



Department of Corrections and Rehabilitation  
NOTICE OF CHANGE TO REGULATIONS

<b>Sections:</b> 3000 and 3293	<b>NCR Number:</b> 22-01	<b>Publication Date:</b> January 14, 2022
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**INSTITUTION POSTING AND CERTIFICATION REQUIRED**

This Notice announces the proposed amendment of sections 3000 and 3293 of the California Code of Regulations (CCR), Title 15, Crime Prevention and Corrections, Division 3, Chapter 1, regarding Computer Voice Stress Analyzer examinations.

**PUBLIC COMMENT PERIOD**

The public comment period will close on **March 11, 2022**. Any person may submit written comments about the proposed regulations by mail to the California Department of Corrections and Rehabilitation (CDCR or the department), Regulation and Policy Management Branch (RPMB), P.O. Box 942883, Sacramento, CA 94283-0001, or by e-mail to [RPMB@cdcr.ca.gov](mailto:RPMB@cdcr.ca.gov). All written comments must be received or postmarked no later than **March 11, 2022**.

**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 R. Ruiz, by mail to California Department of Corrections and Rehabilitation, RPMB, P.O. Box 942883, Sacramento, CA 94283-0001, by telephone at (916) 445-2244, or e-mail to [RPMB@cdcr.ca.gov](mailto:RPMB@cdcr.ca.gov). Inquiries regarding the subject matter of these regulations should be directed to Coyt Shirley, Division of Adult Institutions, at (916) 327-2725.

*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, proposes to amend sections 3000 and 3293 of the CCR, Title 15, Division 3, Chapter 1, regarding Computer Voice Stress Analyzer examinations.

**PUBLIC COMMENT PERIOD**

The public comment period begins **January 14, 2022** and closes on **March 11, 2022**. Any person may submit written comments by mail addressed to the primary contact person listed below, or by email to [rpmb@cdcr.ca.gov](mailto: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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**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**

Current regulations authorize the department to administer polygraph examinations to inmates and parolees during the course of an investigation of official matters. These regulations authorize the department to administer Computer Voice Stress Analyzer (CVSA) examinations in addition to the authorized polygraph examination to inmates and parolees during the course of an investigation of official matters.

The CVSA is a computer-based instrument that works by measuring micro-tremors (inaudible vibrations) in the human voice that vary according to the amount of stress a person is experiencing. The instrument processes the voice frequencies and graphically displays the fluctuations of the voice patterns in real-time with the subject's answers, and analyzes, evaluates and quantifies each pattern for deception.

The courts, law enforcement, and other sectors of government have recognized that, while results are not admissible as conclusive evidence in court, CVSA determinations are useful, especially in instances of conflicting testimony and for directing investigative efforts into a threat assessment.

### **This action will:**

- Provide authority to the department to administer CVSA examinations to inmates and parolees during the course of an official investigation.
- Provide the definition of three new terms related to CVSA examinations, and revise the existing definition of examinee.
- Establish a procedure to be followed when conducting a CVSA examination.

## **DOCUMENTS INCORPORATED BY REFERENCE**

None

## **SPECIFIC BENEFITS ANTICIPATED BY THE PROPOSED REGULATIONS**

The proposed regulations will benefit the welfare of California residents by helping to make CDCR institutions and parole offices safer for inmates, persons on parole, and CDCR facilities staff, visitors, contractors and their employees, and volunteers as the department anticipates additional information collected through the CVSA examination will help guide an investigation in the proper direction.

Without examination interruptions, inmates and parolees will be able to continue with their normal programming schedules allowing them to focus on their rehabilitation resulting in more productive citizens being released into the community which will help create a safer community. Additionally, persons who are able to complete additional rehabilitation education may have greater success outside of a custody environment lowering the chances of their recidivism.

## **EVALUATION OF INCONSISTENCY / INCOMPATIBILITY WITH EXISTING LAWS AND REGULATIONS**

Pursuant to Government Code section 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 the proposed regulations concerning computer voice stress analyzer examinations are consistent and compatible with existing regulations and recent case law concerning computer voice stress analyzer examinations.

## **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 that 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 that 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 and parole offices 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 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](http://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

### Title 15. Crime Prevention and Corrections

#### Division 3. Adult Institutions, Programs and Parole

#### Chapter 1. Rules and Regulations of Adult Operations and Programs

#### Article 1. Behavior

#### 3000. Definitions.

The following are definitions of terms as used in these regulations:

...

Collateral Contact means any communication between a Division of Adult Parole Operations staff and another person concerning a parolee.

The Computer Voice Stress Analyzer is a computer-based instrument with a microphone that detects changes in the examinee's voice that are indicative of stress. The presence of stress-induced vocal changes when correlated directly to specific questions suggests the examinee is being deceptive.

Computer Voice Stress Analyzer Examination means the procedures by which a Computer Voice Stress Analyzer Examiner interviews an examinee in an effort to establish truth or deception.

Computer Voice Stress Analyzer Examiner means a department staff person who has successfully completed the Certified Examiner's Course or Recertification Course provided by National Institute for Truth Verification Federal Services or the National Association of Computer Voice Stress Analysts, and who is certified to administer the Computer Voice Stress Analyzer Examination, to analyze and interpret the Computer Voice Stress Analyzer data, and to render an opinion as to the veracity of statements made by an examinee.

...

Escape History refers to any reliable information or inmate self-admission in the central file to an escape, attempted escape, walkaway, or plan to escape. The available information describing the circumstances of the escape or attempted escape shall be evaluated in determining the level of risk to correctional safety and security posed by the inmate.

Examinee means a person ~~an inmate or parolee~~ who voluntarily takes a Computer Voice Stress Analyzer Examination or polygraph examination.

...

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, 4570, 4576, 5007.7, 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**

### **Article 2**

#### **3293. Polygraph and Computer Voice Stress Analyzer Examinations.**

**Subsections 3293(a) and 3293(b) are unchanged.**

**New subsections 3293(c) through 3293(d) are adopted.**

(c) Computer Voice Stress Analyzer examinations, as defined in section 3000, shall be administered by a Computer Voice Stress Analyzer Examiner, as defined in section 3000, to an Examinee, as defined in section 3000, under the following conditions:

(1) The Examinee consents to the Computer Voice Stress Analyzer examination and knowingly and voluntarily agrees to the examination on CDC Form 128B (Rev. 4/74), General Chrono.

(2) The Computer Voice Stress Analyzer Examiner's certification is current.

(3) The Hiring Authority approves the use of the Computer Voice Stress Analyzer Examination as part of an investigation into a threat assessment.

(4) The Computer Voice Stress Analyzer Examination shall be audio recorded.

(d) Computer Voice Stress Analyzer Examinations shall not be used as an alternative to regulatory requirements for determining a person's guilt or innocence of charges in disciplinary matters.

Note: Authority cited: Section 5058, Penal Code. Reference: Section 3307, Government Code; Section 5054, Penal Code; and *Long Beach City Employee's Association v. City of Long Beach* (1986) 41 Cal.3rd 937, 227 Cal.Rptr. 90.

## **INITIAL STATEMENT OF REASONS**

The California Department of Corrections and Rehabilitation (CDCR or the department) proposes to amend the California Code of Regulations (CCR), Title 15, Division 3, sections 3000 and 3293 regarding Computer Voice Stress Analyzer (CVSA) examinations.

The CVSA is a computer-based instrument that works by measuring micro-tremors (inaudible vibrations) in the human voice that vary according to the amount of stress a person is experiencing. The instrument processes the voice frequencies and graphically displays the fluctuations of the voice patterns in real-time with the subject's answers, analyzes, evaluates, and quantifies each pattern for deception. A CVSA examination is a process where the Computer Voice Stress Analyzer Examiner renders an opinion as to the veracity of statements made by an Examinee.

The courts, law enforcement, and other sectors of government have recognized that while results are not admissible as conclusive evidence in court, CVSA determinations are useful, especially in instances of conflicting testimony and for directing investigative efforts into a threat assessment.

### **CONSIDERATION OF ALTERNATIVES:**

The department must determine that no reasonable alternative 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 department has made the following assessments regarding the proposed regulations:

#### **Significant 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 on business, including the ability of California businesses to compete with businesses in other states, because the proposed regulations affect only the internal management of CDCR institutions.

#### **Creation of New or 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. The proposed regulations place no requirements or restrictions on businesses inside or outside of California, as they affect only the internal management of CDCR institutions.

#### **Creation of New or Expansion 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, expansion or elimination of existing business currently doing business within California. The proposed regulations place no requirements or



restrictions on businesses inside or outside of California, as they affect only the internal management of CDCR institutions and persons who are paroled.

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

The CVSA instrument is more cost-effective and takes less time to administer than the traditional polygraph test, resulting in a savings of time and money to the State. Unlike polygraph examinations, the CVSA allows for a more relaxed atmosphere since the subject isn't hooked up to special sensors and pressure cuffs. Instead, subjects simply answer questions while a microphone is clipped to their clothing. This calmer environment makes it easier to distinguish a stressed response, since the technology is less likely to pick up situational stress caused by a difficult examination process.

This action will provide CDCR technology to assist investigators and management with making critical decisions and the department anticipates the regulations will provide additional information collected through the examination which will help guide an investigation in the proper direction. The proposed regulations will benefit the welfare of California residents by helping to make CDCR institutions and parole offices safer for inmates, persons on parole, and CDCR facilities staff, visitors, contractors, and their employees, and volunteers.

Without additional interruptions when conducting an investigation, inmates and parolees will be able to continue with their normal programming schedules allowing them to focus on their rehabilitation resulting in more productive citizens being released into the community which will help create a safer community. Additionally, persons who are able to complete additional rehabilitation education may have greater success outside of a custody environment lowering the chances of their recidivism.

### **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 SECTION 11346.2(b)(1):**

**Section 3000 is amended to** adopt new definitions for the terms Computer Voice Stress Analyzer, Computer Voice Stress Analyzer Examination and Computer Voice Stress Analyzer Examiner, and revise the existing definition of the term Examinee to include reference to Computer Voice Stress Analyzer examinations. These definitions are necessary for clarity to ensure understanding of terms.

**The title of section 3293 is amended** to reference "Computer Voice Stress Analyzer" as regulations for Computer Voice Stress Analyzer examinations are included in this section.

**Subsections 3293(a) and 3293(b) are unchanged.**

**New subsection 3293(c) is adopted to** state the department will conduct CVSA examinations in accordance with the new CVSA definitions included in section 3000, and to establish the conditions under which CVSA examinations may be administered. This is necessary for clarity concerning the types of examinations inmates and parolees may receive, and helps to minimize abuse of authority resulting in unjust CVSA examinations or in the misapplication of CVSA examinations.

**New subsection 3293(c)(1) is adopted to** establish that the examinee must consent in writing to the CVSA examination on a CDC Form 128B before the examination may be administered. This is necessary to ensure persons who undergo a CVSA examination are fully aware of the examination and agree to the examination knowingly and voluntarily.

**New subsection 3293(c)(2) is adopted to** state that persons administering CVSA examinations are trained and certified to administer CVSA examinations.

**New subsection 3293(c)(3) is adopted to** establish that a CVSA examination may be conducted if the hiring authority approved the examination as part of a threat assessment investigation. This is necessary to maintain safety and security of the CDCR facility.

**New subsection 3293(c)(4) is adopted to** establish that CVSA examinations shall be audio recorded. This is necessary to protect both the persons who are undergoing the CVSA examination and the department by maintaining a record of the administered CVSA examination.

**New subsection 3293(d) is adopted to** establish that CVSA examinations shall not be used as an alternative to existing regulatory requirements to determine guilt or innocence in disciplinary matters. This is necessary to protect persons who have received a CVSA examination from being found guilty of a disciplinary charge based on the results of the CVSA Examination. The conclusions reached by the CVSA examiners are expert opinions, but they cannot be used as the sole basis for determining a person's guilt or innocence in a court of law.