

# CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION

## TRIBAL CONSULTATION POLICY

06/06/2014

### I. Introduction

The California Department of Corrections and Rehabilitation (CDCR) operates thirty-five (35) Adult Institutions, three (3) Juvenile Correctional Facilities, and numerous fire and conservation camps. CDCR currently incarcerates approximately 135,000 inmates and employs approximately 65,000 employees. CDCR's institutions are geographically located throughout the State of California, spanning from the Arizona, Nevada, Oregon and Mexico's borders.

CDCR must maintain its operations and remain in compliance with various legal requirements, including but not limited to, the Constitution of the United States of America (1<sup>st</sup>, 8<sup>th</sup> and 14<sup>th</sup> Amendments), the Constitution of the State of California, the Religious Land Use and Institutionalized Person(s) Act (42 U.S.C. section 2000 cc et seq.) and various Federal Laws and State Laws and Regulations.

### II. CDCR's Unique Posture to Provide All Interested Inmates Similar Opportunities to Exercise Religious Freedom

In the creation of any policy or approach to religious practice within CDCR institutions, CDCR must ensure such policy not only will not jeopardize the safety and security of CDCR institutions, inmates and staff, but will also survive judicial review which guarantees CDCR is not favoring one inmate faith group over another. As such, CDCR has approached the religious practice of all inmates in a similar fashion (i.e., if an activity is provided to one inmate faith group, a similar opportunity for religious activity must be made available to all inmate faith groups).

Despite the aforementioned attempts to comply with the various legal requirements, CDCR and its employees are named defendants in thousands of inmate lawsuits filed each year for a wide variety of reasons, including the alleged violation of inmates' religious rights.

### III. Executive Order B-10-11

In September of 2011 the Governor Edmund G. Brown signed Executive Order B-10-11, which provides, as follows in part:

Every state agency and department subject to my executive control shall encourage communication and consultation with California Indian Tribes. Agencies and departments shall permit elected officials and other

representatives of tribal governments to provide meaningful input into the development of legislation, regulations, rules, and policies on matters that may affect tribal communities.

In order to enhance communication and consultation with elected officials of California Indian Tribes, along with other representatives of tribal governments, and other outside stakeholders, CDCR will implement the following policy to facilitate discourse between the above entities.

#### **IV. Definitions**

California Indian Tribe: A federally-recognized California Indian Tribe (as listed on the Federal Register). With respect to cultural resources, a federally-recognized Indian Tribe and a non-federally recognized California Native American Tribe that is on the California Tribal Consultation List maintained by the Native American Heritage Commission (NAHC).

Tribal Leaders: Elected and appointed officials of Indian Tribes and their designees.

Tribal Representatives: An individual who has been elected by an Indian Tribe to be the tribal representative for a consultation session or an individual appointed by a tribal elected leader to participate in a consultation session.

#### **V. Consultation Policy Statement**

The California Department of Corrections and Rehabilitation (CDCR) seeks to establish a Tribal Consultation Policy that will be consistent with CDCR's overall policy to encourage communication and consultation with outside stakeholders. The policy will serve to improve the Department's ability to encourage and support outside interest and involvement in CDCR's continuing effort to afford the most appropriate opportunities for all inmates.

CDCR will endeavor to improve existing methods by providing opportunities for elected officials, representatives of tribal governments and other outside stakeholders with a means to provide meaningful input into the development of legislation, regulations, rules and policies on matters that may affect tribal communities.

#### **VI. Purpose**

The purpose of the Tribal Consultation Policy is to help structure and build meaningful relationships with California Indian Tribes and to establish a clear and concise process through which consultation can take place between CDCR and California Indian Tribes, which is consistent with CDCR's overall consultation approach to all outside stakeholder groups.

The intent of this policy is to achieve the following:

- Ensure opportunities are available for elected officials of California Indian tribes and representatives of tribal governments to communicate and consult with CDCR.
- Ensure CDCR is open to new or alternative approaches to receiving meaningful input on CDCR policies related to matters that may affect tribal communities.
- Facilitate opportunities to involve California Indian Tribes in discussions on legislation, regulations, rules and policies.

## VII. Consultation and Communications Methods and Procedures

Consultation is an enhanced form of communication that emphasizes trust, respect, and shared ideas. In order to ensure consultation and communication with California Indian Tribes occurs on a consistent basis and pursuant to this Tribal Consultation Policy, CDCR will rely upon the following methods:

- The following dedicated email address will be established for elected officials of California Indian Tribes by which communication can be made with CDCR: [policyconsultation@cdcr.ca.gov](mailto:policyconsultation@cdcr.ca.gov)
- CDCR's Office of Policy Standardization (OPS) within the Division of Adult Institutions (DAI) will be available to receive communications initiated by elected officials of California Indian Tribes, and representatives of tribal governments.

Employees of the OPS are available for contact from elected officials of California Indian Tribes, representatives of tribal governments, and other outside stakeholders in the event there is an issue these outside groups believe needs to be brought to CDCR's attention.

- State Advisory Committee on Institutionalized Religions (SACIR) Quarterly Meetings

SACIR was created in the 1940s to provide a vehicle for state departmental managers, state employed chaplains, and outside stakeholders to meet and discuss issues that impact religious practices of the outside community, and their connection to inmate religious practices. CDCR has partnered with SACIR to facilitate communication and consultation between CDCR management, CDCR state employed chaplains, and outside stakeholders with regards to CDCR's efforts to provide religious programming to its inmates.

CDCR will ensure elected officials of California Indian Tribes, and representatives of tribal governments are familiar with SACIR, and are invited to the quarterly meetings to discuss issues relevant to CDCR religious programming and efforts on the part of CDCR to provide reasonable opportunities to express religious freedom.

CDCR will coordinate with SACIR to schedule meetings on at least a quarterly basis. CDCR intends to have various representatives present at each meeting, including but not limited to, representatives from OPS and DAI.

- Legislation, Regulations, Rules and Policies

CDCR will instruct its Headquarters units to facilitate communication and consultation, and procure meaningful input from elected officials of California Indian Tribes tribal representatives with respect to legislation, regulations, rules and policies. Meetings will generally convene at CDCR Headquarters; however, meetings may convene at other locations. In addition, CDCR will encourage all interested California Indian Tribes to take advantage of the public review process, which is part of the Administrative Procedures Act, and provides the public with the opportunity to raise issues that are of concern.

- Specially-Requested Meetings

Elected officials of California Indian Tribes, tribal representatives, can request meetings with CDCR Executive Staff. These requests for meetings can be communicated in person, by electronic means or telephonically. CDCR will coordinate with elected officials of California Indian Tribes, tribal representatives, and other outside stakeholders who are requesting meetings. All meetings will be scheduled in accordance with federal and state laws, including but not limited to, the Bagley-Keene Open Meeting Act.

## VIII. Disclaimer

Executive Order B-10-11 provides:

This Executive Order is not intended to create, and does not create, any rights or benefits, whether substantive or procedural, or enforceable in law or equity, against the State of California or its agencies, departments, entities, officers, employees or any other person.

In accordance therewith, nothing in CDCR's Tribal Consultation Policy is intended to create any preferential right or benefit to any inmate, inmate group, outside group or stakeholder. Additionally, subject to CDCR's unique posture to provide all interested inmates similar opportunities to exercise religious freedom, nothing in this policy is intended to favor the practice of any specific religion. Notwithstanding this policy, CDCR will comply with all applicable laws, rules and regulations regarding the incarceration and supervision of all inmates.

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**Contact:** [policyconsultation@cdcr.ca.gov](mailto:policyconsultation@cdcr.ca.gov)

**Governor's web site:** [Online version of Executive Order B-10-11](#)