

REGULATION AND POLICY MANAGEMENT BRANCH

P.O. Box 942883
Sacramento, CA 94283-0001



April 27, 2021

NOTICE OF CHANGE TO RULEMAKING ACTION AS ORIGINALLY PROPOSED

Pursuant to the provisions of Government Code Sections 11346.8(c) and 11349.4, and Section 44 of Title 1 of the California Code of Regulations (CCR), the California Department of Corrections and Rehabilitation (CDCR) is providing notice of proposed changes made to Title 15, Division 3, Chapter 1, concerning Use of Force.

You are receiving this notice because you provided written comment (including comments sent via email or fax), or requested notice of changes.

To provide notice of the proposed changes to the public, this Notice will be posted on the CDCR Internet website at: [Notice of Change to Rulemaking Action as Originally Proposed](#).

The text is amended to clarify and provide better readability of the Department's intent regarding physical force (specifically chokeholds), clarifying the use of force options, and the expectation regarding the use of force. In subsection 3268(d)(4), the term SBI was changed to GBI to clarify that deadly force may only be used when a person poses a threat to another person. Additionally, the Initial Statement of Reasons (ISOR) is amended to include additional statements explanatory and necessity information regarding the revisions to the initially proposed text. Revisions are reflected by double underline for added text and double strikethrough for deleted text.

Submission of Public Comments

The comment period for these revisions will close on May 14, 2021. Please submit comments by e-mail to RPMB@cdcr.ca.gov; in writing to Anthony Carter, Regulation and Policy Management Branch, Department of Corrections and Rehabilitation, P.O. Box 942883, Sacramento, CA, 94283-0001, before the close of the public comment period. Comments must be received or postmarked no later than May 14, 2021. Only those comments relating directly to the enclosed amendments indicated in this Notice of Change to Rulemaking Action as Originally Proposed will be considered.

YING SUN, Associate Director
Regulation and Policy Management Branch
Department of Corrections and Rehabilitation

Attachment

CHANGES TO TEXT AS ORIGINALLY PROPOSED

Subsection 3268(c)(2) through 3268(c)(4) is renumbered and amended to read:

(c) Use of Force Options. Use of Force options do not have to be ~~utilized~~ used in any particular sequence, but should be the force option staff reasonably believes is ~~sufficient~~ appropriate. Whenever possible, verbal persuasion or orders shall be issued prior to resorting to force and are required to be provided before controlled force is used. ~~The unresisted searching or escorting of a person and the unresisted application of authorized restraint equipment is not a use of force.~~ Use of force options include but are not limited to:

(1) Chemical agents.

~~(2) Hand held batons.~~

~~(3)(2)~~ Physical strength force and holds. Any deliberate physical contact, using any part of the body to overcome active physical resistance, is considered physical force. CDCR does not authorize A= chokeholds or any other physical restraints which prevents the person from swallowing or breathing or restricts blood flow to the brain shall not be used unless the use of deadly force would be authorized.

~~(4)(3)~~ Less-lethal weapons: A less-lethal weapon is any weapon that is not likely to cause death. Examples include but are not limited to a A hand-held baton, an electronic control device (ECD) , a 37mm or 40mm launcher, and any other weapon used to fire less-lethal projectiles is a less-lethal weapon.

~~(5)(4)~~ Lethal weapons: A lethal weapon is any weapon that is likely to result in death. A firearm is a lethal weapon because it is used to fire lethal projectiles.

Subsection 3268(d)(4) is amended to read:

(4) Deadly force shall not be used against a person based on the danger that a person poses to themselves if an objectively reasonable officer would believe the person does not pose an imminent threat of death or ~~SBIGBI~~ to the peace officer or to another person.

STATEMENT OF REASONS FOR REVISIONS TO TEXT AS ORIGINALLY PROPOSED

Subsections 3268(c)(2) is deleted to remove “Hand Held Baton” as a separate listed use of force option. A hand held baton is considered a less-lethal weapon and is referenced within section 3268(c)(4). Therefore, removing the redundancy is appropriate.

Subsection 3268(c)(3) is renumbered to 3268(c)(2) and amended to clarify the meaning of physical force. Staff may use physical strength on objects, such as forcing open a door, which is not a use of force on a person. Staff may also use physical strength to manipulate other weapons. The amended language clarifies that a staff member using any part of their body to overcome active physical resistance is physical force. Additionally, language was deliberately added and removed to clarify the limitation to using physical force that would result in restriction of blood flow to the brain. CDCR determined that this language is needed to clarify the intent of the Department’s expectation of the manner in which physical force is utilized, adoption of similar changes and standardized practices with other law enforcement profession’s policies, and

compliance with recently approved legislation (AB-1196) affecting Government Code, Section 7286.5. The Department continues to recognize the sanctity of human life and its commitment to minimal reliance on the use of force.

Subsection 3268(c)(4) is renumbered and amended to add the use of hand-held batons and an Electronic Control Device (ECD) to the use of force less-lethal weapons category that a peace officer may use to overcome resistance and effect arrest. An ECD is a portable device designed as a less-lethal weapon capable of injuring, immobilizing or inflicting pain on an individual by the discharge of electrical current.

Subsection 3268(c)(5) is renumbered to 3268(c)(4) and remains unchanged.

Subsection 3268(d)(4) is amended to clarify that deadly force may only be used when a person poses a threat to another person. This change is consistent with the language in 3268(d)(1) and 3268(d)(2).