

## **NOTICE OF PROPOSED REGULATIONS**

### **California Code of Regulations Title 15, Crime Prevention and Corrections Department of Corrections and Rehabilitation Division of Juvenile Justice**

**NOTICE IS HEREBY GIVEN** that the Secretary of the California Department of Corrections and Rehabilitation (CDCR), pursuant to the authority granted by Penal Code (PC) Section 5055, and Welfare and Institutions Code (WIC) Section 1712, and the rulemaking authority granted by WIC Section 1712, proposes to amend sections 4621.1 and 4621.2 and add sections 4621.3 and 4964 to the California Code of Regulations (CCR), Title 15, concerning citizens or nationals of a foreign country.

#### **PUBLIC HEARING INFORMATION:**

Date and Time: August 19, 2019 – 11:00 a.m. to 12:00 p.m.

Place: CDCR – Division of Juvenile Justice  
8220 Longleaf Drive, Building B  
1<sup>st</sup> Floor, Room 126  
Elk Grove, CA 95758

Purpose: To receive comments about this action.

This hearing site is accessible to the mobility impaired. At the hearing, any person may present statements or arguments orally or in writing relevant to the proposed action described in the Informative Digest. 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. The Department requests but does not require that persons who make oral comments at the hearing also submit a written copy of their testimony at the hearing.

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

The public comment period will close August 19, 2019 at 5:00 p.m. Any person may submit written comments (by mail or by email) regarding the proposed changes. To be considered, comments must be submitted to the California Department of Corrections and Rehabilitation (CDCR), Division of Juvenile Justice, Policy, Procedures, and Regulations Unit, P.O. Box 588501, Elk Grove, CA 95758-8501, or by e-mail to [M\\_DJJ-PPR@cdcr.ca.gov](mailto:M_DJJ-PPR@cdcr.ca.gov) before the close of the comment period.

#### **CONTACT PERSON:**

Please direct any inquiries regarding this action to:

Shelly Jones  
Division of Juvenile Justice  
P.O. Box 588501, Elk Grove, CA 95758-8501  
Telephone: (916) 683-7473

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

Sandi Becker  
Division of Juvenile Justice  
Telephone: (916) 683-7467

### **AUTHORITY AND REFERENCE:**

Welfare and Institutions Code Section 1712 provides that, commencing July 1, 2005, the Secretary is authorized to make and enforce all rules appropriate to the proper accomplishment of the functions of the Division of Juvenile Facilities, Division of Juvenile Programs, and Division of Juvenile Parole Operations. The rules shall be promulgated and filed pursuant to Chapter 4.5 (commencing with Section 11371) of Part 1 Division 3 of Title 2 of the Government Code, and shall, to the extent practical, be stated in language that is easily understood by the general public.

References cited pursuant to this regulatory action are as follows:

Penal Code Section 5028 requires the Division to inform citizens or nationals of a foreign country in the Division's custody that they may contact their consulate. If contact is requested, the Division is required to notify the nearest consulate or embassy without delay. This section further provides citizens or nationals of a foreign country the right to request transfer to their current or former nation of citizenship for the remainder of their confinement time.

Government Code Section 7284.10 provides a youth the right to decline or accept a request for an interview by an United States Immigration and Customs Enforcement representative, with or without an attorney present..

Government Code Section 12012.1 authorizes the Governor, or the Governor's designee, to approve the transfer of a youth committed to the Division of Juvenile Justice to the youth's current or former nation of citizenship.

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

The California Department of Corrections and Rehabilitation (CDCR), Division of Juvenile Justice (Division) proposes to amend sections 4621.1 and 4621.2 and add section 4621.3 to the California Code of Regulations (CCR), Title 15, Division 4, Chapter 3, Subchapter 1, Article 4. It further proposes to add section 4964 to the CCR, Title 15, Division 4.5, Chapter 2, Article 4, concerning citizens or nationals of a foreign country.

This rulemaking action will ensure compliance with current statutory authorities and requirements. Penal Code section 5028 requires the Division to inform citizens or nationals of a foreign country in the Division's custody that they may contact their consulate. If contact is requested, the Division is required to notify the nearest consulate or embassy without delay. This section further provides citizens or nationals of a foreign country the right to request transfer to their current or former nation of citizenship for the remainder of their confinement time. The proposed text outlines a youth's rights, establishes a transfer request process within the Division, and delineates criteria to be considered by the Board of Juvenile Hearings (Board) when considering the transfer of a youth to the youth's nation of citizenship.

This rulemaking action will also ensure compliance with Government Code section 7284.10, which provides a youth the right to decline or accept a request for an interview by an United States Immigration and Customs Enforcement representative, with or without an attorney present. The proposed language requires parental consent for youth who are under the age of 18 and not emancipated. Further, the proposed language adds requirements for providing citizens or nationals of a foreign country with information received from the United States Immigration and Customs Enforcement, consistent with Government Code section 7284.10(a)(2).

This rulemaking action updates names and terms for consistency with current statutes and terminology used by the Division.

This action provides the following:

- Ensures youth are afforded the right to contact their consulate.
- Provides youth an opportunity to either accept or decline a request for interview by the United States Immigration and Customs Enforcement (ICE).
- Ensures youth are provided information received from ICE.
- Ensures youth are afforded the right to request transfer to a country where the youth is a citizen or national to serve the remainder of their confinement time.
- Provides a timely hearing before the Board to consider their request for transfer to their country of citizenship or nationality
- Ensures youth the right to be informed of and present at a transfer hearing before the Board.
- Provides the Board with criteria on which to base a decision regarding a request for transfer, consistent with the provisions of Foreign Prisoner Transfer Treaties and factors considered by the International Prisoner Transfer Program
- Requires the Division obtain parental consent prior to an interview with the youth by an United States Immigration and Customs Enforcement representative.
- Changes the term “Department” to “Division” for consistency with Welfare and Institutions Code Section 1703(c).
- Changes the term “ward” to “youth” for consistency with Welfare and Institutions Code Section 224.70(e).
- Updates the terms “illegal aliens” and “foreign national” to “citizen or national of a foreign country”, consistent with the scope of Title 18 United States Code section 4100.
- Includes the name of the United States Department of Justice International Prisoner Transfer Program for consistency with current transfer process guidelines.

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

The proposed regulatory action will benefit the youth committed to the Division by ensuring youth who are citizens or nationals of a foreign country are provided the right to contact their consulate, accept or decline a request for interview by the United States Immigration and Customs Enforcement (ICE), receive information from ICE, and request transfer to a country where the youth is a citizen or national to serve the remainder of their confinement time.

Additionally, the proposed regulatory action will ensure youth are provided a timely hearing before the Board to consider their request for transfer to their country of citizenship or nationality, as well as the right to be informed of and present at this hearing. Further, the proposed regulatory action will provide the Board with criteria on which to base their decision, consistent with the provisions of Foreign Prisoner Transfer Treaties and factors considered by the International Prisoner Transfer Program.

The requirement for obtaining parental consent prior to an interview with an United States Immigration and Customs Enforcement representative, ensures youth under the age of 18 and not emancipated are afforded the same rights as they would have if they were not detained. This provision facilitates family engagement, an important aspect of the Division's rehabilitative mission.

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

Pursuant to Government Code 11346.5(a)(3)(D), the Department must evaluate whether the proposed regulations are inconsistent or incompatible with existing state regulations. Pursuant to this evaluation, the Department has determined these proposed regulations are not inconsistent or incompatible with any existing regulations within CCR, Title 15, Divisions 4 or 4.5.

**LOCAL MANDATES:**

The proposed regulatory action imposes no mandates on local agencies or school districts, or a mandate which requires reimbursement pursuant to Government Code Sections 17500-17630.

**FISCAL IMPACT STATEMENT:**

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

**EFFECT ON HOUSING COSTS:**

The Department has determined that the proposed action will have no significant effect on housing costs because the proposed regulations effect only the internal operations of the Division and youth committed to the Division.

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

The Department has determined that the proposed action 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 because the proposed regulations effect only the internal operations of the Division and youth committed to the Division.

**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 because the proposed regulations effect only the internal operations of the Division and youth committed to the Division.

**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 will have no significant adverse economic impact on small businesses because the proposed regulations effect only the internal operations of the Division and youth committed to the Division.

### **CONSIDERATION OF ALTERNATIVES:**

In accordance with Government Code section 11346.5, subdivision (a)(13), the Department must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention 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 provisions of law.

The Department invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations 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 regulatory action. The rulemaking file for this regulatory action, which contains those items and all information on which the proposal is based (rulemaking file) is available to the public upon request directed to the contact person listed in this Notice. The proposed text, ISOR, and Notice of Proposed Action will also be made available on the Department's website at [https://www.cdcr.ca.gov/Regulations/Juvenile\\_Justice](https://www.cdcr.ca.gov/Regulations/Juvenile_Justice).

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

Following its preparation, a copy of the Final Statement of Reasons may be obtained from the contact person listed in this Notice.

### **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 calendar days before the Department adopts the regulations as revised. Requests for copies of any modified regulation text should be directed to the contact person listed in this Notice. The Department will accept written comments on the modified regulations for 15 calendar days after the date on which they are made available.