



Department of Corrections and Rehabilitation
NOTICE OF CHANGE TO REGULATIONS

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| Chapter 1, Subchapter 6, Article 1, Parole Supervision | NCR Number: 20-12 | Publication Date: August 21, 2020 | Effective Date: TBD |
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INSTITUTION POSTING AND CERTIFICATION REQUIRED

This Notice announces the proposed amendment of the California Code of Regulations (CCR), Title 15, Crime Prevention and Corrections, Division 3, Chapter 1, Subchapter 6, Article 1, regarding Parole Supervision.

PUBLIC COMMENT PERIOD

The public comment period will close on **October 2, 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 **October 2, 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 Anthony Carter, by mail to California Department of Corrections and Rehabilitation, RPMB, P.O. Box 942883, Sacramento, CA 94283-0001, by telephone at (916) 445-2220, or e-mail to RPMB@cdcr.ca.gov. Inquiries regarding the subject matter of these regulations should be directed to Lee Brannon, Division of Adult Parole Operations, at (916) 445-1040.

Original signed by

KATHLEEN ALLISON
Undersecretary (A), 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 Chapter 1, Subchapter 6, Article 1 into Title 15, Division 3, regarding Parole Supervision.

PUBLIC COMMENT PERIOD

The public comment period begins **August 21, 2020** and closes on **October 2, 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, 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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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

These regulations are necessary to implement, interpret, and comply with Penal Code (PC) sections 290.04, 3000, 3000.03, 3000.08, 3008, 3060.7, and 9003 and recommendations from the Bureau of State Audits.

This action will:

- Implement the use of a risk assessment instruments used by the State Authorized Risk Assessment Tools for Sex Offenders as mandated by California Penal Code Section 290.4
- Implement the use of evidence based practices to assess the risk of sex offenders with a comprehensive, multi-disciplinary Sex Offender Management Program pursuant to the Penal Code.
- Clarify DAPO's responsibility in regards to high risk parolees.
- Incorporate and implement additional assessment tools for identifying criminogenic needs, addressing those needs, and appropriately setting supervision levels based upon assessment scores.

DOCUMENTS INCORPORATED BY REFERENCE

None

SPECIFIC BENEFITS ANTICIPATED BY THE PROPOSED REGULATIONS

The health and welfare of California residents will 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. The proposed regulations will not affect worker safety or the State's environment.

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 CDCR has concluded that these are the only regulations that concern Parole Supervision.

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

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|--|-------------|
| • Cost or savings to any state agency: | <i>None</i> |
| • Cost to any local agency or school district that is required to be reimbursed: | <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 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 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; underline indicates added or amended text. Additionally, an asterisk (*) indicates unchanged or omitted text.

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

Table of Contents

Subchapter 6, Adult Parole

Article 1. Parole Supervision

Section Titles 3500 through 3506.1 are amended to read:

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3503. Assignment to Parole Agent. ~~[Reserved]~~ Unit.

3504. ~~Parole Assessment~~ Supervision.

3504.1. Determination of Highest Control or Risk Classification For Reporting Upon Release.

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3506. ~~[Reserved]~~ Sex Offender Treatment.

3506.1. Sex Offender Polygraph Testing.

Subchapter 6, Adult Parole

Article 1, Parole Supervision

Section 3500 is amended to read:

3500. General Policy.

~~(a) Pursuant to the provisions of Penal Code (PC) section 3000, when an inmate is sentenced under PC section 1168 or 1170 by a court, the California Department of Corrections and Rehabilitation (CDCR) shall release the inmate on parole unless it is waived by the Board of Parole Hearings.~~

Pursuant to provisions of Penal Code (PC) Sections, 3000, 3000.08, and 1170.18(d), an inmate sentenced to the California Department of Corrections and Rehabilitation (CDCR) for the following, shall be released by CDCR onto parole upon completion of their sentence, unless parole is waived by the Board of Parole Hearings:

(1) An inmate whose commitment offense is a violent felony listed in PC Section 667.5(c).

(2) An inmate whose commitment offense is a serious felony listed in PC Section 1192.7(c).

(3) An inmate sentenced to life pursuant to PC Section 667(e)(2) or Section 1170.12(c)(2).

(4) An inmate designated as a High-Risk Sex Offender (HRSO), as described in Section 3580 and after being assessed as described in Section 3581.

(5) An inmate who is required to undergo treatment in a Department of State Hospital (DSH) facility pursuant to PC Section 2962.

(6) A person re-sentenced pursuant to PC Section 1170.18(d) and ordered to serve one year under the supervision of CDCR.

(b) Release on parole means the legal and physical transfer of an inmate from confinement in an institution to the supervision of a parole agent of the CDCR, Division of Adult Parole Operations (DAPO).

(c) The function of parole is:

(1) To provide for the supervision and surveillance of parolees, including the ~~judicious use of revocation actions~~, community-based programs and services designed to address parolees' criminogenic needs, and revocation actions in accordance with Article 19 of Subchapter 6 of this Division.

(2) To provide educational, vocational, family and personal counseling necessary to assist in the transition between imprisonment and discharge, when feasible, ~~by addressing the criminogenic needs of the parolee to reduce the likelihood that the parolee will commit another crime.~~

(d) Public safety and security.

(1) Consistent effort will be made to ensure that the public is protected and the effectiveness of inmate/parolee treatment programs are within the framework of departmental security and safety.

(2) Each CDCR employee within the parole process will be trained to understand how employee behavior, supervision levels, personnel, and operative procedures affect the maintenance of public safety and security.

(3) The requirement of compliance with conditions of parole, the law, and the need to protect the public will take precedence over all other considerations in the operation of all programs and activities of the parole process.

(e) All inmates not meeting the criteria listed in Section 3500(a)(1) through (6) shall be released to the jurisdiction of the county of last legal residence under post-release community supervision.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 1168, 1170, 3000 and 5054, Penal Code.

Section 3501 is amended to read:

3501. Rules and Regulations.

Persons committed to the Department who are ~~allowed to go upon and remain upon parole or outpatient status~~ released to the jurisdiction of DAPO shall conform to the applicable rules established by or under the authority of the BPH as set forth in Title 15, Divisions 2 and 5 of the California Code of Regulations (CCR), ~~or under the authority of the Superior Court for the county in which the person is being supervised.~~

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 3052 and 5076.2, Penal Code; and Sections 3151 and 3156, Welfare and Institutions Code.

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Section 3503 is adopted to read:

3503. Assignment to Parole Agent. ~~[Reserved] Unit.~~

(a) Except as provided in (b), all offenders under DAPO supervision shall be assigned to a parole unit that serves the county or city in which the offender resides or, if the offender is still serving the prison term, the county of last legal residence.

(b) All sex offenders required to register pursuant to PC Section 290 who are under DAPO supervision, shall be assigned to a parole unit that serves the city of last legal residence.

Note: Authority cited: Section 5058, Penal Code. Reference: sections 3003 and 5054, Penal Code.

Section 3504 is amended to read:

3504. Parole Assessment~~Supervision~~.

(a) For the purpose of this section, the following definitions shall apply:

~~(1) High Control means the highest level of supervision based on commitment offense(s) and prior criminal history. Cases designated high control shall be reserved for persons with violent felony commitments as described in Penal Code (PC) section 667.5(c), PC section 290 registrants; cases generating extensive media or public attention; or cases involving membership in Security Threat Group (STG), as stated on CDCR Form 128-B2, (Rev. 06/14) Security Threat Group Validation/Rejection Review, which is incorporated by reference. The following minimum contact requirements shall apply to these cases:~~

~~(A) Face-to-face contact by the first working day following release from custody, but no later than the third working day following release. In most cases it is expected that this contact will take place at the office.~~

~~(B) Each month one field contact at the parolee's residence. The first face-to-face residential contact shall be within seven working days following release from custody.~~

~~(C) Each thirty days one collateral contact.~~

~~(D) If anti-narcotic testing applies, a minimum testing schedule of one test per month.~~

~~(E) Case review, thirty calendar days after assignment to this category and, if retained in this category, each sixty calendar days thereafter.~~

~~(2) High Service means the level of supervision based on service needs and behavioral patterns and is primarily utilized for the placement of civil addicts, or individuals requiring special assistance such as individuals with severe mental or psychiatric problems. The following minimum contact requirements shall apply to these cases:~~

~~(A) Face-to-face contact by the first working day following release from custody, but no later than the third working day following release. In most cases it is expected that this contact will take place at the office.~~

~~(B) Each month one field contact at the parolee's residence. The first face-to-face residential contact shall be within seven working days following release from custody.~~

~~(C) Each thirty days one collateral contact.~~

~~(D) With the exception of civil addicts, if anti-narcotic testing applies, a minimum testing schedule of one test per month. Civil addicts shall be tested weekly; two of which tests must be random/surprise urinalysis tests. One of the two random/surprise tests shall be in the field.~~

~~(E) Case review thirty calendar days after assignment to this category and, if retained in this category, each sixty calendar days thereafter.~~

~~(3) Control Services means the level of supervision based on commitment offense(s) and prior criminal history, or service needs and behavioral patterns that do not meet the specifications of high control as described in subsection (a)(1) and high service as described in subsection (a)(2). The following minimum contact requirements shall apply for these cases:~~

~~(A) Face-to-face contact by the first working day following release from custody and, when possible, the initial interview will be conducted no later than the third working day following release. In most cases, it is expected that this contact will take place at the office.~~

~~(B) Two face-to-face contacts per quarter, with at least one being at the parolee's residence. One face-to-face contact at the parolee's residence within fifteen workdays following release from custody.~~

~~(C) Each quarter one collateral contact.~~

~~(D) If anti-narcotic testing applies, felon parolees shall be tested twice every quarter and non-felon parolees two times each thirty days.~~

~~(E) Parolees who complete 180 days of satisfactory parole will automatically be assigned to the minimum supervision category. Exceptions to the automatic reduction shall include violent felony commitments described in PC section 667.5, PC section 290 registrants, cases generating extensive media or public attention, and STG members, as documented on CDGR Form 128-B2 (Rev. 06/14) Security Threat Group Validation/Rejection Review, which is incorporated by reference.~~

~~(4) Minimum Supervision means the level of supervision based on commitment offense(s) and prior criminal history, and service needs and behavioral patterns. With the exception of parole outpatient clinic attendees and those cases/parolees identified in subsections (a)(1) and (a)(2), felon parolees who complete 180 days of satisfactory parole under control services supervision, absent a case review, shall be assigned to the minimum supervision level category unless the unit supervisor retains the case at the control services level.~~

~~One face-to-face contact shall be conducted in the month prior to discharge. If retained on parole, there shall be two field contacts annually.~~

~~(5) Collateral Contact means any communication with an individual concerning a parolee. Collateral contacts may be completed in person, via telephone, or by written or electronic medium.~~

~~(b) Upon their initial release from an institution/facility, parolees shall not be placed on the minimum supervision level category. Upon their initial release, parolees shall be placed in one of the following categories:~~

~~(1) High Control.~~

~~(2) High Service.~~

~~(3) Control Services.~~

~~(4) Non-revocable parole, as described in section 3000.~~

~~(c) Civil addicts shall remain in the high service supervision level category until they complete 180 days of continuous drug-free outpatient or civil addict parole.~~

~~(d) Exceptions to placement in any of the supervision level categories or reduction in any of the supervision level categories described in subsections (a)(1) through (a)(4) may be made by the unit supervisor on a case-by-case basis.~~

(1) Criminogenic Need: Dynamic risk factors: such as characteristics, traits, problems, or issues of an inmate that directly relate to criminal behavior and the likelihood to reoffend.

(2) Case Conference Review: a structured analysis of a case by the parole agent and unit supervisor; additionally, other stakeholders may participate, such as Behavior Health Reintegration (BHR) staff, Parole Administrator, and other members of the parolee's support network. The case conference review shall review factors such as status, parole adjustment, employment, residence stability, compliance with special conditions, response to supervision, and violations (if applicable). The case conference review shall also review the parolee's individual case factors and progress relative to addressing their criminogenic needs. The supervision level shall be determined at a case conference review.

(3) Containment Team Meeting: a collaborative effort establishing a mechanism of consistent communication with all involved parties for the purpose of discussing case factors and progress with sex offender treatment as described in Section 3505. Based upon the availability of participants, the Containment Team shall consist of the parole

agent, unit supervisor, sex offender parolee, and clinician (licensed psychiatrist, psychologist or psychiatric social worker directly treating the sex offender parolee). When possible, a victim advocacy representative shall be invited to the Containment Team Meeting. This representative may be from a local law enforcement agency, district attorney's office, or other organization. If a victim advocacy representative cannot attend, the unit supervisor, parole agent, and clinician shall ensure that the victim's concerns, if any, are considered during the Containment Team Meeting. The supervision level shall be determined at a case conference review or Containment Team Meeting.

(4) Supervision Category: level of supervision determined by the Department's assessment of the offender's static and dynamic case factors: such as criminal history, residential and employment status, education, substance abuse, mental and physical health, adjustment on parole supervision, and associations with gangs defined by Section 3000.

(5) Transitional Phase: supervision level reserved for the first 90 days of the parole term, or the first 90 days after release from a parole revocation of at least 60 days. The Transitional Phase, is the programming phase in which, the parolee is transitioning into the community. During this phase the parolee is in need of treatment referrals and services that address the parolee's criminogenic needs.

(b) Criminogenic needs shall be determined in accordance with Section 3375.6 and based on observations by the parole agent. The parole agent shall refer the parolee to programs and services that address the parolee's criminogenic needs in an attempt to prevent violations of conditions of parole and as an alternative to incarceration, in accordance with Article 19 of Subchapter 6.

(1) The parole agent shall refer the parolee to programs and services that address the parolee's criminogenic needs within the first 90 days of the parole term.

(2) After the first 90 days, the parole agent shall continue to refer the parolee to programs and services as needed, to address changes in the parolee's criminogenic needs.

(c) The CDCR Form 1661 (Rev. 12/19) Goals and Progress Report, which is hereby incorporated by reference, shall be used to notify the parolee of the criminogenic needs that will be addressed during their ensuing parole term. The Goals and Progress Report will also assist in evaluating the parolee's progress in addressing their criminogenic needs. To facilitate parolee success, the Goals and Progress Report process shall be subject to the Department's rewards and incentive program that provides positive reinforcement to parolees who are actively engaged in addressing their criminogenic needs as stated on the CDCR Form 1661.

(d) All parolees not assigned to a Global Positioning System specialized caseload shall be supervised under the California Parole Supervision and Reintegration Model (CPSRM) with the appropriate supervision category assigned. CPSRM is focused on recidivism reduction by inducing long-term behavioral change.

(1) The initial supervision shall be in the Transitional Phase. Between 60 to 90 days, a case conference review shall be conducted.

(2) A case conference review shall be conducted annually thereafter.

(3) CPSRM supervision categories are as follows:

(A) Transitional Phase: supervision level reserved for parolees as defined in Section 3504(d)(1).

(B) Category A: is designated as a High supervision level reserved for parolees based on sections 3504(a)(5) and (b). High supervision is defined as the highest frequency for supervision contact requirements such as: face-to-face, residential and collateral contacts on the parolees assigned to this category. This supervision category will also be used for public interest and high notoriety cases; parolees assigned to Electronic In-Home Detention (EID) supervision; parolees governed by the Interstate Commission for Adult

Offender Supervision without a pre-release assessment, and inmates supervised in a private residence under the Alternative Custody Program.

(C) Category B: is designated a Medium supervision level primarily reserved for parolees based on sections 3504(a)(5) and (b). Medium supervision is defined as a lower frequency than Category A for supervision contact requirements such as: face-to-face, residential and collateral contacts on the parolees assigned to this category. .

(D) Category C: is designated a Low supervision level reserved for parolees based on sections 3504(a)(5) and (b). Low supervision is defined as the lowest frequency for supervision contact requirements such as: face-to-face, residential and collateral contacts on the parolees assigned to this category.

(E) Category D: supervision level reserved for parolees who are incarcerated or gravely ill in a home care facility.

(F) Category E: earned discharge supervision level reserved for parolees to initiate the earned discharge process. This supervision category is also used for parolees whose criminogenic needs requires the lowest frequency of face-to-face, residential and resource contacts in the community.

(G) Category P: level of supervision reserved for parolees in a residential treatment program: optional supervision level used in lieu of Transition Phase, when parolees are directly released to or immediately placed into a residential substance abuse treatment program upon their initial release from custody.

(H) High Control: supervision level reserved for parolees placed in suspend status that meet the criteria of determining highest control or risk classification as defined in Article 1 of Subchapter 6 Section 3504.2.

(I) Enhanced Outpatient Program (EOP) Non-Specialized: supervision level reserved for parolees designated as a mental health participant at the level of EOP and assigned to a non-specialized caseload. This supervision level requires supervision processes defined in Section 3504 (d)(3)(B).

(J) EOP Specialized: supervision level reserved for parolees designated as a mental health participant at the level of EOP and assigned to an EOP specialized caseload. This supervision level requires supervision processes defined in Section 3504 (d)(3)(B).

(K) Mentally Disordered Offenders (MDO) Specialized: supervision level reserved for parolees certified by the CDCR Chief Psychiatrist as meeting the criteria as outlined in PC 2962 and assigned to a specialized caseload. This supervision level requires supervision processes defined in Section 3504 (d)(3)(B).

(L) MDO Non-Specialized: supervision level reserved for parolees certified by the CDCR Chief Psychiatrist as meeting the criteria as outlined in PC 2962 and assigned to a non-specialized caseload. This supervision level requires supervision processes defined in Section 3504 (d)(3)(B).

(M) EID Monitoring (Sanction): supervision level reserved for parolees assigned to the EID program as the result of a sanction for violating the terms and conditions of parole. This supervision level requires supervision processes defined in Section 3504 (d)(3)(B).

EID Monitoring (Monitoring Tool): supervision level reserved for parolees assigned to the EID program as a monitoring tool due to the existence of a direct nexus to enhance public safety. This supervision level requires supervision processes defined in Section 3504 (d)(3)(B).

(N) Pending Deportation: supervision level reserved for parolees who are pending deportation from the country.

(O) Deported: supervision level reserved for parolees who have been deported from the country.

(e) All parolees required to register pursuant to PC 290 shall be supervised under the Sex Offender Management Program (SOMP) with the appropriate supervision category

assigned. SOMP is a comprehensive supervision model consisting of enhanced supervision, sex offender treatment, polygraph use, and victim advocacy.

(1) The first 90 days of supervision shall be in the Transitional Phase. An initial Containment Team Meeting shall be conducted within 90 days of release.

(2) For a parolee supervised at the highest SOMP level, Containment Team Meetings shall be conducted within 180 days after the initial Containment Team Meeting, and recur within every 180 days thereafter.

(3) For a parolee supervised at the moderate SOMP level, Containment Team Meetings shall be conducted within 180 days after the initial Containment Team Meeting and following the date of assignment to the current supervision level, and recur within every 180 days thereafter.

(4) For a parolee supervised at the lowest SOMP level, Containment Team Meetings shall be conducted within 365 days following the date of assignment to the current supervision level, and recur annually thereafter.

(5) SOMP supervision categories are as follows:

(A) Sex Offender Parolee Transitional Phase: supervision level reserved for sex offenders as defined in section 3504 (e)(1). The level requires the highest frequency of face-to-face, residential and resource contacts in the community;

(B) Sex Offender Category A: is designated as a high supervision level primarily reserved for sex offender parolees who are designated as HRSO as defined in California Code of Regulations (CCR), Title 15 sections 3573 and 3580. High supervision is defined as the highest frequency for supervision contact requirements such as: face-to-face, residential and collateral contacts on the parolees assigned to this category.

(C) Sex Offender Category B: medium supervision level primarily reserved for sex offenders whose risk level is determined by their Static-99R or Female Sex Offender Risk Assessment FSORA scores as defined in CCR, Title 15, Section 3573. Medium supervision also includes a lower frequency than Category A for supervision contact requirements such as: face-to-face, residential and collateral contacts on the parolees assigned to this category.

(D) Sex Offender Category C: Low supervision level primarily reserved for sex offender parolees who have displayed a positive parole adjustment, successfully addressed their criminogenic needs, or whose risk level is low as defined by their Static-99R or FSORA Low supervision is also includes the lowest frequency for supervision contact requirements such as: face-to-face, residential and collateral contacts on the parolees assigned to this category.

(E) Sex Offender Category D: supervision level reserved for sex offender parolees who are incarcerated.

(F) Sex Offender Category E: earned discharge supervision level reserved for sex offender parolees to initiate the earned discharge process. This supervision category is also used for parolees whose criminogenic needs requires the lowest frequency of face-to-face, residential and resource contacts in the community.

(f) Urinalysis testing is part of parolee supervision, and shall be conducted in accordance with Article 10 of Subchapter 6.

Note: Authority cited: Section 5058, Penal Code. Reference: sections 186.22, 186.5, 186.30, 186.31, 186.32, 290, 667.5(c), ~~3000.03~~, 3008, 3020, and 5054, Penal Code; and sections 3151 and 3152, Welfare and Institutions Code.

Section 3504.1 is amended to read:

3504.1. Determination of Highest Control or Risk Classification.

(a) Any person released on parole who meets any of the following criteria, is defined as being within the highest control or risk classification for the purposes of reporting requirements upon release:

(1) Is required to register as a sex offender pursuant to Penal Code sections 290 through 290.023.

(2) Has a California Static Risk Assessment (CSRA) risk number value of 5 as provided in California Code of Regulations, Title 15, Division 3, section 3768.1.

(b) If a CSRA risk number value is not available at the time of release or while on parole, the person shall be assigned a risk number value of 5 until a CSRA score is calculated. ~~for the purposes of release. After release on parole, a CSRA risk number value shall be provided within five business days.~~

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 3060.7 and 5054, Penal Code.

Section 3504.2 is amended to read:

3504.2. Highest Control or Risk Classification Parole Reporting Requirements.

(a) Inmates meeting the criteria for assignment to the highest control or risk classification as provided in subsections 3504.1(a)-(a)(2), upon release from confinement in a ~~State CDCR facility or private facility contracted to house inmates committed to CDCR~~, are required to report to their assigned parole unit ~~within two days (48 hours) from time of release, no later than 48 hours after release, or the first working day following release, whichever is sooner.~~

(1) Inmates shall not be released to the community from a State CDCR facility or private facility contracted to house inmates committed to CDCR on a Friday or the day before a legal holiday.

(2) If the inmate's release date falls on a Friday or the day before a legal holiday, the inmate shall have ~~his or her~~ their scheduled release date adjusted as follows:

(A) For an inmate whose current commitment offense was sentenced prior to January 1, 1996, the release date shall be adjusted backward if the scheduled release date falls on a Friday or the day before a holiday listed in section 3504.2(b).

(B) For an inmate whose current commitment offense was sentenced on or after January 1, 1996, the release date shall be adjusted forward if the scheduled release date falls on a Friday or the day before a holiday listed in Section 3504.2(b).

(b) For the purposes of subsection 3504.2(a)(1) and 3504.2(a)(2) above, recognized legal holidays are:

- (1) New Years Day
- (2) Martin Luther King Day
- (3) President's Day
- (4) Cesar Chavez Day
- (5) Memorial Day
- (6) Independence Day
- (7) Labor Day
- (8) Veteran's Day
- (9) Thanksgiving Day
- (10) Day after Thanksgiving
- (11) Christmas Day

(c) Any scheduled release date that is adjusted to a date that would not permit the inmate to report to ~~his or her~~ their assigned parole unit within 48 hours of release during normal business hours, will require the inmate to be seen by a parole agent during a weekend or holiday, within 48 hours of release.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 3060.7 and 5054, Penal Code.

Section 5304.3 is adopted to read:

3504.3. Parole Agent Pickup From Institutions.

(a) Parolees who are being released from a CDCR institution or a Department of State Hospital (DSH) facility shall be picked up at the institution and transported to the parole unit or other designated location by a parole agent or team of parole agents in the following situations:

(1) Parolees released from a Psychiatric Services Unit.

(2) Parolees released from a Security Housing Unit, or who are endorsed for Psychiatric Services Unit or Security Housing Unit, but are being released from an Administrative Segregation Unit.

(3) When a Division of Adult Institutions clinician or doctor determines that an inmate classified as EOP, or has developmental or physical disabilities is unable to utilize public transportation.

(4) When a parolee is being released from a facility of the DSH and the CDCR transportation unit is unable to provide the transportation.

Note: Authority cited: Section 5058, Penal Code. Reference: sections 3060.7 and 5054, Penal Code.

3505. Non-Revocable Parole.

Subsections 3505(a) through 3505(a)(8) remain unchanged.

Subsection 3505(b) is amended to read:

(b) Notwithstanding any other provision of this Title, the department is ~~not~~ required to provide services or programs for parolees on non-revocable parole.

Subsection 3505(c) remains unchanged.

Note: Authority cited: Section 5058.3, Penal Code. Reference: Sections 3000.03, 3067 and 5054, Penal Code.

Section 3506 is adopted to read:

3506. ~~[Reserved]~~ Sex Offender Treatment

(a) Subject to appropriation of necessary funds by the Legislature, the Department shall enter into contracts with treatment programs for sex offender relapse prevention.

(b) Any provision of treatment will be from a provider certified by the California Sex Offender Management Board (CASOMB).

(c) Sex Offenders released on parole prior to July 1, 2012, shall remain in the program for a period of not less than one year or for the remainder of the parole term. The length

of the period in the program is to be determined by the certified sex offender management professional in consultation with the parole agent.

(d) Sex offenders released on parole on or after July 1, 2012, shall be required to complete the treatment program. The length of the period in the program shall be not less than one year, up to the entire period of parole, as determined by the certified sex offender management professional in consultation with the parole agent.

(e) Upon referring the sex offender to the certified program, the sex offender shall:

(1) Waive any privilege against self-incrimination.

(2) Waive any psychotherapist-patient privilege to enable communication between the sex offender management professional and the parole agent.

(f) Bi-annually, the treatment provider shall conduct risk assessments using evidence based, State-authorized tools, and provide the assessments to the parole agent. The first assessment shall occur within 90 calendar days of the sex offender's referral to the program.

(g) The risk-assessment tools shall be determined by CASOMB.

(h) Participation in the program, when and where available, and the waivers described in Section 3505(e)(1) and (2), shall be a condition of parole for parolees required to register pursuant to PC Section 290.

(i) The unit supervisor shall organize monthly Containment Team Meetings as described in Section 3504(a)(3). The parolee's progress in sex offender treatment shall be reported on in detail at this meeting by the treatment provider.

Note: Authority cited: sections 5058 and 5058.3, Penal Code. Reference: sections 290.04, 3008, and 9003, Penal Code.

Section 3506.1 is adopted to read:

3506.1 Sex Offender Polygraph Testing

(a) Polygraph testing is a component of sex offender treatment. Polygraph testing and polygraph test results shall not replace other components of the SOMP. Polygraph test results shall not be used as the sole basis for filing a petition for revocation or termination of sex offender treatment.

(b) Polygraph testing shall be completed by the sex offender treatment provider based on the standards established by CASOMB for Post-Conviction Sex Offender Polygraph Standards.

(c) Parolees shall be subject to the following types of polygraph examinations:

(1) Sexual History Exam: questioning regarding the parolee's sexual history.

(2) Instant Offense Exam: questioning regarding the crime for which the parolee is required to register per PC 290 through 294.

(3) Maintenance/Monitoring Exam: questioning regarding the parolee's conduct while on parole, including compliance with conditions of parole and treatment.

(d) The Sexual History Exam and Instant Offense Exam shall not be repeated if the polygraph examiner does not detect deception.

(e) The Maintenance/Monitoring Exam shall normally be conducted semi-annually for each parolee; however, the frequency may be increased with unit supervisor approval.

Note: Authority cited: sections 5058 and 5058.3, Penal Code. Reference: sections 290.04, 3008, and 9003, Penal Code. California Sex Offender Management Board, *Post Conviction Polygraph Standards*, June 2011.

INITIAL STATEMENT OF REASONS

The California Department of Corrections and Rehabilitation (CDCR) proposes to amend the California Code of Regulations (CCR), Title 15, Division 3, Subsection 6, Article 1 concerning Division of Adult Parole Operations' (DAPO) supervision classifications, reporting requirements, and supervision methods for parolees.

These regulations are necessary to implement, interpret, and comply with Penal Code (PC) Sections 290.04, 3000, 3000.03, 3000.08, 3008, 3060.7, and 9003 and recommendations from the Bureau of State Audits (BSA) final report.

PC Section 290.04 requires that a risk assessment instrument is selected and used by the State Authorized Risk Assessment Tools for Sex Offenders (SARATSO). The SARATSO Review Committee must replicate the most reliable, objective, and well-established protocols for predicting sex offender risk of recidivism. The risk assessment instrument has to be scientifically validated and cross validated, and is, or is reasonably likely to be, widely accepted by the courts. The SARATSO Review Committee must consult with experts in the field of risk assessment when selecting instruments mandated for use in California. The SARATSO Review Committee is required to periodically evaluate the chosen risk assessment instruments. If it is determined that an instrument should be replaced, the SARATSO Review Committee must advise the Governor's Office, Office of Legislation, and post the decision on CDCR's website.

PC Section 3000 defines length of parole term and authorizes the Board of Parole Hearings (BPH) and DAPO to discharge a parolee before the maximum possible parole term.

PC Section 3000.03 provides the criteria for offenders who shall not fall under the jurisdiction of the CDCR as meeting all of the following: Is not required to register as a sex offender pursuant to Chapter 5.5 (commencing with Section 290) of Title 9 of Part 1. The offender was not committed to prison for a serious felony as defined in Sections 1192.7 and 1192.8, or a violent felony, as defined in Section 667.5, and does not have a prior conviction for a serious felony, as defined in Sections 1192.7 and 1192.8, or a violent felony, as defined in Section 667.5. The offender was not committed to prison for a sexually violent offense as defined in subdivision (b) of Section 6600 of the Welfare and Institutions Code and does not have a prior conviction for a sexually violent offense as defined in subdivision (b) of Section 6600 of the Welfare and Institutions Code. The offender was not found guilty of a serious disciplinary offense, as defined in regulation by the Department, during their current term of imprisonment; is not a validated prison gang member or associate, as defined in regulation by the Department. The offender did not refuse to sign any forms, or provide any samples, as required by Section 3060.5; was evaluated by the Department using a validated risk assessment tool and was not determined to pose a high risk to reoffend.

As a result of the 2011 Public Safety Realignment Act, PC Section 3000.08 standardizes the jurisdiction and revocation process for all persons subject to local supervision (probation, mandatory supervision, post-release community supervision, and parole). Section 3000.08 grants the local courts sole authority to issue warrants for parolees and clarifies that warrants issued by the BPH before July 1, 2013 remain in effect until served or recalled by the Board.

PC Section 3008 requires CDCR to use evidence-based practices to assess the risks a sex offender poses to the community upon release and to supervise sex offenders with the comprehensive, multi-disciplinary Sex Offender Management Program (SOMP). This program includes enforcement, treatment, and victim advocacy components. Under PC Sections 3008 and 9003, the California Sex Offender Management Board (CASOMB) certifies treatment providers. PC 3008(d)(3) mandates polygraph examinations as part of SOMP. Pursuant to PC Section 9003, CASOMB-certified treatment providers conduct these exams.

PC Section 3060.7 requires that inmates assessed as the highest-risk report to the parole unit within two days of release. This section also requires DAPO to request an arrest warrant within 24 hours if the parolee fails to report as instructed. PC Section 3060.7 authorizes the Department to adjust an inmate's release date if an inmate is released on a weekend or three-day holiday weekend when DAPO parole units are normally not open; the inmate will be released and must be seen by a parole agent within 48 hours.

On September 6, 2011, the BSA issued its final report titled "Department of Corrections and Rehabilitation: The Benefits of Its Correctional Offender Management Profiling for Alternative Sanctions (COMPAS) Program Are Uncertain." The BSA recommended that DAPO issue regulations and update its operations manual to define how the use of COMPAS will affect decision making about inmates, such as clarifying how COMPAS results will be considered when developing expectations for those on parole. The development of regulations will standardize and require the mandatory completion of a COMPAS re-entry assessment for every offender on parole. This will result in the development and utilization of COMPAS case plans. Also incorporated is the implementation of the California Parole Supervision and Reintegration Model (CPSRM) requiring the use of assessment tools for identifying criminogenic needs, addressing those needs, and setting the level of supervision for parolees who are influenced by the assessment scores. Promulgation of these regulations will give this activity the force of law.

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. A reasonable alternative 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 no longer has jurisdiction over an inmate who meets PC 3000.03 eligibility criteria upon the inmate's parole date.

ECONOMIC IMPACT ASSESSMENT

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

Creation of New or the 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 the elimination of existing, jobs within California.

Creation of New or the Elimination of Existing Businesses 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.

Expansion of Businesses Currently Doing Business in the State of California

The Department has determined that the proposed regulations will not have an impact on the expansion of businesses currently doing business in California.

BENEFITS OF THE REGULATIONS

The health and welfare of California residents will 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. The proposed regulations will not affect worker safety or the State's environment.

MATERIALS RELIED UPON

None.

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

Subchapter 6, Article 1

Subsection 3500 is amended to include the separate jurisdictions of Parole and Post-release Community Supervision, notwithstanding those inmates whose parole are waived by the Board of Parole Hearings. This section standardizes the jurisdictional and revocation process for all persons subject to local supervision (probation, mandatory supervision, post-release community supervision, and parole). As a result of the 2011 Public Safety Realignment Act, inmates convicted of violent and serious crimes, and inmates who are assessed to be high-risk sex offenders, are supervised by DAPO. Inmates sentenced to State prison for lesser crimes are supervised at the county jurisdictional level under post-release community supervision. DAPO's methods for addressing violations have also changed to follow evidence-based practices focusing on criminogenic needs. The Department identifies criminogenic needs as the traits and conditions that, when present, increase the likelihood that someone will commit a crime. The referral of parolees to community-based programs for services that have been proven to address the criminogenic needs of parolees will reduce the likelihood that the parolee may commit another crime. For example, a parolee may have anti-social cognitions; these are thoughts a person uses to justify negative behavior. In this example, a parolee may be on parole for robbing a bank, and justifies that robbery because the parolee believed he needed money and there was no other way to get it. The research indicates that if criminogenic needs go unaddressed during supervision, there is a high likelihood that the parolee will commit another crime.

Subsection Title 3501 is amended to add the jurisdiction of county courts to amend conditions of parole. As a result of the 2011 Public Safety Realignment Act, the Superior Courts can amend conditions of parole when a violation is referred to the court, pursuant to PC Section 3000.08(f)(1).

Subsection Title 3503 is adopted to describe unit assignment. Pursuant to PC Section 3003, parolees are required to reside in the county they were living in before being sentenced to prison. In addition, parolees required to register pursuant to PC Section 290 shall reside in the city they were living in before being sentenced to prison. Transfers can be made based on criteria described in PC 3003. This regulation is added to state that it is departmental policy to assign inmates to a parole unit that serves the area where the inmate will eventually reside.

Subsection Title 3504 is amended to update and describe fundamentals of supervision for parolees in accordance with industry standards. Face-to-face contact between the parole agent and the parolee is important for effective supervision and the quality of the contact is as important as the quantity of the contacts. It was determined that focusing resources at the beginning of the parole terms for moderate and high-risk offenders yielded better outcomes. This practice also strikes a balance between surveillance and treatment, giving the offender the motivation to participate in the decision-making process about their own supervision.

Current probation and parole supervision practices indicate that the quantity of contacts with the supervising officer and the person under supervision have a marginal effect on recidivism rates. The Department contends that focusing supervision resources on the risks and needs of a person may further reduce the likelihood of new criminal activity.

Thus, DAPO has created the California Parole Supervision and Reintegration Model (CPSRM) to direct its supervision resources to the parolees most in need of services. Parolees under DAPO supervision not required to register pursuant to PC Section 290 will be supervised under CPSRM. Current supervision classifications described in this section focus on surveillance and quantity of contact based on the commitment offense, and not on the current risk the parolee poses to the community. Current regulations also do not mandate referrals to services. In existing regulation, DAPO focuses supervision resources almost entirely on the severity of the commitment offense, not on the current behavior and risk factors of each case. The new Section 3504 describes the pertinent portions of CPSRM used in supervision and the frequency of decision-making meetings that impact the parolee's supervision. CPSRM adds a Case Conference Review, which is a face-to-face meeting where the parolee and stakeholders in the parolee's supervision, such as family members, community program representatives, and other members of a parolee's support system are given the opportunity to provide input on the parolee's supervision and conditions of parole.

The new Section 3504 also describes the Sex Offender Management Program (SOMP). SOMP is mandated by PC Section 3008 and applies many of the same principles of CPSRM by focusing on a sex offender's initial transition from prison to the community. SOMP also adds the Containment Team Meeting. In a Containment Team Meeting, the parolee is invited and all stakeholders in the parolee's supervision are given the

opportunity to give input on the parolee's supervision and conditions of parole. The Containment Team Meeting differs from the Case Conference Review in that, in a Containment Team Meeting, the parolee's progress in sex offender treatment is a major factor in determining the parolee's supervision level. As described in PC 290.09, the treatment provider must communicate with the supervising officer at least once a month about the offender's progress in the program and dynamic risk assessment issues. The Containment Team Meeting ensures that some of this communication is completed face-to-face and the parolee is aware of how their progress in sex offender treatment is viewed by the treatment provider and DAPO.

Current language in this section describes the minimum contact requirements between the parole agent and the parolee. These contacts are made at random and are not pre-scheduled with the parolee. Minimum contact requirements are only a requirement for parole agents to meet. The parolee is not at fault if the parole agent does not meet minimum contact requirements. The supervision level is not considered in determining the consequences of a violation of supervision conditions, which are described in Article 19 of Subchapter 6.

Under the California Administrative Procedures Act, minimum contact requirements fall under the internal management exemption as specified in Government Code 11340.9(d). Therefore, language that described the minimum contact requirements for each supervision level is removed.

Subsection Title 3504.1 is amended to describe the definition of Highest Control or Risk. The California Static Risk Assessment (CSRA), which utilizes automated California criminal history information from the Department of Justice to statistically predict an offender's risk and likelihood of re-arrest for a felony within three years following their release from custody. The Department uses the CSRA to determine the risk an inmate poses of committing a new crime upon release, and the general likelihood of what that crime will be. The CSRA score is a scale of one through five, with one being low risk, two being moderate risk, three being high risk of a drug crime, four being high risk of a property crime, and five being high risk of a violent crime.

Subsection Title 3504.2 is amended to comply with PC Section 3060.7. Parole units are normally open from 8:00AM to 5:00PM, Monday through Friday. Inmates who are determined to be of the highest risk of committing a new crime, based upon their CSRA score, are required to report to DAPO within two days of release. Thus, a high-risk inmate who is released on a Friday or the day before a holiday may not be able to report as required. This section explains the release date adjustments authorized by PC Section 3060.7 and specifies the State holidays which may require a release date adjustment.

New Subsection Title 3504.3 is adopted to describe criteria requiring DAPO to pick up an inmate from a State institution. When an inmate is being released directly from a Security Housing Unit, or does not have the capability to use public transportation due to mental illness, or other developmental or physical disabilities, the parole agent, or a team of parole agents, is required to pick up the inmate in the interests of public safety. This section will set the criteria requiring parole agent pickup.

New Subsection Title 3506 is adopted to describe the Sex Offender Treatment as described in PC Section 3008. Sex offenders on parole are required to participate in treatment designed to prevent them from committing another sex crime. These programs are certified by CASOMB, and CDCR enters into contracts with these certified programs to provide relapse-prevention therapy to sex offenders on parole. There are stringent requirements set in PC Section 9003 for these programs. This regulation section describes the authority of CASOMB to determine treatment requirements and the criteria for parolee participation in the program.

New Subsection 3506.1 is adopted to describe the types of polygraph tests that will be used on parolees and the frequency of the polygraph tests while on parole. The standards for polygraph testing of sex offenders are determined by the California Sex Offender Management Board (CASOMB), as are the rules governing the polygraph examiners and methods used to conduct the polygraph examination. Pursuant to Penal Code Section 9003, CASOMB defines three types of polygraph tests for use in sex offender treatment and posts those standards on CASOMB's website.

The Sexual History Exam is necessary to learn about the sex offender's own past. During treatment, many sex offenders are often in denial about their own sexual history (which may include instances in which the sex offender was a victim of or witness to a sex crime) because they are embarrassed or do not recognize that past events may have contributed to the sex offender's criminal acts. Also, the sex offender may have committed other sex crimes or other predatory acts for which the sex offender was never caught. This exam will help determine if that occurred.

The Instant Offense Exam is necessary to determine if the sex offender is being honest about the sex offense or offenses for which the sex offender was convicted. This exam is necessary to determine if the sex offender is still in denial about the crime. Many sex offenders completely deny their involvement, blame the victim, minimize their role in the crime, or do not believe they hurt the victim. In any treatment program, overcoming denial is a major obstacle to treatment. This exam assists treatment providers and the parole agent in determining if the sex offender is in denial.

The Maintenance/Monitoring Exam is an investigative tool to assist the treatment provider and the parole agent to determine if the sex offender parolee is remaining compliant with their conditions of parole.