

**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: 3411**  
**Repeal sections:**

***CORRECTED* NOTICE OF APPROVAL OF  
REGULATORY ACTION**

**Government Code Section 11349.3**

**OAL Matter Number: 2021-0914-04**

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

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Consistent with the Prison Rape Elimination Act, this action amends section 3411 of Title 15 of the California Code of Regulations to specify that employees or contractors of the Department of Corrections and Rehabilitation have a continuing duty to report having engaged in sexual abuse in any prison or other facility and any conviction or administrative or civil determination of having engaged or attempted to engage in sexual activity in the community facilitated by force, threat, or coercion, or where the victim did not or could not consent.

OAL approves this regulatory action pursuant to section 11349.3 of the Government Code. This regulatory action becomes effective on 1/1/2022.

Date: October 27, 2021



Dale P. Mentink  
Assistant Chief Counsel

For: Kenneth J. Pogue  
Director

Original: Kathleen Allison, Secretary  
Copy: Renee Rodriguez

# REGULAR

Instructions on (reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER <b>Z- 2021-0201-01</b>	REGULATORY ACTION NUMBER <b>2021-0914-04</b>	EMERGENCY NUMBER <b>5</b>
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For use by Office of Administrative Law (OAL) only

**OFFICE OF ADMIN. LAW**  
 2021 SEP 14 PM 12:23

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

**OCT 20 2021**  
 1:35 pm

NOTICE

REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY  
 California Department of Corrections and Rehabilitation

AGENCY FILE NUMBER (if any)  
 20-0026

**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)
OAL USE ONLY <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER <b>2021, 8-Z</b>	PUBLICATION DATE <b>2/12/21</b>	

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

1a. SUBJECT OF REGULATION(S) <b>PREA</b>	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLES 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 <b>3411</b>
	REPEAL <b>15</b>

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"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))	<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)  
**5/27/21 - 6/11/21**

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) _____
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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 <b>Renee Rodriguez</b>	TELEPHONE NUMBER <b>916-445-2217</b>	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional) <b>Renee.Rodriguez@cddr.ca.gov</b>
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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.

Digitally signed by SIGNATURE OF AGENCY HEAD OR DESIGNEE <b>Jeffrey Macomber</b>	DATE <b>8/27/2021</b>
TYPE AND TITLE OF SIGNATORY <b>Jeffrey Macomber, Undersecretary Operations</b>	

For use by Office of Administrative Law (OAL) only

**ENDORSED APPROVED**

**OCT 20 2021**

Office of Administrative Law

## TEXT OF ADOPTED REGULATIONS

### Title 15. Crime Prevention and Corrections Division 3. Adult Institutions, Programs and Parole Chapter 1. Rules and Regulations of Adult Operations and Programs Subchapter 5. Personnel

#### Article 2. Employees (Ref & Annos)

Sections 3390 through 3410.2 remain unchanged.

Section 3411 is amended to read:

#### **3411. Reporting of Arrest, ~~or Conviction,~~ Civil or Administrative Adjudication, Change in Weapons or Driving Status.**

(a) If an employee is arrested or convicted of any violations of law, the employee must promptly notify the institution head or appropriate ~~d~~Director/~~assistant secretary~~ of that fact. Misconduct which impairs an employee's ability to do ~~his or her~~ their job, or affects or involves the department, may be cause for disciplinary action. Suspension, revocation, or restrictions to an employee's driving privilege ~~that which~~ prohibit the employee from performing any of their job duties, shall be reported to the institution head or appropriate ~~d~~Director/~~or assistant secretary~~. An employee shall also report any change in eligibility to own, possess and have custody/ or control of any firearm or other weapon authorized by the department.

~~(b) An~~ The employee or contractor has a continuing duty to report, and shall promptly notify the institution head, or appropriate Director, if any of the following occur:

(1) They Hhave engaged in sexual abuse in any prison, jail, lockup, community confinement facility, juvenile facility, or other institution (as defined in Title 42 U.S.C., Section 1997)

(2) They Hhave been convicted of engaging or attempting to engage in sexual activity in the community facilitated by force, overt or implied threats of force, or coercion, or if the victim did not consent or was unable to consent or refuse; or

(3) They Hhave been civilly or administratively adjudicated to have engaged in activity described in subdivision (b)(2) of this section or attempting to engage in sexual activity in the community facilitated by force, overt or implied threats of force, or coercion, or if the victim did not consent or was unable to consent or refuse.

Note: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code; and Sections 921, 922 and 926, Title 18, United States Code. Section 115.17, Title 28, Code of Federal Regulations.

Sections 3412 through 3416 remain unchanged.

## **FINAL STATEMENT OF REASONS**

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

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

On February 12, 2021, the Notice of Proposed Regulations for the Prison Rape Elimination Act was published, which began the public comment period. The Department's Notice of Change to Regulations #21-02 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) website, and copies posted in CDCR institutions. The Department received one written comment which are included below under *Summaries and Responses to the Written Public Comments Received During the Initial Comment Period*.

A request for a public hearing was received during the public comment period. CDCR subsequently posted and mailed a Notice of Public Hearing on April 13, 2021, announcing a teleconference hearing, which occurred on April 20, 2021, there were no callers or comments received.

On May 27, 2021, 15-day re-notice published, posted and mailed. The revision reflected in the re-notice include revisions to the text were non-substantive adding the word "they" to refer to employees and the removal of the word "an" and replaced with the word "the" for clarity. The changes to the Initial Statement of Reasons provided clarification to the Economic Impact Assessment. No comments received.

### **DETERMINATION**

As a result of recent mandatory PREA audits, the Department has determined there is a need to amend its regulation to further incorporate the requirement of PREA standard, 28 Code of Federal Regulations (CFR) Section 115.17, Hiring and Promotion Decisions. The reporting requirement for employees has existed since 2015, when internal forms were modified.

The proposed regulation duplicates or overlaps a state or federal statute or regulation which is cited as "authority" or "reference" for the proposed regulation and the duplication or overlap is necessary to satisfy the "clarity" standard of Government Code Section 11349.1(a)(3).

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 adopted regulations, 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 Adult Institutions (DAI).

Except as set forth and discussed in 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.

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

### **Commenter #1**

**Comment 1A:** Commenter states there is a grammatical mistake in the amendments, the commenter states the word “their” is not consistent with employee’s (no agreement). The commenter further states, there is plural and employee’s is singular. The commenter states there are different ways to correct, but will not recommend the proper way. The commenter suggest consulting an English teacher or a basic English grammar book. Additionally, the commenter states any lawyer should know basic English grammar.

**Accommodation:** None

**Response 1A:** The commenter is addressing the use of “their” which is a replacement for the use of his or her, used to provide gender neutrality. This comment does not address any aspect or aspects of the subject proposed regulatory action. It is insufficiently related to the specific action or actions proposed, 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).