



Department of Corrections and Rehabilitation
NOTICE OF CHANGE TO REGULATIONS

Sections: 3767	NCR Number: 20-07	Publication Date: June 19, 2020	Effective Date: To Be Determined
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INSTITUTION POSTING AND CERTIFICATION REQUIRED

This Notice announces the proposed repeal of Section 3767 of the California Code of Regulations (CCR), Title 15, Crime Prevention and Corrections, Division 3, Subchapter 6, regarding Flash Incarcerations.

PUBLIC COMMENT PERIOD

The public comment period will close on **August 7, 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 **August 7, 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 Josh Jugum, by mail to California Department of Corrections and Rehabilitation, RPMB, P.O. Box 942883, Sacramento, CA 94283-0001, by telephone at (916) 445-2269, or e-mail to RPMB@cdcr.ca.gov. Inquiries regarding the subject matter of these regulations should be directed to Aimee Sugapong, Division of Adult Parole Operations, at (916) 324-9325.

Original Signed By:

GUILLERMO VIERA ROSA
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 the Department), proposes to repeal Section 3767 of the California Code of Regulations, Title 15, Division 3, Subchapter 6, regarding Flash Incarcerations.

PUBLIC COMMENT PERIOD

The public comment period begins **June 19, 2020** and closes on **August 7, 2020**. Any person may submit written comments by mail addressed to the primary contact person listed below, or by email to rpmb@cdcr.ca.gov, before the close of the comment period. For questions regarding the subject matter of the regulations, please 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

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Back-Up

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Program Contact

A. Sugapong
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Division of Adult Parole
Operations

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 Department adopted regulations regarding Flash Incarcerations effective July 1, 2019, pursuant to Penal Code Section 3000.08. Flash incarceration is a period of detention, between one and ten consecutive days, in a city or a county jail due to a violation of a parolee's conditions of parole.

This action will:

Repeal California Code of Regulations, Title 15, Section 3767, Flash Incarcerations. The Department conducted a thorough review of flash incarceration and determined there is a lack of evidence supporting a direct correlation between the use of flash incarceration as a remedial sanction and reduced recidivism. Therefore, the Department has elected to discontinue its use.

DOCUMENTS INCORPORATED BY REFERENCE

None

SPECIFIC BENEFITS ANTICIPATED BY THE PROPOSED REGULATIONS

The repeal of these regulations is necessary to ensure that interventions are evidence-based, target the criminogenic needs of offenders, motivate a change in behavior, and subsequently reduce 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. 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 the flash incarcerations of parolees.

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 regulations 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. This rulemaking action repeals existing regulatory provisions and does not adopt or amend any provisions.

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 Regulations 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 text, ~~strikethrough~~ indicates deleted text.

California Code of Regulations, Title 15, Division 3, Adult Institutions, Programs, and Parole

Subchapter 6, Article 19, Section 3767, Flash Incarcerations is repealed.

3767. Flash Incarcerations.

~~(a) The California Department of Corrections and Rehabilitation (CDCR) has the authority to impose a period of flash incarceration, as defined in Penal Code Section 3000.08(e), in a city or county jail as a remedial sanction upon parolees who violate conditions of parole. Flash incarceration periods imposed by the Department shall not exceed 10 consecutive days. During a period of flash incarceration, the parolee is not revoked and their parole period shall continue to run untolled (i.e., the period of parole will continue to be reduced on a day-to-day basis).~~

~~(b) Upon placement of a parole hold, and subsequent investigation, the parole agent may recommend to the unit supervisor a parolee serve a period of flash incarceration as a remedial sanction in lieu of revocation. The parole agent shall complete an automated CDCR Form 1500, Parole Violation Decision Making Instrument in the Parole Violation Disposition Tracking System to make the recommendation. Upon such recommendation, the parole agent shall also utilize the CDCR Form 1500 to recommend at least one additional remedial sanction to address the parolee's criminogenic need(s) as defined in Section 3000.~~

~~(c) Upon review and approval of a recommendation for flash incarceration on a CDCR Form 1500 by a unit supervisor or higher, the parolee shall serve a period of flash incarceration not to exceed 10 consecutive days from the day of arrest.~~

~~(1) Notification of the reasons for the detention shall be made to the parolee by the Department in accordance with Section 3754.~~

~~(2) For purposes of calculating a flash incarceration period, the day of booking into a city or county jail shall count as day one.~~

~~(d) The Department shall not impose more than three consecutive flash incarcerations as a sanction upon a parolee during his or her term of parole. An exception to this limit shall be made upon a petition for parole revocation being filed with the court. Upon every petition for parole revocation filed with the court regarding the parolee, the three options for flash incarceration shall reset and be made available for use by the Department.~~

~~(e) Once released from custody, the parolee shall report to the parole office to meet with a parole agent on the first business day following release. Upon reporting, the parole~~

~~agent shall implement the remedial sanction(s) imposed in conjunction with the flash incarceration.~~

~~Note: Authority cited: Section 5054, Penal Code. Reference: Section 3000.08, Penal Code.~~

INITIAL STATEMENT OF REASONS

The California Department of Corrections and Rehabilitation (CDCR) proposes to repeal Section 3767 of the California Code of Regulations (CCR), Title 15, Division 3, Subchapter 6, concerning Flash Incarcerations.

The CDCR Division of Adult Parole Operations (DAPO) conducted a thorough review of flash incarceration and determined there is a lack of evidence supporting a direct correlation between the use of flash incarceration as a remedial sanction and reduced recidivism. Therefore, the Department has elected to discontinue its use.

DAPO conducted research on benchmark programs that use flash incarceration to determine its effectiveness in reducing recidivism. DAPO learned that probation programs that utilize short-term incarceration as a remedial sanction found it to be cost effective, and effective in reducing recidivism in probationers. Although there is documented success regarding the use of short-term incarceration at the county level, DAPO has determined that the use of Flash Incarceration in lieu of a parole revocation period, which may result in no more than three months in custody, does not support similar outcomes for state parolees. DAPO concluded that a reduction in recidivism may also be achieved by using existing evidence-based sanctions. These sanctions provide evidence-based practices that address the known risk factors for reoffending.

The repeal of these regulations is necessary to ensure that interventions are evidence-based, target the criminogenic needs of offenders, motivate a change in behavior, and subsequently reduce recidivism.

Consideration of Alternatives

The Department must determine that no reasonable alternatives considered, or that have 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.

The Department created workgroups that explored the following alternative approaches to implement Flash Incarceration.

1. Initiate Flash Incarceration Hearings: Initiating Flash Incarceration Hearings and developing a Definable Standard/Matrix were rejected, as it may be cost prohibitive due to the significant expense associated with the implementation of the hearing and research component. It may have also created an increased workload for DAPO staff due to the short timeframe to prepare and conduct the hearings.

2. Utilize a Flash Incarceration Waiver: Flash Incarceration Waivers would be a form, which gave the offender an option to waive a hearing and accept flash incarceration as a remedial sanction. This was rejected due to the possibility of further Armstrong litigation risk.

3. Utilize Flash Incarceration for Detoxification in Jail: Using Flash Incarceration for Detoxification in Jail was determined to be an inappropriate use of the sanction. Alternative interventions are available to assist offenders in detoxifying from alcohol or other substances.

ECONOMIC IMPACT ASSESSMENT:

In accordance with Government Code Section 11346.3(b), the CDCR 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 repeal of regulations will not have a significant statewide adverse economic impact on business, including the ability of California businesses to compete with businesses in other states, because the proposed repeal of regulations will only affect parolees under CDCR supervision and will place no obligations or requirements on any business.

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

The Department has determined that the proposed repeal of regulations will not have an impact on the creation of new, or the elimination of existing, jobs within California, as only California offenders released on parole will be affected.

Creation of New or the Elimination of Existing Businesses Within the State of California

The Department has determined that the proposed repeal of regulations will not have an impact on the creation of new, or the elimination of existing, business within California, as only California offenders released on parole will be affected.

Expansion of Businesses Currently Doing Business in the State of California

The Department has determined that the proposed repeal of regulations will not have an impact on the expansion of businesses currently doing business in California, as only California offenders released on parole will be affected.

BENEFITS OF THE REGULATIONS:

The health and welfare of California residents may be enhanced by identifying and directing resources toward programs and services that will improve the reintegration of offenders to their communities upon being released from serving a sentence in state prison. The offender's successful reintegration to the community will improve the public's safety. Repealing these regulations will not affect worker safety or the State's environment.

MATERIALS RELIED UPON:

The Department, in proposing amendments to these regulations, has not identified nor has it relied upon 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):

Subchapter 6. Adult Parole

Article 19. Parole Violations and Reports

3767. Flash Incarcerations.

Section 3767 is repealed. The CDCR Division of Adult Parole Operations conducted a thorough review of flash incarceration and determined there is a lack of evidence supporting a direct correlation between the use of flash incarceration as a remedial sanction and reduced recidivism. Therefore, the Department has elected to discontinue its use.