



Department of Corrections and Rehabilitation
NOTICE OF CHANGE TO REGULATIONS

Sections: 3124	NCR Number: 20-13	Publication Date: September 11, 2020	Effective Date: To Be Announced
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INSTITUTION POSTING AND CERTIFICATION REQUIRED

This Notice announces the proposed amendment of Section 3124 of the California Code of Regulations (CCR), Title 15, Crime Prevention and Corrections, Division 3, Chapter 1, regarding Content of Law Libraries.

PUBLIC COMMENT PERIOD

The public comment period will close on **October 29, 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 29, 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. 05/19), 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, by mail to California Department of Corrections and Rehabilitation, RPMB, P.O. Box 942883, 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 Brandy Buenafe, Division of Rehabilitative Programs, at (916) 322-2803.

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 Section 3124 of Title 15, Division 3, Chapter 1, regarding Content of Law Libraries.

PUBLIC COMMENT PERIOD

The public comment period begins **September 11, 2020** and closes on **October 29, 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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Back-Up

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Program Contact

Brandy Buenafe
Telephone: (916) 322-2803
Division of Rehabilitative
Programs

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 United States Supreme Court has held that inmates have a constitutional right to access the court during confinement, either by the mechanism of a lawyer or a law library, *Lewis v. Casey*, 518 U.S. 343 (1996). California has provided law libraries, staffed with trained paraprofessionals and professionals, and containing a legal collection to fulfill the requirement in *Lewis*. Over the past decade, more legal library materials, or their equivalents, are available via the Law Library Electronic Delivery System (LLEDS), so they no longer need to be purchased in physical format.

This action will:

Provide the required materials only in digital format increasing the use of the electronic resources by inmates, which will increase their digital literacy and better prepare them for their return to the community.

DOCUMENTS INCORPORATED BY REFERENCE

None

SPECIFIC BENEFITS ANTICIPATED BY THE PROPOSED REGULATIONS

Digital literacy is a prosocial skill inmates will need to navigate the community when they are released. ATM machines, online job applications, touch screen kiosks, and smartphones all require digital literacy. The ability to use these resources will assist inmates in achieving employment and thereby reduce recidivism.

EVALUATION OF INCONSISTENCY / INCOMPATIBILITY 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 contents of law libraries.

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 improving inmates' digital literacy, and assist them with reintegration and success in the community, thus helping to reduce 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 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 2. Inmate Resources

Article 3. Library

Section 3124. Content of Law Libraries.

[Section 3124(a) is amended to read:]

(a) Each institution shall maintain at least one law library for the use of inmates, ~~in print and/or by means of the Electronic Law Library Delivery System with any necessary print or other electronic supplements.~~ Except for items that are out of print, the law library collection shall include, ~~but shall not be limited to,~~ the following ~~current and updated~~ legal materials, latest edition or update, or their equivalents from other publishers:

- (1) Deering's California Codes Annotated.
- (2) Judicial Council of California Civil and Criminal Jury Instructions.
- (3) Michie, California Official Reports.
- (4) Matthew Bender, Standard California Codes: Rules of Court (~~latest edition~~).
- (5) Matthew Bender, California Criminal Defense Practice (~~latest edition~~).
- (6) Matthew Bender, California Criminal Discovery (~~latest edition~~).
- (7) Matthew Bender, California Evidence Courtroom Manual (~~latest edition~~).
- (8) Matthew Bender, California Forms of Pleading and Practice (~~latest edition~~).
- (9) Michie, United States Code Service.
- (10) Matthew Bender, Moore's Federal Practice (~~latest edition~~).

[Subsections 3124(a)(11) through (13) are relocated to Subsections 3124(b)(1) through (3)]

- ~~(11) All United States Supreme Court Cases.~~
- ~~(12) All Federal Appeals Court Cases – as reported in the Federal Reporter.~~
- ~~(13) All Federal District Court Cases – as reported in the Federal Supplement.~~

[Subsections 3124(a)(14) through (27) are renumbered 3124(a)(11) through (24), and are amended to read:]

- ~~(4411)~~ Anderson, Constitutional Rights of Prisoners (~~latest edition~~).

- (~~4512~~) Michie, Federal Habeas Corpus Practice and Procedure (~~latest edition~~).
- (~~4613~~) The Daily Journal (newspaper); ~~one year back file~~.
- (~~4714~~) Shepard's United States Citations.
- (~~4815~~) Shepard's Federal Citations.
- (~~4916~~) Shepard's California Citations.
- (~~2017~~) A recognized law dictionary, such as Black's or Ballantine's (~~latest edition~~).
- (~~2418~~) California Code of Regulations.
- (~~2219~~) California Family Law Litigation Guide (~~latest edition~~).
- (~~2320~~) California Family Law Practice and Procedure (~~latest edition~~).
- (~~2421~~) Civil Rights Actions (~~latest edition~~).
- (~~2522~~) Cotchett, California Courtroom Evidence, by ~~Cotchett~~.
- (~~2623~~) California Juvenile Courts Practice and Procedure (~~latest edition~~).
- (~~2724~~) California Superior Court Local Rules.

[Section 3124(b) is amended to read:]

(b) Each institution shall also make supplemental legal materials available to inmates by means of the Law Library Electronic Delivery Service (LLEDS). ~~from an outside source~~. Except for items that are out of print, the supplemental legal materials shall include, ~~but shall not be limited to~~, the following legal materials or their equivalents from other publishers:

- (1) ~~Federal Rules Decisions~~ All United States Supreme Court Cases.
- (2) ~~Corpus Juris Secundum~~ All Federal Appeals Court Cases.
- (3) ~~California Jurisprudence (latest edition)~~ All Federal District Court Cases.

[Note section is amended to read:]

Note: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code; *Gilmore v. Lynch*, 319 F.Supp. 105 (N.D. Cal. 1970); *Toussaint v. McCarthy*, 801 F.2d 1080 (9th Cir. 1986); *Toussaint v. McCarthy*, USDC N.D. Cal. No. C 73-1422 SAW, First Special Report of the Monitor, August 19, 1987; *Toussaint v. Rowland*, USDC N.D. Cal. No. C 73-1422 SAW, Second Special Report of the Monitor, June 30, 1988; *Zatko v. Rowland*, 835 F.Supp. 1174 (N.D. Cal. 1993); *Lewis v. Casey*, 518 U.S. 343 (1996); *Bounds v. Smith*, 430 U.S. 817 (1977).

INITIAL STATEMENT OF REASONS

The United States Supreme Court has held that inmates have a constitutional right to access the court during confinement, either by the mechanism of a lawyer or a law library. *Lewis v. Casey*, 518 U.S. 343 (1996). California has provided law libraries, staffed with trained paraprofessionals and professionals, and containing a legal collection to fulfill the requirement in *Lewis*. Over the past decade, more legal library materials, or their equivalents, are available via the Law Library Electronic Delivery System (LLEDS), so they no longer need to be purchased in physical format.

CONSIDERATION OF ALTERNATIVES:

The Department must determine that no reasonable alternative that has been considered or otherwise identified and brought to the Department's attention, would be more effective in carrying out the purpose for which this action is proposed. The Department must also determine that no proposed action 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 such reasonable alternatives have been identified.

ECONOMIC IMPACT ASSESSMENT:

The Department believes there will be no economic impact with the proposed regulations. In accordance with Government Code Section 11346.3(b), the Department has made the following assessments regarding the proposed regulations:

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

The Department has determined that the proposed regulations will have no impact on the creation of new jobs or the elimination of existing jobs in California. The proposed regulations do not have a direct impact on the creation of new or elimination of existing jobs in the state of California as the proposed regulations affect the internal management of prisons only.

Creation of New, Expansion, or Elimination of Existing Businesses Currently doing Business in the State of California

The Department has determined that the proposed regulations will not have an impact on the creation of new businesses, or the expansion or elimination of existing businesses currently operating in California. Additionally, there have been no facts, documents, testimony, or other evidence provided that would alter the Department's initial determination. The proposed regulations do not have a direct impact on the creation of new, expansion, or elimination of existing businesses currently doing business in the state of California as the proposed regulations affect the internal management of prisons only.

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

The health and welfare of California residents will be enhanced by increasing the digital literacy of inmates, enabling them to be better prepared for release into their communities. The proposed regulations will not affect worker safety or the State's environment, as the proposed regulations affect the internal management of prisons only.

Significant Adverse Economic Impact on Business

The Department has made an initial determination that the 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 the significant adverse economic impact on business as the proposed regulations affect the internal management of prisons only.

BENEFITS OF THE REGULATIONS:

Providing the required materials only in digital format will increase the use of the electronic resources by inmates, which will increase their digital literacy and better prepare them for their return to the community. Digital literacy is a prosocial skill inmates will need to navigate the community when they are released. ATM machines, online job applications, touch screen kiosks, and smartphones all require digital literacy. The ability to use these resources will assist inmates in achieving employment and thereby reduce recidivism.

DOCUMENTS RELIED UPON:

In proposing additions or amendments to these regulations, the Department has not identified, nor has it relied on any, technical, theoretical, or empirical study, report, or similar document.

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

Section 3124(a) is amended to update language for consistency with changes made within the section, and remove language which included an incorrect and outdated reference to the "Electronic Law Library Delivery System." In addition, new language specifies that the list of the law library collection is inclusive, this is because the list includes all relevant materials, and all materials that need to be maintained. The term "current and updated" is replaced with "latest edition or update" for better clarity and specificity.

Subsections 3124(a)(1) through (a)(8), and 3124(a)(10) are amended to remove the language "(latest edition)," as this language is no longer necessary due to the inclusion of the language "latest edition or update" in Section 3124(a), which applies to the entire section.

Subsections 3124(a)(11) through (13) are relocated to Subsections 3124(b)(1) through (3) for a more appropriate placement, as these materials are considered supplemental legal materials, and are now available exclusively by means of the Law Library Electronic Delivery Service.

Subsections 3124(a)(14) through (27) are renumbered (11) through (24) due to the removal and relocation of previous Subsections (11) through (13).

Subsection 3124(a)(11) and 3124(a)(12) are amended to remove the language "(latest edition)," as this language is no longer necessary due to the inclusion of the language "latest edition or update" in Section 3124(a), which applies to the entire section.

Subsection 3124(a)(13) is amended to eliminate the need for the Department's adult law libraries to maintain a one-year back file of "The Daily Journal" to encourage access to electronic law library materials on LLEDS.

Subsections 3124(a)(17) and 3124(a)(19) through (a)(21) are amended to remove the language "(latest edition)," as this language is no longer necessary due to the inclusion of the language "latest edition or update" in Section 3124(a), which applies to the entire section.

Subsection 3124(a)(22) is amended to add the word "Cotchett" prior to "California Courtroom Evidence," and remove the language "by Cotchett," for correction purposes.

Subsection 3124(a)(23) is amended to remove the language "(latest edition)," as this language is no longer necessary due to the inclusion of the language "latest edition or update" in Section 3124(a), which applies to the entire section.

Section 3124(b) is amended to eliminate the language "from an outside source," as the Department's adult law libraries no longer need to have an arrangement with an outside agency to act as a circulating law library for supplemental legal materials or their equivalents that were previously not available to the Department except from an outside source. Supplemental legal materials or their equivalents are now available through staff-accessible databases, and language is added to make the supplemental materials available by means of the LLEDS. The language "but shall not be limited to" is removed, as the list of the supplemental legal materials or their equivalents is exclusive to the materials listed.

Subsections 3124(b)(1) through (3) are amended to remove the supplemental materials: Federal Rules Decisions, Corpus Juris Secundum, and California Jurisprudence (latest edition), and replace them with: All United States Supreme Court Cases, All Federal Appeals Court Cases, and All Federal District Court Cases, which cover those exact or comparable topics.