



Department of Corrections and Rehabilitation
NOTICE OF CHANGE TO REGULATIONS

Sections: 3270.3	NCR Number: 21-09	Publication Date: September 24, 2021	Effective Date: July 29, 2021
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INSTITUTION POSTING AND CERTIFICATION REQUIRED

This Notice announces the proposed adoption of Sections 3270.3 of the California Code of Regulations (CCR), Title 15, Crime Prevention and Corrections, Division 3, Chapter 1, regarding Body-Worn Cameras.

PUBLIC COMMENT PERIOD

The public comment period will close on **November 12, 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 **November 12, 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 Renee Rodriguez, by mail to California Department of Corrections and Rehabilitation, RPMB, P.O. Box 942883, Sacramento, CA 94283-0001, by telephone at (916) 445-2217, or e-mail to RPMB@cdcr.ca.gov. Inquiries regarding the subject matter of these regulations should be directed to Melanie Bruns, Division of Adult Institutions, at (916) 324-2758.

Original signed by:

JEFF MACOMBER
Undersecretary, Operations
California Department of Corrections and Rehabilitation

Attachments

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

NOTICE IS HEREBY GIVEN that the Secretary of the California Department of Corrections and Rehabilitation (CDCR or Department), proposes to adopt new Section 3270.3 into Title 15, Division 3, Chapter 1, regarding Body Worn Cameras.

PUBLIC COMMENT PERIOD

The public comment period begins **September 24, 2021** and closes on **November 12, 2021**. Any person may submit written comments by mail addressed to the primary contact person listed below, or by email to rmb@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

Renee Rodriguez
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Back-Up

Y. Sun
Telephone: (916) 445-2269
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Program Contact

Melanie Bruns
Telephone: 916-324-2758
Division of Adult Institutions

AUTHORITY AND REFERENCE

Government Code Section 12838.5 provides that commencing July 1, 2005, CDCR succeeds to, and is vested with, all the powers, functions, duties, responsibilities, obligations, liabilities, and jurisdiction of abolished predecessor entities, such as: Department of Corrections, Department of the Youth Authority, and Board of Corrections.

Penal Code (PC) Section 5000 provides that commencing July 1, 2005, any reference to Department of Corrections in this or any code, refers to the CDCR, Division of Adult Operations. **PC Section 5050** provides that commencing July 1, 2005, any reference to the Director of Corrections in this or any other code, refers to the Secretary of the CDCR. As of that date, the office of the Director of Corrections is abolished.

PC Section 5054 provides that commencing July 1, 2005, the supervision, management, and control of the State prisons, and the responsibility for the care, custody, treatment, training, discipline, and employment of persons confined therein are vested in the Secretary of the CDCR. **PC Section 5055** provides that commencing July 1, 2005, all powers and duties previously granted to and imposed upon the Department of Corrections shall be exercised by the Secretary of the CDCR. **PC Section 5058** authorizes the Director to prescribe and amend rules and regulations for the administration of prisons and for the administration of the parole of persons. **PC Section 5058.3** authorizes the Director to certify in a written statement filed with Office of Administrative Law that operational needs of the Department require adoption, amendment, or repeal of regulation on an emergency basis.

INFORMATIVE DIGEST / POLICY STATEMENT OVERVIEW

The proposed regulations establish the Department's authorization to utilize body-worn cameras (BWCs) within California Institution for Women (CIW), California State Prison, Corcoran (COR), Kern Valley State Prison (KVSP), California State Prison, Los Angeles County (LAC), Richard J. Donovan Correctional Facility (RJD), and Substance Abuse and Treatment Facility and State Prison, Corcoran (SATF), bring the Department in compliance with the Five Prisons Remedial Plan Order.

This action will:

- Establish the department’s authorization to utilize BWCs within CIW, COR, KVSP, LAC, RJD, and SATF.
- Establish regulations regarding the use of BWCs and recording. BWCs will provide the ability for real-time monitoring and recording events that may be utilized as evidence. This will assist staff in completing use of force reviews, and help to identify inmate and staff misconduct.
- Establish and define when BWCs will be deactivated, specifically during confidential assessments, appointments, consultations, or health care.

DOCUMENTS INCORPORATED BY REFERENCE

None

SPECIFIC BENEFITS ANTICIPATED BY THE PROPOSED REGULATIONS

The Department has determined the proposed regulations may improve investigations of staff misconduct and reduce violations of *Armstrong* class members’ rights under the *Armstrong* Remedial Plan.

EVALUATION OF INCONSISTENCY / INCOMPATIBILITY WITH EXISTING LAWS AND REGULATIONS

Pursuant to Government Code 11346.5(a)(3)(D), the Department has determined the proposed regulations are not inconsistent or incompatible with existing regulations. After conducting a review for any regulations that would relate to or affect this area, the Department has concluded that these are the only regulations that concern the regulatory provisions addressed by this rulemaking action.

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:
 - *Additional expenditures in the current State Fiscal Year:* \$2,822,454
 - *Additional costs for specific BWCs hardware, contractor installation, cabling and PY associated specifically with the BWCs:* \$2,958,756
- 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 businesses 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 the state's environment. Through the use of BWCs these regulations may help to make CDCR institutions safer for inmates, staff, and visitors.

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 added text.

**California Code of Regulations, Title 15: Crime Prevention and Corrections
Division 3. Rules and Regulations of Adult Institutions, Programs and Parole
Chapter 1. Rules and Regulations of Adult Operations and Programs
Subchapter 4. General Institutions Regulations
Article 2. Security**

New Section 3270.3 is adopted.

3270.3 Body-Worn Cameras

(a) Correctional officers and correctional sergeants shall utilize body-worn cameras at the California Institution for Women; California State Prison, Corcoran; Kern Valley State Prison; California State Prison, Los Angeles County; Richard J. Donovan Correctional Facility; and the Substance Abuse and Treatment Facility and State Prison, Corcoran.

(b) Body-worn camera recording technology may be used to conduct after-the-fact reviews of triggering events involving use of force incidents, allegations of excessive or unnecessary force, and other staff and inmate misconduct.

(c) Body-worn cameras shall not be used to record confidential assessments, appointments, consultations, or health care.

Note: Authority cited: Sections 5058, 5058.3, Penal Code. Reference: Section 5054, Penal Code. Armstrong v. Newsom (No. 4:94-cv-02307-CW N.D. Cal.)

INITIAL STATEMENT OF REASONS

The California Department of Corrections and Rehabilitation (CDCR or the department) proposes to adopt the California Code of Regulations, Title 15, Division 3, Chapter 1, Subchapter 4, Article 2, section 3270.3.

The proposed regulations establish the department's authorization to utilize body-worn cameras (BWCs) within California Institution for Women (CIW), California State Prison, Corcoran (COR), Kern Valley State Prison (KVSP), California State Prison, Los Angeles County (LAC), Richard J. Donovan Correctional Facility (RJD), and Substance Abuse and Treatment Facility and State Prison, Corcoran (SATF).

Effective January 19, 2021, the department implemented a pilot program (California Code of Regulations, Title 15, Division 3, section 3999.28) at RJD in accordance with the court's September 8, 2020 order in *Armstrong v. Newsom* (No. 4:94-cv-02307-CW N.D. Cal.). All Correctional Officers and Correctional Sergeants who may have interaction with *Armstrong* class members shall wear BWCs. In March 2021, the court ordered CDCR's Correctional Officers and Correctional Sergeants at CIW, COR, KVSP, LAC, and SATF who may interact with disabled inmates to begin using BWCs within 60 days of the finalization of the Five Prisons Remedial Plan. The Five Prisons Remedial Plan Order ordered all audio or video footage from these five prisons to be retained for a minimum of 90 days. All audio or video footage of incidents resulting in serious injury or death; incidents involving allegations of use of force, or inmate or staff misconduct; incidents involving Prison Rape Elimination Act allegations; or other identified triggering events identified by staff shall be retained for a minimum of 5 years.

BWCs audio and video footage shall meet State mandates for e-Discovery and retention of Electronically Stored Information (ESI), which is an all-inclusive term referring to conventional electronic files of any type (including the file's metadata). CDCR's Enterprise Information Services (EIS) will be responsible for the procurement, architecture, data communication network, implementation and access control of all BWCs recording systems, ongoing hardware and software support contracts, and licensing. All proposed BWCs systems shall be evaluated and approved by EIS to ensure that all hardware, software, and communication platforms comply with CDCR standards and guidelines.

CONSIDERATION OF ALTERNATIVES:

The department must determine that no reasonable alternatives considered, or otherwise identified and brought to the attention of the department, would be more effective in carrying out the purpose for which this action is proposed, as effective and less burdensome to affected private persons than the action proposed, 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 department's attention that would alter the department's initial determination. The court's order does not permit alternatives to the BWCs requirement. Pursuant to the court's orders, CDCR will implement BWCs at CIW, COR, KVSP, LAC, RJD, and SATF.

ECONOMIC IMPACT ASSESSMENT:

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

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

The department has determined that the proposed regulations will have an impact on the creation of new jobs within California.

CDCR will increase the staff at all six prisons by assigning two Correctional Officers, one Associate Governmental Program Analyst (AGPA), and one Information Technology (IT) support staff.

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

The department has determined the proposed regulations will not have an impact on the creation of new, expansion, or elimination of existing businesses currently doing business in California.

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

The department has determined the proposed regulations will have an impact on California residents, worker safety, and the state's environment, as the implementation of body-worn camera technology will enhance public safety and facility security by providing the ability to conduct after-the-fact reviews.

Significant Adverse Economic Impact on Business

The department has made an initial determination the proposed regulations will not have a significant statewide adverse economic impact on business.

BENEFITS OF THE REGULATIONS:

The court ordered the deployment of BWCs based on its finding that they are likely to improve investigations of staff misconduct and reduce violations of *Armstrong* class members' rights under the *Armstrong* Remedial Plan or the Americans with Disabilities Act.

MATERIALS RELIED UPON:

The department, in proposing amendments to these regulations, has not identified, nor has it relied upon any technical, theoretical, empirical study, report, or similar document.

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

Section 3270.3 Body-worn Cameras is adopted to establish the locations of the implementation, capability of the equipment, criteria for downloading and retaining footage, and when BWCs will be deactivated.

Section 3270.3(a) is adopted to implement BWCs at California Institution for Women (CIW), California State Prison, Corcoran (COR), Kern Valley State Prison (KVSP), California State Prison, Los Angeles County (LAC), Richard J. Donovan Correctional Facility (RJD), and Substance Abuse and Treatment Facility and State Prison, Corcoran (SATF). This is necessary to comply with the expanded court mandated requirements (*Armstrong v. Newsom*).

Section 3270.3(b) is adopted to include language regarding the use of the recording technology of BWCs. BWCs will be used to record inmate and staff interactions. This will assist staff in completing use of force reviews, and help to identify inmate and staff misconduct. Additionally, the use of BWCs will provide the ability for real-time monitoring and recording events that may be utilized as evidence and will be used to conduct after-the-fact reviews of these events.

Section 3270.3(c) is adopted to include when BWCs will be deactivated, specifically during confidential assessments, appointments, consultations or health care.