



Department of Corrections and Rehabilitation

**NOTICE OF CHANGE TO  
REGULATIONS**

Section: 3287

**Number:**

**17-06**

**Publication Date:**

**September 1, 2017**

**Effective Date:**

**To be Announced**

**INSTITUTION POSTING REQUIRED**

This Notice announces the amendment of Section 3287 of the California Code of Regulations (CCR), Title 15, Crime Prevention and Corrections, to incorporate into the CCR provisions concerning Cell, Property and Body Inspections.

**IMPLEMENTATION:** To be announced.

**PUBLIC COMMENT PERIOD**

Any person may submit written comments about the proposed regulations to the California Department of Corrections and Rehabilitation, Regulation and Policy Management Branch (RPMB), P.O. Box 942883, Sacramento, CA 94283-0001, by fax to (916) 324-6075, or by e-mail to [RPMB@cdcr.ca.gov](mailto:RPMB@cdcr.ca.gov). All written comments must be received by the **close of the public comment period October 20, 2017 at 5:00 p.m.**

**PUBLIC HEARING INFORMATION**

A public hearing regarding these proposed regulations will be held **October 20, 2017 from 10:00 a.m. to 11:00 a.m. in the Kern/Colorado Room, located at 1515 S Street, North Building, Sacramento CA 95811.** The purpose of the hearing is to receive oral comments about this action. It is not a forum to debate the proposed regulations. No decision regarding the permanent adoption of these regulations will be rendered at this hearing. Written or facsimile comments submitted during the prescribed comment period are given the same significance and weight as oral comments presented at the hearing. This hearing site is accessible to the mobility impaired.

**POSTING**

This notice shall be posted immediately upon receipt at locations accessible to inmates, parolees, and employees in each Department facility and field office, not later than five calendar days after receipt. Also, facilities shall make this Notice available for review by inmates in segregated housing who do not have access to the posted copies, and shall distribute it to inmate law libraries and advisory councils. Certification of Posting, CDCR Form 621-A, shall be returned to the RPMB electronically, by fax, or by mail. See Department Operations Manual sections 12010.5.7 and 12010.5.8 for posting and certification of posting procedures.

**CONTACT PERSON**

Inquiries regarding this notice should be directed to Timothy M. Lockwood, Chief, RPMB, California Department of Corrections and Rehabilitation, P.O. Box 942883, Sacramento, CA 94283-0001, by telephone at (916) 445-2269 or e-mail at [RPMB@cdcr.ca.gov](mailto:RPMB@cdcr.ca.gov). Inquiries regarding the subject matter of these regulations may be directed to Bryan Donahoo, Division of Adult Institutions, at (916) 324-1653.

*/ Original signed by /*

RALPH M. DIAZ  
Undersecretary, Operations

Attachments

## NOTICE OF PROPOSED REGULATORY ACTION

### California Code of Regulations Title 15, Crime Prevention and Corrections Department of Corrections and Rehabilitation

**NOTICE IS HEREBY GIVEN** that the Secretary of the California Department of Corrections and Rehabilitation (CDCR), pursuant to the authority granted by Government Code Section 12838.5 and Penal Code (PC) Section 5055, and the rulemaking authority granted by PC Section 5058, proposes to amend sections 3287 of the California Code of Regulations (CCR), Title 15, Division 3, concerning Searches and Inspections.

#### **PUBLIC HEARING:**

Date and Time: **October 20, 2017 – 10:00 a.m. to 11:00 a.m.**  
Place: Department of Corrections and Rehabilitation  
Colorado Room  
1515 S Street – North Building  
Sacramento, CA 95811  
Purpose: To receive comments about this action.

#### **PUBLIC COMMENT PERIOD:**

The public comment period will close **October 20, 2017 at 5:00 p.m.** Any person may submit public comments in writing (by mail, by fax, or by e-mail) regarding the proposed changes. To be considered by the Department, comments must be submitted to the CDCR, Regulation and Policy Management Branch, P.O. Box 942883, Sacramento, CA 94283-0001; by fax at (916) 324-6075; or by e-mail at [RPMB@cdcr.ca.gov](mailto:RPMB@cdcr.ca.gov) before the close of the comment period.

#### **CONTACT PERSON:**

Please direct any inquiries regarding this action to:

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

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

**Anthony Carter**  
**Regulation and Policy Management Branch**  
**Telephone (916) 445-2266**

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

**Bryan Donahoo**  
**Department of Corrections and Rehabilitation**  
**(916) 323-2160**

#### **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW:**

PC Section 5000 provides that commencing July 1, 2005, any reference to the Department of Corrections in this or any code, refers to the CDCR, Division of Adult Operations.

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

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

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

This action amends Section 3287 of the CCR, Title 15, Division 3 concerning Searches and Inspections to incorporate Ion scanners and full body (low dose x-ray) scanning of inmates.

**SPECIFIC BENEFITS ANTICIPATED BY THE PROPOSED REGULATIONS:**

The Department anticipates that these regulations will reduce the amount of contraband brought into the institutions, creating a safer environment for inmates, staff, visitors, contractors and their employees, and volunteers. The regulations may reduce strife between inmates trying to profit from illegal activities, thus the need to modify inmate programs as a result of disruptive behaviors may be reduced. Additionally, as a result of a decrease in illegal drugs entering the institutions, inmates seeking recovery from addiction may have an environment more beneficial to their recovery.

In recent years, the Department has adopted various regulations and implemented procedures to incorporate drug and contraband interdiction strategies ranging from a Mandatory Random Urinalysis Program for inmates, the expansion of canine units for area and vehicle searches; and more recently, passive alert canine units and random Ion scanning for visitors and staff to assist in detecting drugs entering the institutions. The Department has determined that further expansion of these strategies is warranted. The strategies have been overall effective; as the more search options are available and utilized, the more drugs and contraband are found.

**EVALUATION OF CONSISTENCY / COMPATIBILITY WITH EXISTING REGULATIONS:**

The Department has determined that these proposed regulations are consistent and compatible with existing state laws and regulations. The Department reached this conclusion because these proposed regulations supplement existing regulations by expanding search options /tools to search inmates, and inmate property, which is authorized by law.

**LOCAL MANDATES:**

This action imposes no mandates on local agencies or school districts, or a mandate which requires reimbursement of costs or savings pursuant to Government Code Sections 17500 – 17630.

**FISCAL IMPACT STATEMENT:**

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

**EFFECT ON HOUSING COSTS:**

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

**SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT ON BUSINESS:**

The Department has initially determined that the proposed regulations will not have a significant statewide

adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

**RESULTS OF ECONOMIC IMPACT ASSESSMENT:**

The Department has determined that the proposed regulations will have no impact on the creation of new or the elimination of existing jobs or businesses within California or affect the expansion of businesses currently doing business in California. The Department has determined that the proposed regulations will have no effect on the health of California residents or the state's environment, because the proposed regulations relate strictly to the management of CDCR institutions.

The Department has determined that the proposed regulations may have a positive impact upon the welfare of California residents by helping reduce contraband (e.g., cellphones), as well as reducing illegal drug activity and use.

**COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES:**

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

**EFFECT ON SMALL BUSINESSES:**

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

**CONSIDERATION OF ALTERNATIVES:**

The Department must determine that no reasonable alternative considered by the Department, or that has otherwise been identified and brought to the attention of the Department, would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. Interested persons are accordingly invited to present statements or arguments with respect to any alternatives to the changes proposed at the scheduled hearing or during the written comment period.

**AVAILABILITY OF PROPOSED TEXT AND INITIAL STATEMENT OF REASONS:**

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

**AVAILABILITY OF THE FINAL STATEMENT OF REASONS:**

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

**AVAILABILITY OF CHANGES TO PROPOSED TEXT:**

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

## TEXT OF PROPOSED REGULATIONS

In the following, all new language is indicated by underline and deleted text is indicated by strikethrough.

### Chapter 1. Rules and Regulations of Adult Operations and Programs

#### Subchapter 4. General Institution Regulations

#### Article 2. Security

#### 3287. Cell, Property and Body Inspections.

Subsections 3287(a) through 3287(b)(5) are unchanged.

Subsection 3287(b)(5) is unchanged and shown for reference:

(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.

New subsection 3287(b)(6) is adopted to read.

(6) Inmates 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, low dose full body x-ray 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 device.

Subsection 3287(c) is unchanged and shown for reference:

(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.

Subsections 3287(c)(1) through 3287(d) are unchanged.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 5054 and 6402, Penal Code; and *Jordan v. Gardner*, 986 F.2d 1521.

## **INITIAL STATEMENT OF REASONS:**

The California Department of Corrections and Rehabilitation (CDCR) proposes to amend Section 3287 of the California Code of Regulations, Title 15, regarding the Department's contraband and drug interdiction efforts for searching inmates. Specifically, the Department is expanding available searching tools for use on inmates to detect drugs and other contraband. These tools are in the form of Ion scanners and full body (low dose x-ray) scanners.

While recognizing the ongoing problem with illegal drug use and trafficking within the institutions, CDCR has focused on a comprehensive approach to preventing the introduction of illegal drugs and contraband into its prisons. Persons entering CDCR institutions sometimes employ extraordinary means to try to smuggle illegal drugs and contraband into prisons. These methods include secreting illegal drugs and contraband in hidden pockets in clothing or in body cavities. Importing, trafficking, and illegal drug use pose many problems in a prison setting, including an increase in violence, power struggles within the inmate population, establishment of an underground economy, and staff corruption.

In recent years, the Department has adopted various regulations and implemented procedures to incorporate a variety of drug and contraband interdiction strategies ranging from a Mandatory Random Urinalysis Program for inmates, the expansion of canine units for area and vehicle searches, and more recently, passive alert canine units and random Ion scanning for visitors, contractors, volunteers, and staff to assist in detecting drugs entering the institutions. The Department has determined that further expansion of these strategies is warranted. The strategies have been effective overall; as the more search options are available and utilized, the more drugs and contraband are found.

The Department asserts that with additional methods of drug and contraband interception and detection, the Department will:

- better identify those inmates who may be in need of substance abuse treatment programs to assist in their rehabilitation;
- identify potential non-programming inmates;
- identify and/or prosecute visitors and staff discovered introducing contraband into the institutions;
- deter individuals (visitors and staff, etc.) from attempting to introduce drugs and other contraband into the facilities; and
- enhance the overall safety of inmates, staff, and the general public by removing the threat of such contraband before it can be utilized.

Despite CDCR's efforts, contraband (drugs, tobacco, and cellular telephones) continue to be discovered within the secured perimeter of the institutions. Due to this, the Department determined a multifaceted; zero-tolerance approach was the most effective way to reduce contraband activity within the institutions. This approach includes heightened security, dismantling drug distribution systems, disrupting gang activity and closing all contraband avenues both externally and internally. In other words detect, interdict and intervene. This approach has enabled CDCR to reduce contraband from entering institutions as well as minimizing its availability.

The Department believes that the existence and enforcement of these regulations has deterred individuals (visitors and staff, etc.) from attempting to introduce drugs and other contraband into the facilities; and also has resulted in discovery, identification, and/or prosecution of those inmates, visitors and staff who have violated the law by attempting to introduce contraband.

Even with the above-mentioned efforts, the Department has seen a continuing problem of drugs and contraband smuggled into our institutions, causing continual issues with drugs and inmates using contraband cellular telephones to commit criminal activities within our institutions and the community. If staff is deprived of being armed with additional tools, it is safe to assume that this increase will continue.

### **Drug related**

CDCR Secretary Kernan testified before the Legislature that there were 81 inmate deaths attributed to drug overdose from January 2013 through December 2016.

Data from CDCR Computer Statistics (CompStat) revealed that from January 2015 to December 2016 there were 44,761 Rules Violations Reports issued involving drugs.

### **Cell Phones**

Data vetted through CDCR's Office of Research revealed that from July 2014 to March 2017; there were 22,306 cell phones discovered at institutions overall.

Such devices in the hands of inmates enable felons to access information while in prison about other inmates and/or parolees, department staff or their families' addresses via public network sites, coordinate criminal activities with collaborators who are not incarcerated and jeopardize institutional security by providing inmates with the ability to take and disseminate photographs and video, and can present a threat to victims of being re-victimized by incarcerated inmates possessing cell phones.

### **Need for interdiction**

From July 2014 to March 2017, there were 775 incidents which visitors and staff were identified, arrested, and/or prosecuted for attempting to introduce contraband into the institutions. Of those incidents, data retrieved from the CDCR's internal Drug Interdiction SharePoint Page revealed:

- 21 Staff Arrests
- 617 Visitor Arrests, and
- 137 Civilian (non-visitor) Arrests

Without the use of the many layers of interdiction available, inmates will continue to die from drug overdoses and staff and visitors will continue to be compromised by being pressured by inmates to smuggle contraband.

Existing regulations establish that 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. The Department utilizes a variety of search options on inmates such as visual inspections, clothed body searches (pat down), visual unclothed body searches and metal detectors. The Department intends to increase these options by incorporating Ion scanners and low dose x-ray (full body scanners) to be used on inmates.

Current regulations already allow the utilization of Ion scanners on visitors and staff. The use of Ion scanners within the 20 institutions that already have them has proven effective not only by the number of arrests(s) that have been made after an individual has scanned positive twice, submitted to a clothed body search, and ultimately found with drugs on their person; but the Ion scan tracking logs also show numerous situations where a visitor has scanned positive twice for drugs, has refused the clothed body

search, and decided to leave institution grounds for the day. The assumption is that, in these instances, the Ion scanner proved to be a deterrent from an individual to continue their efforts to bring drugs into the respective institution. By expanding the use of Ion scanners on inmates, the department anticipates the discovery of those drugs that have already been introduced into the institutions.

The Department also intends to include the use of low dose full body scanners as a tool to search inmates only. The low dose full body scanner is a non-intrusive device that scans the whole body in seconds, detecting the presence of contraband secreted or ingested inside the human body. The use of this device eliminates the need for an inmate to be subject to an unclothed body search. This machine is able to detect cell phones, drugs, copper wires, plastics, etc. The scanner uses software for the automatic calculation of the cumulative doses (ionizing radiation exposure) per individual being screened. The software will calculate the dose by an individual's name or CDCR number before a scan is initiated. If an individual is approaching his/her permitted annual limit, a warning message appears, alerting the operator that this individual is approaching the limit of the preset annual allowable dose. If any individual achieves this limit, the system will NOT perform a scan, and a warning message will be displayed to alert the operator that this individual has achieved his/her annual limit. In the unlikelihood this limit is reached, an unclothed body search of the inmate will be conducted. The full body (low dose x-ray) scanners are equipped with built-in privacy software to ensure absolute privacy with the x-ray images.

The use of the Low Dose Full Body X-Ray Scanner makes screening safe for the inmates, as well as the operators within the Division of Adult Institutions (DAI). In regards to the scanning process and related equipment, CDCR adheres to Title 10, Section 20.1003, of the *Code of Federal Regulations* (10 CFR 20.1003) which defines "As Low As Reasonably Achievable" (ALARA) principle, in the usage of the Low Dose Full Body X-Ray Scanner. CDCR also adheres to the standards set by the American National Standards Institute (ANSI) - Accredited Standards Committee N43, *Equipment for Non-Medical Radiation Applications* with the Health Physics Society (HPS), and the current version of the American national consensus radiation safety standards for x-ray people screening products that was published in 2009. ANSI/HPS N43.17-2009 *Radiation Safety for Personnel Security Screening Systems Using X-Ray or Gamma Radiation* sets limits on dose to an individual being screened; sets limits on dose to bystanders, operators, and other employees; requires a variety of safety features; and establishes operational requirements for organizations using these products. It was written, reviewed, and approved by a consensus group that included government regulators, product manufacturers, and product users.

ANSI/HP 17-2009 provides detailed guidance not only for acceptable radiation dose levels for individuals and radiation workers but also for radiation-producing systems, manufacturing, installation, safety performance, and regular maintenance. Radiation-producing instruments are required to include fail-safe mechanisms that would halt the operation in case of major failures in mechanical or electronic components, including testing of those fail safe mechanisms.

In adherence to the California Code of Regulations, Title 17, Division 1, Chapter 5, Sub-chapters 4 and 4.5, the Department has also developed a Radiation Protection Program for each institution related to protection from radiation machines.

This rulemaking action will establish that all inmates 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, low dose full body x-ray scanners and other available contraband and/or metal detecting device(s) technology,



### **CONSIDERATION OF ALTERNATIVES:**

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

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

### **SIGNIFICANT ADVERSE ECONOMIC IMPACT ON BUSINESS**

The Department has made an initial determination that this action will not have a significant adverse economic impact on business because business is not affected by the internal management of prisons.

### **ECONOMIC IMPACT ASSESSMENT:**

The Department is implementing ion scanning and low dose full body scanning of inmates to the extent allowed with existing resources and will expand the program when and if additional resources are provided.

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

#### **Creation or Elimination of Jobs within the State of California**

The Department has determined that these proposed regulations will have no impact on the creation or elimination of existing jobs or businesses within California because those jobs or businesses are not affected by the internal management of prisons.

#### **Creation of New Businesses or Elimination of Existing Businesses within the State of California**

The adoption of these proposed regulations will have no effect on the creation of new or elimination of existing businesses within the State of California because those businesses are not affected by the internal management of prisons.

#### **Expansion of Business Currently Doing Businesses within the State of California**

These proposed regulations have no effect on the expansion of businesses currently doing business within the State of California because they are not affected by the internal management of prisons.

#### **Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment**

The proposed regulations may have a positive effect on the health and welfare of California residents, worker safety, and/or the State's environment by eliminating the potential strife between inmates trying to profit from illegal activities, because of the anticipated reduction in contraband and drugs introduced by visitors and/or staff to the institutions.

### **BENEFITS OF THE REGULATIONS**

The Department anticipates that these regulations will ultimately reduce the amount of contraband and drugs brought into the institutions, creating a safer environment for inmates, staff, visitors, contractors and their employees, and volunteers. The regulations may reduce strife between inmates trying to profit from illegal activities, thus the need to modify inmate programs as a result of disruptive behaviors may be reduced. Moreover, as a result of a decrease in illegal drugs entering the institutions, inmates seeking recovery from addiction will have an environment more beneficial to their recovery.

## **REPORTS RELIED UPON**

The Department, in proposing amendments to these regulations has utilized supporting data from internal and external elements.

Internal elements utilized which are a compilation of management, philosophy, and organizational management tools:

- CDCR Office of Research, *Sum of Cell Phone Seizures by institution and month, July 1, 2014 through March 2017.*
- Computer Statistics (CompStat) programs,
- CDCR Drug Interdiction SharePoint Page.

External elements utilized consist of:

- ANSI/HPS N43.17-2009 *Radiation Safety for Personnel Security Screening Systems Using X-Ray or Gamma Radiation.*
- California Code of Regulations, Title 17, Division 1. Subchapter 4. Radiation; and Subchapter 4.5 Radiologic Technology.
- Title 10, Section 20.1003, of the *Code of Federal Regulations*

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

**Subsection 3287(b)(6) is adopted** to incorporate additional search tools the department will utilize to search inmates. Current regulations allow for the utilization of ion scanners and passive canine for the search of staff and visitors as outlined in Sections 3410.1. and 3173.2. The use of passive canines to search inmates is already codified and in effect within this article. The Department is including additional tools of Ion scanning and low dose full body scanners to utilize on inmates to increase the tools necessary to intercept and detect contraband.