



Department of Corrections and Rehabilitation
NOTICE OF CHANGE TO REGULATIONS

Sections: 3375 and 3375.3	Number: 19-05	Publication Date: August 9, 2019	Effective Date: N/A
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INSTITUTION POSTING AND CERTIFICATION REQUIRED

This Notice announces the proposed amendment of Sections 3375 and 3375.3 of the California Code of Regulations (CCR), Title 15, Crime Prevention and Corrections, Division 3, Chapter 1, regarding the calculation of unfavorable behavior points.

PUBLIC COMMENT PERIOD

The public comment period will close on **September 30, 2019 at 5:00 p.m.** Any person may submit written comments about the proposed regulations by mail to the California Department of Corrections and Rehabilitation (CDCR), Regulation and Policy Management Branch (RPMB), P.O. Box 942883, Sacramento, CA 94283-0001, or by e-mail to RPMB@cdcr.ca.gov. All written comments must be received or postmarked no later than **5:00 p.m. on September 30, 2019**.

PUBLIC HEARING INFORMATION

A public hearing regarding these proposed regulations will be held **on September 30, 2019, from 10:00 am to 11:00 am in the Conference Room 100N, located at 1515 S Street, North Building, Sacramento, CA 95811.** The purpose of the hearing is to receive 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 comments submitted during the prescribed comment period are given the same significance and weight as verbal 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, institutions and 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. CDCR Form 621-A (Rev. 04/18), Certification of Posting, shall be returned to RPMB by mail or email. See Department Operations Manual Sections 12010.12.1 and 12010.12.2 for posting and certification of posting procedures.

CONTACT PERSON

Inquiries regarding this Notice should be directed to J. Struckmann, by mail to California Department of Corrections and Rehabilitation, RPMB, P.O. Box 942883, Sacramento, CA 94283-0001, by telephone at (916) 445-2276, or e-mail to RPMB@cdcr.ca.gov. Inquiries regarding the subject matter of these regulations should be directed to Steve Jimenez, Division of Adult Institutions, at (916) 445-0224.

Original signed by:

KATHLEEN ALLISON
Undersecretary, Operations
California Department of Corrections and Rehabilitation

Attachments

NOTICE OF PROPOSED REGULATIONS
California Code of Regulations
Title 15, Crime Prevention and Corrections
Department of Corrections and Rehabilitation

NOTICE IS HEREBY GIVEN that the Secretary of the California Department of Corrections and Rehabilitation (CDCR or Department), proposes to amend Sections 3375 and 3375.3 of Title 15, Division 3, Chapter 1, regarding unfavorable behavior points.

PUBLIC HEARING

Date and Time: **September 30, 2019 – 10:00 am - 11:00 am**
Place: Department of Corrections and Rehabilitation
Conference Room 100N
1515 S Street – North Building
Sacramento, CA 95811
Purpose: To receive comments about this action.

PUBLIC COMMENT PERIOD

The public comment period begins **August 9, 2019** and closes on **September 30, 2019 at 5:00 p.m.** Any person may submit written comments by mail addressed to the primary contact person listed below, or by email to rpbm@cdcr.ca.gov, before the close of the comment period. For questions regarding the subject matter of the regulations, call the program contact person listed below.

CONTACT PERSONS

<u>Primary Contact</u>	<u>Back-Up</u>	<u>Program Contact</u>
J. Struckmann Telephone: 916-445-2276 Regulation and Policy Management Branch P.O. Box 942883 Sacramento, CA 94283-0001	Y. Sun Telephone: (916) 445-2269 Regulation and Policy Management Branch P.O. Box 942883 Sacramento, CA 94283-0001	Steve Jimenez Classification Services Unit Division of Adult Institutions 916-445-0224

AUTHORITY AND REFERENCE

Government Code Section 12838.5 provides that commencing July 1, 2005, CDCR succeeds to, and is vested with, all the powers, functions, duties, responsibilities, obligations, liabilities, and jurisdiction of abolished predecessor entities, such as: Department of Corrections, Department of the Youth Authority, and Board of Corrections.

Penal Code (PC) Section 5000 provides that commencing July 1, 2005, any reference to 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 5055** provides that commencing July 1, 2005, all powers and duties previously granted to and imposed upon the Department of Corrections shall be exercised by the Secretary of the CDCR. **PC Section 5058** authorizes the Director to prescribe and amend rules and regulations for the administration of prisons and for the administration of the parole of persons. **PC Section 5058.3** authorizes the Director to certify in a written statement filed with Office of Administrative Law that operational needs of the Department require adoption, amendment, or repeal of a regulation on an emergency basis.

INFORMATIVE DIGEST / POLICY STATEMENT OVERVIEW

In 2010, CDCR commissioned the Expert Panel Study of the Inmate Classification Score System to evaluate the factors that justify an inmate's housing placement, custody level, and propensity for institutional misconduct. The study found that inmates placed in higher security level housing are more likely to engage in more institutional misconduct than if they were placed in a lower security level.

Current regulations require the assessment of an inmate's unfavorable behavior point for prior disciplinary offenses during incarceration with any correctional agency, regardless how long ago the offense occurred. The proposed regulations enacts a 10-year limitation on the length of time a prior disciplinary offense will count towards an inmate's classification score, thereby potentially placing the inmate in a lower security level where they may maintain appropriate behavior and successfully engage in rehabilitative programming.

This action will:

- Establish a limitation on the effect an inmate's disciplinary history will have on their classification score.
- Revise procedures for assessing unfavorable behavior points for inmates admitting to CDCR on a new term of commitment.
- Revise procedures for assessing unfavorable behavior points for inmates returning to CDCR on a current term of commitment.

DOCUMENTS INCORPORATED BY REFERENCE

None.

SPECIFIC BENEFITS ANTICIPATED BY THE PROPOSED REGULATIONS

The Department anticipates the proposed regulations will further promote inmate access to rehabilitative services and programs, which will aid in public safety when inmates return to the community. The proposed regulations will also assist in providing opportunity for lower security level placement consistent with the Expert Panel Study, which concluded inmates placed in a lower security level are more likely to refrain from serious institution misconduct. The proposed amendments prioritize safety of inmates and institution staff while allowing inmates, whose disciplinary history is lessened, the opportunity to qualify for lower security levels and potentially increase their access to rehabilitative services and programs.

EVALUATION OF CONSISTENCY / COMPATIBILITY WITH EXISTING LAWS AND REGULATIONS

Pursuant to Government Code 11346.5(a)(3)(D), the Department has determined the proposed regulations are not inconsistent or incompatible with existing regulations. After conducting a review for any regulations that would relate to or affect this area, the Department has concluded that these are the only regulations that concern unfavorable behavior points.

LOCAL MANDATES

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

FISCAL IMPACT STATEMENT

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

EFFECT ON HOUSING COSTS

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

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

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

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT ON BUSINESS

The Department has made an initial determination that the proposed regulations will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states, because the proposed regulations place no obligations or requirements on any business.

EFFECT ON SMALL BUSINESSES

The Department has determined that the proposed regulations will not affect small businesses. This action has no significant adverse economic impact on small business because they place no obligations or requirements on any business.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

The Department has determined that the proposed regulation will have no effect on the creation of new, or the elimination of existing, jobs or businesses within California, or effect the expansion of businesses currently doing business in California. The Department has determined that the proposed regulation will have no effect on worker safety or the state's environment. These regulations may benefit the welfare of California residents by helping to make CDCR institutions safer for inmates, staff, and visitors. Additionally, safer institutions may provide an environment more conducive to rehabilitation, thereby reducing recidivism.

CONSIDERATION OF ALTERNATIVES

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

AVAILABILITY OF PROPOSED TEXT AND INITIAL STATEMENT OF REASONS

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

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

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

AVAILABILITY OF CHANGES TO PROPOSED TEXT

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

TEXT OF PROPOSED REGULATIONS

In the following, underline indicates additional text and ~~strikethrough~~ indicates deleted text.

California Code of Regulations, Title 15, Division 3, Adult Institutions, Programs and Parole Subchapter 4. General Institution Regulations

Article 10. Classification

3375. Classification Process.

Subsections 3375(a) through (b) are unchanged.

New Subsection 3375(b)(1) is adopted to read:

(b)(1) An automated needs assessment tool that identifies an inmate's criminogenic needs shall be administered pursuant to Section 3375.6.

Subsections 3375(c) through 3375(k)(1)(C)(2) are unchanged.

Subsection 3375(l) is amended to read:

~~(l) An automated needs assessment tool that identifies an inmate's criminogenic needs shall be administered pursuant to Section 3375.6.~~ The readmission process shall include review of the inmate's CDCR Form 839 to determine if unfavorable behavior points were previously assessed for a guilty finding of one or more of the six serious disciplinary offenses set forth in subsections 3375.3(b)(4)(C) through (H). If the offense(s) occurred 10 or more years prior to the date of the inmate's initial reception to CDCR, the previously assessed points shall be removed from the inmate's electronic CDCR Form 839, and shall no longer be counted toward the inmate's preliminary classification score.

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).

3375.3. CDCR Classification Score Sheet, CDCR Form 839, Calculation.

Subsections 3375.3 through 3375.3(b)(4)(A) are unchanged.

Subsection 3375.3(b)(4)(B) is amended to read:

(b)(4)(B) Serious Disciplinary History (Boxes 53-64).

A single serious disciplinary offense for which an inmate was found guilty may result in the assessment of points for more than one factor listed in subsections (b)(4)(C) through (H) of this section. Unfavorable behavior points shall be assessed for offenses that occurred while the inmate was incarcerated with any correctional agency. and Points shall not be assessed for serious disciplinary offenses that occurred during any prior incarceration 10 or more years prior to the date of the inmate's initial reception on the current term of incarceration. even if it occurred beyond the last 12 months of incarceration.

Subsections 3375.3(b)(4)(C) through 3375.3(g)(2) are unchanged.

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).

INITIAL STATEMENT OF REASONS

The California Department of Corrections and Rehabilitation (CDCR) proposes to adopt subsection 3375(b)(1), and amend subsections 3375(l) and 3375.3(b)(4)(B) of the California Code of Regulations (CCR), Title 15, Division 3, Article 10, Section 3375 Classification Process, concerning the recalculation of unfavorable behavior points applied to an inmate's preliminary classification score.

CDCR employs an Inmate Classification Score System (ICSS) to determine the appropriate housing placement and supervision level for inmates. This scoring system determines inmates' housing placement at one of four security levels. Lower placement scores correspond with lower security controls, and higher placement scores correspond with higher security controls.

The ICSS was implemented by CDCR in the early 1980s and has evolved based on periodic validation studies designed to improve the association between classification scores and institutional misconduct. In 2010, CDCR commissioned the Expert Panel Study of ICSS to evaluate and assist in identifying factors that justify an inmate's housing placement, custody level, and propensity for institutional misconduct. The Expert Panel acknowledged that the best predictor of inmates' institutional misconduct is their preliminary classification score. The preliminary classification score is based on several variables, including inmates' prior incarceration behavior. Based on the Expert Panel's findings, CDCR modified the ICSS by adjusting security level ranges. These modifications are found under CCR, Title 15, Division 3, Article 10, Section 3375.1, Inmate Placement, which identifies inmate housing placement as follows: An inmate with a placement score of 0 through 18 shall be placed in a Level I facility; an inmate with a placement score of 19 through 35 shall be placed in a Level II facility; an inmate with a placement score of 36 through 59 shall be placed in a Level III facility; an inmate with a placement score of 60 and above shall be placed in a Level IV facility.

The Expert Panel concluded there is evidence of a higher rate of institutional misconduct among inmates classified at Levels III and IV. The study found that inmates who are placed in higher security level housing may engage in more institutional misconduct than they would if placed at a lower security level, where they may successfully engage in the housing program and maintain appropriate behavior.

Current regulations set forth the procedure for assessing unfavorable behavior points for prior disciplinary offenses. If an inmate returns to CDCR under a new commitment, the assigned Correctional Counselor (CC) reviews the inmate's prior incarceration disciplinary history to determine if there was a prior guilty finding for one or more of the six serious disciplinary violations listed in CCR, Title 15, subsections 3375.3(b)(4)(C) through (H). The six offenses are: Battery or Attempted Battery on a Non-Prisoner; Battery or Attempted Battery on a Prisoner; Distribution of Drugs; Possession of a Deadly Weapon; Inciting a Disturbance; and Battery Causing Serious Injury. These offenses are considered serious disciplinary violations and predictors of an inmate's threat level. The disciplinary history that is reviewed includes both offenses committed during an incarceration at CDCR, and equivalent misconduct committed during incarceration in any other facility (such as county jail). If the inmate has a prior guilty finding for any of the six

offenses, unfavorable behavior points are added to the inmate's preliminary classification score. As an example, if an inmate was found guilty of one of the six disciplinary offenses in 1999, then was discharged and returned to CDCR on a new prison commitment in 2018, under current regulations, unfavorable behavior points based on the 1999 disciplinary offense would be added to the inmate's preliminary score during admission to CDCR on the new commitment. The addition of these unfavorable behavior points would result in the inmate receiving a higher placement score, and depending on the total points assessed, would potentially result in the inmate being placed at a higher classification level. Currently, points are assessed for disciplinary violations the inmate committed at any time in the past, potentially decades.

The proposed regulations create a 10-year limitation on the length of time a prior disciplinary offense will count toward inmates' preliminary classification scores. CDCR considers 10 years to be a sufficient length of time to temper the prior misconduct and decrease the risk of future serious institutional misconduct.

The proposed regulations will establish a review period for the application of unfavorable behavior points. If an inmate returns to CDCR under a new commitment or readmission, a CC shall review the inmate's prior incarceration disciplinary history to determine if he or she was found guilty of one of the six offenses. If it is determined the offense was committed 10 years or more prior to the inmate's return to CDCR under a new commitment, the unfavorable points shall not be assessed. For those inmates currently incarcerated prior to the proposed regulation, who were assessed unfavorable behavior points associated with any of the six offense(s) and determined to be committed 10 years or more prior to the inmate's return to CDCR shall have their unfavorable behavior points removed and placement score recalculated by a CC during the inmate's next Annual Review pursuant to the proposed regulations. Using the example given above, this inmate would no longer have unfavorable behavioral points added to their preliminary classification score, because the prior disciplinary offense was committed 10 or more years prior to the inmate's return. As a result, the inmate may be placed at a lower security level, depending on all of the individual's case factors.

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 identified that would alter the Department's initial determination.

ECONOMIC IMPACT ASSESSMENT

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

Significant Adverse Economic Impact on Business

The Department has made an initial determination that the proposed regulatory action will not have a significant adverse economic impact on business. Additionally, there have been no facts, evidence, documents, testimony, or other evidence provided that would alter the Department's initial determination. The proposed regulations do not have a direct impact on California businesses as the proposed regulations affect the internal management of prisons only.

Creation of New or Elimination of Existing Jobs within the State of California

The Department has determined that the proposed regulations will not have an impact on the creation of new or elimination of existing jobs within California as the proposed regulations affect the internal management of prisons only.

Creation of New, Expansion or the Elimination of Existing Businesses Currently Doing Business within the State of California

The Department has determined that the proposed regulations will not have an impact on the creation of new or the elimination of existing businesses within California, or affect the expansion of businesses currently doing business in California as the proposed regulations affect the internal management of prisons only.

LOCAL MANDATES

The Department has determined this action imposes no mandates on local agencies or school districts, or a mandate that would require reimbursement pursuant to Part 7 (Section 17561) of Division 4.

BENEFITS OF THE REGULATIONS

The Department anticipates the proposed regulations will further promote inmate access to rehabilitative services and programs, which will aid in public safety when inmates return to the community. The proposed regulations will also assist in providing opportunity for lower security level placement consistent with the Expert Panel Study, which concluded inmates placed in a lower security level are more likely to refrain from serious institution misconduct. The proposed amendments prioritize safety of inmates and institution staff while allowing inmates whose disciplinary history is lessened the opportunity to qualify for lower security levels and potentially increase their access to rehabilitative services and programs.

MATERIALS RELIED UPON

The Department, in proposing amendments to these regulations, relied, in part, upon the following document:

- [2011 Office of Research publication titled the "Expert Panel Study of the Inmate Classification Score System."](#)

SPECIFIC PURPOSE AND RATIONALE FOR EACH SECTION, PER GOVERNMENT CODE SECTION 11346.2(b)(1)

Section 3375 Classification Process.

Subsection 3375 (a) through (b) is unchanged.

Subsection 3375(b)(1) is adopted to relocate existing text from subsection 3375(l) as the Department determined it is better suited in sequence to section 3375(b)(1). No other changes are being made to the existing text as it's only being relocated.

Subsection 3375(l) is amended to relocate existing text to new subsection 3375(b)(1), and to adopt new language to address inmates who were paroled, but were returned to CDCR custody on a parole violation and the recalculation of unfavorable behavior points. During the readmission process, the Correctional Counselor refers to the inmate's CDCR Form 839 (Rev. 07/12), Classification Score Sheet, an electronic form that was completed when the inmate was initially received into CDCR custody on the current term, to assess if the inmate received points from prior unfavorable behavior. The CDCR Form 839 was previously adopted and incorporated by reference into the CCR, Title 15, Division 3, Section 3375.3, and is therefore not made available for review with this rulemaking action. The Correctional Counselor reviews serious disciplinary history, and if the violation was committed 10 or more years before the inmate's initial reception date, those points shall be removed from the electronic CDCR Form 839 and the score shall be recalculated. The result of the removal and recalculation of points ultimately lowers the placement score of the returning inmate, which may qualify the inmate for classification at a lower level, resulting in a lower-level housing placement. By affording inmates this avenue for reassessment, CDCR anticipates inmates who are placed in lower security levels will increase their participation in the available rehabilitative services and programs. CDCR considers 10 years to be a sufficient length of time to lessen the prior misconduct and decrease the risk of future serious misconduct.

Section 3375.3 CDCR Classification Score Sheet, CDCR Form 839, Calculation.

Subsections 3375.3(a) through 3375.3(b)(4)(A) are unchanged.

Subsection 3375.3 (b)(4)(B) is amended to clarify the procedure for assessing unfavorable behavior points. The amendment of the current regulations will afford inmates with past disciplinary histories an avenue to potentially qualify for placement in lower security housing. CDCR anticipates inmates who qualify for such placement will increase their participation in available rehabilitative services and programs, thereby decreasing the likelihood for future misconduct. The phrase "while incarcerated with any correctional agency" is added to clarify behavioral points will be assessed from an inmate's history of incarceration, which can include juvenile hall and county jail. The phrase "during any prior incarceration" is removed as it could be interpreted as only CDCR incarceration, which is not the intent of the regulation. The phrase "the inmate's current term" is added to specify that even though an inmate could have prior incarceration history with CDCR, the 10-year timeframe is based on the reception date of the inmate's current term of commitment.