



Department of Corrections and Rehabilitation
NOTICE OF CHANGE TO REGULATIONS

Sections: 3375.2, 3377.1	NCR Number: 20-03	Publication Date: April 24, 2020	Effective Date: To Be Announced
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INSTITUTION POSTING AND CERTIFICATION REQUIRED

This Notice announces the proposed amendment of Sections 3375.2 and 3377.1 of the California Code of Regulations (CCR), Title 15, Crime Prevention and Corrections, Division 3, Chapter 1, regarding Administrative Determinants.

PUBLIC COMMENT PERIOD

The public comment period will close on **June 10, 2020**. 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 **June 10, 2020**.

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 Section 12010.6.7 for posting and certification of posting procedures.

CONTACT PERSON

Inquiries regarding this Notice should be directed to S. Pollock, RPMB, P.O. Box 94283, Sacramento, CA 94283-0001, by telephone at (916) 445-2308, 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:

JEFFREY MACOMBER
Undersecretary, Administration
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 3375.2 and 3377.1 into Title 15, Division 3, Chapter 1, regarding Administrative Determinants.

PUBLIC COMMENT PERIOD

The public comment period begins **April 24, 2020** and closes on **June 10, 2020**. Any person may submit written comments by mail addressed to the primary contact person listed below, or by email to rmb@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.

No public hearing is scheduled for these proposed regulations; however, pursuant to Government Code Section 11346.8, any interested person or their duly authorized representative may request a public hearing, no later than 15 days prior to the close of the written comment period.

CONTACT PERSONS

Primary Contact

S. Pollock
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Regulation and Policy
Management Branch
P.O. Box 942883
Sacramento, CA 94283-0001

Back-Up

Y. Sun
Telephone: (916) 445-2269
Regulation and Policy
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Sacramento, CA 94283-0001

Program Contact

Steve Jimenez
Division of Adult Institutions
Classification Services Unit
Telephone: 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 regulation on an emergency basis.

INFORMATIVE DIGEST / POLICY STATEMENT OVERVIEW

The proposed regulations standardize the use of administrative determinants to encourage further access to rehabilitative services and programs within a behavior based model for inmates housed within CDCR. Current regulations allow inmates meeting one or more administrative or irregular placement conditions, known as administrative determinants, to be housed in a facility with a security level that is not consistent with the inmate's placement score, however Section 3375.2(a)(2) requires an inmate with a history of specific sex crimes designated in Section 3377.1(b) to be housed in accordance with

their placement score and not to be assigned outside the security perimeter. The proposed regulations will allow for inmates with a history of specific sex crimes to be placed in a Level II or higher facility based upon individual factors that may indicate a more appropriate placement for the inmate. In addition, inmates serving a life term whose placement score is not consistent with a Level II security level, shall now be afforded the opportunity for placement in a Level II security level when approved by the Departmental Review Board. These changes will allow for a more appropriate placement of the inmate and promote further access to rehabilitative services and programs.

This action will:

- Revise language in Section 3375.2(a) to require that inmates with a history of sex crimes designated in Section 3377.1(b), shall not be housed in a Level I facility. This will allow for these inmates to be placed in a Level II or higher facility based upon individual factors that may indicate a more appropriate placement.
- Remove the language “Level II” from Section 3375.2(a)(11), to provide that inmates serving a life term whose placement score is not consistent with a Level I security level, shall not be housed in a Level I facility except when approved by the Departmental Review Board. This will allow for these inmates to be housed in a Level II or higher facility.
- Revise language in Section 3377.1(b)(10) to provide consistency with the new language in Section 3375.2(a)(2). This will provide that inmates with “R” suffixes shall not be housed in a Level I facility and shall not be assigned outside the security perimeter.

DOCUMENTS INCORPORATED BY REFERENCE

N/A

SPECIFIC BENEFITS ANTICIPATED BY THE PROPOSED REGULATIONS

The proposed regulatory action will benefit CDCR inmates by allowing for specified inmates to access rehabilitative services and programs by allowing for them to be placed in a lower level security facility. Access to rehabilitative services and programs will improve inmates’ ability to rehabilitate so that they are better prepared for life once released from prison, improving their chances of success, and reducing recidivism.

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. This was determined by performing a search of existing regulations.

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 providing rehabilitative services and programs to inmates, providing them a greater chance for success in their communities once released from prison.

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

Chapter 1. Rules and Regulations of Adult Operations and Programs

Subchapter 4. General Institution Regulations

Article 10. Classification

3375.2 Administrative Determinants

Subsections 3375.2(a) through (a)(1) are unchanged.

Subsection 3375.2(a)(2) is amended to read:

(2) An inmate with a history of sex crimes designated in Section 3377.1(b) shall not be housed in ~~accordance with their placement score~~ a Level I facility and shall not be assigned outside the security perimeter.

Subsections 3375.2(a)(3) through (a)(10)(I) are unchanged.

Subsection 3375.2(a)(11) is amended to read:

(11) An inmate serving a life term whose placement score is not consistent with a Level I ~~or H~~ security level shall not be housed in a Level I ~~or Level H~~ facility except when approved by the Departmental Review Board.

Subsections 3375.2(a)(12) through (b)(30) are unchanged.

3377.1 Inmate Custody Designations

Subsections 3377.1(a) through (b)(9) are unchanged.

Subsection 3377.1(b)(10) is amended to read:

(10) Inmates with "R" suffixes shall not be housed in ~~accordance with their placement score~~ a Level I facility and shall not be assigned outside the security perimeter.

Subsections 3377.1(b)(11) through (d)(3)(B) are unchanged.

INITIAL STATEMENT OF REASONS

The California Department of Corrections and Rehabilitation (CDCR) proposes to amend Sections 3375.2 and 3377.1 of the California Code of Regulations (CCR), Title 15, Division 3, regarding Administrative Determinants and Inmate Custody Designations. The primary objective of these amendments is to standardize the use of administrative determinants and to encourage further access to rehabilitative services and programs within a behavior based model for inmates housed within CDCR.

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

Existing regulatory language in Section 3375.2(a) allows an inmate meeting one or more administrative or irregular placement conditions, known as administrative determinants, to be housed in a facility with a security level that is not consistent with the inmate's placement score. For example, correctional staff may utilize an administrative determinant when: The inmate's behavior record indicates they are capable of successful placement at a facility with a security level lower than that which is consistent with their placement score; the inmate has strong family ties to a particular area where other placement would cause an unusual hardship; or the inmate has a work skill in a critical trade that warrants special placement considerations.

Current regulatory language in Section 3375.2(a)(2) requires that an inmate with a history of specific sex crimes designated in CCR, Title 15, Section 3377.1(b) shall be housed in accordance with their placement score and shall not be assigned outside the security perimeter. This policy prevents CDCR from using available administrative determinants for inmates with a history of specific sex crimes to place them in a security level that is otherwise not consistent with their placement score. The proposed amendment to Section 3375.2(a)(2) will allow CDCR to place an inmate with a history of specific sex crimes in a Level II or higher facility based upon individual factors that may indicate a more appropriate placement for the inmate. This change will not affect existing regulations that prevent inmates with a history of specific sex crimes from placement in a Level I facility and assignment outside the security perimeter.

In addition, current regulatory language in Section 3375.2(a)(11) specifies that an inmate serving a life term whose placement score is not consistent with a Level I or Level II security level shall not be housed in a Level I or Level II facility except when approved by the Departmental Review Board (DRB). The proposed amendment to Section 3375.2(a)(11) allows CDCR to place life term inmates with a placement score not

consistent with a Level II security level in Level II housing. This change will not impact existing regulations requiring DRB approval for an inmate serving a life term whose placement score is not consistent with a Level I security level to be housed in a Level I facility.

To provide consistency with these changes to Sections 3375.2(a)(2) and (a)(11), Section 3377.1(b)(10) is amended to remove the language that specifies “housing in accordance with their placement score” and replace it with language that specifies inmates “shall not be housed in a Level I facility.”

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 only affect the internal management of prisons.

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 only affect the internal management of prisons.

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

The Department anticipates the proposed regulations will further enhance inmate access to rehabilitative services and programs through lower security level placement. The proposed amendments will allow inmates the opportunity to qualify for lower security levels and increased access to rehabilitative services and programs, which will aid in public safety when inmates return to the community. The proposed regulations will not affect worker safety or the State's environment.

BENEFITS OF THE REGULATIONS:

The Department anticipates the proposed regulations will further enhance inmate access to rehabilitative services and programs through lower security level placement. The proposed amendments will allow inmates the opportunity to qualify for lower security levels and increased access to rehabilitative services and programs, which will aid in reducing inmate recidivism and increase public safety when inmates return to the community.

MATERIALS RELIED UPON:

In proposing additions and amendments to these regulations, the Department has not identified or relied on any technical, theoretical, or empirical study, report, or similar document.

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

Chapter 1. Rules and Regulations of Adult Operations and Programs

Subchapter 4. General Institution Regulations

Article 10. Classification

Section 3375.2 Administrative Determinants.

Subsection 3375.2(a)(2) is amended to allow inmates with a history of sex crimes designated in CCR, Subsection 3377.1(b) to be reviewed by CDCR for placement in a

facility with a security level which is not consistent with their placement score. The requirement that these inmates be housed “in accordance with their placement score” is removed, giving CDCR the authority to apply an appropriate administrative determinant in order to house these inmates at a facility that is not consistent with their placement score. The words “not” and “a Level I facility” are added to assure that inmates with a history of certain offenses are not housed in a Level I facility, consistent with current practice. The existing requirement that these inmates not be assigned outside the security perimeter is retained. These revisions will allow classification committees to consider inmates with a history of specified sex crimes for placement in a more appropriate facility. By providing the possibility of lower level security housing, inmates will have greater access to rehabilitative services and programs, which will in turn improve their chances of success upon release to parole and into their communities.

Subsection 3375.2(a)(11) is amended to remove the requirement that Departmental Review Board (DRB) approval is necessary to place an inmate serving a life term in a Level II facility when that inmate’s placement score is not consistent with a Level II security level. Removing the phrase “or Level II” retains the requirement of DRB approval for placing an inmate serving a life sentence in a Level I facility when that inmate’s placement score is not consistent with a Level I security level. However, for placement of an inmate into a Level II facility when that inmate is serving a life term and their placement score is not consistent with a Level II security level, classification staff will have the authority to apply an appropriate administrative determinant when reviewing such placement. Removing this language will allow these inmates to be considered for Level II housing. By providing the possibility of lower level security housing, inmates will have greater access to rehabilitative services and programs, which will in turn improve their chances of success upon release to parole and into their communities.

Subsection 3377.1(10) is amended to revise the current language by stating that “Inmates with “R” suffixes shall not be housed in a Level I facility and shall not be assigned outside the security perimeter.” This will provide consistency with language outlined in other sections.