

**State of California  
Office of Administrative Law**

**In re:**  
**Department of Corrections and  
Rehabilitation**

**Regulatory Action:**

**Title 15, California Code of Regulations**

**Adopt sections:**  
**Amend sections: 3124**  
**Repeal sections:**

**NOTICE OF APPROVAL OF REGULATORY  
ACTION**

**Government Code Section 11349.3**

**OAL Matter Number: 2021-0211-01**

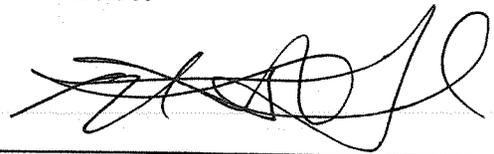
**OAL Matter Type: Regular (S)**

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In this rulemaking action, the Department amends its regulation related to the content of law libraries. Legal materials are to be made available by means of the Law Library Electronic Delivery System (LLEDS). The amendments also include removing the requirement to maintain one year back file for the Daily Journal.

OAL approves this regulatory action pursuant to section 11349.3 of the Government Code. This regulatory action becomes effective on 10/1/2021.

**Date:** July 20, 2021



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**Thanh Huynh  
Senior Attorney**

**For: Kenneth J. Pogue  
Director**

**Original: Kathleen Allison, Secretary  
Copy: Sarah Pollock**

# REGULAR

## NOTICE PUBLICATION/REGULATIONS SUBMISSION (See instructions on reverse)

STD. 400 (REV. 10/2019)

For use by Secretary of State only

**ENDORSED - FILED**  
in the office of the Secretary of State  
of the State of California

JUL 20 2021

*1:17pm*

<b>OAL FILE NUMBERS</b>	<b>NOTICE FILE NUMBER</b> Z-2020-0826-01	<b>REGULATORY ACTION NUMBER</b> 2021-0211-01	<b>EMERGENCY NUMBER</b> S
For use by Office of Administrative Law (OAL) only			
NOTICE		REGULATIONS	
<b>AGENCY WITH RULEMAKING AUTHORITY</b> California Department of Corrections and Rehabilitation			<b>AGENCY FILE NUMBER (If any)</b> 20-0001

### A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON		TELEPHONE NUMBER
FAX NUMBER (Optional)		NOTICE REGISTER NUMBER		PUBLICATION DATE
<b>OAL USE ONLY</b>	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn			

### B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Content of Law Libraries		1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)		
2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)				
<b>SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)</b>	ADOPT			
	AMEND			
	3124			
TITLE(S) 15	REPEAL			
3. TYPE OF FILING				
<input checked="" type="checkbox"/> Regular Rulemaking (Gov. Code §11346) <input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute. <input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h)) <input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)				
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §11349.3, 11349.4) <input type="checkbox"/> File & Print <input type="checkbox"/> Print Only				
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b)) <input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1) <input type="checkbox"/> Other (Specify) _____				
4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)				
5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)				
<input checked="" type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a)) <input type="checkbox"/> Effective on filing with Secretary of State <input type="checkbox"/> \$100 Changes Without Regulatory Effect <input type="checkbox"/> Effective other (Specify) _____				
6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY				
<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660) <input type="checkbox"/> Fair Political Practices Commission <input type="checkbox"/> State Fire Marshal				
<input type="checkbox"/> Other (Specify) _____				
7. CONTACT PERSON Sarah Pollock		TELEPHONE NUMBER 916-445-2308	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional) sarah.pollock@cdcr.ca.gov

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE

**Jeffrey Macomber**

DATE  
1/26/2021

PRINTED NAME AND TITLE OF SIGNATORY

JEFF MACOMBER, Undersecretary, Operations, CDCR

For use by Office of Administrative Law (OAL) only

**ENDORSED APPROVED**

JUL 20 2021

Office of Administrative Law

## TEXT OF ADOPTED 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~~ Law Library Electronic Delivery System (LLEDS) ~~with any necessary print or other electronic supplements.~~ Except for items that are ~~out of print, no longer published,~~ 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~~).
- (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~~.
- (14) Anderson, Constitutional Rights of Prisoners (~~latest edition~~).
- (15) Michie, Federal Habeas Corpus Practice and Procedure (~~latest edition~~).
- (16) The Daily Journal (newspaper), ~~one year back file~~.
- (17) Shepard's United States Citations.
- (18) Shepard's Federal Citations.
- (19) Shepard's California Citations.
- (20) A recognized law dictionary, such as Black's or Ballantine's (~~latest edition~~).
- (21) California Code of Regulations.

- (22) California Family Law Litigation Guide (~~latest edition~~).
- (23) California Family Law Practice and Procedure (~~latest edition~~).
- (24) Civil Rights Actions (~~latest edition~~).
- (25) Cotchett, California Courtroom Evidence, ~~by Cotchett~~.
- (26) California Juvenile Courts Practice and Procedure (~~latest edition~~).
- (27) 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 System (LLEDS). ~~from an outside source.~~ Except for items that are ~~out of print~~ no longer published, 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.~~
- ~~(2) Corpus Juris Secundum.~~
- ~~(3)~~(1) California Jurisprudence (~~latest edition~~).

**[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).

## **FINAL STATEMENT OF REASONS**

The Initial Statement of Reasons (ISOR) is incorporated by reference.

### **UPDATES TO THE INITIAL STATEMENT OF REASONS:**

On September 11 2020, the Notice of Proposed Regulations for Content of Law Libraries was published, which began the public comment period. The Department's Notice of Change to Regulations (NCR) #20-13 was also mailed the same day to individuals who had requested to be on the Department's mailing list for regulation changes. In addition, they were posted on the California Department of Corrections and Rehabilitation (CDCR) internet website, and copies posted in CDCR institutions. After publication of the NCR the Department discovered minor non-substantive formatting and typographical errors in the Text of Proposed Regulations. These errors are listed below under *Non-Substantive Changes to Text of Proposed Regulations*. The Department received 29 written comments which are included below under *Summaries and Responses to the Written Public Comments Received During the Initial Comment Period*. No public hearing was requested or held.

After publication of the Notice of Proposed Regulations, it was determined that additional revisions to the proposed regulations were necessary to comply with the Clarity and Consistency standards of the Administrative Procedure Act. An Initial Statement of Reasons - Addendum was issued to address these issues and was included in the *Notice of Change to Text as Originally Proposed (Re-Notice)*. The Initial Statement of Reasons - Addendum, and the reasons for the revisions to the originally proposed text, are explained below under the heading *Notice of Change to Text as Originally Proposed – Re-Notice*. The Notice of Change to Text as Originally Proposed (Re-Notice) was distributed on June 2, 2021 to those who provided comments during the public comment period, and was posted on the Department's website the same day. The Department accepted public comments from this date through June 17, 2021. One written comment was received during this period and is included below under *Summaries and Responses to the Written Public Comments Received During the 15-Day Re-Notice Comment Period*.

After the close of the Notice of Change to Text as Originally Proposed – Re-Notice, an inadvertent, non-substantive error was discovered in the Initial Statement of Reasons - Addendum, Specific Purpose and Rational Section, for Subsections 3124(b)(1) through (3). The reference to "*Corpus Juris Decisions*" should have been referenced as "*Corpus Juris Secundum*."

### **Non-Substantive Changes to Text of Proposed Regulations:**

- Missing strikethrough for end parentheses in the words "latest edition" for Section 3124(a)(4).
- Missing strikethrough for end parentheses in the words "latest edition" for Section 3124(a)(5).

- Missing strikethrough for both parentheses in the words “latest edition” for Section 3124(a)(6).
- Missing strikethrough for beginning parentheses in the words “latest edition” for Section 3124(a)(12).
- Missing underline under the number 1 of the number 13 for Section 3124(a)(13).
- Missing underline under the number 1 of the number 14 for Section 3124(a)(14).
- Missing underline under the number 1 of the number 15 for Section 3124(a)(15).
- Missing underline under the number 1 of the number 16 for Section 3124(a)(16).
- Missing strikethrough for beginning parentheses in the words “latest edition” for Section 3124(a)(19).
- Missing strikethrough for beginning parentheses in the words “latest edition” for Section 3124(a)(20).
- Missing underline under the number 2 of the number 23, and missing strikethrough for the beginning parentheses in the words “latest edition” for Section 3124(a)(23).

**DETERMINATION:**

The Department has determined that no alternative considered 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 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. This determination was reached by a consensus of the Division of Rehabilitative Programs.

Except as set forth and discussed in the Initial Statement of Reasons – Addendum, and the summary and response to the comments received, no other alternatives have been proposed or otherwise brought to the Department’s attention that would alter the Department’s decision.

**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.

**NOTICE OF CHANGE TO TEXT AS ORIGINALLY PROPOSED – RE-NOTICE:**

**Initial Statement of Reasons – Addendum:**

The following language is added to the Initial Statement of Reasons opening paragraph statement:

By providing legal materials in an electronic format it allows for a more efficient means for inmates to access legal information. The information is readily available, current and up-to-date, can be accessed and sorted quickly, and multiple users may access at any one time.

Previously an outside entity was required in order to obtain supplemental legal materials, as well as The Daily Journal for up-to-date cases. This was necessary because the LLEDS was only updated quarterly, which prevented access to newer law in a timely fashion, therefore the Department utilized outside vendors to obtain the newer material. Now, through the LLEDS, supplemental legal materials and up-to-date cases as found in The Daily Journal, can be accessed in real time, eliminating the need for an outside entity.

### **CONSIDERATION OF ALTERNATIVES:**

The statement in the Initial Statement of Reasons which stated “Currently, no such reasonable alternatives have been identified,” is replaced with the following statement:

The Department considered continuing to provide law materials to inmates in paper format, but determined that by providing law materials to inmates electronically it provides a more efficient means of accessing law materials because current and up-to-date information can be accessed in real time, by multiple users, and it eliminates the need to retain and store outdated materials, as the Department is not an archive for historical materials.

### **BENEFITS OF THE REGULATIONS:**

The following statement is added to the Benefits of the Regulations as stated in the Initial Statement of Reasons:

Additionally, information will be accessed more efficiently, providing current up-to-date information, and less reliance on paper resources, which will reduce the carbon footprint.

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

The following language supplements the specific purpose and rationale as stated in the Initial Statement of Reasons for the sections listed below:

**Section 3124(a):** By providing the law library to inmates exclusively by means of the LLEDS inmates will be able to access information more efficiently, and be provided current up-to-date information. Additionally, it will increase inmates’ digital literacy and better prepare them for their return to the community.

**Subsection 3124(a)(16) (previously 3124(a)(13)):** “The Daily Journal” is a legal newspaper that provides recent court decisions to readers. This material is now available on the LLEDS, and while a print copy will continue to be purchased as a convenience, the one-year back file is no longer necessary, as the LLEDS is updated in real time, therefore, older copies of The Daily Journal are not needed to access those cases.

**Subsection 3124(b):** The statement in the Initial Statement of Reasons, which stated “*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,*” was a misstatement. Inmates will have access on their own to the supplemental materials available through LLEDS.

**Subsections 3124(b)(1) through (3):** The explanation in the Initial Statement of Reasons that the United States Supreme Court Cases, All Federal Appeals Court Cases, and All Federal District Court Cases covered the exact or comparable topics as the previously

listed supplemental materials was an inadvertent error. It was initially believed that the court cases could be made available as supplemental resources, but further reflection showed that they needed to be available as part of the core collection. Revisions for these subsections are corrected in the 15-Day Re-Notice Text of Proposed Regulations and explained in the Notice of Change to Text as Originally Proposed. The Federal Rules Decisions and Corpus Juris Decisions are removed from the list of supplemental materials because the material is available in the Federal District Court Cases and in several legal encyclopedias included on LLEDS.

### **Revisions to Text of Proposed Regulations:**

Section 3124(a) is amended to add back the reference in this section to the “Law Library Electronic Delivery System (LLEDS)” as the law library that shall be made available in each institution for inmates’ use. Language now provides the correct title of the system, and clarifies that LLEDS is the system that shall be utilized for the law library. This will help to avoid any confusion that the law library is available in a printed format. Additionally, the language “out of print” is replaced with “no longer published” to further remove any confusion that the law library is available in a printed format. The language “but shall not be limited to” is added back, as it was determined that there may be other legal materials available to inmates. This clarifies that the list of legal materials is not exclusive to the listed materials.

Subsections 3124(a)(11) through (13) which were previously relocated to 3124(b)(1) through (3) are reverted back to subsections 3124(a)(11) through (13), as it was determined that these materials should remain within the main law library collection. The language “as reported in the Federal Reporter” and “as reported in the Federal Supplement,” will remain deleted because those references are to physical books, and the same materials are now offered electronically.

Previously numbered subsections 3124(a)(11) through (24) are reverted back to subsections 3124(a)(14) through (27), due to the change stated above.

Section 3124(b) is amended to correct language which erroneously referenced the term “Law Library Electronic Delivery Service,” to “Law Library Electronic Delivery System.” This was an inadvertent error. The language “out of print” is replaced with “no longer published” to remove any confusion that the supplemental legal materials are available in a printed format. Additionally, the language “but shall not be limited to” is added back, as it was determined that there may be other supplemental legal materials available to inmates. This clarifies that the list of supplemental legal materials is not exclusive to the listed supplemental materials.

Subsections 3124(b)(1) through (2) are deleted due to the reverting of these items back to the list of main law library materials, as it was determined that the United States Supreme Court Cases, All Federal Appeals Court Cases, and All Federal District Court Cases should remain within the main list of law library materials. The California Jurisprudence is added back to the list of supplemental materials and is renumbered 3124(b)(1). The explanation in the Initial Statement of Reasons that the United States Supreme Court Cases, All Federal Appeals Court Cases, and All Federal District Court

Cases covered the exact or comparable topics as the previously listed supplemental materials was an inadvertent error. It was determined that the California Jurisprudence is a valuable supplemental legal source which should remain as a supplemental source. This work is devoted exclusively to the examination of California law and highlights areas where California and federal law intersect. The Federal Rules Decisions and Corpus Juris Secundum are not added back to the list of supplemental materials as it was determined the material is available in the Federal District Court Cases and in several legal encyclopedias included on LLEDS.

## **SUMMARIES AND RESPONSES TO THE WRITTEN PUBLIC COMMENTS RECEIVED DURING THE INITIAL COMMENT PERIOD:**

### **Commenter #1**

**Comment 1A:** Ever since the Department implemented the Electronic Law Library System some libraries have the mistaken idea that irrespective of the Regulatory Mandate/Statutory Mandate/Case Law Mandate that prisoners only need to access the LLEDS and the library does not have to have current Matthew Bender, California Forms of Pleadings and Practice in order for a prisoner to be able to obtain a copy of the form in order to be able to draft his/her moving papers in their cell leisurely.

**Accommodation:** None

**Response 1A:** All required legal materials for inmate use are available via Lexis on the LLEDS computers and touch screen kiosks.

**Comment 1B:** It is hard enough for some prisoners to find what they need in order for them to address their legal needs. Most prisons that I have been housed, a person can obtain the format of Criminal/Civil Formats (i.e. 3124(a)(8)). When one is first able to find the format that they need on the LLEDS and they tell the librarian what they want, the librarian tells the prisoners that he does not have that form on his computer system. That obviously is not correct since the librarian's computer has internet access and can access the format at hundreds of legal websites. This problem needs to be fixed, and if there is a problem with making copies of the Matthew Bender formats for prisoners, then perhaps the Department needs to obtain a copy of the California Practice and Procedures Forms Manuals for each library (Criminal and Civil) from Continuing Education of the Bar (CEB).

**Accommodation:** None

**Response 1B:** One benefit of the LLEDS is the ability to search by keyword and within sources. This should make it easier for inmate users to find the information they need than was possible with the physical resources. At this time the CEB manuals will not be purchased for the libraries as criminal and civil forms are available on the LLEDS.

**Comment 1C:** Time and time again I have noted that the Department has gone out of its way to try and make things hard for prisoners to do what they need to do competently, and while I know what I may be doing, I take exception to the fact that due to departmental practices that make it so hard for others to do what they need to do that it impedes on my

limited library time when they ask me to stop what I am doing to show them where to find something.

**Accommodation:** None

**Response 1C:** The above comment is either insufficiently related to the specific action proposed or to the procedures followed by the Department in proposing or adopting these regulations, or generalized or personalized to the extent that no meaningful response can be formulated by the Department in refutation or accommodation of the comment, therefore the comment is irrelevant pursuant to Government Code, Section 11346.9(a)(3).

**Comment 1D:** The LLEDS would be more effective if it had a word processing program that allowed a prisoner to draft his/her document and send it to a copy machine which the librarian could view the document before printing it if the Department can't provide a format for prisoners. Time and time again I have noted obvious limitations that affect the prisoner users effectiveness, in that the digital format that the Department has implemented is frankly not interactive with a word processing program that allows for the interaction with California Forms of Pleading and Practice, and other State/Federal forms, in order for a prisoner to realistically be more effective in the drafting of the desired document he/she desires. This problem needs to be addressed by the Department, as to make such ability available would prove to be more beneficial for the prisoner, the Department, and society because it alone would factually increase the use of the electronic resources available to prisoners. By not having an interactive word processor it makes things more costly forcing the lion share of the two hour periods one is authorized to use to find applicable law insufficient particularly since one is not allowed to page such, rendering a 20 minute task to a 4-5 hour task for one trained in the drafting of documents. For one not trained in the law, it multiplies exponentially, which other prisoners have complained about.

**Accommodation:** None

**Response 1D:** A word processing program is not supported on the LLEDS.

**Comment 1E:** Now that the judicial system is more and more requiring the electronic filing of court documents, each library LLEDS should be put into a small pod like closed system that is monitored by the librarian through a 2-5 terabyte server system in the office that is not connected to any LAN or Wifi for security purpose. The librarian could control prisoner documents to erase/delete the prisoner documents who transfer or have printed them out, or have them copied to a thumb drive for sending to the court by the librarian or litigations coordinator, whomever has that responsibility. Or alternatively do like the San Diego County Jail law library does and provide a flash/thumb drive to prisoners for the period that they are in the library for them to save their work on, which would be more effective, practical, and beneficial for the prisoner, society, and the Department. This would insure that more prisoners are learning skills, which include "cutting and pasting" the necessary information from LLEDS, this is necessary to increase prisoners digital literacy which is the Department's stated purpose and is necessary for all prisoners confined in CDCR for developing pro-social skills, which the Department has identified prisoners need to lawfully navigate their communities/society when they are released

from confinement. The Department needs to fully embrace the technology available that exists and would simplify things, and make effective use of time and resources.

**Accommodation:** None

**Response 1E:** While Commenter's suggestions regarding digital literacy are appreciated, at this time there is not a process for inmates to print from LLEDS. The Department does not support the use of thumb drives for inmate users due to security concerns.

**Comment 1F:** These are alternatives that are being brought to the attention of the Department which would in fact result in savings in other areas. The problem is that when alternatives are brought to the attention of the Department, particularly by a prisoner, it's immediately rejected irrespective of the benefits and improvements that such may bring. This is compounded by the fact that departmental officials fail to even seek input from those compelled to use the LLEDS in order to gain first hand real prisoner world information relative to the difficulties they experience. This writer is trying to identify issues that are typically ignored that render the claimed benefits identified by the Department specious as to its cost effectiveness which on its face is a mirage in light of the other costs that increase and then the claimed benefit are only supposedly on its face to implement the statutory policy or other provision of law. Such practices do not benefit the health and welfare of California residents, workers safety, or the state's environment. It only tends to frustrate and discourage the prisoners who try to use the LLEDS process and should be fixed.

**Accommodation:** None

**Response 1F:** Commenter is urged to request assistance from facility library staff in using LLEDS.

## **Commenter #2**

**Comment 2A:** Regarding Section 3124, specifically 3124(a)(13) formerly (a)(16), and the deletion of the one year back file. These reports should be kept for a period of time such as the time between when the issue is received and the law library computers are updated to show the reported information. Law library computers are updated about every 3 months but even then there is a lag between the update and the material on the update. I would argue that a 6 month back file be kept in order that inmates be afforded a fair opportunity to take advantage of new mailings that are not available on the law library computers until months later.

**Accommodation:** None

**Response 2A:** The Daily Journal legal newspaper will still be available to inmate patrons, with the only change being the requirement to maintain back issues for one year. Individual libraries may retain back issues for an amount of time that makes sense, based on their own population and circumstances. Because The Daily Journal is now also

available through LLEDS, the one-year back file is no longer necessary, as the LLEDS is updated in real time.

### **Commenter #3**

**Comment 3A:** Given that CDCR proposes to eliminate several paper based legal resources for institutions' libraries, please require concurrent to this that law libraries be provided with additional kiosks and monitors. In our prison yard (CIM-A) there are only five such devices for a yard of over 1,100 inmates. At present, several of us could/can access our needed legal resources by using the open tables and studying print-copy resources, but if these are no longer updated we are woefully inadequate as to access to the online or digitized versions at present. Adding 5-7 more of these monitors positioned on what is now open counters, would be quite necessary.

**Accommodation:** None

**Response 3A:** Due to space issues in the libraries, and currently with social distancing requirements from COVID, it is not possible to increase the number of LLEDS computers.

### **Commenter #4**

**Comment 4A:** Regardless if it is for a one year back file or just recent, to eliminate access to the San Francisco Daily Journal or Daily Appellate Report (DAR) will be a big problem. There are articles and cases in the San Francisco Daily Journal that one can't find or access in the LLEDS. So if the proposed changes to the regulations will eliminate access to the San Francisco Daily Journal and the DAR I do have a problem with this.

**Accommodation:** None

**Response 4A:** See Response to Comment 2A.

### **Commenter #5**

**Comment 5A:** There has been a gross abrogation of fiduciary responsibility to taxpayers, violation of federal court holdings, and infringement of the constitutional right to access courts. Notice of Change to Regulations (NCR) 20-13 signals a continuation of this trend, as does the March 2020 removal of law books from Calif. State Prison Solano's law libraries. Making already difficult pro se litigation more so for the incarcerated is not the goal of the U.S. Supreme Court rulings which require prisons to provide certain resources for inmates, and not take them away. The removal of law books violates federal decisional law. See *Phillips v. Hust...* To deny access to the comb binding service that was essential to plaintiff's filing of a habeas corpus appeal, was to deny access to the courts under the general rule articulated in *Lewis v. Casey*, which requires that state prisons give inmates the capability to 'file non-frivolous legal claims challenging their convictions or conditions of confinement.' This court finds as a matter of law that to deny tools or services such as comb binding to any inmate plaintiff so as to render him incapable of substantially complying with an applicable Supreme Court Rule is to deny access to the courts under *Lewis*. In short, if an inmate has an expectation to continuing

access to something as simple as a comb binder, which is supported by federal decisional law, how much more so is the expectation of continuing accessibility of law books present for decades?

**Accommodation:** None

**Response 5A:** See Response to Comment 1A.

**Comment 5B:** The Informative Digest/Policy Statement Overview compounds the matter by stating a falsehood that applies at a minimum to CSP Solano: “California has provided law libraries, staffed with trained paraprofessionals and professionals, and containing a legal collection to fulfill the requirements in *Lewis*.” There is no evidence at this institution that “trained paraprofessionals and professionals” are staffing this prison’s libraries. Further, the terms paraprofessionals and professionals are not clearly defined in NCR 20-13. Under state law, the plain language interpretation of those terms would imply paralegal and it’s like as defined in the Business and Professions Code, section 6450 et seq. Again, no such thing is present at Solano prison, and if there is such staffing elsewhere within CDCR, let respondent produce proof.

**Accommodation:** None

**Response 5B:** Paraprofessionals refers to Library Technical Assistants and Professionals refers to Librarians and Senior Librarians. Each institution staffs libraries with one or more of these classifications.

**Comment 5C:** NCR 20-13 is arbitrary and capricious because it mandates removal of more legal publications from minimum requirements previously in place for decades, and argued by respondent CDCR in justifying Solano’s March 2020 physical removal of the law books. The capricious nature of NCR 20-13 is clear in its Initial Statement of Reasons: Economic Impact Assessment: “The Department believes there will be no economic impact with the proposed regulations.” There has already been “economic impact” from the millions of dollars already spent on law books—now destroyed—across the prison system when law books were eliminated. Expenditures for Solano alone are purportedly at least \$300,000. (Add to this the costs of over 30 other prisons). The state now faces an additional economic impact of re-litigating this matter.

**Accommodation:** None

**Response 5C:** As stated in the Initial Statement of Reasons, the Department believes there will be no economic impact with the proposed regulations. While physical books are no longer purchased, information technology is required to manage these digital resources. Therefore, the same funds that were being spent on physical books are now being spent on the digital resources/information technology.

**Comment 5D:** In the Department’s “Benefits to the Regulations,” as stated in the Initial Statement of Reasons (ISOR), the claim: “to increase...digital literacy and better prepare inmates” is the only benefit articulated in the ISOR for this drastic change, which speaks volumes about CDCR’s ultimate intent on removing law books. Keeping in mind the

reality that less than one percent of the prison population actually uses the law library services on an ongoing basis and that the average inmate is barely functioning at a sixth grade level, by this admission, CDCR clearly does not already have a robust and mandatory computer literacy program accessible to the majority of the population, who clearly need it. Further, reliance on regular use of the library as a means to increase or even achieve “digital literacy” fails as a justification for eliminating law books. The amount of money destroyed in the process might easily have established a functional prison-wide digital literacy program if CDCR truly wanted to “assist inmates in achieving employment and thereby reduce recidivism.” Note, NCR 20-01 and its report that in 2018 over 11,000 cell phones were “discovered”—about one phone for every ten inmates. At no time during this period was there a documented absence of any cell phones, which implies there were more than 11,000 phones in the prisons during the period in which the 11,000 were found. It seems inmates developed their own digital literacy program.

**Accommodation:** None

**Response 5D:** The Department is committed to increasing digital literacy, and the law library is one avenue for digital literacy. The Initial Statement of Reasons (ISOR) – Addendum expanded the Benefits of the Regulations statement as initially stated in the ISOR, to further state that “information will be accessed more efficiently, providing current up-to-date information, and less reliance on paper resources, which will reduce the carbon footprint.” In addition, with the LLEDS keyword searching is available for quicker searching, and multiple inmate users can utilize the same resource at the same time. Also, LLEDS is updated in real time, allowing for current and accurate information to be available to inmate users. The outdated physical books will be recycled.

**Comment 5E:** In the ISOR, Section 3124(b) states: “...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.” This language is contradictory because it could be interpreted to mean inmates may not be allowed to ask for “supplemental legal materials...now available through staff accessible databases” since those supplemental materials are “available by means of the LLEDS.” After all, “the list of supplemental legal materials or their equivalents is exclusive to the materials listed [presumably in 3124(a) or (b)].” In other words, the supplemental materials are not supplemental at all, if they are already “available by means of the LLEDS.”

**Accommodation:** Partial Accommodation

**Response 5E:** Upon further review, the Department determined that there may be other supplemental legal materials available to inmates, therefore text was revised to not limit the list of supplemental legal materials. Additionally, the LLEDS contain more than the minimum materials required, and those additional materials are supplemental to the standard materials.

**Comment 5F:** The proposed regulations do not itemize the contents of the “supplemental legal materials now available through staff-accessible databases.” Again, a distinction without a meaning. It must be a requirement that a list of contents be identified and

provided in the regulations. Lacking this information makes the proposed regulations as substantial as smoke.

**Accommodation:** None

**Response 5F:** The statement in the ISOR regarding “Supplemental legal materials or their equivalents are now available through staff accessible databases...” was a misstatement, as was identified in the Initial Statement of Reasons - Addendum.

**Comment 5G:** Section 3124(b) removes important digests, to be replaced by Federal Court Reporters. This is like removing the Merck Manual of medical information from a library and leaving the medical layperson only a list of diseases.

**Accommodation:** None

**Response 5G:** Those digests or their equivalents are available to inmate patrons on the LLEDS.

**Comment 5H:** It is likely that already burdened library staff will be more burdened when fielding requests for information from the “staff-accessible databases,” assuming inmates know what information is available from those databases. Additionally burdened staff is additionally burdened inmates.

**Accommodation:** Partial

**Response 5H:** Individual libraries may provide information from staff-accessible databases, based on their individual population and circumstances. Additionally, paging is available to inmates when necessary. Paging is when library staff print out requested materials from LLEDS and provide it to the inmate during a modified program.

**Comment 5I:** In response to the ISOR, Subsection 3124(b)(1) through (3), removing all digests and providing only case reporters harkens back to 1968, when inmates challenged the constitutionality of the prison system’s law offerings. In *Gilmore v. Lynch* the federal court in response to CDC[R] regulations requiring “all existing law books and references in inmate law libraries be removed and destroyed,” ordered CDC[R] to ensure prisoners were given adequate means of obtaining necessary legal expertise. This struggle continued for decades, when in *Gilmore v. California* “having found the restrictive list of prison books constitutionally deficient...CDC is enjoined from enforcing the 1970 regulations.” In 2010 *Gilmore v. California* ordered termination of the injunction. The pendulum has swung the other way. It’s déjà vu all over again.

**Accommodation:** Partial

**Response 5I:** The Federal Rules Decisions and Corpus Juris Decisions were removed from the list of supplemental materials because the material is available in the Federal District Court Cases and in several legal encyclopedias included on LLEDS. The California Jurisprudence was added back to the supplemental materials as it was determined to be a valuable supplemental legal source which should remain as a

supplemental source. The statement in the Initial Statement of Reasons (ISOR) that “the United States Supreme Court Cases, All Federal Appeals Court Cases, and All Federal District Court Cases covered the exact or comparable topics as the previously listed supplemental materials” was an inadvertent error, and this was explained in the ISOR Addendum. It was initially believed that the court cases could be made available as supplemental resources, but further reflection showed that they needed to be available as part of the core collection, therefore they were added back to the list of required materials. Revisions for these subsections were corrected in the 15-Day Re-Notice Text of Proposed Regulations and explained in the Notice of Change to Text as Originally Proposed.

### **Commenter #6**

**Comment 6A:** The inmates should have as much access to libraries as possible. They need the law libraries for legal reasons. You would not want access denied if you were in their situation.

**Accommodation:** None

**Response 6A:** Inmates’ access to the law library is not being changed.

### **Commenter #7**

**Comment 7A:** It should be noted that the intent of “Digital Literacy” in #20-13 Proposed Regulations will not be achieved in this proposal. Inmates at Folsom State Prison do not have direct access to the Law Library Electronic Delivery System (LLEDS). In order to achieve “Digital Literacy,” the language needs to be changed to give us direct LLEDS access. Inmate’s access at the prison is indirect access. We are required to submit written request to the library staff for the information we need. Sometimes it takes a week or more for a response. If the staff determines that a case or information is too long, they only provide us with incomplete cases. Commenter attached a copy of an “Internet Search Request.”

**Accommodation:** None

**Response 7A:** Folsom State Prison was contacted and inmates are allowed to use LLEDS during normal programming. Current COVID restrictions have required paging in lieu of direct LLEDS access. Paging is when library staff print out requested materials from LLEDS and provide it to the inmate during a modified program.

### **Commenters #8 through #26 (these comments are all duplicative of each other)**

**Comment 8-26A:** Commenter states any proposed change that has the potential to impact the legal and civil rights of the incarcerated people should be scrutinized very carefully. Commenter takes issue with amendments to Sections 3124(a)(13) and 3124(b). Commenter states several aspects of the proposed changes are not just inconsistent, but working in opposition to the stated purpose. Commenter brings attention to, and urges CDCR to consider, the alternative of continuing to progress digital access

and literacy in *combination with* physical copies instead of *replacing* physical copies to achieve the stated purpose. The proposed changes may have adverse effects of contributing to the opposite of the stated purpose, while a combination of increased digital access and physical access “would be as effective and less burdensome to affected private persons than the proposed regulatory action.”

**Accommodation:** None

**Response 8-26A:** These changes reflect the reality that there are already very few if any physical law books in the libraries. We do our inmates a disservice by providing physical law books, as when they release they will be returning to an increasingly digital world.

**Comment 8-26B:** Proposed amendments to subsection 3124(a)(13) would eliminate the need for CDCR to maintain a backlog of the Daily Journal. This requirement was won through a lawsuit and thus must be maintained perpetually. There are incarcerated people who have religious or ethical objections to the use of technology and they would be forced to choose between their core value system and due process/court access. The result of being isolated from otherwise modern technological developments has left many incarcerated people without the skills required for the use of electronic devices. CDCR recognizes digital literacy is a pro social skill, yet offers very few classes or programs to facilitate that learning. In addition to all the barriers incarcerated people have to navigate in order to learn, type, and print to get work done, they may miss court deadlines or encounter otherwise avoidable obstacles. Further, some people need their privacy due to the sensitivity of their cases, which may deter them from seeking the help they need. Accessing the Daily Journal facilitates the accommodations required for multiple types of needs.

**Accommodation:** None

**Response 8-26B:** See Response to Comment 2A.

**Comment 8-26C:** Proposed amendments to subsection 3124(b) would eliminate “outside sources” as a requirement for legal information. This is due to the increased capacity of CDCR staff to provide all relevant information through the computerized system. However, without outside sources and print media of legal decisions of courts, the Department could inadvertently withhold information from incarcerated people that could depress full legal rights. Eliminating the wording “but shall not be limited to” from Title 15 may allow CDCR to take away books from law libraries that are currently being used in litigation as supporting claims of evidence. It could also limit legal learning, which may impact the civic engagement of incarcerated people and therefore interfere with constitutional rights. Since electronic platforms are in limited supply across CDCR institutions, and classes that facilitate digital learning are also limited, physical materials provide additional access to valuable resources that can be copied and used after the law library has closed or during lockdowns when timely access to electronic materials cannot be guaranteed.

**Accommodation:** Partial Accommodation

**Response 8-26C:** The wording “but shall not be limited to” was added back to sections 3124(a) and (b) in the Re-Notice Text of Proposed Regulations, as the Department determined the lists should not be limited. Additionally, paging will be available during modified programs when the LLEDS is inaccessible. Paging is when library staff print out requested materials from LLEDS and provide it to the inmate during a modified program.

**Comment 8-26D:** There are also considerations about reduced accessibility and increased cost. For example, law libraries currently have reduced capacity due to COVID-19. The capacity inevitably suppresses the ability for incarcerated people to access timely legal information, especially those with urgent legal deadlines. Any measure that could further decrease access must be challenged. The financial cost to maintain and buy new computers is substantially more expensive than buying books and allowing access to new versions via kiosks.

**Accommodation:** None

**Response 8-26D:** See Response to Comment 19A. In addition, the Department does not believe these changes will reduce access or increase cost.

**A few of the duplicative Commenters within 8-26 are personalized comments as follows:**

**Commenter #9**

**Comment 9A:** It is completely unacceptable and inappropriate to make it harder for incarcerated individuals to gain access to legal information. Incarcerated individuals have the basic right to engage in access to legal information, as well as tangible items that may help them. You must, at minimum provide individuals with copies of books from the library if you are restricting entrance; or maintain social distancing and a max amount of people within the library at a time. Completely changing a system, and increasing stay time is not an appropriate response to an ongoing pandemic.

**Accommodation:** None

**Response 9A:** This decision is not related to the pandemic, but rather reflects the reality that mandated legal materials are available on LLEDS. It also provides practice of digital literacy skills.

**Commenter #19**

**Comment 19A:** As a volunteer in the college program at San Quentin I know how important the law library is for incarcerated people, not only for their own cases but as part of their rehabilitation as they learn to reenter society upon their release. Time, space and resources are limited enough at present for those who wish to access resources, and with limited numbers of computers, this access will be all the more limited.

**Accommodation:** None

**Response 19A:** Nothing in the proposed regulations reduces the time inmates may be present in the library. The mandated legal materials are available on LLEDS. It also provides practice of digital literacy skills.

### **Commenter #21**

**Comment 21A:** Commenter states she is an advocate for her 3 brothers currently incarcerated in 3 different CDCR prisons. Her brothers have benefitted from the use of physical books and literature to accompany their rehabilitation. She believes that maintaining access to these materials in physical form is important. She understands the need to encourage digital media and become tech savvy, but also believes in equal access to education. She strongly advises that these changes be amended to be an extension of the library access, rather than a substitute to an existing program that proves extremely fruitful for so many. Commenter states outside sources of legal information are also important because the department may unintentionally suppress access to crucial information. Commenter provides a personal account of each brothers' situation and need for physical materials.

**Accommodation:** None

**Response 21A:** Promoting digital access to the law library materials is in the interest of equity. Legal research done on the outside is done electronically, and so providing that access to the inmate user is the gold standard for legal research. There are training sessions provided by the vendor to the inmate user, and the inmate user does not have to be tech savvy to use the LLEDS. Using the LLEDS will also increase the digital literacy of the inmate user. Outside sources are being provided in alternative format (digitally), but are not being eliminated. The physical resources which are now out of date will be recycled.

### **Commenter #23**

**Comment 23A:** Commenter states he is the founder and executive director of UnCommon Law, which provides mental health counseling and legal assistance to long-term incarcerated individuals. Over the last few decades, many of the advances in California's legal landscape came about because of the diligent legal research and writing of people in prison, who used resources like the Daily Journal. Commenter's clients regularly rely on law libraries to research their cases, ask them legal questions, and become the key drivers of their legal journeys home. Access to physical materials is a crucial component of this process.

**Accommodation:** None

**Response 23A:** All required legal materials for inmate use are available via Lexis on the LLEDS computers and touch screen kiosks. This material on the LLEDS duplicates what was available in physical format, so no access is being lost. Now inmate users will have access to legal reference material updated in real time.

### **Commenter #27**

**Comment 27A:** Commenter states he took part in the previous revision to Section 3124, and he welcomes this revision which is necessary. The previous revision omitted a publication on the LLEDS called Federal Court Rules; this proposed revision also omits it. It must be added.

**Accommodation:** None

**Response 27A:** The required materials are listed in 3124(a). It may not be exhaustive.

**Comment 27B:** This revision also fails to reflect that the former list's item #4, Matthew Bender, Standard California Codes: Rules of Court is on the LLEDS with a simpler yet more extensive title: California State and Federal Court Rules. I believe it would be proper that you use that name. Don't be confused – the federal rules included in this publication are for federal district courts and do not supplant those in Federal Court Rules as mentioned above.

**Accommodation:** None

**Response 27B:** While Commenter's suggestion is noted, the names of the items in LLEDS will not be changed at this time. The names of the LLEDS items are set by the vendor.

**Comment 27C:** The deletion of "Electronic Law Library Delivery System" from Section 3124(a) is welcome – it has been a long standing bit of humor that CDCR couldn't get it right in the very next section after the term is defined. "Law Library Electronic Delivery System" and LLEDS are defined in Section 3123. There is no need to repeat the long form in Section 3124, especially 3124(b).

**Accommodation:** None

**Response 27C:** The Department's practice when using acronyms is to spell out the acronym once per section.

**Comment 27D:** In the "Benefits of the Regulations" as stated in the "Initial Statement of Reasons" the intent is revealed that the "required material" referred to in Section 3124 will be "provided....only in digital format." This can only mean that it will be on the LLEDS, not in print. Yet, the proposed Section 3124(a) strips out anything referring to LLEDS; further it implies the material should be in print form, by excusing any that are "out of print." Also, the reference to LLEDS being only in Section 3124(b) unfortunately reinforces the print-only misunderstanding of Section 3124(a). This is neither correct nor tolerable, and is inconsistent with the "Benefits" statement. The proposed revision to Section 3124(b) should not then include the "by means of the Law Library Electronic Delivery Service (LLEDS)."

**Accommodation:** Full accommodation

**Response 27D:** Initially the intent for removal of the language in Section 3124(a) referring to the “Electronic Law Library Delivery System” was to correct an incorrect and outdated reference. However to remove any confusion, the reference to the correct term “Law Library Electronic Delivery System (LLEDS)” was added back in the Re-Notice Text of Proposed Regulations, to avoid any confusion that the materials are available in print. In addition, the language “out of print” was replaced with “no longer published” in the Re-Notice Text of Proposed Regulations, to further remove any confusion that the law library is available in a printed format.

**Comment 27E:** The correct last word in the name of the term “LLEDS” per Section 3123 [sic] is “System,” not “Service.” Further, since the definition is already given in the referenced section, it need not be repeated; it would be sufficient to simply use “LLEDS.”

**Accommodation:** Partial

**Response 27E:** The Department agrees with the correction to the inadvertent error listing the term as “Law Library Electronic Delivery Service,” which should have been referenced as “Law Library Electronic Delivery System.” This correction was made in the 15-Day Re-Notice Text of Proposed Regulations. The Department’s practice when using acronyms is to spell out the acronym once per section.

**Comment 27F:** The separation into 3124(a) and (b) needs work. The three supplemental items are mandatory under *Gilmore* as much that is listed in 3124(a), while some of what’s in 3124(a) is not. Commenter provides a suggested text and listing of materials.

**Accommodation:** Partial

**Response 27F:** The items initially listed as supplemental materials in the originally proposed Text of Proposed Regulations were reverted back to the list of core materials in the 15-Day Re-Notice Text of Proposed Regulations.

**Comment 27G:** The supplemental items listed in 3124(b) are claimed to “cover the exact or comparable topics” as the deleted items; that is either an exhibition of ignorance or a bald lie. The Corpus Juris Secundum and California Jurisprudence are most closely approximated/replaced by California Forms of Pleading and Practice and other of the reference publications; these publications are the ones that should be listed under “supplemental” (look at Section 53060.11 in a former DOM); they are not law, they are about law. Federal Rules Decisions were not available under Premise 4, and are clearly not equivalent to decisions of the Supreme Court of the United States. LexisNexis conveniently includes them within the other federal decisions.

**Accommodation:** Partial

**Response 27G:** The explanation in the Initial Statement of Reasons that the United States Supreme Court Cases, All Federal Appeals Court Cases, and All Federal District Court Cases covered the exact or comparable topics as the previously listed supplemental materials was an inadvertent error. It was initially believed that the court cases could be made available as supplemental resources, but further reflection showed

that they needed to be available as part of the core collection. Revisions for these subsections were corrected in the 15-Day Re-Notice Text of Proposed Regulations. The Federal Rules Decisions and Corpus Juris Decisions were removed from the list of supplemental materials because the material is available in the Federal District Court Cases and in several legal encyclopedias included on LLEDS. It was determined that the California Jurisprudence is a valuable supplemental legal source which should remain as a supplemental source. This work is devoted exclusively to the examination of California law and highlights areas where California and federal law intersect. The Federal Rules Decisions and Corpus Juris Secundum were not added back to the list of supplemental materials as it was determined the material is available in the Federal District Court Cases and in several legal encyclopedias included on LLEDS.

**Comment 27H:** Commenter proposes Section 3124 should have four subsections as follows: (a) would establish availability and platform; (b) and (c) would, without talking about what (a) already covers, merely present the lists – (b) for publications that are law, and (c) for publications that are about law; (d) would list publications that are available only in print. Commenter provides suggested text.

**Accommodation:** None

**Response 27H:** See Response to Comment 27F.

**Comment 27I:** Commenter takes issue with the removal of the one year back file of “The Daily Journal.” The Daily Journal cannot be made available by means of the LLEDS; that’s why a new subsection (d) should be created to specify its inclusion in the library collection. The alleged justification for removing the one year back file, stated in the Initial Statement of Reasons is “to encourage access to electronic law library materials on LLEDS.” The trouble is, the material in The Daily Journal is not timely available on the LLEDS. The one year back file requirement should not be relaxed. The decision and published therein are not available on the LLEDS for often long periods of time, and multiple releases. The Daily Journal remains a critical resource for legal library users.

**Accommodation:** None

**Response 27I:** See Response to Comment 2A.

**Comment 27J:** Commenter provides a lengthy detail (in which he has provided graphs and computations) regarding the delays (gaps) of decisions not available on the LLEDS/upgrade releases of LLEDS. Therefore the need for back files of publications for the gaps until the next release/upgrade of LLEDS.

**Accommodation:** None

**Response 27J:** See Response to Comment 2A.

**Comment 27K:** The proposed revision states “The Department has not identified, nor has it relied on, any technical, theoretical, or empirical study, report, or similar document.” That means that these proposed revisions are arbitrary, at least to some extent. I’m

surprised the Department claims to be unaware of any related study – because I have conducted such a study, continually over the course of six years encompassing 22 database upgrades; the contact person for this proposed revision is well aware of it. Commenter provides details regarding his study of the databases, and documentation of an “update tail” problem, as missed decisions are included in later releases, which are sometimes much later.

**Accommodation:** None

**Response: 27K:** The statement in the Initial Statement of Reasons refers to formalized studies, reports, etc., entered into proactively by the Department.

### **Commenter #28**

**Comment 28A:** The proposed regulation of relocating existing Sections 3124(a)(11) through (13) to Sections 3124(b)(1) through (b)(3) cannot be enforced because these materials are mandatory, not supplemental materials, that are to be provided to all inmates in the state of California pursuant to the holdings in *Gilmore v. Lynch*. The CDCR cannot try and impose new regulations that violate a court order that removes the supplemental materials: Federal Rules Decisions, Corpus Juris Secundum, and California Jurisprudence (latest edition). These supplemental materials were ordered to be provided to inmates as per *Gilmore v. Lynch*. If the CDCR wants to eliminate the use of these materials they must seek a court order from the same court that decided *Gilmore* to do so. If the court does not allow CDCR to do so and CDCR does not have the funds to provide at least 1 set of the supplemental legal materials to all prisons in the state of California, then these supplemental legal materials should be provided through the LLEDs that inmates use to conduct legal research.

**Accommodation:** Partial

**Response 28A:** See Response to Comment 27G. In addition, *Gilmore* was terminated in 2010, and is no longer binding for the Department.

**Comment 28B:** Every prison should maintain at least 1 set of the current Federal Rules Decisions, the current Corpus Juris Secundum, and the current California Jurisprudence 3d and should replace these materials every 5 years. This needs to be done in order for inmates not having to file administrative appeals for law library staff not properly researching an issue presented by an inmate.

**Accommodation:** None

**Response 28B:** See Response Comment 28A.

**Comment 28C:** The proposed change for Section 3124(a)(13) should instead be read to state that the Department should maintain a 6 month back file of “The Daily Journal,” because some information on the legal kiosks may be outdated and more current legal case can be obtained with a 6 month back file of “The Daily Journal.”

**Accommodation:** None

**Response 28C:** See Response to Comment 2A.

**Commenter #29**

**Comment 29A:** Commenter disagrees that any changes in these regulations are for the benefit of prisoners, especially when it comes to the legal materials made available for prisoner's education and use. If CDCR could get away with not providing any legal material to prisoners, they would. CDCR's intent is never to be helpful/prisoner friendly/advance use of legal material. Changes are always to prisoner's disadvantage, especially when it comes to prisoner's being provided with an ability to legally arm themselves. CDCR looks at being able to litigate on one's own behalf wrongly, as being a "litigating machine."

**Accommodation:** None

**Response 29A:** Commenter misrepresents the intent of the regulations, which is to streamline the process of accessing legal materials in the libraries and provide digital literacy opportunities for inmate patrons.

**Comment 29B:** CDCR is misrepresenting what *Lewis* required for "staff with trained paraprofessionals and professionals..." That requirement was aimed toward persons trained in/knowledgeable in law. I have never met one library personnel that knew anything about law. Commenter states it is often the belief that CDCR hires persons who have biases toward prisoners and do not make use of/access to legal materials convenient/easy.

**Accommodation:** None

**Response 29B:** CDCR library staff are trained in the use of the LLEDS and commenter is urged to request further assistance from staff if needed.

**Comment 29C:** The LLEDS is not a bad idea as a supplement to the existing physical format (books). However, standing alone it's a terrible idea. One person sitting in front of a screen hogs an entire collection of legal materials not in use. CDCR does not mandate that a library's maximum user capacity be matched by available computers. And if they did, they'd simply reduce a library's maximum user capacity.

**Accommodation:** None

**Response 29C:** Electronic access to a legal library is the industry standard, and it would be doing the inmate patrons a disservice to continue using print books. Inmate patrons deserve the digital literacy opportunity and the same access as non-incarcerated legal researchers.

**Comment 29D:** Getting rid of the books and moving to only an electronic delivery system will curtail/diminish the intent/spirit of *Lewis v. Casey*, especially when the new proposed

changes describe all: U.S. Supreme Court Cases, Federal Appeals Court Cases, and Federal District Court Cases as “supplemental” legal materials. Prior to these proposed changes these materials were not described as “supplemental,” they were to be maintained in the collection. They need to be maintained in the collection.

**Accommodation:** Partial

**Response 29D:** See Response to Comment 27G.

**Comment 29E:** Regarding the benefit “computer literacy,” Commenter states it is a joke. If CDCR wants to introduce/advance prisoner’s computer literacy skills then institute real computer literacy courses, not these parodies of computer literacy classes (only in name, not in substance), which are nothing more than a way to bilk taxpayers under the guise of “rehabilitation.” Computers for legal research are not the time and place to be learning computer literacy skills, that’s how you thwart, obstruct, block, slow down, keep those that really need the use of the computer, away from the computer.

**Accommodation:** None

**Response 29E:** Commenter is incorrect in how digital literacy is achieved. Digital literacy practice in the library is a benefit to the inmate population.

**Comment 29F:** Imagine how many prisoners could use a single set of law books (Fed. Reporters, S. Ct. Reports, California Digest, etc.) at one time. You don’t have that availability with an electronic system.

**Accommodation:** None

**Response 29F:** Multiple inmate patrons may use the same case on the LLEDS system, which they cannot do with legal books. Also, the library collection has been provided electronically for the past 14 years, with the physical book collection being phased out for the past seven years.

**Comment 29G:** The Daily Journal should be maintained with/as a one year back file. Why does CDCR have a problem with this? It is convenient for us, and it costs nothing to do this.

**Accommodation:** None

**Response 29G:** See Response to Comment 2A.

**Comment 29H:** CDCR states in its own Fiscal Impact Statement that when it comes to “cost or savings to any state agency” it’s “none.” So if there is no savings associated with this proposal then there’s no need to impose a burden, obstruction, oppressive library system, in relation to physical format legal materials upon prison litigants.

**Accommodation:** None

**Response 29H:** Commenter misstates the motivations of the Department. The intent of the regulation change is to provide industry standard legal access along with digital literacy opportunities to inmate patrons.

**Comment 29I:** CDCR is well aware this proposed change (which has already taken place with the law books no longer being replaced, sets updated, computers being waited on for use, and the limited/reduced research time made available to prisoners conducting legal research) has already caused prisoner litigants hardship in timely bringing appeals/suits.

**Accommodation:** None

**Response 29I:** See Response to Comment 29H.

### **Summaries and Responses to the Written Public Comments Received During the 15-Day Re-Notice Comment Period:**

#### **Re-Notice Commenter #1 (same as written Commenter #5)**

**Re-Notice Comment 1A:** Regarding the statements in the Notice of Change to Text as Originally Proposed, Page 1, Paragraph 3: “This change will help to avoid any confusion that the law library is available in a printed format” and “The language ‘out of print’ is replaced with ‘no longer published’ to further remove any confusion that the law library is available in a printed format” - if this means the notion that the law library is not to at all be considered at least partially available in print, ignores the reality that books do not require electricity and do not suffer from limited bandwidth, weak WiFi signals, and network lockouts, obstacles patrons experience with the current LLEDS on a near daily basis.

**Accommodation:** None

**Response Re-Notice Comment 1A:** Commenter is correct that the legal library collection is available exclusively on the LLEDS desktop computers and touch screen kiosks. While there may be connectivity issues from time to time, offering the legal collection electronically is necessary to allow for multiple users to access the same content at the same time as well as providing digital literacy opportunities for inmate patrons. In order to provide up to date information, the legal collection is provided on the LLEDS. Books are out of date soon after publication, and providing access via physical books is not equitable. Providing access on the LLEDS also allows the Department to reduce its carbon footprint.

**Re-Notice Comment 1B:** Regarding the statements in the Notice of Change to Text as Originally Proposed, Page 1, Paragraph 3: the phrases “but shall not be limited to” and “clarifies... the list of legal materials is not exclusive” - revisit a yet to be resolved issue, at some point print-based resources must be included in mandatory offerings, two reasons come to mind: 1) The number of patrons accessing content is limited to workstation count. With books, more patrons can accomplish legal research. 2) There is still a lack of equivalency in some areas of legal research. The Continuing Education

of the Bar (CEB) publication “California Criminal Law Procedure and Practice,” updated annually, is a more effective means of addressing the tremendous continual change underway in California’s criminal landscape. There is no current electronic offering that comes close.

**Accommodation:** None

**Response Re-Notice Comment 1B:** A print collection is limiting, as only one user can access a print resource at a time. The LLEDS eliminates this limitation.

**Re-Notice Comment 1C:** Regarding the statement in the Notice of Change to Text as Originally Proposed, Page 2, Paragraph 1: “The Federal Rules Decisions and Corpus Juris Secundum are not added back to the list of supplemental materials as it was determined the material is available in the Federal District Court Cases and in several legal encyclopedias included on LLEDS.” Federal Rules Decisions cases are available via parallel citation, but Corpus Juris Secundum (CJS) is not. Out of millions of cases a global search for CJS yields 1260 citing this encyclopedia, hardly a comprehensive availability to what is the federal equivalent of California Jurisprudence. It is not reasonable to subject patrons to searching an enormous haystack to find CJS’s needles, when, by definition an encyclopedia is a collection located in one place. Federal Courts note the importance of CJS, see *Strickler v. Walters*. It is not true that the entirety of CJS is available from ferreting through a disorganized, incomplete array of CJS citings in federal decisions. This is not fair to patrons and must be remedied by an independent self-contained collection of CJS. Surely CDCR does not want to limit the LLEDS offering by removing all instances of cases whose sole distinction is their referencing Corpus Juris Secundum.

**Accommodation:** None

**Response Re-Notice Comment 1C:** Corpus Juris Secundum is a legal encyclopedia, and the LLEDS contains several comparable legal encyclopedias for patron use.

**Re-Notice Comment 1D:** The statement in the Initial Statement of Reasons – Addendum, Page 2, Paragraph 2, states: “The Federal Rules Decisions and Corpus Juris Decisions are removed from the list of supplemental materials...” is a mistake, as it should read “Corpus Juris Secundum” not “Corpus Juris Decisions.”

**Accommodation:** Full Accommodation

**Response Re-Notice Comment 1D:** This was an inadvertent, non-substantive error, and the language should have been referenced as “Corpus Juris Secundum.” The error has been noted in this Final Statement of Reasons.