



Department of Corrections and Rehabilitation
NOTICE OF CHANGE TO REGULATIONS

Sections: 3741-3746 and 3748	NCR Number: 20-11	Publication Date: August 28, 2020	Effective Date: TBD
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INSTITUTION POSTING AND CERTIFICATION REQUIRED

This Notice announces the proposed amendment of Sections 3741 through 3746 and 3748 of the California Code of Regulations (CCR), Title 15, Crime Prevention and Corrections, Division 3, Chapter 1, regarding the Return and Transfer of Parole.

PUBLIC COMMENT PERIOD

The public comment period will close on **October 16, 2020**. 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 **October 16, 2020**.

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. 04/18), 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 Ayla Williams, Division of Adult Parole Operations, at (916) 323-0474.

Original signed by:

KATHLEEN ALLISON
Undersecretary (A), 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 amend Sections 3741 through 3746 and 3748 into Title 15, Division 3, Chapter 1, regarding Return and Transfer of Parole.

PUBLIC COMMENT PERIOD

The public comment period begins **August 28, 2020** and closes on **October 16, 2020**. Any person may submit written comments by mail addressed to the primary contact person listed below, or by email to rpmb@cdcr.ca.gov, before the close of the comment period. For questions regarding the subject matter of the regulations, call the program contact person listed below.

No public hearing is scheduled for these proposed regulations; however, pursuant to Government Code Section 11346.8, any interested person or their duly authorized representative may request a public hearing, no later than 15 days prior to the close of the written comment period.

CONTACT PERSONS

Primary Contact

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Program Contact

Ayla Williams
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Division of Adult Parole

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

Changes to these regulations are necessary to implement, interpret and comply with Penal Code (PC) Section 3003, which was recently amended to allow an offenders or parolee to be returned to the city of last legal residence if it is in the best interest of the public.

This action will:

- Amend Sections 3741 through 3746 and 3748, Return and Transfer of Parole, adding language which will allow all inmates and parolees committed to prison for a sex offense for which registration is required pursuant to PC 290 shall through all efforts reasonably possible to be returned to their city of last legal residence or a close geographic location.

DOCUMENTS INCORPORATED BY REFERENCE

Not applicable

SPECIFIC BENEFITS ANTICIPATED BY THE PROPOSED REGULATIONS

The health and welfare of California residents will be enhanced by identifying and directing resources toward programs and services that will improve the reintegration of offenders to their communities upon being released from serving a sentence in state prison. The offender's successful reintegration to the community will improve the public's safety.

EVALUATION OF CONSISTENCY / COMPATIBILITY 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 Return and Transfer of Parole.

LOCAL MANDATES

This action imposes no mandates on local agencies or school districts, or a mandate which requires reimbursement of costs or savings pursuant to Government Code Sections 17500 - 17630.

FISCAL IMPACT STATEMENT

- Cost or savings to any state agency: *None*
- Cost to any local agency or school district that is required to be reimbursed: *None*
- Other nondiscretionary cost or savings imposed on local agencies: *None*
- Cost or savings in federal funding to the state: *None*

EFFECT ON HOUSING COSTS

The Department has made an initial determination that the proposed action will have no significant effect on housing costs.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT ON BUSINESS

The Department has made an initial determination that the proposed regulations will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states, because the proposed regulations place no obligations or requirements on any business.

EFFECT ON SMALL BUSINESSES

The Department has determined the proposed regulations will not affect small businesses. This action has no significant adverse economic impact on small business because they place no obligations or requirements on any business.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

The Department has determined that the proposed regulation will have no effect on the creation of new, or the elimination of existing, jobs or businesses within California, or effect the expansion of businesses currently doing business in California. The Department has determined the proposed regulation will have no effect on worker safety or the state's environment. These regulations may benefit the welfare of California residents by helping to make CDCR institutions safer for inmates, staff, and visitors. Additionally, safer institutions may provide an environment more conducive to rehabilitation, thereby reducing recidivism.

CONSIDERATION OF ALTERNATIVES

The Department must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed regulatory action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law. Interested persons are invited to present statements or arguments with respect to any alternatives to the changes proposed at the scheduled hearing or during the written comment period.

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, ~~strikethrough~~ indicates deleted text; underline indicates added or amended 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 6. Adult Parole

Article 17.5. Return and Transfer of Parole (Refs & Annos)

Section 3741 is amended to read:

3741. County or City of Last Legal Residence

(a) Pursuant to the provisions of Penal Code (PC) Section 3003, all offenders committed to prison for a non-sex offense for which registration is not required pursuant to PC 290, released on parole shall be returned to the County of Last Legal Residence (~~CLLR~~),¹ unless the case conforms with sections 3743 through 3744. All inmates and parolees committed to prison for a sex offense for which registration is required pursuant to PC 290, shall through all efforts reasonably possible be returned to their city of last legal residence or a close geographic location in which they have family, social, or economic ties, unless a return to that location would violate any other law, pose a risk to the parolee's victim, or the case conforms with sections 3743 through 3744. ~~For the purposes of this Section, the CLLR is the last county in which an offender resided prior to incarceration for the commitment offense. The county of last legal residence for non-sex offenders, or city of last legal residence for sex offenders, is the county or city of residence where the offender resided prior to incarceration for the most current commitment offense. If an offender has multiple commitment offenses, the most recent-current of the offenses shall be used to determine the CLLR. county of last legal residence or city of last legal residence. Offenses that occur in custody, defined as being confined in State prison, local jail, or a Department of State Hospitals (DSH) facility for treatment shall not be considered in determining the CLLR. county or city of last legal residence. For the purposes of this Section, custody is defined as being confined in State prison, local jail, or a State hospital for treatment.~~

Note: Authority cited: Section 5058, Penal Code. Reference: Section 3003, Penal Code.

Section 3742 is amended to read:

3742. Determining the County of or City last Legal Residence.

(a) The Division of Adult Parole Operations (DAPO) determines the ~~CLLR~~ county or city of last legal residence based as recorded on the following documents, listed in order of precedence:

(1) The current Probation Officer's Report, as defined in Section 3000. If an address is not recorded, DAPO shall assess subsection (a)(2).

(2) If available, the sentencing transcript for the current commitment. If an address is not identified, DAPO shall assess subsection (a)(3).

- (3) The arrest report for the current commitment offense. If an address is not recorded, DAPO shall assess subsection (a)(4).
- (4) The abstract of judgment with the recorded county of commitment for the current commitment offense. For the purposes of this Section, the county of commitment is the county where the commitment offense occurred.
- (b) The address designated as an offender's GCLR county or city of last legal residence must be a complete address including a street number, street name, city name, and ZIP code.
- (c) Incomplete addresses, ambiguous references to street intersections in lieu of a complete address, and addresses listed only by the name of a business shall not be considered when determining the GCLR county or city of last legal residence.
- (d) Post office boxes may be considered for rural areas if the parole unit responsible for that area confirms that only post office boxes are used.
- (e) If all of the documents in subsections (a)(1)-(a)(4) list the offender as either transient or homeless, or fail to list a complete address, the offender shall be paroled to the county of commitment; as defined in PC 3003.

Note: Authority cited: Section 5058, Penal Code. Reference: Section 3003, Penal Code.

Section 3743 is amended to read:

3743. Parole Return or Transfer to a County or City Other than the County or City of Last Legal Residence and Transfer to the County or City of Last Legal Residence

(a) Pursuant to PC Section 3003(b), upon release an offender may be returned, or while in the community an offender may be transferred, from their GCLR county or city of last legal residence to a county or city other than the GCLR county or city of last legal residence to serve their parole if it is in the best interest of the public, and DAPO determines placement in a county or city other than the GCLR county or city of last legal residence is appropriate based on criteria as defined in Section 3744, subsections (a)(1)-(a)(6).

(b) An offender may also be transferred back to their GCLR county or city of last legal residence pursuant to Section 3745.

(c) If placed in a county or city other than the GCLR county or city of last legal residence, the reasons shall be documented on the offender's CDCR Form 1650-D (Rev 06/12), Record of Supervision. Notification shall be made to the sheriff or chief of police, or both, and the district attorney, in the receiving county or city pursuant to PC Section 3058.6(a). Notice shall be made on a CDCR Form 863 (Rev. 08/11), Notice of Release, which is incorporated by reference.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 3003 and 3058.6, Penal Code.

Section 3744 is amended to read:

3744. Factors Considered for Return or Transfer to a County or City Other than the County or City of Last Legal Residence.

(a) For return or transfer to a county or city other than the CLLR county or city of last legal residence, DAPO shall consider the following factors to determine if such a return or transfer is appropriate:

(1) The need to protect the life or safety of a victim, a witness, the parolee, or any other person.

(2) Public concern that would reduce the chance of the offender's parole being successfully completed, such as cases in which the offender's chances of successfully completing parole in the CLLR county or city of last legal residence are greatly reduced due to the offender's criminal history, public recognition, family ties, career, or behavior in custody that has resulted in extensive media coverage, public interest, or high notoriety.

(3) The existence of a work offer, ~~or an~~ educational, ~~or~~ vocational training program.

(A) For the purposes of this Section, "work offer" is a conditional letter of employment, and "work" is permanent employment that may enable the offender to be financially self-sufficient. Short-term employment is not of sufficient duration to qualify.

(B) For the purposes of this Section, educational and vocational training are full-time programs that materially upgrade the offender's employment skills or education level.

(4) The existence of immediate family members, as defined in Section 3000, in another county or city with whom the offender has maintained strong ties.

(A) Upon proof of a familial relationship, on a case-by-case basis, DAPO may give consideration to other relatives who are not immediate family members if strong family ties have been maintained and the familial relationship would increase the chance of successful completion of parole. Documentation proving a familial relationship may include birth certificates, marriage certificates, or adoption records.

(5) The availability of necessary outpatient treatment programs for offenders receiving treatment pursuant to PC Section 2960.

(6) Availability for direct placement into a California Department of Corrections and Rehabilitation (CDCR) CDCR-funded community-based residential treatment program which shall be approved for transfer provided there are no victim or witness residence restrictions as recorded in the offender's special conditions of parole. CDCR-funded community-based residential treatment programs may include Female Offender Treatment and Employment Program, Residential Multi-Service Center, Parolee Service Center, and Specialized Treatment for Optimized Programming.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 2960 and 3003, Penal Code.

Section 3745 is amended to read:

3745. Transfer or Return of Offender to the County or City of Last Legal Residence.

(a) If a transfer or return of an offender to a county or city other than the CLLR county or city of last legal residence is based on placement into a CDCR-funded community-based residential treatment program, and the offender does not successfully complete the CDCR-funded community-based residential treatment program, the offender shall be transferred to the CLLR county or city of last legal residence.

(b) If a transfer or return of an offender to a county or city other than the CLLR county or city of last legal residence is based on participation in an educational, employment, training, or treatment program and the qualifying program is no longer offered within that county or city, the offender may be allowed to participate in a similar program in another county or city if one is available and provided there are no victim or witness residence restrictions as recorded in the offender's special conditions of parole or board-ordered conditions prohibiting placement in a specific county or city. The offender shall be transferred to the CLLR county or city of last legal residence if no programs are available, or if the offender does not successfully complete the program.

(c) The offender shall be transferred from a county or city other than the CLLR county or city of last legal residence to the CLLR county or city of last legal residence upon a new misdemeanor or felony criminal conviction.

(d) At the discretion of the unit supervisor, an offender transferred or returned to a county or city other than the CLLR county or city of last legal residence may be transferred to the CLLR county or city of last legal residence if the offender violates their general or special conditions of parole. In determining whether to transfer an offender back to the CLLR county or city of last legal residence after a violation of a general or special condition of parole, the unit supervisor shall consider the following factors:

- (1) Seriousness of the violation.
- (2) Victim-related violation.
- (3) Goals and progress performance while under supervision.
- (4) Overall conduct while under supervision.

(e) If an offender successfully completes an educational, employment, training, treatment or a CDCR-funded community-based residential treatment program in a county or city other than the CLLR county or city of last legal residence, the offender shall be given the option to remain in that county or city provided the offender does not violate any condition of parole and has established an appropriate residence. A residence is considered appropriate as long as it does not cause the offender to violate his or her general or special conditions of parole or any other applicable statutory requirements. The Department shall verify the appropriateness of a residence by completing a CDCR Form 1658 (Rev. 6/11), Pre-Parolee Residence/Employment Verification, which is incorporated by reference.

Note: Authority cited: Section 5058, Penal Code. Reference: Section 3003, Penal Code.

Section 3746 is amended to read:

3746. County Closed to Parole Return or Transfer.

(a) Pursuant to PC Section 3003(i), DAPO shall give consideration to the equitable distribution of offenders serving parole in a particular county.

(1) In order to give consideration to the equitable distribution, DAPO shall observe a five percent offender return or transfer limitation.

(2) DAPO shall monitor county import and export ratios of offenders released for parole supervision and returning or transferring to counties other than their CLLRs county of last legal residence. Return and transfer imports shall not exceed an additional five percent of the total number of active parolees under the jurisdiction of CDCR who are

required to be paroled to a particular CLLR county of last legal residence. Any county that has an import ratio of five percent shall be closed to returns and transfers and shall not reopen for import until the import ratio is below five percent except in the following circumstances:

(A) The Board of Parole Hearings orders the placement of an offender released as a result of a board grant.

(B) Direct Placement of an offender into a CDCR-funded community-based residential treatment program.

(C) The county is the CLLR county or city of last legal residence of an offender, and they are not returning or transferring to a county other than the CLLR county or city of last legal residence pursuant to Section 3743, subsection (a).

Note: Authority cited: Section 5058, Penal Code. Reference: Section 3003, Penal Code.

Section 3747 Parole Return or Transfer to Another State remains unchanged.

3748. Parole Returns or Transfers for Life Term Offenders Released to Parole.

(a) In addition to Sections 3741 through 3747, if an offender is released as a result of a board grant to parole pursuant to PC Sections 3000, subsections (b)(1) and (b)(3), and 3000.1, the following shall apply when considering the return or transfer of the offender's parole.

(1) If the offender requests to serve his or her parole in a county other than the CCLL county or city of last legal residence, any previous BPH order or recommendation for parole placement must be amended or vacated prior to return or transfer if an order or recommendation exists. In addition, there must be no victim or witness concerns, as documented in the offender's special conditions of parole, in the desired county.

(2) Parole return or transfer for offender cases released as a result of a board grant and accepted by the Interstate Compact for an out-of-state transfer of parole must be reviewed by BPH in order to be granted placement in the desired state. If the parole return or transfer is granted, the offender must have any previous BPH orders or recommendations for parole placement amended or vacated prior to the return or transfer, and DAPO shall ensure there are no victim or witness concerns within the desired state, as documented in the offender's special conditions of parole.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 3003 and 11177.2, Penal Code.

INITIAL STATEMENT OF REASONS

The California Department of Corrections and Rehabilitation (CDCR) proposes to amend Sections 3741, 3742, 3743, 3744, 3745, 3746, and 3748 of the California Code of Regulations (CCR), Title 15, Division 3, Chapter 1 concerning Return and Transfer of Parole.

Changes to these regulations are necessary to implement, interpret and comply with Penal Code (PC) Section 3003, which was recently amended to allow an offender to be returned to the city of last legal residence if it is in the best interest of the public.

CONSIDERATION OF ALTERNATIVES:

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

Currently, no reasonable alternatives have been brought to the attention of the Department that would alter the Department's initial determination.

ECONOMIC IMPACT ASSESSMENT:

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

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

The Department has determined that the proposed regulations will not have an impact on the creation of new, or the elimination of existing, jobs within California.

Creation of New or the Elimination of Existing Businesses Within the State of California

The Department has determined that the proposed regulations will not have an impact on the creation of new, or the elimination of existing, business within California.

Expansion of Businesses Currently Doing Business in the State of California

The Department has determined that the proposed regulations will not have an impact on the expansion of businesses currently doing business in California.

BENEFITS OF THE REGULATIONS:

The health and welfare of California residents will be enhanced by identifying and directing resources toward programs and services that will improve the reintegration of offenders to their communities upon being released from serving a sentence in state prison. The offender's successful reintegration to the community will improve the public's safety. The proposed regulations will not affect worker safety or the State's environment.

The Department has made an initial determination that no reasonable alternatives to the regulations have been identified or brought to the attention of the Department that would lessen any adverse impact on small business.

MATERIALS RELIED UPON:

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

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

Chapter 1. Rules and Regulations of Adult Operations and Programs

Subchapter 6. ADULT PAROLE

Article 17.5 Return and Transfer of Parole

Section 3741 is amended to read all inmates and parolees committed to prison for a sex offense that requires registration pursuant to PC 290, shall through all efforts reasonably possible be returned to their city of last legal residence or a close geographic location in which they have family, social, or economic ties, unless a return to that location would violate any other law or pose a risk to any victims or witnesses. The new language is necessary to comply with the recently amended PC 3003.

Sections 3742, 3743, 3744, 3745, 3746, and 3748 are amended to change the terminology from “county” to “county or city” in reference to the last legal residence of an offender. This language is necessary in order to include all offenders, specifically to included inmate and parolees requiring PC 290 registration. Additionally, any reference to the acronym CLLR referring to *County of Last Legal Residence* was removed from these sections to prevent confusion.