



**Department of Corrections and Rehabilitation
NOTICE OF CHANGE TO REGULATIONS**

Sections: 3261.2, 3261.3, 3261.5, 3261.6, and 3261.7	NCR Number: 21-05	Publication Date: April 23, 2021	Effective Date: To Be Announced
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INSTITUTION POSTING AND CERTIFICATION REQUIRED

This Notice announces the proposed amendment of Sections 3261.2, 3261.3, 3261.5, 3261.6, and 3261.7 of the California Code of Regulations (CCR), Title 15, Crime Prevention and Corrections, Division 3, Chapter 1, regarding news and non-news media access.

PUBLIC COMMENT PERIOD

The public comment period will close on **June 11, 2021**. Any person may submit written comments about the proposed regulations by mail to the California Department of Corrections and Rehabilitation (CDCR), Regulation and Policy Management Branch (RPMB), P.O. Box 942883, Sacramento, CA 94283-0001, or by e-mail to RPMB@cdcr.ca.gov. All written comments must be received or postmarked no later than **June 11, 2021**.

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 R. Orr by mail to California Department of Corrections and Rehabilitation, RPMB, P.O. Box 942883, Sacramento, CA 94283-0001, by telephone at (916) 445-2276, or e-mail to RPMB@cdcr.ca.gov. Inquiries regarding the subject matter of these regulations should be directed to Terry Thornton, Office of Public and Employee Communication, at (916) 716-5989.

Original signed by:

KATHLEEN ALLISON
Secretary
California Department of Corrections and Rehabilitation

Attachments

NOTICE OF PROPOSED REGULATIONS
California Code of Regulations
Title 15, Crime Prevention and Corrections
Department of Corrections and Rehabilitation

NOTICE IS HEREBY GIVEN that the Secretary of the California Department of Corrections and Rehabilitation (CDCR or Department), proposes to amend Sections 3261.2, 3261.3, 3261.5, 3261.6, and 3261.7 into Title 15, Division 3, Chapter 1, regarding news and non-news media access.

PUBLIC COMMENT PERIOD

The public comment period begins **April 23, 2021** and closes on **June 11, 2021**. 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

CDCR is committed to fulfilling its obligation to make known to the public information about the Department and how it is operated and fulfills this mission by contact with public groups and individuals, making its public records available for review, and through the news media.

This action will:

Amend sections regarding the release of offender photos and commitment information to the news media; media access to health care facilities, operations, and patients; information about a patient's condition; the definition of "news media;" requirements for filming on state property; and media access to parole hearings.

DOCUMENTS INCORPORATED BY REFERENCE

None.

SPECIFIC BENEFITS ANTICIPATED BY THE PROPOSED REGULATIONS

This rulemaking will support the public's right to know about how the Department operates while preserving patients' legal rights to privacy as well as protecting the integrity of an investigation involving current or former offenders.

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 news and non-news media access.

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 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 during the written comment period or at a scheduled hearing should one be scheduled.

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, underline indicates new text and ~~strike through~~ indicates deleted text.

Title 15. Crime Prevention and Corrections

Division 3. Rules and Regulations of Adult Institutions, Programs, and Parole

Subchapter 4. Article 1, Public Information and Community Relations

Sections 3260 through 3261.1 are unchanged.

3261.2. Authorized Release of Information.

Subsections 3261.2(a) through 3261.2(c) are unchanged.

Subsection 3261.2(d) is amended to read:

(d) Information derived from a person's Criminal Identification and Investigation Report shall not be provided to the media or to the public. Information about the State prison history of parolees or former offenders who have been arrested or are under investigation by an outside law enforcement agency will only be released with authorization from the arresting or investigating agency.

Subsection 3261.2(e) is amended to read:

(e) Including the limitations of (c) and (d) above, the only inmate or parolee data which may be released without a valid written authorization from the inmate or /parolee to the media or to the public includes the inmate's or parolee's:

Subsections 3261.2(e)(1) through 3261.2(e)(9) are amended and renumbered to read:

(1) Name.

(2) Age.

(3) Race and/or ethnicity.

~~(3)~~ (4) Birthplace.

(4) (5) County of last legal ~~Place of previous~~ residence.

~~(5)~~ (6) Commitment offense information obtained from their adult probation officer's report.

(6) (7) Date of admission to CDCR and CDCR number. ~~Facility assignments and behavior.~~

(8) Facility assignments and a general description of behavior.

~~(7)~~ (9) General state of health, Patient health condition given in short and non-medical general terms that do not communicate specific medical information about the individual, such as good, fair, serious, critical, treated and released, or undetermined. ~~poor, or stable.~~

~~(8)~~ (10) Cause Manner of death as natural, homicide, suicide, accidental, or executed.

~~(9)~~ (11) Sentencing and release actions, including month and year of current parole eligibility date.

Subsection 3261.2(f) is unchanged

Subsection 3261.2(g) is amended to read:

(g) Information endangering an employee or concerning an employee who is a crime victim shall not be released to the media or to any member of the public.

Note: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code; Sections 56.10, 1798.20, 1798.30 and 1798.40-42, Civil Code; Sections 6250-6276.48, Government Code; and Code of Federal Regulations, Title 45, Parts 160 and 164; Michael Broadheim v. CDCR (Super. Ct San Francisco County, 2020, No. CPF-20-516978); Catalin Voss, Yun Hong, Kristen Bell, and Nicholas McKeown v. CDCR (Super. Ct San Francisco County, 2020, No. CPF-20-517117).

3261.3. Notifying Media of Escapes.

Subsection 3261.3(a) is unchanged.

Subsection 3261.3(b) is amended to read:

(b) When available, the missing inmate's identification photograph or short escape bulletin shall be furnished to the notified television stations and newspapers. ~~If a photograph or short escape bulletin are not available for distribution, the media shall be informed that one is posted at the facility's front entrance where they will be permitted to take a picture of it for their use.~~

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

Existing Section 3261.4. Media Inquiries is unchanged.

3261.5. Routine Media Interviews.

Subsection 3261.5(a)(1) is amended to read:

(a) Definitions.

(1) "News media representative" ~~is means~~ a journalist who works for, or is under contract to, a newspaper, magazine, wire service, book publisher, website, podcast, ~~or~~ radio or television program or station or who, through press passes issued by a governmental or police agency, ~~or through similar convincing means,~~ can demonstrate that ~~he or she is~~ they are a bona fide journalist engaged in the gathering of information for distribution to the public.

Subsections 3261.5(a)(2) through Subsection (d)(1) are unchanged.

Subsection 3261.5(d)(2) is unchanged but shown for reference.

(2) Non-news media representative requests for access to departmental facilities, on-duty staff or inmates shall include project and production details as necessary to determine security and operational impacts.

Subsection 3261.5(d)(3) is amended to read:

(3) Non-news media representative film productions require a California Film Commission permit, along with evidence of financial responsibility and general and automobile liability insurance of at least in an amount not less than \$1 million indemnifying and defending the State of California, its officers, employees and agents against any lawsuits. Automobile liability insurance is not required if no vehicles are used in or for filming. Statutory Workers Compensation and Employers' Liability with a limit of \$1 million is also required. If a company has no employees, a Workers Compensation waiver letter must be submitted to the California Film Commission.

Subsections 3261.5(e) through 3261.5(l) are unchanged.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 2601 and 5054, Penal Code, and Pell v. Procunier, 94 S.Ct. 2800 (1974).

The Title of Section 3261.6 Seriously or Terminally Ill Inmate Media Interviews is amended to read:

3261.6. Seriously or Terminally Ill Inmate Media Interviews. Access to Correctional Health Care Facilities and Patients.

Existing Subsection 3261.6(a) is repealed:

~~(a) Media interviews shall not be permitted with an inmate suffering from a mental illness when, in the opinion of a psychiatrist or psychologist, the inmate is not capable of giving informed consent or their condition may be worsened by such an interview.~~

New Subsection 3261.6(a) is adopted to read:

(a) News and non-news media representatives may be allowed controlled access under institution escort to patients and their housing areas in order to safeguard the public's right to know while respecting patients' legal right to health care privacy. The Assistant Secretary, Communications; the Undersecretary of Health Care Services; and institution health care staff shall be notified in advance of all news media events involving inmate patients. Access shall require approval of the Warden, the Health Care Chief Executive Officer (CEO), and the Assistant Secretary, Communications, or their designee.

Existing Subsection 3261.6(b) is repealed:

~~(b) Controlled access may be permitted to seriously or terminally ill patients and their housing areas. Random interviews in such unit shall be closely monitored and shall be terminated if a majority of the unit's inmates object.~~

New Subsection 3261.6(b) is adopted to read:

(b) Random interviews in units housing patients shall be closely monitored to protect health care privacy. To safeguard patients' legal right to privacy, health care staff shall ensure that signs, charts and/or any other patient identifiers are not visible. Clinical and non-clinical staff members are not to divulge any patient's protected health information.

Existing Subsection 3261.6(c) is repealed:

~~(c) No more than two visits per calendar month to a unit housing seriously or terminally ill inmates shall be allowed. Visits shall be on a first come, first served basis with a waiting list to be maintained by the facility's public information officer. A "pool" of no more than ten media persons per visit shall be permitted.~~

New Subsection 3261.6(c) is adopted to read:

(c) Requests from news and non-news media representatives to visit contracted health care facilities must be made in writing at least 30 days in advance in order to obtain written consent from the contractor.

New Subsection 3261.6(d) is adopted to read:

(d) News and non-news media access is not permitted within units with mental health crisis beds or any area housing patients under medical isolation or quarantine.

New Subsection 3261.6(e) is adopted to read:

(e) To protect the integrity of delivering patient care, news and non-news media access to clinical areas where health care is delivered (e.g. dialysis centers, dental clinics, triage and treatment areas) may only be allowed when no patients are present.

New Subsection 3261.6(f) is adopted to read:

(f) News and non-news media representatives may be permitted random face-to-face interviews with patients receiving health care services and living in units that provide health care treatment. The Warden and the Health Care CEO may restrict the time, place and duration of such interviews, the size of technical crews, and the amount and type of equipment.

New Subsection 3261.6(g) is adopted to read:

(g) News and non-news media access to units housing seriously or terminally ill inmates may be permitted on a case-by-case basis. Consideration shall be given to factors that may disrupt the operation of the unit. Participation is restricted to patients who have the capacity for giving informed consent. Filming, video and/or audio recording, and photographing will not be allowed of patients who do not have the capacity to give informed consent.

New Subsection 3261.6(h) is adopted to read:

(h) Media interviews shall not be permitted with an inmate suffering from a mental illness which, in the opinion of a psychiatrist or psychologist, renders them incapable of giving informed consent or their condition may be worsened by such an interview. Individuals who are severely ill or injured, medicated, are cognitively impaired, suffer from dementia, or are experiencing severe pain, anguish or grief often lack the capacity to give consent and should not be approached by news and non-news media representatives. Consent should only be obtained from patients who are awake, alert and have the capacity to understand the consequences of giving informed consent.

Note: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code; and Sections 1798.41 and 1798.42, Civil Code; Section 3999.98, Title 15 California Code of Regulations, and Code of Federal Regulations, Title 45, Parts 160 and 164.

3261.7 Cameras and Other Audio or Visual Recording Devices.

Subsection 3261.7(a) is amended to read:

(a) Staff cannot prohibit a person who is not on State facility property from photographing, filming, videotaping or otherwise recording any Department facilities, employees, inmates, parolees or equipment.

Subsection 3261.7(b) is unchanged.

Subsection 3261.7(c) is unchanged but shown for reference:

(c) Photographs, films or videotapes for other than department purposes which reveal an inmate's identity may be taken within a facility subject to the following conditions:

Subsection 3261.7(c)(1) is amended to read:

(1) A CDCR Form 146 (Rev. 06/08), Inmate Declaration to News Media Contact, shall be completed for each inmate before a photograph, film, audio recording, or videotape identifying the inmate may be taken.

Subsections 3261.7(c)(2) through 3261.7(c)(3) are unchanged.

Subsection 3261.7(d) is amended to read:

(d) Unless there is a specified threat of imminent danger to an inmate or parolee by releasing their departmental identification photograph, or unless the release of their photograph could jeopardize an ongoing law enforcement investigation, news media representatives as defined in Subsection 3261.5(a)(1) and non-news media representatives as defined in Subsection 3261.5(a)(2) shall be permitted access to photographs without the inmate's or parolee's consent.

Subsection 3261.7(d)(1) is repealed.

~~(1) News media and non-news media representatives shall pay for the facility's cost to provide such requested departmental identification photographs.~~

Existing Subsection 3261.7(d)(2) is renumbered as Subsection 3261.7(d)(1).

~~(2)~~ (1) Current departmental identification photographs of escaped inmates and parolees at large shall be provided without charge.

Subsection 3261.7(e) and 3261.7(f) are unchanged.

Subsection 3261.7(g) is amended to read:

(g) Before photographers and camera operators enter a facility, they shall be informed of any restrictions, including that photographs or recordings are prohibited of: persons without their consent; and procedures, equipment or structures, which ~~will comprise~~ compromise security.

New Subsection 3261.7(h) is adopted to read:

(h) Media access to parole hearings is governed by the California Code of Regulations, Title 15, Division 2, Sections 2031 and 2032. Requests to attend hearings must be submitted in accordance with those regulations. The Executive Officer of the Board of Parole Hearings approves news and non-news media representatives' requests to attend parole hearings and must authorize media representatives' use of cameras and recording devices at parole hearings.

Existing Subsection 3261.7(h) is renumbered as Subsection 3261.7(i).

~~(h)~~ (i) Any photographs, film, video tape or other recording taken within facilities in violation of these regulations shall be seized and placed undamaged, undeveloped and unviewed in a secure area. The news media or non-news media representative's supplies and equipment shall not be damaged.

Note: Authority cited: Section 5058, Penal Code. Reference: Section 4570, 4570.1 and 5054, Penal Code.

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, Subchapter 4, Article 1, Sections 3261.2 through 3261.7 regarding public information and community relations.

CDCR is committed to fulfilling its obligation to make known to the public information about the Department and how it is operated and fulfills this mission by contact with public groups and individuals, making its public records available for review, and through the news media.

This action is necessary to amend sections regarding the release of offender photos and commitment information to the news media; media access to health care facilities, operations, and patients; information about a patient's condition; the definition of "news media;" requirements for filming on State property; and media access to parole hearings.

This action is needed to codify CDCR's existing policy regarding the release of photos and commitment information about parolees and ex-offenders arrested or under investigation by law enforcement agencies. Offender photographs are public documents unless the release of a photo endangers an inmate or parolee. When a parolee or discharged offender has been arrested or is under investigation by a law enforcement agency, news reporters routinely contact CDCR for their photo and/or their commitment offense. It has been CDCR's policy, in accordance with Government Code Section 6253, Subsection (c)(3) and Section 6254, Subsection (f), to contact the arresting or investigating agency to authorize the release of photos and/or commitment offense information. This is to protect the integrity of an ongoing criminal investigation and potential future investigations where additional witnesses and victims may be interviewed. Offender photos are also used by law enforcement investigators in photo lineups and used in witness and victim identification. Withholding photos at the request of the investigating law enforcement agency protects the investigative process and ensures a photo lineup is not prejudiced and that a potential jury pool is not tainted.

The proposed regulatory action removes the requirement that news and non-news media representatives pay the cost of providing departmental identification photographs. Offender photographs are digital and it is routine for CDCR to provide them electronically, which does not incur any costs.

The proposed regulatory changes add race and ethnicity to what can be released about an inmate or parolee. Criminal offender record information is exempt from disclosure pursuant to Penal Code statutes. Case law has determined that race and/or ethnicity is not considered criminal record information and that general physical descriptions including ethnicity implicates no personal privacy interest. Case law also notes that Government Code statutes, the Information Practices Act and CDCR policies do not bar the disclosure of race and ethnicity. Courts also observed that disclosing race and/or ethnicity serves the public interest, especially in the national focus on the role of race in the criminal justice system.

This amendment clarifies the commitment offense information that may be shared and adds date of admission to State prison and an offender's CDCR number to what can be disclosed to the news media.

Proposed regulatory changes are needed so that CDCR spokespeople can better comply with the Information Practices Act and Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-191, prohibitions regarding the release of protected health information. Rather than providing information about an offender's state of health, which

violates national privacy standards for health care information, a description of a patient's condition using general and the non-medical terms good, fair, serious, critical, treated and released, or undetermined, should be used. These are standard terms acceptable under HIPAA laws and the guidelines of the American Hospital Association and the California Hospital Association. The term "stable" should not be used as a condition.

These terms are defined as follows:

- Undetermined – Patient is awaiting physician assessment.
- Good – Vital signs are stable and within normal limits. Patient is conscious and comfortable. Indicators are excellent.
- Fair – Vital signs are stable and within normal limits. Patient is conscious, but may be uncomfortable. Indicators are favorable.
- Serious – Vital signs may be unstable and not within normal limits. Patient is acutely ill. Indicators are questionable.
- Critical – Vital signs are unstable and not within normal limits. Patient may be unconscious. Indicators are unfavorable.

This proposed action updates the definition of "news media representative" to include "website" and "podcast." As noted, one of the ways CDCR fulfills its mission to make known to the public how it operates is through the news media. Traditionally, this has included news wire services, newspapers and other printed publications, radio and television. The internet has fundamentally changed the media landscape and CDCR has already been responding to requests from online news websites and podcast producers in the same way as other news and non-news media representatives.

This trend is borne out by research. In 2018, the Pew Research Center measured which platform people prefer getting their news. They found that 44 percent of adults prefer television, 34 percent prefer the internet (websites, apps or social media), 14 percent prefer radio and seven percent prefer print. Researchers have observed that Americans express a clear preference for getting their news on a screen, though which screen varies. Television news is dramatically lower among younger adults. Adults under 50 prefer the internet as the platform for getting news, and print news consumption is declining.

This proposed regulatory action comports with State law and California Film Commission policies for filming on State property, which includes the requirement that filmmakers provide evidence of financial responsibility, general and automobile liability insurance and workers compensation insurance.

This proposed regulatory action adds language describing media access to incarcerated patients and health care facilities within CDCR—including contracted health care facilities and units housing seriously and/or terminally ill patients—while safeguarding patients' rights to privacy. The proposed action also specifies that media interviews may be allowed with patients who have the capacity for giving informed consent and have the capacity to understand the consequences of giving or not giving informed consent. The proposed amendments also prohibit filming, video and/or audio recording, and photographing an incarcerated patient who does not have the capacity to give informed consent.

This proposed action specifies that news and non-news media access to suitability hearings is governed by the Board of Parole Hearings (BPH) and that requests are to be made in accordance with the California Code of Regulations, Title 15, Division 2, Sections 2031 and 2032. This will provide clarity about the role and responsibilities of the BPH in granting media access to parole suitability hearings.

CONSIDERATION OF ALTERNATIVES:

The Department must determine that no reasonable alternative considered, or that has otherwise been identified and brought to the attention of the Department, would be more effective in carrying out the purpose for which this action is proposed, would be as effective and less burdensome to affected private persons than the action proposed, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. Currently, no reasonable alternatives have been brought to the attention of the Department that would alter the Department's initial determination.

ECONOMIC IMPACT ASSESSMENT:

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

Significant Adverse Economic Impact on Business

The Department has made an initial determination that the proposed regulations will not have a significant statewide adverse economic impact on business, including the ability of California businesses to compete with businesses in other states, because the proposed regulations affect only the internal management of CDCR institutions.

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. The proposed regulations place no requirements or restrictions on businesses inside or outside of California, as they affect only the internal management of CDCR institutions.

Creation of New, Expansion or the Elimination of Existing Businesses Currently Doing Business within the State of California

The Department has determined that the proposed regulations will not have an impact on the creation of new or the elimination of existing businesses within California, or affect the expansion of businesses currently doing business in California as the proposed regulations affect the internal management of prisons only.

BENEFITS OF THE REGULATIONS:

The Department anticipates that the proposed amendments will provide clarity to news and non-news media representatives about their access to offender information and photographs, departmental and contracted health care facilities, incarcerated patients and their housing units, information about a patient's condition, and parole hearings and ensures that law enforcement investigations involving current and/or former offenders are not jeopardized.

This supports the public's right to know about how the Department operates while preserving patients' legal rights to privacy as well as protecting the integrity of an investigation involving current or former offenders.

MATERIALS RELIED UPON:

The Department, in proposing these amended regulations, has relied upon the following documents:

- *Guidelines for Releasing Information on the Condition of Patients*, published by the American Medical Association.
<https://mahprm.org/resources/Guidelines%20for%20Releasing%20Information%20on%20the%20Condition%20of%20Patients.pdf>
- *Release of Patient Information to the Media: A guide for hospital public relations professionals and the news media as specified by California law and HIPAA*, ©2017 by the California Hospital Association. First edition ©2005.
https://www.neuroskills.com/files/PatientInfoReleaseGuide_2017.pdf
- *Ethics: Audio or Visual Recording Patients for Education in Health Care, Code of Medical Ethics Opinion 3.1.3*, published by the American Medical Association.
<https://www.ama-assn.org/delivering-care/ethics/audio-or-visual-recording-patients-education-health-care>
- *Commercial Filming of Patient Care Activities in Hospitals* by Joel M. Geiderman, MD and Gregory L. Larkin, MD, MSPH; published in 2002 by the American Medical Association and reprinted July 17, 2002, by the Journal of the American Medical Association.
<https://jamanetwork.com/journals/jama/fullarticle/195127>
- *Americans Still Prefer Watching to Reading the News – and Mostly Still Through Television* by Amy Mitchell, published December 3, 2018, by the Pew Research Center.
<https://www.journalism.org/2018/12/03/americans-still-prefer-watching-to-reading-the-news-and-mostly-still-through-television/>

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

Title 15, Crime Prevention and Corrections

Division 3, Rules and Regulations of Adult Institutions, Programs, and Parole

Subchapter 4. Article 1, Public Information and Community Relations

Sections 3260, 3260.1, 3261 and 3261.1 are unchanged.

3261.2. Authorized Release of Information.

Subsections 3261.2(a), 3261.2(b), and 3261.2(c) are unchanged.

New Subsection 3261.2(d) is amended to codify the Department’s existing policy for contacting the arresting or investigating law enforcement agency before fulfilling requests by the news media for photos and/or commitment offense information of parolees or former offenders who have been arrested, are under investigation, or are a person of interest. Often, law enforcement agencies ask that commitment offense, photographs and other information about an offender or ex-offender not be disclosed to the media in order to protect the integrity of an ongoing investigation, not prejudice a photo lineup, not taint a potential jury pool and not jeopardize witness and victim identification. The Department’s existing policy, in accordance with Government Code Section 6253 Subsection (c)(3) and Section 6254 Subsection (f), is to contact the investigating law enforcement agency when receiving a request from a member of

the news media for a photo or commitment offense information of a parolee or ex-offender who has been arrested or is under investigation. The investigating law enforcement agency determines whether or not the release of information and/or a photo might hamper their investigation and may ask that CDCR withhold—sometimes only temporarily—the information and/or the photo. CDCR relays that decision to the news media representative who made the request and provides the investigating agency’s contact information should they wish to follow up. This policy protects the integrity of law enforcement investigations.

Subsection 3261.2(e) is amended to clarify which offender data may be released to the media or to the public without valid written authorization from an inmate or a parolee.

Subsection 3261.2(e)(1) through Subsection 3261.2(e)(9) are amended and renumbered to add race and/or ethnicity as information that can be released without a parolee’s or inmate’s authorization. Case law has determined that race and/or ethnicity is not considered criminal record information not subject to disclosure pursuant to Penal Code statutes and that general physical descriptions including ethnicity implicates no personal privacy interest. Case law also notes that Government Code statutes, the Information Practices Act and CDCR policies do not bar the disclosure of race and ethnicity. Courts observed that disclosing race and/or ethnicity serves the public interest, especially in the national focus on the role of race in the criminal justice system. This amendment clarifies that commitment offense information may be shared and adds date of admission to CDCR and an offender’s CDCR number to what can be disclosed to the news media. This amendment also enables CDCR spokespeople to better comply with federal and state health privacy laws. The existing regulations allowed for CDCR spokespeople to describe an inmate’s general state of health; however, CDCR employees authorized to respond to the media on the record are not clinicians and thus, cannot fully know what an inmate’s general state of health is, nor can they discuss it without violating federal and state medical privacy laws. The proposed regulatory changes are needed so that CDCR spokespeople can better comply with the State of California’s Information Practices Act and the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-191.

These terms are defined as follows:

- Undetermined – Patient is awaiting physician assessment.
- Good – Vital signs are stable and within normal limits. Patient is conscious and comfortable. Indicators are excellent.
- Fair – Vital signs are stable and within normal limits. Patient is conscious, but may be uncomfortable. Indicators are favorable.
- Serious – Vital signs may be unstable and not within normal limits. Patient is acutely ill. Indicators are questionable.
- Critical – Vital signs are unstable and not within normal limits. Patient may be unconscious. Indicators are unfavorable.

The amendment changes “cause” of death to “manner” of death. CDCR does not determine or release an offender’s cause of death—coroners do. CDCR routinely refers news media representatives to coroners to obtain a deceased offender’s official cause of death. However, after a coroner has determined an offender’s cause of death, CDCR can describe the manner of death as natural, homicide, suicide, accidental or executed and can confirm the death of an

incarcerated person after efforts to notify their next of kin have been made. The amendment also adds the month and year of current parole eligibility date to sentencing and release actions.

Subsection 3261.2(f) is unchanged.

Subsection 3261.2(g) is amended to clarify that in addition to the media, no member of the public should have access to information endangering an employee or concerning an employee who is a crime victim. This is necessary to protect the identity of the employee and to not hinder any investigation of the incident.

3261.3. Notifying Media of Escapes.

Subsection 3261.3(a) is unchanged.

Subsection 3261.3(b) is amended to remove the requirement that media representatives obtain a missing inmate's photograph by taking a picture of it posted at a correctional facility's front entrance. Offender photographs are provided digitally and emailed to news media representatives, thus making this requirement obsolete.

3261.4. Media Inquiries is unchanged.

3261.5. Routine Media Interviews.

Subsection 3261.5(a)(1) is amended to add "website" and "podcast" to the definition of a news media representative. One of the ways CDCR fulfills its mission to make known to the public how it operates is through the news media. Traditionally, this has included newspapers and other printed publications, radio and television. The internet has fundamentally changed the media landscape in the last few years and there has been an increase in news appearing online from news and non-news media organizations, apps, stakeholders and other public groups as well as social media. Not only do traditional media outlets—newspapers, magazines, wire services, television, and radio broadcasters—have websites, but some news outlets solely disseminate its content online. The Department has already been responding to requests from online news websites and podcast producers the same way as other news and non-news media representatives and this amendment codifies the Department's existing policy.

This trend is borne out by research. In 2018, the Pew Research Center measured which platform people prefer getting their news. They found that 44 percent of adults prefer television, 34 percent prefer the internet (websites, apps or social media), 14 percent prefer radio and seven percent prefer print. Researchers have observed that Americans express a clear preference for getting their news on a screen, though which screen varies. Television news is dramatically lower among younger adults. Adults under 50 prefer the internet as the platform for getting news, and print news consumption is declining.

Subsection 3261.5(a)(2) through Subsection (d)(2) are unchanged.

Subsection 3261.5(d)(3) is amended to codify the Department's policies regarding filming in its institutions and facilities. The Department does, on a case-by-case basis, accommodate requests from filmmakers, production companies, documentary producers and others to film inside its correctional facilities. Such access is granted within available resources consistent with the safe and secure operations of CDCR facilities. However, this type of filming is considered discretionary filming and written requests and proposals from filmmakers and production companies are evaluated to ascertain the impact on staffing, resources, safety,

security and operations as well as compliance with California law, departmental policies and communications objectives. The Department's policies regarding filming in its facilities are in line with the policies of the California Film Commission for filming on all State property, which includes the requirement that filmmakers provide evidence of financial responsibility, general and automobile liability insurance and workers compensation insurance. Minimum automobile liability limits are required by State law in order to operate a vehicle within California pursuant to the California Insurance Code Section 11580.1. Valid auto coverage is required in accordance with the California Vehicle Code Sections 16450 to 16457. Filmmakers' provision of Worker's Compensation is statutory pursuant to the California Labor Code Section 3700. The proposed amendment also states that no automobile liability insurance is required if the filmmaker does not use a vehicle in or for filming. Many filmmakers are independent and have no employees. The proposed amendment also states that if a company has no employees, they must submit a Workers Compensation waiver letter to the California Film Commission. The amendment also corrects the word "offices" to read "officers."

Subsections 3261.5(e) through 3261.5(l) are unchanged.

3261.6. Access to Correctional Health Care Facilities and Patients.

The Title of Section 3261.6 is amended to read Access to Correctional Health Care Facilities and Patients to better describe the purpose of the proposed changes.

Existing Subsection 3261.6(a) is repealed because the policy and procedures have changed since the initial adoption of this subsection and the existing language does not accurately reflect the current practices, which are detailed in the explanation for Subsection 3261.6(a).

New Subsection 3261.6(a) is adopted to describe news and non-news media access to correctional health care facilities and patients. The previous language only addressed media interviews with seriously or terminally ill inmates; however, in practice, the Department and California Correctional Health Care Services (CCHCS), on a case-by-case basis, have granted media access to clinical areas where health care is delivered including contracted facilities, hospice and palliative care facilities, triage and treatment units, areas that provide mental health treatment when inmates are not present, physical therapy treatment areas, dental areas, clinics, telemedicine rooms, and others. The public has a right and a duty to know how the Department operates and this includes correctional health care facilities. However, the Department is also legally mandated to protect the medical privacy of incarcerated patients and the confidentiality of patient information. The amendment describes what access may be allowed to news and non-news media representatives, who is notified in the event of news media events involving patients, and who grants approval for news and non-news media requests for access to correctional health care facilities.

Existing Subsection 3261.6(b) is repealed to remove language that only describes news and non-news media access to seriously and terminally ill patients and their housing units. The proposed amendments describe news and non-news media access to all patients—not just seriously and terminally ill patients.

New Subsection 3261.6(b) is adopted to ensure patients' privacy rights are safeguarded when the news and non-news media representatives are conducting random interviews of incarcerated patients. The amendment includes actions clinical staff can take to ensure patient identifiers are not visible and reiterates the Department's legal mandate that clinical and non-clinical staff members are not to divulge any patient's protected health information.

Existing Subsection 3261.6(c) is repealed to remove the requirement that no more than two visits per calendar month to a unit housing seriously and terminally ill patients will be allowed and to remove the requirement that a waiting list be maintained. In practice, this has not been necessary. The proposed amendments describe news and non-news media access to all incarcerated patients and their housing units—not just seriously and terminally ill patients.

New Subsection 3261.6(c) is adopted to describe news and non-news media access to contracted health care facilities and the process for requesting access to contracted health care facilities. The proposed amendment allows for consent to be obtained from the contractor at least 30 days in advance to ensure there is sufficient time for the contractor to review the request, confer with CDCR and CCHCS, and prepare for the visit.

New Subsection 3261.6(d) is adopted to codify existing policy that news and non-news media access is not permitted within units with mental health crisis beds or any area under medical isolation or quarantine. People housed in mental health crisis beds are not capable of giving informed consent. Not permitting media access to areas under a medical quarantine or medical isolation protects the health of patients, staff, news and non-news media representatives and the public.

New Subsection 3261.6(e) is adopted to codify the Department's policy of limiting news and non-news media access to clinical areas where health care is delivered. The public has a right and a duty to know how such facilities are operated; however, access by news and non-news representatives can potentially disrupt patient care and/or introduce contaminants. To protect some health care treatment areas, the proposed amendment allows for media access when no patients are present.

New Subsection 3261.6(f) is adopted to permit news and non-news media representatives to conduct random face-to-face interviews with patients receiving health care services and/or living in units that provide health care treatment like they can with all incarcerated people. Pursuant to Section 3261.5(f), an institution head can restrict the time, place and duration of interviews and the size of technical crews. For media interviews conducted in health care facilities, this amendment adds that the Health Care Chief Executive Officer, as well as the Warden, may also restrict the time, place and duration of such interviews, the size of technical crews and the amount and type of equipment.

New Subsection 3261.6(g) is adopted to permit news and non-news media access to units housing seriously or terminally ill inmates on a case-by-case basis with consideration given to factors that may disrupt the operation of the unit. Under HIPAA, photographing, videotaping and/or interviewing patients requires prior written authorization from the patient. Only patients who have the capacity for giving informed consent can participate in media interviews. Patients who lack the capacity to give informed consent are prohibited from being filmed, videotaped, audio recorded or photographed by news and non-news media representatives.

New Subsection 3261.6(h) is adopted to prohibit media interviews with a patient suffering from a mental illness when in the opinion of a psychiatrist or psychologist renders them incapable of giving informed consent or their condition may be worsened by such an interview. This section also describes other patients who should not be approached by news and non-news media representatives. This includes patients who are severely ill or injured, medicated, cognitively impaired, or are in severe pain, anguish or grief pursuant to standards issued by The Joint Commission and policies from the American Medical Association Council on Ethical and Judicial Affairs. Consent should also only be obtained from patients who are

awake, alert and have the capacity to understand the consequences of giving or not giving informed consent. The Note section is amended to include citations pertaining to HIPAA regulations.

3261.7. Cameras and Other Audio or Visual Recording Devices.

Subsection 3261.7(a) is amended to provide clarity that Department employees cannot prohibit a person who is not on State property—not just facility property—from photographing, filming, videotaping or otherwise recording Department facilities, employees, offenders or equipment. The change to using the word "State" is more inclusive and direct to encompass any and all State property under CDCR's jurisdiction.

Subsection 3261.7(b) is unchanged.

Subsection 3261.7(c)(1) is amended to add the requirement that inmates also need to sign the CDCR Form 146, (Rev. 06/08), Inmate Declaration to News Media Contact, before an audio recording is made of them. This is already CDCR policy and inmates already complete this form before being photographed, filmed, videotaped and/or audio recorded.

Subsection 3261.7(d) is amended to codify the Department's existing policy to withhold an offender's photo from the media if its release could jeopardize an ongoing law enforcement investigation. Offender photographs are public documents unless their release endangers an inmate or parolee. This is to protect the integrity of an ongoing criminal investigation and potential future investigations where additional witnesses and victims may be interviewed. Offender photos are also used by law enforcement investigators in photo lineups and used in witness and victim identification. Withholding photos at the request of the investigating law enforcement agency protects the investigative process and ensures a photo lineup is not prejudiced and that a potential jury pool is not tainted.

Subsection 3261.7(d)(1) is repealed to remove the requirement that news and non-news media representatives pay the cost of providing offender identification photographs. Because photographs are provided digitally, the Department incurs no cost in providing them; therefore, there is no need to require payment.

Subsection 3261.7(d)(2) is renumbered as Subsection 3261.7(d)(1).

Subsection 3261.7(g) is amended to correct a misspelled word. The word "comprise" should be "compromise."

Subsection 3261.7(h) is adopted to specify that news and non-news media access to parole suitability hearings is governed by the Board of Parole Hearings and requests are made in accordance with the California Code of Regulations, Title 15, Division 2, Sections 2031 and 2032. This will provide clarity about the role and responsibilities of the BPH in granting media access to parole suitability hearings and describes who at the BPH approves such access and who authorizes what equipment media representatives are permitted to use.

Subsection 3261.7(h) is renumbered as Subsection 3261.7(i).