011 as an emergency; operative 6-15-2011 (Register 2011, No. 24). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 11-22-2011 or emergency language will be repealed by operation of law on the following day.
2. Repealed by operation of Government Code section 11346.1(g) (Register 2011, No. 48).
3. New section refiled 12-1-2011 as an emergency; operative 12-1-2011 (Register 2011, No. 48). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 2-29-2012 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 12-1-2011 order, including amendment of subsection (a), repealer of subsection (a)(1) and redesignation of former subsections (a)(2)–(b) as new subsections (b)–(c), transmitted to OAL 2-27-2012 and filed 4-2-2012 (Register 2012, No. 14).

Article 7. Parole Searches

3600. Searches of Parolees.

(a) Any contraband or evidence of illegal activity shall be seized by the parole agent or the law enforcement officer conducting a search of a parolee's person, property, or residence. Property not belonging to the parolee shall be seized only when needed as evidence to support a parole violation charge.

(b) Property seized as evidence by departmental staff shall be documented on a CDCR Form 1136 (Rev. 10/06), Evidence Report and Inventory Receipt. A copy of the form will be available to either the parolee or a responsible adult, or left at the place of seizure.

(c) Only those areas of a parolee's residence occupied solely by the parolee or of common access shall be searched without a search warrant.

(d) A parole agent's authority to search or arrest a parolee applies to all law enforcement officers in California as long as it is judicious and conducted for legitimate law enforcement purposes.

(e) If staff's forced entry into a structure results in damages to the structure, the parole office shall make available to the landlord or owner the claim form needed to recover repair costs through the Victim Compensation and Government Claims Board.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code; Sections 13920 and 13921, Government Code; *People* v. *Giles,* 233 Cal.App.2nd 643, 43 Cal.Rptr. 758 (1965); and *People* v. *LaJocies* 119 Cal.App.3d 947, 174 Cal.Rptr. 100 (1981).

HISTORY:

1. Change without regulatory effect adding article 7 (section 3600) and renumbering former section 3701.1 to new section 3600 filed 7-30-2008 pursuant to section 100, title 1, California Code of Regulations (Register 2008, No. 31).
2. Amendment of subsections (b) and (d), repealer of subsections (d)(1)–(3) and amendment of subsection (e) filed 6-17-2009; operative 7-17-2009 (Register 2009, No. 25).

3604. Prerelease Referral.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.

HISTORY:

1. New section filed 5-27-93; operative 6-28-93 (Register 93, No. 22).
2. Change without regulatory effect renumbering former section 3604 to new section 3502 filed 7-30-2008 pursuant to section 100, title 1, California Code of Regulations (Register 2008, No. 31).

Article 8. Financial Assistance

3605. Financial Assistance.

(a) Financial assistance funds may be loaned to qualified parolees/releasees or dischargees as described in (b), below.

(b) When a request for financial assistance is received, the parole agent shall determine if the requestor needs the assistance and whether other resources are available to meet the need.

(c) If assistance is deemed necessary and not available from other sources, the parole agent shall obtain both of the following:

(1) The unit supervisor's approval for any loan.

(2) The signature of the requestor on CDC Form 910C (Rev. 11/96), Bank Draft Stock Register, which is incorporated by reference, before releasing the loan funds.

(d) The parolee/releasee or dischargee shall repay any such loans as soon as their employment and personal circumstances permit. A receipt for every repayment made on a loan shall be provided to the individual.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 5054 and 5060, Penal Code.

HISTORY:

1. New section filed 5-18-2000 as an emergency; operative 5-18-2000 (Register 2000, No. 20). Pursuant to Penal Code section 5058(e), a Certificate of Compliance must be transmitted to OAL by 10-25-2000 or emergency language will be repealed by operation of law on the following day.
2. Editorial correction of History 1 (Register 2000, No. 21).
3. New section refiled 10-24-2000 as an emergency; operative 10-26-2001 (Register 2001, No. 19). A Certificate of Compliance must be transmitted to OAL by 4-4-2001 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 10-24-2000 order, including further amendment of section, transmitted to OAL 3-30-2001 and filed 5-11-2001 (Register 2001, No. 19).
5. Change without regulatory effect renumbering former section 3605 to new section 3504, adding article 8 (section 3605) and renumbering former section 3705 to section 3605 filed 7-30-2008 pursuant to section 100, title 1, California Code of Regulations (Register 2008, No. 31).
6. Amendment of article heading and subsections (a) and (c)(1)–(2) filed 9-9-2010; operative 10-9-2010 (Register 2010, No. 37).

3605.5. Release from Revocation or Limited Placement.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.

HISTORY:

1. New section filed 5-27-93; operative 6-28-93 (Register 93, No. 22).
2. Change without regulatory effect renumbering former section 3605.5 to new section 3740 filed 7-30-2008 pursuant to section 100, title 1, California Code of Regulations (Register 2008, No. 31).

Article 9. Parole Outpatient Clinic

3610. Parole Outpatient Clinic Services.

(a) Parole outpatient clinics (POC) have been established to provide mental health assessments and outpatient mental health treatment, if needed, to parolees.

(b) At any time during the period of parole, the parole agent of record may refer a parolee to a POC for a screening evaluation to determine the need for a full mental health assessment.

(c) POC clinical staff shall provide a mental health assessment for each referred parolee to determine if there is a need for transitional or sustained therapeutic intervention on an outpatient basis. If therapy is deemed necessary, the parolee shall be assigned to attend a POC for mental health treatment. Treatment services may be supplemented by interagency agreements/contracts with other state and county agencies. All records of mental health diagnosis, evaluation and treatment shall be considered confidential in accordance with subsection 3361(c).

(d) The parole agent of record shall impose a special condition of parole to participate in a POC on all parolees assigned by clinical staff to attend POC for treatment.

(e) A parolee upon whom a special condition of parole to attend a POC is imposed and who is absent without being excused by their parole agent of record or the POC clinician, or whose stated reasons for absence are later determined by the parole agent of record to be false, shall be considered in violation of their parole conditions.

(f) Mandatory referral to a POC for a mental health assessment shall be made by the parole agent of record for the following:

(1) Inmates who are in a mental health treatment program at the time of the prerelease case referral as described in section 3502. To provide continuity of care, a POC referral appointment shall occur as soon as possible but not more than 30 days after release to parole.

(2) Parolees whose offense history, institutional history, social history, or behavior in the community, past or present, indicate that a mental health assessment may be of assistance in successful reintegration to the community.

(3) Violent offenders, as designated in Penal Code (PC) section 667.5(c), and sex offenders as designated in PC section 290, for whom a mental disorder may have been a contributing factor to their commitment offense.

(4) Parolees exhibiting observable symptoms of a mental disorder while under supervision in the community.

(g) Parolees for whom psychotropic medications are prescribed shall be given the information upon which to base an informed consent. The parolee shall provide specific written informed consent in compliance with sections 3353 and 3363(d).

(h) When the department's jurisdiction of a parolee/releasee is expiring and continued treatment or services are required, the parole agent of record, in concert with POC staff, shall assist the parolee/releasee in obtaining the services from a community mental health agency. If the services of the agencies cannot be obtained, the parolee/releasee may continue to receive parole outpatient clinic services until community services can be arranged or the services are no longer required.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 290, 667.5(c), 2974 and 5054, Penal Code.

HISTORY:

1. Change without regulatory effect adding article 9 (section 3610) and renumbering former section 3706 to new section 3610 filed 7-30-2008 pursuant to section 100, title 1, California Code of Regulations (Register 2008, No. 31).
2. Amendment of section and NOTE filed 6-17-2009; operative 7-17-2009 (Register 2009, No. 25).

Article 10. Urinalysis Testing Program

3620. Urinalysis Testing Program Policy.

All parolees may be subject to Urinalysis (UA) Testing for prohibited substances, pursuant to section 3504. All confirmed positive UA test results must be addressed by intervention and/or sanctions to promote positive lifestyle changes.

(a) Parolees with a narcotic-related conviction within five years of incarceration for their current offense, or who have a history of alcohol or substance abuse, may have a special condition of parole imposed requiring UA testing at the direction of the Parole Agent (PA). Upon approval by the field Parole Unit Supervisor (US), the special condition of parole to participate in UA testing shall be imposed and documented on the CDCR Form 1515 Addendum (Rev. 04/13), Special Conditions of Parole. If reasonable suspicion exists that a prohibited substance was recently used, the CDCR Form 1515 Addendum is not required for the PA to instruct the parolee to provide a UA specimen for testing.

(1) The frequency in which UA testing is administered shall be determined by the supervision requirements, pursuant to Section 3504, and/or any imposed special conditions of parole set by the parole US, the court authority, or the Board of Parole Hearings (BPH).

(2) The UA test is conducted when the PA obtains a random, unscheduled urine sample from the parolee.

(b) Prior to collecting the urine sample, the PA shall inquire of the parolee whether the parolee is taking any prescription or over-the-counter medications which may result in a positive UA test result. The PA shall document the parolee's response to the inquiry on the CDCR Form 1650-D (Rev. 06/12), Record of Supervision, which is incorporated by reference, only when the parolee declares that he or she is taking prescription medication. If the parolee admits to taking prescription medication, and/or the PA suspects that the type of medication may indicate a positive UA test result for a prohibited substance, the PA shall instruct the parolee to provide proof of the current and valid prescription. This information shall be documented on the CDCR Form 1502 (Rev. 10/06), Activity Report, and a copy shall be placed in the parolee's field file.

(c) The UA sample shall be taken under direct observation of the PA whenever possible, where he or she can clearly observe the flow of urine into the approved specimen bottle. During the collection of the UA sample, the PA shall adhere to the following:

(1) Check the restroom for contraband and conduct a visual search of the parolee's person prior to administering the test.

(2) Conduct a pat down search when necessary to ensure parolee is not in possession of any contraband, only when safe to do so (e.g., in the parole office, or when in the community in the presence of another law enforcement officer).

(3) Prohibit the parolee from taking anything other than the test kit into the restroom, and note the temperature and color of the sample immediately following the test.

(4) In the event that direct observation is not possible, further steps may be taken to reduce the chance of manipulation (e.g., no running water or flushing the toilet).

(5) Documentation and placement of the sample into the locked UA sample storage container pursuant to section 3623.

(d) The UA samples being sent to the laboratory for confirmation must include the security labels provided by the contracted laboratory, and must be completed by the PA who collected the UA sample. The PA must clearly indicate the type of UA tests to be completed. The security label shall be placed on the sample bottle, and shall include the following:

(1) The date the sample was obtained.

(2) The parolee's CDC number.

(3) The parole unit's identification or billing number.

(4) The name or initials of the PA who collected the UA sample.

NOTE: Authority Cited: Sections 5058 and 5058.3, Penal Code. Reference: Sections 3060.9, 3063.1, 3063.2, 3068 and 5054, Penal Code.

HISTORY:

1. Change without regulatory effect adding article 10 (sections 3620–3625) and renumbering former section 3801 to new section 3620 filed 7-30-2008 pursuant to section 100, title 1, California Code of Regulations (Register 2008, No. 31).
2. Amendment filed 6-17-2009; operative 7-17-2009 (Register 2009, No. 25).
3. Repealer of article 10 (sections 3620–3625) and section and new article 10 (sections 3620–3626) and section filed 7-17-2014 as an emergency; operative 7-17-2014 (Register 2014, No. 29). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 12-24-2014 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-17-2014 order, including amendment of subsection (a), transmitted to OAL 11-7-2014 and filed 12-22-2014; amendments effective 12-22-2014 pursuant to Government Code section 11343.4(b)(3) (Register 2014, No. 52).

3621. Instant Test Kit.

Collection of the UA test sample shall first be obtained by utilizing an onsite testing device which is an instant test kit. A positive or negative test result shall determine the next course of action.

(a) In the event of a negative instant test result, the PA shall have the parolee discard the sample and the test kit.

(1) No further laboratory confirmation is required.

(2) The negative test result shall be recorded on the CDCR Form 2249 (REV. 08/14), Urinalysis Sample Control Log, which is incorporated by reference, and shall also be documented on the CDCR Form 1650-D (Rev. 06/12), Record of Supervision.

(b) In the event of an undisputed presumptive positive instant test, the PA shall record the instant test result on the CDCR Form 2249 and obtain a signed CDCR Form 1527 (Rev. 06/12), Voluntary Statement of Admission, which is incorporated by reference.

(1) The PA shall have the parolee discard the sample and the test kit.

(2) No further laboratory confirmation is required.

(3) The PA shall adjudicate the presumptive positive test utilizing swift and certain interventions which may include immediate community drug treatment.

(c) In the event of a disputed positive instant test result, the PA shall record the instant test results on the CDCR Form 2249. The PA shall adhere to the following steps to preserve the chain of custody of the UA sample:

(1) Process the sample in the contract laboratory-approved specimen bottle.

(2) Process the identification label and instruct the parolee to place the label on the specimen bottle in the PA's presence.

(3) Ensure that the bottle shall be sealed by the parolee and placed into the individual specimen bag.

(4) Secure the sample in accordance with section 3623(b).

(d) Upon laboratory confirmation, the PA shall ensure that the positive test result shall be adjudicated to include immediate interventions.

(e) If the parolee admits to use of a prohibited substance, the PA shall obtain a CDCR Form 1527, signed by the parolee indicating a voluntary admission for the use of a prohibited substance.

NOTE: Authority Cited: Sections 5058 and 5058.3, Penal Code. Reference: Sections 3060.9, 3063.1, 3063.2, 3068 and 5054, Penal Code.

HISTORY:

1. New section filed 7-17-2014 as an emergency; operative 7-17-2014 (Register 2014, No. 29). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 12-24-2014 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 7-17-2014 order, including amendment of subsection (a)(2), transmitted to OAL 11-7-2014 and filed 12-22-2014; amendments effective 12-22-2014 pursuant to Government Code section 11343.4(b)(3) (Register 2014, No. 52).

3622. Tracking of Urinalysis Sample and Documentation.

(a) In order to maintain the integrity of the chain of custody from point of receipt of the sample, the PA shall log every sample received by the parolee, and take the following steps:

(1) Enter the UA test sample on the CDCR Form 2249 (REV. 08/14), Urinalysis Sample Control Log, to include the parolee's name, parolee's signature, CDC number, PA's initials, collection date and time, and UA test results.

(2) For disputed positive test results requiring laboratory confirmation, the PA shall deposit the sample into the locked UA sample storage container pursuant to section 3623, and make an indication on the CDCR Form 2249 verifying that the sample was sent to the contract laboratory.

(3) Enter the sample collection event, the test result, and the outcome on the CDCR Form 1650-D (Rev. 06/12), Record of Supervision.

(4) Retain the CDCR Form 2249 within the parolee field book or parole Field File.

(b) The PA shall deposit collected UA samples into the locked UA sample storage container upon returning to the parole unit, prior to the end of his or her shift, but no later than close of business the next business day.

NOTE: Authority Cited: Sections 5058 and 5058.3, Penal Code. Reference: Sections 3060.9, 3063.1, 3063.2, 3068 and 5054, Penal Code.

HISTORY:

1. New section filed 7-17-2014 as an emergency; operative 7-17-2014 (Register 2014, No. 29). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 12-24-2014 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 7-17-2014 order, including amendment of subsections (a)(1) and (a)(4), transmitted to OAL 11-7-2014 and filed 12-22-2014; amendments effective 12-22-2014 pursuant to Government Code section 11343.4(b)(3) (Register 2014, No. 52).

3623. Locked Urinalysis Sample Storage Container.

(a) To ensure the integrity of the UA sample is not compromised in temporary storage, the US or designee must maintain security of the UA sample from the point of collection and storage to the subsequent transfer to the contract courier.

(1) Each parole unit shall maintain the locked UA sample storage container in a fixed location. This is to be an area where parolees are not allowed unattended access.

(2) Only the US or designee shall be granted access to the locked UA sample storage container to retrieve the UA samples for transfer to the courier service employee.

(3) The US or designee shall maintain the storage container key.

(b) The UA sample, in the labeled bottle and individually sealed in the bag, shall be secured in the locked UA sample storage container; this shall serve to maintain the chain of custody of the UA sample.

(1) The transportation bag shall be maintained inside the locked UA sample storage container until the transportation bag/s (to include the UA samples) are transferred to the courier service employee by the US or designee.

NOTE: Authority Cited: Sections 5058 and 5058.3, Penal Code. Reference: Sections 3060.9, 3063.1, 3063.2, 3068 and 5054, Penal Code.

HISTORY:

1. New section filed 7-17-2014 as an emergency; operative 7-17-2014 (Register 2014, No. 29). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 12-24-2014 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 7-17-2014 order transmitted to OAL 11-7-2014 and filed 12-22-2014 (Register 2014, No. 52).

3624. Transfer to Vendor Process.

(a) Upon arrival of the laboratory courier, the US or designee shall:

(1) Unlock the locked UA sample storage container and remove the plastic transportation bag containing the individually packaged UA samples.

(2) Secure the bag and transfer the sealed bag to the vendor courier service employee.

(3) Print his or her name and sign the CDCR Form 2250 (06/12), Urinalysis Sample Transfer Log, which is incorporated by reference.

(4) Obtain the vendor courier service employee printed name and signature documenting the date and time of pickup on the CDCR Form 2250.

(5) Place a new plastic transportation bag in the locked UA sample storage container and lock the container.

NOTE: Authority Cited: Sections 5058 and 5058.3, Penal Code. Reference: Sections 3060.9, 3063.1, 3063.2, 3068 and 5054, Penal Code.

HISTORY:

1. New section filed 7-17-2014 as an emergency; operative 7-17-2014 (Register 2014, No. 29). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 12-24-2014 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 7-17-2014 order transmitted to OAL 11-7-2014 and filed 12-22-2014 (Register 2014, No. 52).

3625. Documentation of Laboratory Test Results.

(a) The laboratory responsible for analyzing the UA samples shall provide each parole unit with the test results for all submitted UA samples. Typically, the test results are sent to the parole unit via facsimile. Laboratory test results shall be logged, maintained, and processed by designated parole unit support staff. A legible copy of each individual test result shall be kept in the parolee's field file for use at a later date, if needed. The parole unit support staff shall:

(1) Maintain one copy of all test results for the parole unit in a central location, accessible to all staff.

(2) Provide the US with one copy of the test results.

(3) Verify the Parole Agent of Record (AOR) assignment for each parolee with a positive UA test result, and provide that AOR with a copy of the test results of the affected parolee.

NOTE: Authority Cited: Sections 5058 and 5058.3, Penal Code. Reference: Sections 3060.9, 3063.1, 3063.2, 3068 and 5054, Penal Code.

HISTORY:

1. Change without regulatory effect renumbering former section 3802 to new section 3625 filed 7-30-2008 pursuant to section 100, title 1, California Code of Regulations (Register 2008, No. 31).
2. Amendment of subsections (a) and (b)(8) and new subsections (c)–(g)(3) filed 6-17-2009; operative 7-17-2009 (Register 2009, No. 25).
3. Repealer and new section filed 7-17-2014 as an emergency; operative 7-17-2014 (Register 2014, No. 29). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 12-24-2014 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-17-2014 order transmitted to OAL 11-7-2014 and filed 12-22-2014 (Register 2014, No. 52).

3626. Adjudication of a Parole Violation as a Result of Positive Test.

In the event of a positive test result, the PA shall case conference the violation with the US or PAII (Supervisor) to determine the appropriate interventions and/or sanctions based on the case factors and available resources. The PA shall document the results on the CDCR Form 1650-D (Rev. 06/12), Record of Supervision, and complete a CDCR Form 1500 (05/13), Parole Violation Decision Making Instrument, identifying appropriate resources and/or interventions based on identified criminogenic needs. The US or PA II (Supervisor) must verify that all positive test results have been adjudicated pursuant to section 3768.

NOTE: Authority Cited: Sections 5058 and 5058.3, Penal Code. Reference: Sections 3060.9, 3063.1, 3063.2, 3068 and 5054, Penal Code.

HISTORY:

1. New section filed 7-17-2014 as an emergency; operative 7-17-2014 (Register 2014, No. 29). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 12-24-2014 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 7-17-2014 order transmitted to OAL 11-7-2014 and filed 12-22-2014 (Register 2014, No. 52).

Article 11. Illegal Aliens

3630. Limitations of Parole Services.

(a) Pursuant to Section 411 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, (PRWORA) (8 U.S.C. Section 1621), and notwithstanding any other provision of Title 15, Division 3 of the California Code of Regulations, aliens who are not "qualified aliens" or "nonimmigrant aliens," as defined by federal law, or who are paroled into the United States for less than one year, are ineligible to receive or participate in the following parole services:

(1) Food coupons.

(2) Bus passes.

(3) Job placement services.

(4) Short-term cash assistance.

(b) Verification of immigration status is based on information furnished to the Department by the United States Immigration and Customs Enforcement prior to an inmate alien's release on parole.

(c) A determination that an alien is ineligible for the services specified in subdivision (a) may be appealed as provided in Sections 3084 through 3084.9 of these regulations.

(d) All eligibility requirements contained herein shall be applied without regard to race, creed, color, gender, religion, or national origin.

(e) For purposes of this section, an alien who, at the time he or she applies for, receives, or attempts to receive a parole benefit specified in subsection (a), is eligible for those benefits if he or she meets all of the conditions of subparagraphs (1), (2), (3), and (4) below:

(1) Has been battered or subjected to extreme cruelty in the United States by a spouse or registered domestic partner or a parent, or by a member of the spouse's or registered domestic partner's or parent's family residing in the same household as the alien, and the spouse or registered domestic partner or parent of the alien consented to, or acquiesced in, such battery or cruelty; or has a child who has been battered or subjected to extreme cruelty in the United States by a spouse or registered domestic partner or a parent of the alien, without the active participation of the alien in the battery or cruelty, or by a member of the spouse's or registered domestic partner's or parent's family residing in the same household as the alien,

and the spouse or registered domestic partner or parent consented to or acquiesced in such battery or cruelty.

(2) In the opinion of the Attorney General of the United States, which opinion is not subject to the review of any court, there is a substantial connection between such battery or cruelty and the need for the benefits provided.

(3) Has been approved or has a petition pending which sets forth a prima facie case, as enumerated in the Immigration and Nationality Act (INA), for:

(A) Status as a spouse or registered domestic partner or child of a United States citizen; or

(B) Suspension of deportation and adjustment of status; or

(C) Classification pursuant to clause (ii) or clause (iii) of Section 204(a)(1)(B) of the INA.

(D) Cancellation of removal pursuant to Section 240A(b)(2) of the INA.

(4) For the period for which the benefits are sought, the individual responsible for the battery or cruelty, as stated in paragraph (e)(1) does not reside in the same household or family eligibility unit as the individual subjected to the battery or cruelty.

NOTE: Authority cited: Section 5058, Penal Code. Reference: 8 U.S.C. Sections 1621, 1641 and 1642; Section 297.5, Family Code; and Section 5054, Penal Code.

HISTORY:

1. Change without regulatory effect renumbering former article 2 to new article 11 (section 3630) and renumbering former section 3815 to new section 3630 filed 7-30-2008 pursuant to section 100, title 1, California Code of Regulations (Register 2008, No. 31).
2. Amendment of subsections (b) and (e)(3)(D) filed 6-17-2009; operative 7-17-2009 (Register 2009, No. 25).
3. Amendment of subsection (c) filed 12-13-2010 as an emergency; operative 1-28-2011 (Register 2010, No. 51). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 7-7-2011 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 12-13-2010 order transmitted to OAL 6-15-2011 and filed 7-28-2011 (Register 2011, No. 30).

Article 12. Parolee Field Files

3640. Parolee Field Files.

(a) For the purpose of this section, a parolee field file means a file maintained by a parole unit office containing information about a parolee and his or her current parole.

(b) Except by means of valid authorization, subpoena, or court order, no parolee or their attorney or the attorney's designee shall have access to another parolee's field file or component thereof.

(c) Parolees may review their own field file, subject to applicable federal and state law. This review shall be conducted in the presence of staff. The parolee will not be provided access to a computer to view any of his or her electronic records, if applicable, but instead will have a printed copy made available.

(d) No parolee or their attorney or the attorney's designee shall access information designated confidential pursuant to section 3321 which is in or from the parolee's field file.

(e) An attorney or the attorney's designee, hired to or appointed to represent a parolee in the parole revocation process may review a parolee's field file, subject to applicable federal and state law. A parolee's attorney or the attorney's designee is not required to obtain authorization from the parolee before reviewing the parolee's field file, though authorization may be provided. This review shall be conducted in the presence of staff. The attorney or the attorney's designee will not be provided access to a computer to view any of the parolee's electronic records, if applicable, but instead will have a printed copy made available.

(f) No parolee field file or component thereof shall be released to any agency or person outside the department, except for private attorneys hired to represent the department, the Office of the Attorney General, the Board of Parole Hearings, the Inspector General, and as provided by applicable federal and state law. Any outside person or entity that receives parolee field files is subject to all legal and departmental standards for the integrity and confidentiality of those documents.

NOTE: Authority Cited: Section 5058, Penal Code. Reference: Sections 2081.5, 5054 and 6126.5, Penal Code; Sections 56.10, 1798.24 and 1798.40, Civil Code; and Code of Federal Regulations, Title 45, Sections 164.512 and 164.524.

HISTORY:

1. New article 12 (section 3640) and section filed 6-17-2009; operative 7-17-2009 (Register 2009, No. 25).

Article 13. Registration

3650. Registration Notification.

An inmate/parolee required to register pursuant to Penal Code sections 186.30, 290 et seq., 457.1 or Health and Safety Code section 11590, shall be notified of the requirement to register pursuant to the procedures specified in section 3075.2.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 186.30, 290.023, 457.1 and 5054, Penal Code; and Section 11590, Health and Safety Code.

HISTORY:

1. New article 13 (sections 3650–3654) and section filed 8-11-2009; operative 9-10-2009 (Register 2009, No. 33).

3651. Penal Code Section 186.30 Registrants (Gang Offenders).

(a) Any inmate/parolee required to register pursuant to Penal Code (PC) section 186.30 shall register with the Chief of Police of the city in which he or she resides, or the Sheriff of the county if he or she resides in an unincorporated area or in a city that has no police department, within 10 days of release from custody or within 10 days of his or her arrival in any city, county, or city and county to reside, whichever comes first.

(b) The registration required by PC section 186.30 shall consist of the following:

(1) The parolee shall appear at the law enforcement agency.

(2) The law enforcement agency will serve the parolee with a California Street Terrorism Enforcement and Prevention Act notification which includes, where applicable, that the parolee belongs to a Security Threat Group (STG) whose members engage in or have engaged in a pattern of criminal STG activity as described in PC section 186.22(e).

(3) The parolee shall submit a written statement, signed by the parolee, giving any information that may be required by the law enforcement agency.

(4) The parolee shall submit his or her fingerprints and a current photograph to the law enforcement agency.

(c) Within 10 days of changing his or her residence address, any person required to register shall inform, in writing, the law enforcement agency with whom he or she last registered, of his or her new address. If his or her new residence address is located within the jurisdiction of a law enforcement agency other than the agency where he or she last registered, he or she shall also register with the new law enforcement agency, in writing, within 10 days of the change of residence.

(d) Any parolee required to register who knowingly violates any of the provisions of PC section 186.30 is guilty of a misdemeanor.

(e) Any person who is required under PC section 186.30 and who knowingly fails to register, and who is subsequently convicted of or subject to a juvenile petition that is sustained for a violation of any of the offenses in PC section 186.30 is subject to an additional term of imprisonment in the state prison.

(f) The registration requirement terminates five years after the last imposition of a registration requirement that arose under PC section 186.30.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 186.30, 186.32, 186.33 and 5054, Penal Code.

HISTORY:

1. New section filed 8-11-2009; operative 9-10-2009 (Register 2009, No. 33).
2. Amendment of subsection (b)(2) filed 10-17-2014; operative 10-17-2014 pursuant to Government Code section 11343.4(b)(3) (Register 2014, No. 42).

3652. Penal Code Section 290 Registrants (Sex Offenders).

(a) Any inmate/parolee who is required to register pursuant to Penal Code (PC) section 290 et seq. shall register with the Chief of Police of the city in which he or she is residing, or the Sheriff of the county if he or she is residing in an unincorporated area or city that has no police department. The inmate/parolee shall also register with the Chief of Police of a campus of the University of California, the California State University, or community college if he or she is residing upon the campus or in any of its facilities. The inmate/parolee shall meet these registration requirements within five working days of coming into, or changing his or her residence within, any city, county, or city and county, or campus in which he or she temporarily resides.

(1) If the person who is registering has more than one residence address at which he or she regularly resides, he or she shall register in each of the jurisdictions in which he or she regularly resides, regardless of the number of days or nights spent there. If all of the addresses are within the same jurisdiction, the parolee shall provide the registering authority with all of the addresses where he or she regularly resides.

(2) Beginning on his or her first birthday following registration or change of address, the person shall register annually, within five working days of his or her birthday, to update his or her registration(s). At the annual update, a sex offender registrant shall provide current information as required by the Department of Justice annual update forms and PC section 290.012.

(3) The registration requirement shall be for life.

(b) Sexually Violent Predators:

(1) Every person who has been adjudicated a sexually violent predator as defined in section 6600 of the Welfare and Institutions Code, shall, after his or her release from custody, verify his or her residence and employment addresses at least once every 90 days, including the name of the employer and the place of employment.

(2) Any person who has ever been adjudicated a sexually violent predator, and who fails to verify his or her registration at least every 90 days is subject to imprisonment in the state prison, or in the county jail not to exceed one year.

(c) Definitions: For the purpose of this section, the following terms are defined:

(1) Transient means a person who has no residence.

(2) Residence means one or more addresses at which a person regularly resides, regardless of the number of days or nights spent there, such as a shelter or structure that can be located by a street address, including, but not limited to, houses, apartment buildings, motels, hotels, homeless shelters, and recreational and other vehicles.

(d) Transient parolees required to register pursuant to PC Section 290 et seq:

(1) Following Release: A transient must register, or re-register if the person has previously registered, within five working days after release from incarceration, placement or commitment, or release on probation, except that if the person previously registered as a transient less than 30 days from the date of his or her release from incarceration, he or she does not need to re-register as a transient until his or her next required 30-day re-registration. If a transient is not physically present in any one jurisdiction for five consecutive working days, he or she must register or re-register in the jurisdiction in which he or she is physically present on the fifth working day following release.

(2) Re-Register: Beginning on or before the 30th day following initial registration upon release, a transient must re-register and continue to re-register, at least once every 30 days. A transient must re-register at least once every 30 days regardless of the length of time he or she has been physically present in the particular jurisdiction in which he or she re-registers. A transient shall re-register with the Chief of Police of the city in which he or she is physically present within that 30-day period, or the Sheriff of the county if he or she is physically present in an unincorporated area or city that has no police department, and additionally, with the Chief of Police of a campus of the University of California, the California State University, or community college if he or she is physically present upon the campus or present in any of its facilities.

(3) Failure to Re-Register: If a transient fails to re-register within any 30-day period, he or she is subject to prosecution in any jurisdiction in which he or she is physically present. Willful failure to re-register within any 30-day period is a misdemeanor, and under some circumstances specified in PC section 290.018(g), is a felony.

(4) Annual Update: Beginning on his or her first birthday following registration, a transient shall register annually within five working days of his or her birthday, to update his or her registration with the law enforcement agency or agencies having jurisdiction over the place in which he or she is physically present on that date.

(5) Required Information: A transient shall, upon registration, 30-day re-registration, and the annual update, provide current information as required on the Department of Justice registration forms, including the information required by PC section 290.015(a), and shall also list the places where he or she sleeps, eats, works, frequents, and engages in leisure activities. If a transient changes or adds to the places listed on the form during a 30-day re-registration period, he or she does not need to report the new place or places until the next required registration.

(6) Move to Residence: A transient who moves to a residence shall have five working days within which to register at that address.

(7) Becomes Transient: A person registered at a residence address who becomes transient shall have five working days within which to register or re-register as a transient.

(e) Providing Proof of Registration, Changes and Updates: Every person released on parole who is required to register as a sex offender shall provide proof of registration to his or her parole agent within six working days of release on parole. The six-day period for providing proof of registration may be extended but only upon determination by the parole agent that unusual circumstances exist relating to the availability of local law enforcement registration capability that preclude that person's ability to meet the deadline.

(1) Every parolee who is required to register as a sex offender who makes a change or update to his or her registration information shall provide proof of any change or update to his or her parole agent within five working days of making the change or update with the Chief of Police or County Sheriff and if applicable, with the Campus Police Chief.

(2) A parole agent who supervises a parolee who is required to register as a sex offender shall inform that parolee of the parolee's

duties under this subsection no fewer than six days prior to the date on which proof of registration is to be provided to the parole agent.

(3) For the purpose of this section, proof of registration means a photocopy of the actual registration form.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 290, 290.010, 290.011, 290.012, 290.013, 290.015, 290.85 and 5054, Penal Code.

HISTORY:

1. New section filed 8-11-2009; operative 9-10-2009 (Register 2009, No. 33).

3653. Penal Code Section 457.1 Registrants (Arson Offenders).

(a) The following offenders convicted of arson, a violation of Penal Code (PC) section 451, 451.5 or 453, and offenders convicted of attempted arson, which includes but is not limited to, a violation of PC section 455, shall register:

(1) Any offender who, on or after November 30, 1994, is convicted in any court in California of arson or attempted arson shall be required to register for the rest of his or her life.

(2) Any offender who, on or after January 1, 1985 through November 29, 1994, inclusive, is convicted in any court in California of arson or attempted arson, shall be required to register for a period of five years beginning, in the case where he or she was confined for the offense, from the date of his or her release from confinement, or if he or she was not confined for the offense, from the date of sentencing or discharge if he or she was ordered by the court at the time of sentencing to register as an arson offender.

(b) Registration Timing and Jurisdiction(s) Where to Register: Offenders with a registration obligation under subsection (a) above must register within 14 days of coming into or changing residence or location within any city, county, city and county, or campus where he or she temporarily resides, or if he or she has no residence, is located with the following law enforcement:

(1) Chief of Police: If the person is residing in a city, or if the person has no residence and is located in a city, he or she must register with the Chief of Police of the city where he or she is residing or located, or;

(2) Sheriff: If the person is residing in an unincorporated area or in a city that does not have a police department, or if the person has no residence and is located in an unincorporated area or in a city that does not have a police department, he or she must register with the Sheriff of the county where the person is residing or located.

(3) Chief of Police, Campus: If the person is residing at a campus of the University of California, the California State University, or a community college, or if the person has no residence and is located at one of these places, he or she must register with the Chief of Police of that campus, in addition to registering with either the Chief of Police or Sheriff.

(c) Information: Law enforcement agencies shall make registration information of arson registrants required to register under subsection (a)(2) above available to the chief fire official of a legally organized fire department or fire protection district having local jurisdiction where the person resides. Law enforcement agencies are permitted to make registration information of arson registrants required to register under both (a)(1) and (a)(2) above available to regularly employed peace officers and to other law enforcement officers, including those employed by fire departments and fire protection districts.

(d) Change of Residence: If an arson offender required to register by PC section 457.1 changes his or her residence address, he or she shall inform, in writing, within 10 days, the law enforcement agency with whom he or she last registered of his or her new address. The law enforcement agency is obligated to, within three days after receipt of the information, electronically forward it to the Department of Justice. The Department of Justice is obligated to forward appropriate registration data to the law enforcement agency having local jurisdiction of the new place of residence.

(e) Violations:

(1) Any offender required to register who violates any of the provisions of PC section 457.1 is guilty of a misdemeanor.

(2) Any offender who has been convicted of arson or attempted arson and who is required to register who willfully violates any provisions of PC section 457.1 is guilty of a misdemeanor and is subject to being sentenced to a term of not less than 90 days nor more than one year in a county jail.

(3) Whenever any person is released on parole and is required to register under PC section 457.1 but fails to do so within the required timeframe, the Board of Parole Hearings is obligated to order the parole of that person revoked.

(f) Relief from Obligation to Register: A person required to register may initiate a legal proceeding under the Penal Code, Chapter 3.5, beginning with section 4852.01 of Title 6, Part 3, and upon obtaining a certificate of rehabilitation, shall be relieved of any further duty to register under this section for the offense(s) giving rise to the certificate of rehabilitation.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 451, 451.5, 453, 455, 457.1 and 5054, Penal Code.

HISTORY:

1. New section filed 8-11-2009; operative 9-10-2009 (Register 2009, No. 33).

3654. Health and Safety Code 11590 Registrants (Drug Offenders).

(a) Any inmate/parolee obligated to register under Health and Safety Code (H&SC) section 11590 shall register with the Chief of Police of the city in which he or she resides, or the Sheriff of the county if he or she resides in an unincorporated area or in a city without a police department, within 30 days of release from custody, or within 30 days of his or her arrival, in any city, county, or city and county to reside.

(b) Change of Address: If an inmate/parolee required to register by H&SC section 11590, changes his or her residence address, he or she shall inform, in writing, within 10 days, the law enforcement agency with whom he or she last registered of his or her new address. The law enforcement agency is obligated, within three days after receipt of the information, to forward it to the Department of Justice. The Department of Justice is obligated to forward appropriate registration data to the law enforcement agency having local jurisdiction of the new place of residence.

(c) Registration Requirements. The registration required by H&SC section 11590 shall consist of the following:

(1) The parolee shall appear at the law enforcement agency.

(2) A written statement, signed by the parolee, giving any information that may be required by the Department of Justice.

(3) The fingerprints and current photograph of the parolee shall be submitted to the law enforcement agency.

(d) Violations: Any parolee required to register by H&SC section 11590 who knowingly violates any of its provisions is guilty of a misdemeanor.

(e) Termination: The registration requirement of H&SC section 11590 shall terminate five years after the discharge from prison, release from jail or termination of probation or parole of the person convicted.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code; and Sections 11590 and 11594, Health and Safety Code.

HISTORY:
1. New section filed 8-11-2009; operative 9-10-2009 (Register 2009, No. 33).

Article 14. Hormonal Chemical Treatment for Sex Offenders [Reserved]

3700. Medroxyprogesterone Acetate Treatment Program. [Reserved]

3701. Medroxyprogesterone Acetate Treatment Advisory Board. [Reserved]

3702. First Conviction of a Qualifying Offense. [Reserved]

3703. Second Conviction of a Qualifying Offense. [Reserved]

3704. Qualifying Offenses. [Reserved]

3705. Beginning Treatment. [Reserved]

3706. Alternative to Medroxyprogesterone Acetate Treatment. [Reserved]

3707. Administration of Medroxyprogesterone Acetate Treatment Program. [Reserved]

Article 15. Discharge

3720. Discharge Reviews.

(a) Inmate/parolees who are released to non-revocable parole as provided in section 3505, are excluded from any of the provisions of this Article 15, Discharge.

(b) The following terms are defined for the purpose of this Article 15, Discharge:

(1) Continuous Parole, pursuant to California Code of Regulations (CCR), Title 15, subsection 2535(b)(4), is parolees who have not had parole revoked or absconded from parole supervision since their initial release. If a revocation, revocation with credit for time served, or suspension with reinstatement of parole with time loss has occurred in the period, the parolee has not been on continuous parole.

(2) Discharge Review means a review of a parolee's criminal history, and his or her adjustment and/or performance while under parole supervision for the purpose of rendering a decision as to whether or not a parolee should be retained on parole supervision for another year or be discharged from parole supervision altogether.

(c) Discharge review periods to be followed by the Division of Adult Parole Operations are as follows:

(1) The review for those parolees who are subject to a three-year parole period as provided in CCR, Title 15, Division 2, subsection 2515(b), shall be performed during the 12th month of continuous parole, except for those who were committed for violent felonies as listed in section 667.5(c) of the Penal Code, in which case the review shall be performed during the 24th month of continuous parole.

(2) The review for those parolees who are subject to a five-year parole period, as provided for in CCR, Title 15, Division 2, subsection 2515(d), shall be performed during the 36th month of continuous parole.

(3) The review for those parolees who are subject to lifetime parole period shall be during the 84th month of continuous parole for first degree murder parolees and during the 60th month of continuous parole for second degree murder parolees.

(4) A parolee shall be immediately referred to the Board of Parole Hearings for discharge consideration if any of the following criteria exist:

(A) Confirmation exists that the parolee was deported to his or her country of origin after being released to parole.

(B) Confirmation exists that the parolee is under the supervision of another prison system, state or federal, and that supervision period, which includes the period of incarceration and any supervised release, exceeds the jurisdiction period maintained by the Department.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 3000.03, 3000.1, 3001, 3052, 5054 and 5076.2, Penal Code.

HISTORY:
1. New article 15 (sections 3720-3723) and section filed 4-26-2010; operative 5-26-2010 (Register 2010, No. 18).

3721. Discharge Review Reports.

(a) The assigned parole agent shall review each case within the specified review period and recommend retaining the case on parole or recommend discharge and allow the case to discharge by operation of law.

(b) The parole agent must complete a discharge review report, whether the recommendation is to retain or discharge. The following factors shall be considered in conducting discharge reviews and preparing a discharge review report for a parolee in the community:

(1) Parole Adjustment. Whether or not the parolee was complying with his or her conditions of parole or involved in any criminal behavior or activities, the parole adjustment shall include, but is not limited to, the following:

(A) Residence, whether or not the parolee's residential pattern is stable.

(B) Employment, whether or not the parolee demonstrated a steady pattern of employment, educational or vocational training, and if he or she has the ability to reasonably provide for his or her own financial needs while in the community.

(C) Compliant with Special Conditions of Parole. Address any known violations of any general, mandatory or special conditions of parole, or the parolee's ability to comply with all conditions.

(D) Psychological Factors. Note the mental health status of the parolee and his or her compliance with any mental health treatment.

(E) STG Validation. Note any past or present involvement in any STG, criminal, or street gang as a validated member, associate, or affiliate, and if the parolee is a validated STG-I member, associate, or affiliate.

(2) Restitution. Note any fine and/or restitution balance at the time of review, and any effort to satisfy the fine and/or restitution balance.

(3) Criminal History.

(A) Sex, Arson, Gang or Drug Registration Requirements. Note any registration requirement as per sections 290, 457.1 and 186.30 of the Penal Code; and/or section 11590 of the Health and Safety Code and if the applicable registrations(s) are current.

(B) Serious or Violent Commitment Offense. Indicate whether or not the parolee's commitment offense, regardless of whether it is the controlling or non-controlling case, is considered serious or violent as defined in Penal Code sections 1192.7(c), 1192.8, or 667.5(c).

(C) Use of a Weapon during Commitment Offense. Indicate whether or not it is known if the parolee's commitment offense involved the use of a weapon, regardless of whether it is the controlling or non-controlling commitment offense.

(D) Possession of Firearm during Commitment Offense. Indicate whether or not the parolee's commitment offense involved the

possession of a firearm, regardless of whether it is the controlling or non-controlling commitment offense.

(E) History of Serious or Violent Felony Convictions. Indicate whether or not the parolee's criminal history includes a conviction for any serious or violent felony as defined in Penal Code sections 1192.7(c), 1192.8, or 667.5(c).

(F) History of Use of a Weapon Conviction. Indicate whether or not the parolee's criminal history includes a conviction for any offense involving the use of a weapon.

(G) History of Possession of a Firearm Conviction. Indicate whether or not the parolee's criminal history includes a conviction for any offense involving the possession of a weapon within the 10 year period before the commitment offense.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 3000.1, 3001, 3052, 5054 and 5076.2, Penal Code.

HISTORY:
1. New section filed 4-26-2010; operative 5-26-2010 (Register 2010, No. 18).
2. Amendment of subsection (b)(1)(E) filed 10-17-2014; operative 10-17-2014 pursuant to Government Code section 11343.4(b)(3) (Register 2014, No. 42).

3721.1. Documenting the Discharge Review.

Discharge Review Report. When preparing a discharge review report on a parolee, it shall be reported on a CDCR Form 1502 (Rev. 10/06), Activity Report, which is incorporated by reference.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.

HISTORY:
1. New section filed 4-26-2010; operative 5-26-2010 (Register 2010, No. 18).

3722. Annual Discharge Reviews.

(a) General. At the discharge review, the Division of Adult Parole Operations shall consider the parolee's adjustment on parole and any other information relevant to determining whether the parolee should be discharged or retained under parole supervision.

(b) In the event of a retention on parole, the parolee shall be entitled to a review by the parole authority each year thereafter until the statutory maximum period of parole expires. In the event the Board of Parole Hearings (BPH) acts to retain parole, the parole agent shall complete subsequent annual reviews each year thereafter and forward the discharge review report to the BPH for discharge or retain consideration. Annual discharge reviews shall be performed as provided in section 3720 and as noted in this section.

(c) Criteria. Factors tending to indicate there is good cause to retain a parolee on parole include:

(1) Commitment Offense. The parolee was committed to prison for several offenses, for an offense involving weapons or great bodily harm, for an offense which was part of large scale criminal activity or for an offense which caused considerable concern in the local community.

(2) Parole Adjustment. While on parole, the parolee has been involved in criminal activity even if that activity did not result in revocation of parole, has been using drugs, has been involved in gang activities, is currently undergoing criminal prosecution or is being investigated for possible prosecution.

(3) Placement Returns. The parolee has been returned to custody for substance abuse or psychiatric treatment.

(4) Supervision Needed. The parolee is in special need of continued supervision for the safety of the parolee or of the public.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 3000.1, 3001, 3052, 3054 and 5076.2, Penal Code.

HISTORY:
1. New section filed 4-26-2010; operative 5-26-2010 (Register 2010, No. 18).

3723. Parolee Rights.

The parolee shall receive a copy of the discharge review decision, including the reasons for a decision not to discharge the parolee, if applicable. The parolee may appeal any mistake of fact contained in the discharge review report pursuant to the appeals process provided in sections 3084–3084.9. If a mistake of fact is substantiated and that mistake results in a change in the recommendation to retain on parole, the corrected discharge review report with the recommendation to discharge shall be corrected and submitted to the Board of Parole Hearings with a request to reconsider the decision to retain.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.

HISTORY:
1. New section filed 4-26-2010; operative 5-26-2010 (Register 2010, No. 18).
2. Amendment filed 12-13-2010 as an emergency; operative 1-28-2011 (Register 2010, No. 51). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 7-7-2011 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 12-13-2010 order transmitted to OAL 6-15-2011 and filed 7-28-2011 (Register 2011, No. 30).

Article 16. Restitution

3730. Restitution Obligations.

Restitution obligations shall be considered when recommending a parolee for early discharge or when conducting an annual discharge review.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 4852.05 and 5054, Penal Code.

HISTORY:
1. New article 16 (section 3730) and renumbering of former section 3501 to section 3730, including amendment of section, filed 6-17-2009; operative 7-17-2009 (Register 2009, No. 25).

Article 17. Revocation or Limited Placement Releases

3740. Release from Revocation or Limited Placement.

Upon a parolee's release from local custody, an institution, facility, or sanction imposed program their assigned parole agent shall assist the parolee to return to their previous parole program or to develop a new program based upon their particular needs or Board of Parole Hearings imposed sanction.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.

HISTORY:
1. Change without regulatory effect adding article 17 (section 3740) and renumbering former section 3605.5 to new section 3740 filed 7-30-2008 pursuant to section 100, Title 1, California Code of Regulations (Register 2008, No. 31).
2. Amendment filed 6-17-2009; operative 7-17-2009 (Register 2009, No. 25).

Article 18. Parole Holds

3750. Authority to Place a Parole Hold.

(a) If the parole agent has probable cause, as described in Section 3753, to believe the parolee has violated conditions of parole

or of the law, the parole agent may arrest the parolee without a warrant at any time during the period of parole supervision and bring him or her before the court for final adjudication, pursuant to Penal Code (PC) Section 1203.2.

(b) The parole hold decision must be made in every case regardless of the type of crime or parole violation with which the parolee is charged or whether another criminal justice agency is detaining the parolee.

(c) A parole agent may impose a parole hold when the parole agent determines that the parolee falls within the criteria listed in Section 3751, and upon review by the unit supervisor, there is probable cause to believe the parolee has violated parole and the parole hold is appropriate.

(d) Pursuant to PC Sections 3000.08(c) and/or 3056, a parole agent may place a parole hold on a parolee when the parolee has been confined in a county jail facility as the result of a technical violation and/or a new criminal charge as a result of the violation of the law described in subsection 3750(a), or may arrest a parolee and place him or her in a county jail facility on a parole hold pending investigation of the alleged parole violations or new violations of the law.

(e) When determining whether or not to place a parole hold, the parole agent may do the following:

(1) Place the parole hold.

(2) Take any action as described in Section 3764.

NOTE: Authority cited: Sections 3056, 5058 and 5058.3, Penal Code. Reference: Sections 1203.2, 3000(b)(7), 3000(b)(9)(A), 3052, 5054 and 5054.1, Penal Code.

HISTORY:

1. New article 18 (sections 3750–3756) and section filed 2-6-2014 as an emergency; operative 2-6-2014 (Register 2014, No. 6). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 7-16-2014 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 2-6-2014 order, including repealer of subsection (a), subsection relettering and amendment of newly designated subsection (d), transmitted to OAL 7-16-2014 and filed 8-27-2014; amendments effective 8-27-2014 pursuant to Government Code section 11343.4(b)(3) (Register 2014, No. 35).

3751. Criteria for Placement of a Parole Hold.

(a) A parolee suspected of a parole violation may be detained by a parole hold for any of the following reasons:

(1) The parolee is a danger to the person or property of another.

(2) The parolee is suspected of a parole violation and is believed to be at high risk to abscond from parole supervision based on prior parole supervision history or other case factors or information.

NOTE: Authority cited: Sections 5058 and 5058.3, Penal Code. Reference: Sections 1203.2, 3052, 3056, 5054 and 5076.2, Penal Code.

HISTORY:

1. New section filed 2-6-2014 as an emergency; operative 2-6-2014 (Register 2014, No. 6). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 7-16-2014 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 2-6-2014 order transmitted to OAL 7-16-2014 and filed 8-27-2014 (Register 2014, No. 35).

3752. Factors to be Considered for Placement of a Parole Hold.

Factors to be considered when deciding whether to place a parole hold include:

(a) Drug or alcohol abuse. If drug or alcohol abuse is the only factor warranting a parole hold, the parolee shall be placed in the county jail facility only when there is no suitable alternative available such as a residential drug or alcohol treatment program.

(b) The seriousness of the alleged parole violation.

(c) Prior instances of assaultive behavior when the present violation relates to danger to others.

(d) Involvement in the transportation, sale, or distribution of narcotics or restricted drugs.

(e) Any present threats of violence.

(f) Repeated unlawful conduct during the parolee's current parole.

(g) Record of escapes from custody or of absconding from parole, probation or bail.

(h) Employment history and stability.

(i) Residential pattern.

(j) Nature of family and community relationships.

NOTE: Authority cited: Sections 5058 and 5058.3, Penal Code. Reference: Sections 1203.2, 3052, 3056, 5054 and 5076.2, Penal Code; and *Terhune* v. *Superior Court* (Whitley), 65 Cal.App.4th 864.

HISTORY:

1. New section filed 2-6-2014 as an emergency; operative 2-6-2014 (Register 2014, No. 6). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 7-16-2014 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 2-6-2014 order transmitted to OAL 7-16-2014 and filed 8-27-2014 (Register 2014, No. 35).

3753. Review of a Parole Hold.

(a) As soon as possible, but no later than close of the next business day, upon discovery of a known violation of parole and the placement of a parole hold, the parole agent shall conduct a case conference with the parole unit supervisor to present the facts and circumstances of the parolee behavior to determine whether there is probable cause to retain the parole hold.

(b) A parole unit supervisor or the parole administrator may order the removal of a parole hold upon review as described in subsection 3753(a).

(c) Once removed, a parole hold shall not be reinstated unless new information is received which may indicate that the parolee's behavior falls within the criteria set forth in Section 3751. If the parole hold is reinstated, the parolee shall be issued the reasons in writing as provided in Section 3754.

(d) If upon review, it is determined that the county of arrest has no jurisdiction to pursue a revocation, the parole hold shall be removed and the parolee shall be ordered to return to his or her county of supervision and the jurisdiction of the county superior court (court). Upon the parolee's return to the county of supervision, the parole agent shall submit a petition for revocation to the court to adjudicate the parole violation(s).

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.

HISTORY:

1. New section filed 2-6-2014 as an emergency; operative 2-6-2014 (Register 2014, No. 6). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 7-16-2014 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 2-6-2014 order transmitted to OAL 7-16-2014 and filed 8-27-2014 (Register 2014, No. 35).

3754. Notification of Reasons for a Parole Hold.

(a) In all cases wherein the parole unit supervisor determines probable cause exists to retain the parole hold, the noticing parole agent shall notify the parolee in writing of the reasons for the retention of the parole hold no later than three business days from the date of placement of the hold, utilizing CDCR Form 1502-B (Rev. 04/13), Probable Cause Determination, which is incorporated by

reference. The notice shall include a summary of the violation(s) relied upon to maintain the parole hold.

(b) The noticing parole agent shall provide the parolee with the CDCR Form 2271 (04/14), Notice and Request for Assistance During Parole Proceeding, which is incorporated by reference, no later than three business days from the date of the placement of the hold. If the parolee is released from the custody of the county jail and is instructed to report to the court for a petition for revocation prior to him or her being served the CDCR Form 2271, the noticing parole agent shall ensure that the parolee is served with the CDCR Form 2271 upon the parolee reporting to the court, as previously instructed in subsection 3753(d).

(c) If the parole hold has been placed or reinstated by the Board of Parole Hearings (BPH) or the court, the parole agent shall notify the parolee in writing of the reasons for the reinstatement of the parole hold as described in subsection 3754(a).

NOTE: Authority cited: Sections 5058 and 5058.3, Penal Code. Reference: Sections 1203.2, 3052, 3056, 3057, 5054 and 5076.2, Penal Code.

HISTORY:

1. New section filed 2-6-2014 as an emergency; operative 2-6-2014 (Register 2014, No. 6). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 7-16-2014 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 2-6-2014 order, including amendment of subsection (b), transmitted to OAL 7-16-2014 and filed 8-27-2014; amendments effective 8-27-2014 pursuant to Government Code section 11343.4(b)(3) (Register 2014, No. 35).

3756. Length of a Parole Hold.

(a) Pursuant to PC Sections 3056, 3057 and 3060.5, the following shall apply:

(1) Unless otherwise provided by law, for all parolees with a parole hold/discovery date on or after October 1, 2011, the parole hold shall not remain in effect for longer than 180 days.

(2) For purposes of this Section, the discovery date is the date the parole supervising authority obtains knowledge that an alleged violation of parole has occurred.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 3000.08(g) and 5054, Penal Code.

HISTORY:

1. New section filed 2-6-2014 as an emergency; operative 2-6-2014 (Register 2014, No. 6). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 7-16-2014 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 2-6-2014 order, including amendment of Note, transmitted to OAL 7-16-2014 and filed 8-27-2014; amendments effective 8-27-2014 pursuant to Government Code section 11343.4(b)(3) (Register 2014, No. 35).

Article 19. Parole Violations and Reports

3760. Parole Violations and Reports.

(a) Persons on parole for specified crimes, as listed in PC Sections 3000(b)(4) and 3000.1(a)(1)–(2), are subject to PC Section 3000.1 proceedings upon revocation of parole. Parolees subject to PC Section 3000.1 shall be placed into a local jail facility on a parole hold, and shall, upon good cause finding by the court, be retained in local custody pending transfer to state prison.

(b) Pursuant to PC Section 3000.08, persons released from state prison after serving a prison term for the following crimes, or whose sentence has been deemed served pursuant to PC Section 2900.5 and who are not serving a life term of parole supervision, shall be subject to parole supervision by the Department and the jurisdiction of the court in the county where the parolee is supervised or the county in which the alleged parole violation occurred for the purpose of hearing petitions and imposition of a revocation of parole term:

(1) A serious felony as described in PC Section 1192.7(c).

(2) A violent felony as described in PC Section 667.5(c).

(3) A crime for which the person eligible for release from state prison is classified as a High Risk Sex Offender by the CDCR.

(4) Any crime where the person is required, as a condition of parole, to undergo treatment by the Department of Mental Health pursuant to PC Section 2962.

(c) All petitions to the court for revocation of parole shall be reviewed and approved by the parole administrator. When the court finds good cause that the parolee has committed a violation of his or her conditions of parole or of the law, the parole agent shall by order of the court impose additional and appropriate conditions of parole, including, but not limited to, rehabilitation and treatment services, appropriate incentives for compliance, or immediate and structured sanctions as described in Section 3764 for parole violations.

NOTE: Authority cited: Sections 5058 and 5058.3, Penal Code. Reference: Sections 1203.2, 3000(b)(9)(A), 3000.08, 3000.1, 3052, 3063, 5054 and 5054.1, Penal Code.

HISTORY:

1. New article 19 (sections 3760–3766) and section filed 2-6-2014 as an emergency; operative 2-6-2014 (Register 2014, No. 6). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 7-16-2014 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 2-6-2014 order transmitted to OAL 7-16-2014 and filed 8-27-2014 (Register 2014, No. 35).

3761. Investigation of Parole Violations.

The parole agent shall investigate all known and suspected parole violations. All available facts relating to the known or suspected parole violation(s) shall be documented as described in Section 3762. The investigating parole agent shall obtain a copy of the arresting agency's arrest report and/or investigation report when a parolee is arrested or is suspected of a new crime. The investigating parole agent may interview all persons who have knowledge of the suspected parole violation(s) whether or not the violation(s) are being investigated as a new crime(s) ensuring that his or her investigation does not compromise the integrity of any on-going investigation that is being conducted by a local law enforcement agency.

NOTE: Authority cited: Sections 5058 and 5058.3, Penal Code. Reference: Sections 290, 1203.3, 3000, 3000(b)(9)(A), 3052, 3053, 3056, 3057, 5054, 5054.1 and 5076.2, Penal Code; and Sections 11561 and 11563, Health and Safety Code.

HISTORY:

1. New section filed 2-6-2014 as an emergency; operative 2-6-2014 (Register 2014, No. 6). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 7-16-2014 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 2-6-2014 order transmitted to OAL 7-16-2014 and filed 8-27-2014 (Register 2014, No. 35).

3761.1. Investigation of Supplemental Parole Violations.

If the parole agent discovers additional parole violations, or violations of the law, requiring submission of additional information to the court, the parole agent shall record the additional information on the CDCR Form 1502-B and forward to the parole unit supervisor no later than one business day from the date of discovery of the violation, and notify the parolee as described in Section 3754.

NOTE: Authority cited: Sections 5058 and 5058.3, Penal Code. Reference: Sections 290, 1203.2, 3000, 3000(b)(9)(A), 3052, 3053, 3056, 3057, 5054, 5054.1 and 5076.2, Penal Code; and Sections 11561 and 11563, Health and Safety Code.

HISTORY:

1. New section filed 2-6-2014 as an emergency; operative 2-6-2014 (Register 2014, No. 6). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 7-16-2014 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 2-6-2014 order transmitted to OAL 7-16-2014 and filed 8-27-2014 (Register 2014, No. 35).

3762. Parole Violation Report (CDCR Form 1676).

Parole violations are documented on the CDCR Form 1676 (Rev. 04/13), Parole Violation Report, hereby incorporated by reference. The CDCR Form 1676 shall be prepared electronically within the Parole Violation Disposition Tracking System (PVDTS) by the parole agent specifying the charges against the parolee and shall contain or refer to the information known to the parole agent relevant to the charges. The CDCR Form 1676 shall be processed as described in Section 3768.3 upon completion.

NOTE: Authority cited: Sections 5058 and 5058.3, Penal Code. Reference: Sections 290, 1203.2, 3000, 3000(b)(9)(A), 3000.08(a), 3015(b) 3052, 3053, 3056, 3057, 5054, 5054.1 and 5076.2, Penal Code.

HISTORY:

1. New section filed 2-6-2014 as an emergency; operative 2-6-2014 (Register 2014, No. 6). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 7-16-2014 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 2-6-2014 order, including amendment of section, transmitted to OAL 7-16-2014 and filed 8-27-2014; amendments effective 8-27-2014 pursuant to Government Code section 11343.4(b)(3) (Register 2014, No. 35).

3763. Petition for Revocation.

Judicial Council of California Form CR 300 (Rev. 01/14), Petition for Revocation, which is incorporated by reference, or the unique court form established by a court for this purpose in a particular county, shall be utilized by the parole agent for submitting a recommendation for revocation of parole to the court.

(a) The parole agent shall submit the Form CR 300, or the unique court form established by a court for this purpose in a particular county, with the following attachments:

(1) CDCR Form 1676, Parole Violation Report

(2) CDCR Form 1502-B, Probable Cause Determination

(3) CDCR Form 1521-B (Rev. 04/13), Criminal History, which is incorporated by reference

(4) CDCR Form 1244 (Rev. 4/13), Parole Violation History, which is incorporated by reference

(5) CDCR Form 1515 (Rev. 04/14), Notice and Conditions of Parole

(6) CDCR 1515-Addendum (Rev. 04/13), Special Conditions of Parole, which is incorporated by reference

(b) When appropriate, the parole agent shall file a petition for prosecution with the local district attorney's office, utilizing the CDCR Form 2278 (04/14), Arrest Report, which is incorporated by reference, in addition to the documents described in Section 3763(a).

NOTE: Authority cited: Sections 5058 and 5058.3, Penal Code. Reference: Sections 1203.2, 3000.08(a), 3052, 3053, 3063, 5054 and 5076.2, Penal Code.

HISTORY:

1. New section filed 2-6-2014 as an emergency; operative 2-6-2014 (Register 2014, No. 6). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 7-16-2014 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 2-6-2014 order, including amendment of section, transmitted to OAL 7-16-2014 and filed 8-27-2014; amendments effective 8-27-2014 pursuant to Government Code section 11343.4(b)(3) (Register 2014, No. 35).

3764. Recommendations.

The parole agent shall recommend the appropriate sanction to address the violation charged. Public safety shall be the primary concern when determining the recommendation. The parole agent shall choose from the following recommendations and make the recommendation on the CDCR Form 1502-B:

(a) Continue on Parole. This recommendation may be used when the violation charged is not serious enough to warrant petition for revocation. A "Continue on Parole" recommendation may include a recommendation to delete or modify conditions of parole, or add special conditions of parole.

(b) Refer to a local community program. This recommendation may be used when the violation charged is not serious enough to warrant a petition for revocation of the parolee, but does require treatment which can be obtained in a community facility or program.

(c) Remedial Sanctions to include but not limited to the use of Electronic In-Home Detention monitoring.

(d) Petition for Revocation upon review and approval by the parole administrator as described in subsection 3760(c). This recommendation may be used whenever the violation charged is indicative of a violation of conditions of parole or of the law.

NOTE: Authority cited: Sections 5058 and 5058.3, Penal Code. Reference: Sections 1203.2, 3000(b)(7), 3000(b)(9)(A), 3052, 5054 and 5054.1, Penal Code.

HISTORY:

1. New section filed 2-6-2014 as an emergency; operative 2-6-2014 (Register 2014, No. 6). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 7-16-2014 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 2-6-2014 order transmitted to OAL 7-16-2014 and filed 8-27-2014 (Register 2014, No. 35).

3765. Legal Custody and Jurisdiction of County Jail Facility.

A parolee may be housed in a county jail facility in the county where he or she was arrested or the county where the petition to revoke parole is filed.

(a) When housed in a county jail facility, parolees are under the sole legal custody and jurisdiction of the county, and shall remain under the sole legal custody and jurisdiction of the county sheriff or county correctional administrator even if placed in an alternative custody program in lieu of incarceration, including but not limited to, the following:

(1) Work Furlough

(2) Electronic In-Home Detention

(b) When the parolee, including a parolee placed on Electronic In-Home Detention, is under the legal custody and jurisdiction of a county jail facility awaiting parole revocation proceedings, or upon revocation, the parolee shall not be under any supervision by a DAPO parole agent. Parole supervision by the Department shall commence at the time of release from the county jail facility or county alternative custody program following a period of custody for revocation of parole, or upon release from the county jail facility if the court made the determination that there is no violation of parole.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 290, 1203.2, 3000, 3000(b)(9)(A), 3052, 3053, 3056, 3057, 5054, 5054.1 and 5076.2, Penal Code; and Sections 11561 and 11563, Health and Safety Code.

HISTORY:

1. New section filed 2-6-2014 as an emergency; operative 2-6-2014 (Register 2014, No. 6). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 7-16-2014 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 2-6-2014 order transmitted to OAL 7-16-2014 and filed 8-27-2014 (Register 2014, No. 35).

3766. Warrants.

(a) Pursuant to Section 3504.2, inmates meeting the criteria for assignment to the Highest Control or Risk Classification, upon release from confinement from a State facility, are required to report to their assigned parole agent within two days or 48 hours of release from state prison. Within 24 hours of the parolee's failure to report, the DAPO parole agent shall petition the local court as described in subsection 3766(b)(1).

(b) When the parolee is released from a county jail facility, where the parole agent has determined that the parolee has become unavailable for supervision, or of being suspected of committing a serious crime, the parole agent shall attempt to locate the parolee, and if the parole agent has determined that the parolee's whereabouts are unknown, obtain a warrant from the court for the parolee's arrest, completing the following steps:

(1) Petition the court to issue a written order for the arrest of the parolee pending a hearing before the court utilizing Judicial Council of California Form CR 301 (07/13), Warrant Request and Order, which is incorporated by reference, or the unique court form established by a court for this purpose in a particular county.

(2) Monitor the parolee's status until such time that the parolee is re-arrested and remanded into local custody upon the issuance of an arrest warrant.

(3) Recall the warrant issued by the court upon a parolee's arrest utilizing Judicial Council of California Form CR 302 (07/13), Request and Order to Recall Warrant, which is incorporated by reference, or the unique court form established by a court for this purpose in a particular county, when appropriate.

(c) Department staff shall utilize the CDCR Form 2274 (04/13), After-Hours Warrant Tracking Form, which is incorporated by reference, to process after hours warrant information received by the Administrative Officer of the Day, and manually enter warrant information into the following systems:

(1) CLETS.

(2) CalParole data system.

(d) Pursuant to PC Section 3000(b)(9)(B), any warrant issued by BPH shall remain in full force and effect until the warrant is served or recalled by BPH. All cases of parolees arrested pursuant to a warrant issued by BPH shall be reviewed by BPH. The parole agent shall submit a discharge review report to BPH for discharge consideration. If BPH decides to take no action, and/or retain the parolee on parole, DAPO shall initiate remedial sanctions, which may include continuing the parolee on parole with no sanctions, or filing a petition for revocation of parole as described in Section 3764.

NOTE: Authority cited: Sections 1203.2, 3000(b)(9)(B) and 3060.7, Penal Code. Reference: Sections 3000(b)(9)(A), 3052, 5054, 5054.1, 5058 and 5058.3, Penal Code.

HISTORY:

1. New section filed 2-6-2014 as an emergency; operative 2-6-2014 (Register 2014, No. 6). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 7-16-2014 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 2-6-2014 order, including amendment of subsections (b)(1) and (b)(3), transmitted to OAL 7-16-2014 and filed 8-27-2014; amendments effective 8-27-2014 pursuant to Government Code section 11343.4(b)(3) (Register 2014, No. 35).

3768. Parole Violation Decision-Making Instrument.

(a) The purpose of the Parole Violation Decision-Making Instrument (PVDMI) is to enable parole staff to uniformly determine, recommend, and impose proportionate and consistent sanctions for parole violators. These sanctions will be based on the risk level of the offender and the severity of the violation. The risk level of the offender is determined by the California Static Risk Assessment, as described in section 3768.1. The severity of the violation is based on the department's analysis of all technical and criminal violations. Severity rankings were developed in conjunction with, the California Department of Justice, the Board of Parole Hearings, and the department.

(b) The PVDMI shall be used to assess all violations of parole except as noted in section 3768.2.

(c) For the purposes of this section, "severity rankings" are determined by rating all known parole violation codes, as provided in the Violation Code Descriptions (new 12/09), which is incorporated by reference, in a numerical value from 1 to 4.

NOTE: Authority cited: Sections 5058 and 5058.3, Penal Code. Reference Sections 3015, 5054 and 5076.2, Penal Code.

HISTORY:

1. Amendment of article heading and new section filed 1-7-2010 as an emergency; operative 1-25-2010 pursuant to Penal Code section 5058.3(a) and Government Code section 11346.1(d) (Register 2010, No. 2). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 7-6-2010 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 1-7-2010 order, including amendment of section heading and section, transmitted to OAL 6-25-2010 and filed 7-22-2010 (Register 2010, No. 30).

3768.1. California Static Risk Assessment.

(a) The California Static Risk Assessment (CSRA) (new 12/09), which is incorporated by reference, is a validated risk assessment tool that utilizes a set of risk factors which are most predictive of recidivism. The tool produces a risk number value that will predict the likelihood that an offender will incur a felony arrest within a three-year period after release to parole.

Risk factors utilized include, but are not limited to, age, gender, criminal misdemeanor and felony convictions, and sentence/supervision violations.

(b) CSRA risk number values fall in one of following five categories:

(1) Low Risk, with a risk number value of "1".

(2) Moderate Risk, with a risk number value of "2".

(3) High Risk Drug, with a risk number value of "3". High Risk Drug means that the offender has a greater risk of reoffending with a drug offense.

(4) High Risk Property, with a risk number value of "4". High Risk Property means that the offender has a greater risk of reoffending with a property offense.

(5) High Risk Violence, with a risk number value of "5". High Risk Violence means that the offender has a greater risk of reoffending with a violent offense.

(c) For the purposes of this section, the CSRA is defined as an actuarial tool that computes the likelihood to re-offend (incur a felony arrest within a three-year period after release to parole), and

uses static indicators that do not change. These indicators include gender, age and offense history of the offender.

NOTE: Authority cited: Sections 5058 and 5058.3, Penal Code. Reference Sections 3015, 5054 and 5076.2, Penal Code.

HISTORY:

1. New section filed 1-7-2010 as an emergency; operative 1-25-2010 pursuant to Penal Code section 5058.3(a) and Government Code section 11346.1(d) (Register 2010, No. 2). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 7-6-2010 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 1-7-2010 order, including amendment of subsection (b)(5), transmitted to OAL 6-25-2010 and filed 7-22-2010 (Register 2010, No. 30).

3768.2. Exclusions from the Mandatory Use of the Parole Violation Decision-Making Instrument.

(a) The CDCR Form 1500 (Rev. 05/13), Parole Violation Decision-Making Instrument (PVDMI), which is incorporated by reference, shall be used to assess all known parole violations except in the following circumstances:

(1) Any alleged violation committed by a felon from another state who is being supervised in California under the provisions of the Interstate Commission for Adult Offender Supervision (Compact).

(2) Any alleged violation which is based on in-custody behavior.

(3) If the automated PVDMI system is inoperable due to system failure. The Parole Automation Team (PAT) will notify system users of the failure and estimated time of system restoration, via electronic mail. Upon restoration of the system, the PAT will utilize electronic mail to notify users that the system is operational.

(4) Any alleged violation committed by a participant of a reentry court program shall have his or her violation referred to the reentry court for adjudication.

(b) For the purposes of this section, the PAT is defined as staff assigned to the Division of Adult Parole Operations that are responsible for the information technology and automation needs of the Division, and are responsible for the maintenance and support of the PVDMI system.

NOTE: Authority cited: Sections 5058 and 5058.3, Penal Code. Reference: Sections 3015, 5054 and 5076.2, Penal Code.

HISTORY:

1. New section filed 1-7-2010 as an emergency; operative 1-25-2010 pursuant to Penal Code section 5058.3(a) and Government Code section 11346.1(d) (Register 2010, No. 2). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 7-6-2010 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 1-7-2010 order, including amendment of section heading and subsection (a), transmitted to OAL 6-25-2010 and filed 7-22-2010 (Register 2010, No. 30).
3. Amendment of subsection (a) filed 2-6-2014 as an emergency; operative 2-6-2014 (Register 2014, No. 6). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 7-16-2014 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 2-6-2014 order transmitted to OAL 7-16-2014 and filed 8-27-2014 (Register 2014, No. 35).
5. Change without regulatory effect repealing subsection (a)(1) and renumbering subsections filed 4-22-2015 pursuant to section 100, title 1, California Code of Regulations (Register 2015, No. 17).

3768.3. Utilization of the Parole Violation Decision-Making Instrument.

(a) The automated CDCR Form 1500 shall be utilized as the reporting mechanism within the Parole Violation Disposition Tracking System (PVDTS) for the following types of alleged parole violations:

(1) Any alleged violation that can be adjudicated by the Division of Adult Parole Operations at the parole unit level.

(2) Any alleged violation referred to the Board of Parole Hearings for final adjudication with a recommendation to Continue On Parole, when the offender is not in custody, excluding:

(A) Residential Substance Abuse or Treatment Program placement recommendations.

(B) In-Custody Drug Treatment Program placement recommendations.

(b) Prior to the initiation of the CDCR Form 1676 in the PVDTS program, the automated CDCR Form 1500 shall be completed. Upon the completion of the CDCR Form 1676, it shall be forwarded to the court as part of the revocation packet for final adjudication of the parole violation(s) as referenced in Section 3763.

(c) The automated CDCR Form 1500, PVDMI, shall be completed prior to the removal of a Penal Code section 3056 parole hold. The CDCR Form 1500 is not required to be completed when an investigation reveals that no parole violation occurred.

(d) The responsible parole agent will complete the following sections of the automated CDCR Form 1500, PVDMI:

(1) Section A, Offender Information. Section A requires manual entry for those portions that do not auto-populate upon entry of the offender's prison number.

(2) Section B, California Static Risk Level. Section B shall auto-populate. When a California Static Risk Assessment (CSRA) risk number value, as described in section 3768.1, is unavailable, the parole agent is responsible for requesting a CSRA risk number value upon discovery of the violation.

(3) Section C, Violations. Section C requires manual entry for those portions that do not auto-populate.

(4) Section D, Circumstances of Charges. Section D requires manual entry clearly articulating the facts and circumstances for each charged violation.

(5) Section E, Mandatory Report to the Board of Parole Hearings. Section E requires manual entry to designate if the violation(s) are required to be reported to the Board of Parole Hearings in accordance with section 2616 of the California Code of Regulations, Title 15, Division 2.

(6) Section F, Instrument Response Level. Section F shall auto-populate an appropriate response level to the alleged violation. Response levels include:

(A) Least Intensive. Least Intensive responses are those responses to a violation that impose a minimal sanction and are based on the severity of the violation and the risk score of the offender who committed the violation. The Least Intensive Response Level could include a verbal reprimand, the imposition of a curfew, or increased reporting instructions.

(B) Moderately Intensive. Moderately Intensive responses are those responses to a violation that impose a medium-range sanction and is based on the severity of the violation and the risk score of the offender who committed the violation. The Moderately Intensive Response Level could include community service, increased urinalysis testing, or referral to a structured program.

(C) Most Intensive A. Most Intensive A responses are those responses to a violation that impose a higher range sanction and are based on the severity of the violation and the risk score of the offender who committed the violation. The Most Intensive A Response Level could include a referral to an In-Custody Drug Treatment Program or placement into Mental Health Services.

(D) Most Intensive B. Most Intensive B responses are those responses to a violation that impose the highest range sanction and are based on the severity of the violation and the risk score of the offender who committed the violation. The Most Intensive B

Response Level would result in a recommendation for revocation by the parole agent.

(E) Most Intensive C. Most Intensive C responses are those responses to a violation that impose the highest range sanction and are based on the severity of the violation and the risk score of the offender who committed the violation. The Most Intensive C Response Level would result in a recommendation for revocation by the PVDMI.

(7) Section G, Recommended Responses. Section G requires the parole agent to select a recommended response level as provided for in Section F, or the parole agent may select an alternative response level. An alternative response selection will require the completion of the "Parole Agent Override Section."

(8) Parole Agent Override Section. The parole agent shall indicate stabilizing factors, which would mitigate the offender's risk and support a less intensive response, or destabilizing factors, which would support a more intense response. Overrides should not adjust the response level by more than one level.

(9) Section H, Agent's Recommended Response Level. The parole agent shall indicate the specific program that the offender will be required to complete based on the selected response level.

(e) The parole unit supervisor, or designee, shall ensure the responsible parole agent completed all the required sections of the automated CDCR Form 1500, PVDMI. Once verified, the unit supervisor shall complete Section I, Unit Supervisor's Determination of the automated CDCR Form 1500, PVDMI.

(1) Once the unit supervisor reviews the CDCR Form 1500, PVDMI, the "Unit Response Level" shall be selected. Unit Response Levels that differ from the response level provided by an agent require articulation of the difference of opinion in the "comments" area of Section I.

(2) The unit supervisor shall print and sign the completed CDCR Form 1500, PVDMI document, attach any supporting documents, and forward the completed PVDMI packet for processing.

(f) Upon receipt of the completed PVDMI packet, the Decentralized Revocation Unit parole administrator shall review the parole unit's response level on the CDCR Form 1500, PVDMI.

(1) For violations that do not require adjudication by the Board of Parole Hearings (BPH), the parole administrator can elect to:

(A) Retain the response provided by the unit supervisor and forward the completed PVDMI packet to the BPH.

(B) Modify the response provided by the unit supervisor, documenting the change in Section J of the automated CDCR Form 1500, PVDMI, and forward the packet to the BPH, or return the packet to the parole unit, depending on the modification.

(2) For violations that do require final adjudication by the BPH, the parole administrator can elect to:

(A) Retain the response provided by the unit supervisor and forward the completed PVDMI packet to the BPH.

(B) Modify the response provided by the unit supervisor, documenting the change in Section J of the automated CDCR Form 1500, PVDMI and forward the packet to the BPH.

(g) A printed copy of the completed automated CDCR Form 1500, PVDMI, shall be provided, or postmarked for delivery, to the parolee within 10 working days of the final adjudication of the alleged violation.

NOTE: Authority cited: Sections 5058 and 5058.3, Penal Code. Reference: Sections 3015, 5054 and 5076.2, Penal Code.

HISTORY:

1. New section filed 1-7-2010 as an emergency; operative 1-25-2010 pursuant to Penal Code section 5058.3(a) and Government Code section 11346.1(d) (Register 2010, No. 2). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 7-6-2010 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 1-7-2010 order, including amendment of section heading and subsection (a), transmitted to OAL 6-25-2010 and filed 7-22-2010 (Register 2010, No. 30).
3. Amendment of subsections (a) and (b) and repealer of subsections (b)(1)–(3) filed 2-6-2014 as an emergency; operative 2-6-2014 (Register 2014, No. 6). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 7-16-2014 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 2-6-2014 order transmitted to OAL 7-16-2014 and filed 8-27-2014 (Register 2014, No. 35).

3769. Parole Reentry Court Program.

(a) As part of the parole reentry accountability program for parolees established under Penal Code section 3015, the Reentry Court Program (RCP) operates under an established memorandum of understanding between the Administrative Office of the Court and the California Department of Corrections and Rehabilitation (department). The RCP is designed to promote public safety, hold parolees accountable for their behavior, and reduce recidivism.

(b) Under the RCP, services that may be provided to program participants include but are not limited to:

(1) Substance abuse and addiction treatment.

(2) Residential housing.

(3) Individual/group counseling.

(4) Vocational training.

(5) Anger management.

(6) Intensified supervision.

(c) For the purpose of sections 3769-3769.6, the following terminology is defined:

(1) Reentry court program team is defined as the parole agent, representatives from county probation, the district attorney's office, court, and treatment provider.

(2) History of substance abuse is defined as a documented arrest history related to criminal use or possession of a controlled substance, to include alcohol.

(3) History of mental illness is defined as a documented history of any mental illness as determined by a psychiatrist, psychologist, or social worker licensed by the State to make those determinations.

(4) Reentry Court is defined as a county superior court authorized by an agreement with the department to participate in the reentry court program.

(5) Dual Jurisdiction is defined as a situation in which a parolee with a current sentence under the jurisdiction of the department also has a new sentence pending before the court and/or is currently on local probation.

(6) Deputy Commissioner is defined as an official with the Board of Parole Hearings responsible for adjudicating parole revocation cases.

(7) Reentry Parole Agent is defined as a parole agent with the department who is assigned to assist in the administration of the reentry court program.

(8) Reentry Court Judge is defined as a judge assigned to the participating reentry court program who is responsible for the judicial oversight of parolees in the program.

(9) Referral Packet is defined as the package of reports, forms and supporting documents compiled by the department that is required for referral of a parolee into the reentry court program.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 3015 and 5054, Penal Code.

HISTORY:

1. New section filed 4-15-2011 as an emergency; operative 4-15-2011 (Register 2011, No. 15). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 9-22-2011 or emergency language will be repealed by operation of law on the following day.

2. Certificate of Compliance as to 4-15-2011 order, including amendment of subsection (b)(6), transmitted to OAL 7-15-2011 and filed 8-16-2011 (Register 2011, No. 33).

3769.1. Reentry Court Program Eligibility Criteria.

(a) To be eligible for the Reentry Court Program (RCP) a parolee must meet all of the following eligibility criteria:

(1) Parolees must have been sentenced to a term of imprisonment under Penal Code section 1170 and released from an institution or facility to a period of parole supervision.

(2) Parolees must have a documented history of substance abuse or mental illness.

(3) Parolees must violate their conditions of parole.

(b) A parolee who meets the above criteria may be referred by his or her parole agent for participation in the RCP pursuant to section 3769.3.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 1170, 3015 and 5054, Penal Code.

HISTORY:

1. New section filed 4-15-2011 as an emergency; operative 4-15-2011 (Register 2011, No. 15). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 9-22-2011 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 4-15-2011 order transmitted to OAL 7-15-2011 and filed 8-16-2011 (Register 2011, No. 33).

3769.2. Reentry Court Program Exclusionary Criteria.

(a) The following offenders are excluded from participating in the Reentry Court Program (RCP):

(1) Parolees required to register as a sex offender pursuant to the provisions of Penal Code section 290 through 290.023, inclusive.

(2) Parolees subject to supervision via Global Positioning System monitoring as provided in section 3560.

(3) Parolees subject to non-revocable parole pursuant to section 3505.

(4) Any exclusionary criteria established by the participating RCP county.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 290–290.023, 3015 and 5054, Penal Code.

HISTORY:

1. New section filed 4-15-2011 as an emergency; operative 4-15-2011 (Register 2011, No. 15). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 9-22-2011 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 4-15-2011 order transmitted to OAL 7-15-2011 and filed 8-16-2011 (Register 2011, No. 33).

3769.3. Participation in the Reentry Court Program.

(a) Parolees who meet the eligibility criteria provided in section 3769.1 and who are not otherwise excluded as provided for in section 3769.2 may participate in the Reentry Court Program (RCP) if one of the following referrals is made:

(1) The RCP judge may refer a parolee who is under the dual jurisdiction of the department and local probation, or who is currently on parole and facing new criminal charges that may result in a new conviction and subsequent return to prison.

(2) A Deputy Commissioner may refer a parolee who commits a violation of parole to the RCP as a remedial sanction. The Parole Violation Decision Making Instrument shall be utilized in making a determination whether to refer the parolee, pursuant to the provisions of sections 3768 through 3768.3.

(3) Parole Agents may refer directly to the RCP a parolee who commits a violation of parole which is not subject to mandatory referral to the Board of Parole Hearings pursuant to section 2616. A parolee referred under this subsection shall:

(A) Waive his or her right to a revocation hearing by signing a CDCR Form 1420 (Rev. 08/10), Placement Acknowledgement Waiver, which is incorporated by reference.

(B) Sign the CDCR Form 1515-RCP (12/10), Reentry Court Program Special Conditions of Parole, which is incorporated by reference.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 3015 and 5054, Penal Code.

HISTORY:

1. New section filed 4-15-2011 as an emergency; operative 4-15-2011 (Register 2011, No. 15). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 9-22-2011 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 4-15-2011 order transmitted to OAL 7-15-2011 and filed 8-16-2011 (Register 2011, No. 33).

3769.4. Parole Agent Responsibilities—Reentry Court Program.

(a) The reentry parole agent will work as part of the Reentry Court Program (RCP) team. Reentry parole agent duties shall include, but not be limited to the following:

(1) Attend RCP team meetings at least once per week.

(2) Present referral packets to the RCP team for review.

(3) Obtain any additional parole casework information requested by the RCP team.

(4) Act as liaison between the reentry court and other divisions and programs within the department.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 3015 and 5054, Penal Code.

HISTORY:

1. New section filed 4-15-2011 as an emergency; operative 4-15-2011 (Register 2011, No. 15). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 9-22-2011 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 4-15-2011 order transmitted to OAL 7-15-2011 and filed 8-16-2011 (Register 2011, No. 33).

3769.5. Processing Violations of Parole—Reentry Court Program.

(a) Any new violation of parole will be transmitted in accordance with the provisions of sections 3768.3. The alleged violation shall be referred to the Reentry Court Program in accordance with the provisions of subsection 3768.2(a)(5). The authority to place a parole hold on an alleged parole violator shall be retained by the department.

(b) The reentry parole agent will submit a summary of charges for any new violation of parole to the reentry court judge for review and disposition. Within two business days of a reentry court parolee being placed into custody, the reentry parole agent shall coordinate with the reentry court judge to determine if the parolee shall remain in, or be terminated from, the reentry court program.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 3015 and 5054, Penal Code.

HISTORY:

1. New section filed 4-15-2011 as an emergency; operative 4-15-2011 (Register 2011, No. 15). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 9-22-2011 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 4-15-2011 order transmitted to OAL 7-15-2011 and filed 8-16-2011 (Register 2011, No. 33).

3769.6. Processing Absconders from Parole—Reentry Court Program.

(a) In the event a parolee is determined to have absconded from Reentry Court Program (RCP) supervision, the violation shall be reported to the Board of Parole Hearings (BPH) and processed pursuant to the provisions for the suspension of parole and issuance of a warrant in Title 15, Division 2, sections 2711 and 2731.

(b) When an absconding RCP parolee is located, the parolee shall be detained in a county jail pursuant to a parole hold pending the parolee's appearance before the RCP judge on the absconding charge.

(c) In the event the BPH acted to suspend the absconder's parole, the Reentry Parole Agent shall, upon being advised that the parolee is in custody, initiate the process for reinstatement of parole.

(d) Pursuant to PC section 3015, the RCP judge has exclusive authority to hear and adjudicate the absconding charge. If the RCP judge chooses to terminate the parolee's participation in the RCP, the BPH shall retain the authority to hear the charge and determine appropriate sanctions.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 3015 and 5054, Penal Code.

HISTORY:

1. New section filed 4-15-2011 as an emergency; operative 4-15-2011 (Register 2011, No. 15). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 9-22-2011 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 4-15-2011 order transmitted to OAL 7-15-2011 and filed 8-16-2011 (Register 2011, No. 33).

Article 20. Revocation Proceedings [Reserved]

3770. General. [Reserved]

3771. Revocation Period. [Reserved]

3772. Division of Adult Parole Operations Review. [Reserved]

Article 21. PC 3050 Residential Aftercare Program

3800. General Policy.

Pursuant to Penal Code (PC) section 3050, eligible felon inmates who have successfully completed an in-prison drug treatment program or other CDCR sanctioned substance abuse program, upon release from state prison, shall, whenever possible, be entered into a 150-day residential aftercare drug treatment program sanctioned by the California Department of Corrections and Rehabilitation (CDCR). This residential treatment program shall be known as the Treatment Incentive Program (TIP). As a condition of parole, if the parolee successfully completes 150 days of residential aftercare treatment, as determined by the CDCR and the aftercare provider, the parolee shall be discharged from parole supervision at that time.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 3050 and 5054, Penal Code.

HISTORY:

1. New article 21 (sections 3800–3800.3) and section filed 3-9-2011; operative 4-8-2011 (Register 2011, No. 10).

3800.1. Treatment Incentive Program Eligibility Criteria.

(a) To be eligible to participate in the Residential Aftercare Program, the felon inmate must:

(1) Volunteer to participate.

(2) Have successfully completed an in-prison Substance Abuse Program (SAP), as described in section 3040.1, or other CDCR sanctioned substance abuse program.

(3) Not meet any of the exclusionary criteria as provided for in section 3800.2.

(b) Successful completion of a SAP or other CDCR sanctioned substance abuse program will be determined by the Successful Completion Assessment Team (SCAT).

(1) The SCAT shall include:

(A) Correctional Counselor (CC) III.

(B) SAP treatment staff.

(2) The SCAT shall determine successful completion of the SAP or other CDCR sanctioned substance abuse program based on the following criteria:

(A) Time in program.

(B) Participation in program.

(C) Performance in program.

(D) Accomplishment of treatment plan objectives.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 3050 and 5054, Penal Code.

HISTORY:

1. New section filed 3-9-2011; operative 4-8-2011 (Register 2011, No. 10).

3800.2. Treatment Incentive Program Exclusionary Criteria.

(a) An inmate is excluded from Treatment Incentive Program participation if any of the following conditions exist:

(1) The inmate is currently serving time as a parole violator who has been returned to custody.

(2) The inmate was convicted on or after January 1, 1997 of Corporal Injury pursuant to PC section 273.5; Violation of a Protective Order pursuant to PC section 273.6; or Stalking pursuant to PC section 646.9, where they are required to complete a 52-week batterer's program as outlined in PC Section 3053.2.

(3) The inmate is currently serving or has served a prior indeterminate sentence or a sentence for:

(A) A violent felony of any of the crimes listed as a violent felony in PC section 667.5(c).

(B) A serious felony of any of the crimes listed as a serious felony in PC sections 1192.7(c) and 1192.8.

(C) A crime that requires him or her to register as a sex offender pursuant to PC section 290.

(4) The inmate is eligible to participate in non-revocable parole status pursuant to Institution Classification action and as noted on CDC Form 128-B (Rev. 04/74), General Chrono.

(b) Inmates who volunteer to participate in the TIP but are denied entry may appeal the decision through the Department's inmate appeal process as outlined in sections 3084 through 3085.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 273.5, 273.6, 290, 646.9, 667.5(c), 667.59(c), 1192.7(c), 1192.8, 3050, 3053.2 and 5054, Penal Code.

HISTORY:

1. New section filed 3-9-2011; operative 4-8-2011 (Register 2011, No. 10).
2. Repealer of subsection (a)(3), subsection renumbering and amendment of Note filed 7-17-2014 as an emergency; operative 7-17-2014 (Register 2014, No. 29). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 12-24-2014 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 7-17-2014 order transmitted to OAL 11-7-2014 and filed 12-22-2014 (Register 2014, No. 52).

3800.3. 150-Day Residential Aftercare Program.

(a) After successful completion of a CDCR sanctioned in-prison SAP or other CDCR sanctioned substance abuse program, and volunteering, upon release to parole, the parolee shall be placed in a CDCR sanctioned 150-day community based drug treatment program.

(b) Parolees who successfully complete the 150-day residential aftercare program shall be allowed to leave the program at 5 p.m. on their 150th day in the program, and discharged from parole.

(1) Successful completion will be determined by the Aftercare Successful Completion Assessment Team (ASCAT), whose team members shall include:

(A) The Office of Substance Abuse Treatment Services (OSATS) PA II,

(B) The Treatment Provider.

(C) The Substance Abuse Service Coordination Agencies (SASCA) or Female Offender Treatment and Employment Program (FOTEP) Advocate, Case Manager.

(D) The Parole Agent of Record (AOR), whenever possible.

(2) Between the parolee's 130th day and no later than the 135th day of the PC section 3050 150-day residential aftercare program, the ASCAT shall conduct a case review to evaluate for successful completion, using the same criteria as for program eligibility outlined in section 3800.1(b).

(3) Upon a determination of successful completion, a copy of the Certificate of Completion and a CDCR Form 1502 (Rev. 10/06), Activity Report, shall be faxed to the AOR by the OSATS PA II no later than the 137th day. The AOR shall complete the CDCR Form 1502 and any remaining documentation, recommend closing interest in the case pursuant to PC section 3050(b), and shall submit the case to the Unit Supervisor (US) for review.

(4) The field parole US shall review the CDCR Form 1502, and upon approval, note an effective discharge date of 150-days from the date the parolee entered the residential program pursuant to PC section 3050(b). The CDCR Form 1502 and Certificate of Completion shall then be forwarded to Case Records.

(5) Upon receipt of the CDCR Form 1502, Division of Adult Parole Operations (DAPO) Case Records shall discharge the parolee from parole pursuant to PC section 3050(b).

(c) Parolees who fail to successfully complete the Treatment Incentive Program will remain under active parole supervision of DAPO.

(1) The US may restart the parolee in another CDCR sanctioned PC section 3050 150-day program.

(A) The AOR will contact SASCA for an alternate placement and recommend that the parolee restart the 150-days. If there is no bed or program available the parolee will not be afforded the option to restart and will forfeit the opportunity to discharge from parole pursuant to PC section 3050.

(B) If the parolee is restarted in the program a CDCR Form 1502 shall be submitted to the US recommending the effective start date and noting the new tentative discharge date 150-days after the restart date.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 3050 and 5054, Penal Code.

HISTORY:

1. New section filed 3-9-2011; operative 4-8-2011 (Register 2011, No. 10).