

**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: 3000, 3323, 3336, 3338,
3341.9, 3375.3, 3375.4,
3375.5**

Repeal sections:

**NOTICE OF APPROVAL OF REGULATORY
ACTION**

Government Code Section 11349.3


OAL Matter Number: 2021-1014-02

OAL Matter Type: Regular (S)

The California Department of Corrections and Rehabilitation in this regulatory action is establishing and defining the act of aggravated battery on a non-inmate by means of gassing and the act of battery on an inmate by means of gassing. Additionally, the definition of the term "Same and Similar Behavior" is amended as it relates to serious misconduct which may mitigate or aggravate a Security Housing Unit (SHU) term. There are other changes made regarding determinate SHU assessments and retention of inmates in Administrative Segregation.

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

Date: November 30, 2021


Peggy J. Gibson
Senior Attorney

For: Kenneth J. Pogue
Director

Original: Kathleen Allison, Secretary
Copy: Josh Jugum

NOTICE PUBLICATION/REGULATORY ACTION SUBMISSION

REGULAR

For use by Secretary of State only

STD. 400 (REV. 10/2019)

| | | | |
|--|---|--|------------------|
| OAL FILE NUMBERS | NOTICE FILE NUMBER Z-2021-0629-01 | REGULATORY ACTION NUMBER 2021-1014-025 | EMERGENCY NUMBER |
| For use by Office of Administrative Law (OAL) only | | | |
| NOTICE | | REGULATIONS | |

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

NOV 30 2021

1:13 PM

OFFICE OF ADMIN. LAW
2021 OCT 14 PM 12:06

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|---|--------------------------------------|
| AGENCY WITH RULEMAKING AUTHORITY California Department of Corrections and Rehabilitation | AGENCY FILE NUMBER (If any) 21-03 |
|---|--------------------------------------|

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 | ACTION ON PROPOSED NOTICE | NOTICE REGISTER NUMBER | PUBLICATION DATE |

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

| | |
|---|--|
| 1a. SUBJECT OF REGULATION(S) Gassing and Restricted Housing | 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) | |

| | | |
|---|--------|--|
| SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.) | ADOPT | |
| | AMEND | 3000, 3043.8 , 3045.4 , 3323, 3336, 3338, 3341.9, 3375.3, 3375.4, 3375.5 |
| TITLE(S) | REPEAL | per agency request |
| 15 | | |

| | | | |
|---|---|---|---|
| 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. 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 Josh Jugum | TELEPHONE NUMBER 916 445-2266 | FAX NUMBER (Optional) | E-MAIL ADDRESS (Optional) joshua.jugum@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 | DocuSigned by: Jeffrey Macomber | DATE 10/5/2021 |
| TYPED NAME AND TITLE OF SIGNATORY JEFF MACOMBER, UNDERSECRETARY, OPERATIONS | | |

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

NOV 30 2021

Office of Administrative Law

TEXT OF ADOPTED REGULATIONS

In the following, underline indicates newly added text, and strikethrough indicates deleted text.

California Code of Regulations, Title 15, Division 3, Adult Institutions, Programs and Parole

Chapter 1. Rules and Regulations of Adult Operations and Programs

Article 1. Behavior

Section 3000. Definitions.

Section 3000 is revised to adopt, amend and alphabetically merge the definitions below with those which already exist.

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Aggravated battery by means of gassing is defined as gassing committed upon a non-inmate by a person confined in a state prison.

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*

Gassing means intentionally placing or throwing, or causing to be placed or thrown, upon the person of another, any human excrement or bodily fluids or bodily substances, or any mixture containing human excrement or bodily fluids or bodily substances, which results in actual contact with the person's skin or membranes.

*

*

~~Same and Similar Behavior means comparable serious misconduct warranting SHU term assessment, contained in section 3341.9(e), that may be used to aggravate and/or mitigate a SHU term. Specifically, acts of homicide, violence against persons, threats to kill or assault persons, as listed in subsection 3341.9(e)(1), (2) & (3), or any homicide, violence against persons or threats to kill or assault persons in conjunction with any other offense listed in 3341.9(e), are all considered same/similar to one another regardless of victim. Any possession of a weapon, as listed in 3341.9(e)(4), or any possession of a weapon in conjunction with any other offense listed in 3341.9(e), are all considered same/similar. Any distribution of a controlled substance, as listed in 3341.9(e)(5) is same/similar only to itself (possession of a controlled substance is not same/similar). Escapes, as listed in subsection 3341.9(e)(6), are same/similar only to themselves. Disturbances, riots or strikes as listed in subsection 3341.9(e)(7), are same/similar only to themselves. Harassment, as listed in subsection 3341.9(e)(8) is same/similar only to itself. Any theft or destruction of state property offenses, as listed in 3341.9(e)(9) or any theft or destruction of state property in conjunction with any other offense listed in 3341.9(e), are all considered same/similar. Any extortion or bribery offenses listed in subsection 3341.9(e)(10) are same/similar to one another. Sexual misconduct offenses listed in 3341.9(e)(11) are same/similar only to themselves.~~

Same and Similar Behavior means comparable serious misconduct warranting Security Housing Unit (SHU) term assessment or equivalent behavior from a verifiable incarcerated period, contained in subsection 3341.9(e), which may be used to aggravate or mitigate a SHU term. Specifically, any act of homicide, violence against another, threat to kill or assault another as listed in subsection 3341.9(e)(1), (2) & (3); or, any homicide, violence against another or threat to kill or assault another in conjunction with any other offense listed in subsection 3341.9(e), is considered same and similar to each other regardless of the victim. Any possession of a weapon, as listed in subsection 3341.9(e)(4), or any possession of a weapon in conjunction with any other offense listed in subsection 3341.9(e), is considered same and similar. Any distribution of a controlled substance, as listed in subsection 3341.9(e)(5) is considered same and similar to each other (possession of a controlled substance is not considered same and similar to distribution of a controlled substance). Any escape, as listed in subsection 3341.9(e)(6), is considered same and similar to each other. Any disturbance, riot, or strike, as listed in subsection 3341.9(e)(7), is considered same and similar to each other. Any harassment, as listed in subsection 3341.9(e)(8), is considered same and similar to each other. Any Security Threat Group (STG) disruptive behavior, as listed in subsection 3341.9(e)(9) or any STG disruptive behavior in conjunction with any other offense listed in subsection 3341.9(e), is considered same and similar to each other regardless of the victim. Any theft or destruction of state property offense, as listed in subsection 3341.9(e)(10), or any theft or destruction of state property in conjunction with any other offense listed in subsection 3341.9(e), is considered same and similar to each other. Any extortion or bribery offense listed in subsection 3341.9(e)(11), is considered same and similar to each other regardless of the victim. Any sexual misconduct offense listed in subsection 3341.9(e)(12), is considered same and similar to each other regardless of the victim.

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Note: Authority cited: Sections 243(f)(4), 2717.3, 3000.03, 5058, 5058.3 and 1170.05, Penal Code; Section 10115.3(b), Public Contract Code; and Sections 4525(a), 4526 and 14837, Government Code. Reference: Sections 186.22, 243, 314, 530, 532, 600, 646.9, 653, 832.5, 1170.05, 1203.8, 1389, 2080, 2081.5, 2600, 2601, 2700, 2717.1, 2717.6, 2932.5, 3003.5(a), 3020, 3450, 3550, 4501.1, 4570, 4576, 5009, 5050, 5054, 5068, 7000 et seq., 11180 and 11191, Penal Code; Sections 1132.4, 1132.8 and 1203(b)(1), Labor Code; Sections 10106, 10108, 10108.5, 10115, 10115.1, 10115.2, 10115.3 and 10127, Public Contract Code; Section 999, Military and Veterans Code; Section 391, Code of Civil Procedure; Section 297.5, Family Code; Sections 8550, 8567, 12838 and 12838.7, Government Code; Governor's Prison Overcrowding State of Emergency Proclamation dated October 4, 2006; *In re Bittaker*, 55 Cal.App. 4th 1004, 64 Cal. Rptr. 2d 679; Section 11007, Health and Safety Code; *Madrid v. Cate* (USDC ND Cal. C90-3094 TEH); *Sassman v. Brown* (E.D. Cal. 2015) 99 F.Supp.3d 1223; *Mitchell v. Cate*, USDC ED 2:08-CV-01196-TLN-EFB; *In re Garcia* (2012) 202 Cal.App.4th 892; and *Quine v. Beard*, No. C 14-02726 JST.

Subchapter 4. General Institution Regulations

Article 5. Inmate Discipline

Section 3323. Disciplinary Credit Forfeiture Schedule.

Subsection 3323(a) is unchanged but is shown for reference.

(a) Upon a finding of guilt of a serious rule violation, a credit forfeiture against any determinate term of imprisonment or any minimum eligible parole date for an inmate sentenced to an indeterminate sentence, as defined in section 3000 Indeterminate Sentence Law (ISL), shall be assessed within the ranges specified in (b) through (h) below:

Subsections 3323(b) through 3323(b)(10) remain unchanged.

Subsection 3323(c) is unchanged but is shown for reference.

(c) Division "A-2" offenses; credit forfeiture of 151-180 days.

New subsection 3323(c)(1) is adopted to read:

(1) Aggravated battery on a non-inmate by means of gassing.

Existing subsections 3323(c)(1) through 3323(c)(10) are renumbered to 3323(c)(2) to 3323(c)(11).

~~(1)~~(2) Arson involving damage to a structure or causing serious injury.

~~(2)~~(3) Possession of flammable, explosive or combustible material with intent to burn any structure or property.

~~(3)~~(4) Destruction of state property in excess of \$400 during a riot or disturbance.

~~(4)~~(5) Any other felony involving violence or injury to a victim not specifically listed in this schedule.

~~(5)~~(6) Attempted escape with force or violence.

~~(6)~~(7) Introduction or distribution of any controlled substance, as defined in section 3000, in an institution/facility or contract health facility.

~~(7)~~(8) Extortion by means of force or threat.

~~(8)~~(9) Conspiracy to commit any Division "A-1" or "A-2" offense.

~~(9)~~(10) Solicitation to commit an offense listed in subsections ~~(c)(1)~~(2), ~~(c)(3)~~(4), or ~~(c)(8)~~(9) above.

~~(10)~~(11) Behavior or ~~activities~~ activity defined as a division "A-2" offense that promotes, furthers, or assists a an STG or demonstrates a nexus to ~~the~~ an STG.

Subsections 3323(d) through 3323(d)(13) remain unchanged.

Subsection 3323(e) is unchanged but is shown as reference.

(e) Division "C" offenses; credit forfeiture of 91-120 days.

Subsections 3323(e)(1) through 3323(e)(14) are renumbered to 3323(e)(2) to 3323(e)(15).

New subsection 3323(e)(1) is adopted to read:

(1) Battery on an inmate by means of gassing.

Existing subsections 3323(e)(1) through 3323(e)(14) are renumbered to 3323(e)(2) to 3323(e)(15).

~~(1)~~(2) Escape without force from a camp, community-access facility, or any Alternative Custody Program placement, as provided in ~~c~~Chapter 1, ~~a~~Article 6.8.

~~(2)~~(3) Attempted escape without force from an institution or community correctional facility other than a camp or community-access facility.

~~(3)~~(4) Furnishing equipment for or aiding and abetting an escape or escape attempt.

~~(4)~~(5) Attempted extortion by means of threat.

~~(5)~~(6) Bribery.

~~(6)~~(7) Arson.

~~(7)~~(8) Forgery, falsification or alteration of any official record or document prepared or maintained by the Department which could affect a term of imprisonment.

~~(8)~~(9) Possession of any narcotic, drug, or controlled substance, as defined in section 3000, in a community-access facility or any Alternative Custody Program placement.

~~(9)~~(10) Unauthorized possession of drug paraphernalia as defined in section 3000.

~~(10)~~(11) The physical possession of alcohol in an institution, ~~a~~facility, ~~a~~ or contract health facility.

~~(11)~~(12) Accessory to any felony offense.

~~(12)~~(13) Conspiracy to commit any Division "C" offense.

~~(13)~~(14) Solicitation to commit an offense listed in subsections (e)~~(5)~~(6), (e)~~(6)~~(7), or (e)~~(7)~~(8) above.

~~(14)~~(15) Behavior or ~~activities~~ activity defined as a division "C" offense that promotes, furthers, or assists ~~an~~ an STG or demonstrates a nexus to ~~the~~ an STG.

Subsections 3323(f) through 3323(k)(4) remain unchanged.

Note: Authority cited: Sections 5058, 5058.3 and 1170.05, Penal Code. Reference: Sections 148, 241, 243, 295-300.3, 314, 647, 1170.05, 2932, 2933, 4500, 4501, 4501.1, 4573.6, 4576, 4600, 5054 and 12020, Penal Code.

Article 7. Segregated Housing.

Section 3336. Administrative Review of Administrative Segregation Unit Placement.

Subsections 3336(a) through 3336(c) remain unchanged.

Subsection 3336(c)(1) and 3336(c)(2) are amended to read:

(1) Staff Assistance. The Administrative Reviewer shall determine the need for a Staff Assistant (SA) in accordance with Section 3340 and document on the Administrative Segregation Unit Placement Notice.

(2) Investigative Employee (IE). If an inmate requests witnesses and/or the assistance of an IE, the Administrative Reviewer, may assign an IE in accordance with Section 3340 and document on the Administrative Segregation Unit Placement Notice.

Subsection 3336(c)(3) remains unchanged.

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

Section 3338. Amendment to Reasons for Segregation.

Subsections 3338(a) and 3338(a)(1) remain unchanged.

Subsection 3338(a)(2) is amended to read:

(2) The official ~~ordering~~ documenting retention shall ensure, and articulate on the Administrative Segregation Unit Placement Notice at the time of issuance, that all procedural safeguards have been provided, in accordance with subsections 3336(c)(1) through (3).

Subsections 3338(a)(3) through 3338(c) remain unchanged.

Note: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code; and Taylor v. Rushen (N.D. Cal.) L-80-0139 SAW.

Section 3341.9. Security Housing Unit Term Calculation and Assessment.

Subsections 3341.9(a) through 3341.9(d)(1) remain unchanged.

Subsection 3341.9(e) is amended as follows:

(e) SHU Term Assessment Chart (Calculating determinate confinement to SHU).

| Offense | TYPICAL TERM (Mos) | | |
|---|--------------------|----------|------|
| | Low | Expected | High |
| (1) Homicide: | | | |
| (A) Murder, attempted murder, solicitation of murder, or voluntary manslaughter of a non-inmate. | 36 | 48 | 60 |
| (B) Murder, attempted murder, solicitation of murder, or voluntary manslaughter of an inmate. | 24 | 36 | 48 |
| (2) Violence Against Persons: | | | |
| (A) Battery on a non-inmate with a weapon capable of causing serious or mortal injury; caustic substance or other fluids capable of causing serious | 18 | 30 | 42 |

| | | | |
|--|-----------|-----------|-----------|
| or mortal injury; or physical force causing serious injury. | | | |
| (B) Assault on a non-inmate with a weapon, capable of causing serious or mortal injury; caustic substance or other fluids capable of causing serious or mortal injury. | 9 | 15 | 21 |
| (C) Rape, sodomy, or oral copulation on a non-inmate, or any attempt. | 18 | 30 | 42 |
| (D) Battery on an inmate with a weapon capable of causing serious or mortal injury; caustic substance or other fluids capable of causing serious or mortal injury or physical force causing serious injury. | 12 | 18 | 24 |
| (E) Assault on an inmate with a weapon capable of causing serious or mortal injury; caustic substance or other fluids capable of causing serious or mortal injury. | 6 | 9 | 12 |
| (F) Rape, sodomy, or oral copulation on an inmate accomplished against the inmate's will, or any attempt. | 12 | 18 | 24 |
| (G) Battery on a non-inmate without serious injury. | 6 | 12 | 18 |
| (H) Assault on a non-inmate. | 3 | 6 | 9 |
| (I) Battery on an inmate without serious injury. (2 or more offenses within a 12 month period- <u>the initial offense may be an offense listed within the subsection 3341.9(e)(1)-(2) or 1 with direct STG nexus</u>). | 2 | 4 | 6 |
| <u>(J) Aggravated battery by means of gassing intentionally placing or throwing, or causing to be placed or thrown upon the person of a non-inmate, any human excrement or bodily fluids or bodily substances, or any mixture containing human excrement or other bodily fluids or bodily substances, which results in actual contact with the person's skin or membranes.</u> | <u>12</u> | <u>20</u> | <u>28</u> |
| <u>(K) Battery on an inmate by means of gassing intentionally placing or throwing, or causing to be placed or thrown upon the person of an inmate, any human excrement or bodily fluids or bodily substances, or any mixture containing human excrement or other bodily fluids or bodily substances, which results in actual contact with the person's skin or membranes.</u> | <u>8</u> | <u>12</u> | <u>16</u> |
| Subsections 3341.9(e)(3) through 3341.9(e)(3)(B) remain unchanged and are omitted for clarity and brevity. | | | |

| | | | |
|---|----|----|----|
| (4) Possession of a Weapon: | | | |
| (A) Possession of a firearm or possession, <u>manufacture or attempted manufacturing</u> of an explosive device. | 18 | 30 | 42 |
| (B) Possession, or manufacture/manufacturing or attempted manufacture of a Weapon including materials altered from their original manufactured state or purpose and which can be made into a weapon other than a firearm or explosive device and which has been manufactured or modified so as to have obvious intent or capability of inflicting serious injury, and which is under the immediate or identifiable control of the inmate. | 4 | 8 | 12 |
| Subsections 3341.9(e)(5) through 3341.9(e)(7)(C) remain unchanged and are omitted for clarity and brevity. | | | |
| (8) Harassment: a willful course of conduct <u>which that alarms, annoys or terrorizes a specific person, group, or entity in the free society, and which serves no legitimate purpose,</u> either directly or indirectly. | 6 | 12 | 18 |
| Subsections 3341.9(e)(9) through 3341.9(e)(11)(B) remain unchanged and are omitted for clarity and brevity. | | | |
| (12) Sexual Misconduct: | | | |
| (A) Indecent E exposure | 3 | 6 | 9 |
| (B) Sexual D isorderly conduct (<u>2 two</u> or more offenses within a <u>12 twelve</u> month period. <u>The initial offense may be any offense listed within the subsection 3341.9(e)(12).</u> | 3 | 6 | 9 |
| Subsections 3341.9(e)(13) through 3341.9(14) remain unchanged and are omitted for clarity and brevity. | | | |

Subsections 3341.9(f) through 3341.9(f)(3) remain unchanged.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections ~~2933.6~~, 4501.1, 4502, 5054 and 5068, Penal Code; *Sandin v. Connor* (1995) 515 U.S. 472; *Madrid v. Gomez* (N.D. Cal. 1995) 889 F.Supp. 1146; *Toussaint v. McCarthy* (9th Cir. 1990) 926

F.2d 800; *Toussaint v. Yockey* (9th Cir. 1984) 722 F.2d 1490; *Castillo v. Alameida*, et al., (N.D. Cal., No.C94-2847); *Coleman v. Wilson* 912 F. Supp. 1282 (E.D. Cal. 1995); and *Clark v. California* 123 F. 3d 1267 (9th Cir. 1997).

Article 10. Classification

Section 3375.3. CDCR Classification Score Sheet, CDCR Form 839, Calculation.

Subsections 3375.3(a) through 3375.3(b)(4)(E) remain unchanged.

Subsection 3375.3(b)(4)(F) is amended to read:

For each possession, manufacture or attempted manufacture of a deadly weapon:

1. Four points shall be entered in Boxes 59–60 for each well documented incident of an inmate's ~~manufacture or possession~~, of a manufacture or attempted manufacture of a deadly weapon where apparent use was intended (does not include possession of commonly available and unmodified objects unless used as a weapon and this fact is documented in the disciplinary hearing process). Include possession of a razor blade (whether modified or not) in a segregated program-housing unit (e.g. Administrative Segregation Unit, Security Housing Unit, Psychiatric Services Unit, etc.); or,
2. Eight points shall be entered in Boxes 59–60 for each possession, manufacture or attempted manufacture of a deadly weapon incident, which occurred within five years of the inmate's reception to the Department on the current term.

Subsections 3375.3(b)(4)(G) through (g)(2) remain unchanged.

NOTE: Authority cited: Sections 5058 and 5058.3, Penal Code. Reference: Sections ~~3540~~, 4502, 5054 and 5068, Penal Code; *Wright v. Enomoto* (1976) 462 F Supp. 397; *Stoneham v. Rushen* (1984) 156 Cal. App. 3d 302; and *Castillo v. Alameida, et al.* (N.D. Cal., No. C94-2847).

Section 3375.4. CDCR Reclassification Score Sheet, CDCR Form 840, Calculation

Subsections 3375.4(a) through (b)(4) remain unchanged.

Subsection 3375.4(b)(5) is amended to read:

For each well-documented serious misbehavior for possession, manufacture or attempted manufacture of a deadly weapon where apparent use was intended, 16 points shall be entered in Boxes 64–65. Points shall not be assessed for possession of commonly available and unmodified objects, unless they were used as weapons and that fact is documented in the disciplinary report. Include possession of a razor blade (whether modified or not) in a segregated program-housing unit (e.g., Administrative Segregation Unit, Security Housing Unit, Psychiatric Services Unit, etc.).

Subsections 3375.4(b)(6) through (m) remain unchanged.

NOTE: Authority cited: Sections 5058 and 5058.3, Penal Code. Reference: Sections 4502, 5054 and 5068, Penal Code; *Wright v. Enomoto* (1976) 462 F.Supp. 397; and *Stoneham v. Rushen* (1984) 156 Cal.App.3d 302.

Section 3375.5 CDCR Readmission Score Sheet, CDCR Form 841, Calculation.

Subsections 3375.5(a) through (b)(5) remain unchanged.

Subsection 3375.5(b)(6) is amended to read:

For each well-documented serious disciplinary for possession, manufacture or attempted manufacture of a deadly weapon where apparent use was intended, 16 points shall be entered in Boxes 66–67. Points shall not be assessed for possession of commonly available and unmodified objects, unless they were used as weapons and that fact is documented in the disciplinary report. Include possession of a razor blade (whether modified or not) in a segregated program-housing unit (e.g., Administrative Segregation Unit, Security Housing Unit, Psychiatric Services Unit, etc.).

Subsections 3375.5(b)(7) through (k)(1)(B)3 remain unchanged.

NOTE: Authority cited: Sections 5058 and 5058.3, Penal Code. Reference: Section 4502, 5054, Penal Code.

FINAL STATEMENT OF REASONS

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

DETERMINATIONS, ASSESSMENTS, MANDATES, AND FISCAL IMPACT:

The Department has determined that no alternative considered would be more effective in carrying out the purpose for which this regulation is proposed, or would be as effective and less burdensome to affected private persons, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law, than the action proposed. No such alternatives were proposed or brought to the department's attention during the adoption of this rulemaking action.

The Department has made an initial determination that the action will not have a significant adverse economic impact on business. Additionally, there has been no testimony or other evidence provided that would alter the CDCR's initial determination.

The Department has determined that this action imposes no mandates on local agencies or school districts, or a mandate which requires reimbursement pursuant to Part 7 (Section 17561) of Division 4 of the Government Code.

The Department has determined that no reasonable alternatives to the regulation have been identified or brought to the attention of the department that would lessen any adverse impact on affected private persons or small businesses than the action planned.

The Department, in proposing the adoption of these regulations, has not identified nor has it relied upon any technical, theoretical, or empirical study, report, or similar document. The Department has relied upon the results of the Economic Impact Assessment, which can be found in the Notice of Proposed Regulations and is available for review as part of the rulemaking file.

CHANGES TO TEXT AFTER THE PUBLIC COMMENT PERIOD

Section 3043.8, Impact of Transfer on Credit Earning, was previously renumbered to 3044.2 by an Emergency Operational Necessity (EON) filing by the Department. This EON filing deleted subsection 3044.2(e)(2). As this was the only substantive change to this section as part of the Gassing and Restricted Housing rulemaking action, the Department has elected to remove this section entirely from this rulemaking action. The deletion of the reference citation (Penal Code section 2933.6) will not be made, as this deletion was related to the deletion of subsection (e)(2). The EON filing left this reference citation in place, therefore this rulemaking action will not make any changes to the reference citations.

Section 3045.1, Timekeeping for Inmates in Administrative Segregation, was also amended as part of the same EON that renumbered and amended section 3043.8. The Department will defer to the changes made as part of this EON filing, and will not make any amendments to section 3045.1 as part of the Gassing and Restricted Housing rulemaking action.

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

No comments were received regarding this rulemaking action during the public comment period.

PUBLIC HEARING:

At the request of a member of the public, a teleconference public hearing was held on September 1, 2021. The Department posted a notice of this teleconference public hearing on its website

on August 13, 2021, and mailed or emailed the notice to all individuals and/or organizations who have requested to receive notice of proposed changes to regulations on August 20, 2021.

No comments were received during the teleconference public hearing.