

**State of California
Office of Administrative Law**

In re:
**Department of Corrections and
Rehabilitation**

Regulatory Action:

Title 15, California Code of Regulations

Adopt sections: 3261.6
Amend sections: 3261.2, 3261.3, 3261.5,
3261.7
Repeal sections: 3261.6

**NOTICE OF APPROVAL OF REGULATORY
ACTION**

Government Code Section 11349.3

OAL Matter Number: 2021-1004-01

OAL Matter Type: Regular (S)

This action amends regulations regarding news and non-news media.

OAL approves this regulatory action pursuant to section 11349.3 of the Government Code. This regulatory action becomes effective on 7/1/2022.

Date: March 21, 2022



**Anna Thomas
Attorney**

**For: Kenneth J. Pogue
Director**

Original: Kathleen Allison, Secretary
Copy: Shelley Alarid

REGULAR

See instructions on reverse)

For use by Secretary of State only

NOTICE PUBLICATION/REGULATORY SUBMISSION

STD. 400 (REV. 10/2019)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-2021-0413-07	REGULATORY ACTION NUMBER 2021-1004-015	EMERGENCY NUMBER
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For use by Office of Administrative Law (OAL) only

OFFICE OF ADMIN. LAW
2021 OCT 4 PM4:04

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

MAR 21 2022

3:41 pm

NOTICE	REGULATIONS
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AGENCY WITH RULEMAKING AUTHORITY California Department of Corrections and Rehabilitation	AGENCY FILE NUMBER (If any) 2021-0413-07
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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 Disapproved/Withdrawn	ACTION ON PROPOSED NOTICE	NOTICE REGISTER NUMBER	PUBLICATION DATE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) News and Non-News Media	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) <i>per agency request 3/21/22</i>
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 3261.6
	AMEND 3261.2, 3261.3, 3261.5, 3261.6, 3261.7
TITLE(S) 15	REPEAL 3261.6

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 Shelley Alarid	TELEPHONE NUMBER (916) 445-2287	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional) shelley.alarid@cdcr.ca.gov
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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.

DocuSigned by: SIGNATURE OF AGENCY HEAD OR DESIGNEE <i>Kathleen Allison</i>		DATE 9/16/2021
TYPED NAME AND TITLE OF SIGNATORY KATHLEEN ALLISON, Secretary, California Dept. of Corrections and Rehabilitation		

For use by Office of Administrative Law (OAL) only
ENDORSED APPROVED
MAR 21 2022
Office of Administrative Law

Adopted Regulatory Text

Title 15. Crime Prevention and Corrections

Division 3. Rules and Regulations of Adult Institutions, Programs, and Parole

Subchapter 4. Article 1, Public Information and Community Relations

Sections 3260 through 3261.1 are unchanged.

3261.2. Authorized Release of Information.

Subsections 3261.2(a) through 3261.2(c) are unchanged.

Subsection 3261.2(d) is amended to read:

(d) Information derived from a person's Criminal Identification and Investigation Report shall not be provided to the media or to the public. Information about the State prison history of parolees or former offenders who have been arrested or are under investigation by an outside law enforcement agency will only be released with authorization from the arresting or investigating agency.

Subsection 3261.2(e) is amended to read:

(e) Including the limitations of (c) and (d) above, the only inmate or parolee data which may be released without a valid written authorization from the inmate or /parolee to the media or to the public includes the inmate's or parolee's:

Subsections 3261.2(e)(1) through 3261.2(e)(9) are amended and renumbered to read:

(1) Name.

(2) Age.

(3) Race and/or ethnicity.

~~(4)~~ Birthplace.

~~(5)~~ County of last legal ~~Place of previous~~ residence.

~~(6)~~ Commitment offense ~~information obtained from their adult probation officer's report.~~

~~(7)~~ Date of admission to CDCR and CDCR number. ~~Facility assignments and behavior.~~

~~(8)~~ Facility assignments and a general description of behavior.

~~(9)~~ General state of health, ~~Patient health condition~~ given in short and ~~non-medical~~ general terms that do not communicate specific medical information about the individual, such as good, fair, serious, critical, treated and released, or undetermined. ~~poor, or stable.~~

~~(10)~~ Cause ~~Manner of death~~ as natural, homicide, suicide, accidental, or executed.

~~(11)~~ Sentencing and release actions, including month and year of current parole eligibility date.

Subsection 3261.2(f) is unchanged.

Subsection 3261.2(g) is amended to read:

(g) Information endangering an employee or concerning an employee who is a crime victim shall not be released to the media or to any member of the public.

Note: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code; Sections 56.10, 1798.20, 1798.30 and 1798.40-42, Civil Code; Sections 6250-6276.48, Government Code; and Code of Federal Regulations, Title 45, Parts 160 and 164; Michael Broadheim v. CDCR (Super. Ct San Francisco County, 2020, No. CPF-20-516978); Catalin Voss, Yun Hong, Kristen Bell, and Nicholas McKeown v. CDCR (Super. Ct San Francisco County, 2020, No. CPF-20-517117).

3261.3. Notifying Media of Escapes.

Subsection 3261.3(a) is unchanged.

Subsection 3261.3(b) is amended to read:

(b) When available, the missing inmate's identification photograph or short escape bulletin shall be furnished to the notified television stations and newspapers. ~~If a photograph or short escape bulletin are not available for distribution, the media shall be informed that one is posted at the facility's front entrance where they will be permitted to take a picture of it for their use.~~

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

Existing Section 3261.4. Media Inquiries is unchanged.

3261.5. Routine Media Interviews.

Subsection 3261.5(a)(1) is amended to read:

(a) Definitions.

(1) "News media representative" ~~is means~~ a journalist who works for, or is under contract to, a newspaper, magazine, wire service, book publisher, website, podcast, ~~or~~ radio or television program or station or who, through press passes issued by a governmental or police agency, ~~or through similar convincing means,~~ can demonstrate that ~~he or she is~~ they are a bona fide journalist engaged in the gathering of information for distribution to the public.

Subsections 3261.5(a)(2) through Subsection (d)(1) are unchanged.

Subsection 3261.5(d)(2) is unchanged but shown for reference.

(2) Non-news media representative requests for access to departmental facilities, on-duty staff or inmates shall include project and production details as necessary to determine security and operational impacts.

Subsection 3261.5(d)(3) is amended to read:

(3) Non-news media representative film productions require a California Film Commission permit, along with evidence of financial responsibility and general and automobile liability insurance of at least in an amount not less than \$1 million indemnifying and defending the State of California, its officers, employees and agents against any lawsuits. Automobile liability insurance is not required if no vehicles are used in or for filming.

Statutory Workers Compensation and Employers' Liability is also required. If a company has no employees, a Workers Compensation waiver letter must be submitted to the California Film Commission.

Subsections 3261.5(e) through 3261.5(l) are unchanged.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 2601 and 5054, Penal Code; and *Pell v. Proconier*, 94 S.Ct. 2800 (1974).

The Title of Section 3261.6 Seriously or Terminally Ill Inmate Media Interviews is amended to read:

3261.6. Seriously or Terminally Ill Inmate Media Interviews. Access to Correctional Health Care Facilities and Patients.

Existing Subsection 3261.6(a) is repealed:

~~(a) Media interviews shall not be permitted with an inmate suffering from a mental illness when, in the opinion of a psychiatrist or psychologist, the inmate is not capable of giving informed consent or their condition may be worsened by such an interview.~~

New Subsection 3261.6(a) is adopted to read:

(a) News and non-news media representatives may be allowed controlled access under institution escort to patients and their housing areas in order to safeguard the public's right to know while respecting patients' legal right to health care privacy. The Assistant Secretary, Communications; the Undersecretary of Health Care Services; and institution health care staff shall be notified in advance of all news media events involving inmate patients. Access shall require approval of the Warden, the Health Care Chief Executive Officer (CEO), and the Assistant Secretary, Communications, or their designee.

Existing Subsection 3261.6(b) is repealed:

~~(b) Controlled access may be permitted to seriously or terminally ill patients and their housing areas. Random interviews in such unit shall be closely monitored and shall be terminated if a majority of the unit's inmates object.~~

New Subsection 3261.6(b) is adopted to read:

(b) Random interviews in units housing patients shall be closely monitored to protect health care privacy. To safeguard patients' legal right to privacy, health care staff shall ensure that signs, charts and/or any other patient identifiers are not visible. Clinical and non-clinical staff members are not to divulge any patient's protected health information.

Existing Subsection 3261.6(c) is repealed:

~~(c) No more than two visits per calendar month to a unit housing seriously or terminally ill inmates shall be allowed. Visits shall be on a first come, first served basis with a waiting list to be maintained by the facility's public information officer. A "pool" of no more than ten media persons per visit shall be permitted.~~

New Subsection 3261.6(c) is adopted to read:

(c) Requests from news and non-news media representatives to visit contracted health care facilities must be received in writing by CDCR or CCHCS at least 30 days in advance in order to coordinate with the contractor in accordance with section 3261.6(a).

New Subsection 3261.6(d) is adopted to read:

(d) News and non-news media access is not permitted within units with mental health crisis beds or any area housing patients under medical isolation or quarantine.

New Subsection 3261.6(e) is adopted to read:

(e) To protect the integrity of delivering patient care, news and non-news media access to clinical areas where health care is delivered (e.g. dialysis centers, dental clinics, triage and treatment areas) may only be allowed when no patients are present.

New Subsection 3261.6(f) is adopted to read:

(f) News and non-news media representatives may be permitted random face-to-face interviews with patients receiving health care services and living in units that provide health care treatment. Such interviews shall be conducted as stipulated by the Warden and the Health Care CEO, including restricting the time, place and duration of interviews, and size of technical crews in accordance with section 3261.6(a).

New Subsection 3261.6(g) is adopted to read:

(g) News and non-news media access to units housing seriously or terminally ill inmates may be permitted on a case-by-case basis. Consideration shall be given to factors that may disrupt the operation of the unit. Participation is restricted to patients who have the capacity for giving informed consent. Filming, video and/or audio recording, and photographing will not be allowed of patients who do not have the capacity to give informed consent.

New Subsection 3261.6(h) is adopted to read:

(h) News and non-news media interviews shall not be permitted with an inmate suffering from a mental illness which, in the opinion of a psychiatrist or psychologist, renders them incapable of giving informed consent or their condition may be worsened by such an interview. Individuals who are severely ill or injured, medicated, are cognitively impaired, suffer from dementia, or are experiencing severe pain, anguish or grief often lack the capacity to give consent and shall not be approached by news and non-news media representatives. Consent shall only be obtained from patients who are awake, alert and have the capacity to understand the consequences of giving informed consent.

Note: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code; ~~and Sections 1798.41 and 1798.42, Civil Code;~~ Code of Federal Regulations, Title 45, Parts 160 and 164.

3261.7 Cameras and Other Audio or Visual Recording Devices.

Subsection 3261.7(a) is amended to read:

(a) Staff cannot prohibit a person who is not on State or leased facility property under CDCR's jurisdiction from photographing, filming, videotaping or otherwise recording any Department facilities, employees, inmates, parolees or equipment.

Subsection 3261.7(b) is unchanged.

Subsection 3261.7(c) is unchanged but shown for reference:

(c) Photographs, films or videotapes for other than department purposes which reveal an inmate's identity may be taken within a facility subject to the following conditions:

Subsection 3261.7(c)(1) is amended to read:

(1) A CDCR Form 146 (Rev. 06/08), Inmate Declaration to News Media Contact, shall be completed for each inmate before a photograph, film, audio recording, or videotape identifying the inmate may be taken.

Subsections 3261.7(c)(2) through 3261.7(c)(3) are unchanged.

Subsection 3261.7(d) is amended to read:

(d) Unless there is a specified threat of imminent danger to an inmate or parolee by releasing their departmental identification photograph, or unless the release of their photograph could jeopardize an ongoing law enforcement investigation, news media representatives as defined in Subsection 3261.5(a)(1) and non-news media representatives as defined in Subsection 3261.5(a)(2) shall be permitted access to photographs without the inmate's or parolee's consent.

Subsection 3261.7(d)(1) is repealed.

~~(1) News media and non-news media representatives shall pay for the facility's cost to provide such requested departmental identification photographs.~~

Existing Subsection 3261.7(d)(2) is renumbered as Subsection 3261.7(d)(1).

~~(2)~~ (1) Current departmental identification photographs of escaped inmates and parolees at large shall be provided without charge.

Subsection 3261.7(e) and 3261.7(f) are unchanged.

Subsection 3261.7(g) is amended to read:

(g) Before photographers and camera operators enter a facility, they shall be informed of any restrictions, including that photographs or recordings are prohibited of: persons without their consent; and procedures, equipment or structures, which ~~will comprise~~ compromise security.

New Subsection 3261.7(h) is adopted to read:

(h) Media access to parole hearings is governed by the California Code of Regulations, Title 15, Division 2, Sections 2031 and 2032. Requests to attend hearings must be submitted in accordance with those regulations. The Executive Officer of the Board of Parole Hearings approves news and non-news media representatives' requests to attend parole hearings and must authorize media representatives' use of cameras and recording devices at parole hearings.

Existing Subsection 3261.7(h) is renumbered as Subsection 3261.7(i).

~~(h)~~ (i) Any photographs, film, video tape or other recording taken within facilities in violation of these regulations shall be seized and placed undamaged, undeveloped and

unviewed in a secure area. The news media or non-news media representative's supplies and equipment shall not be damaged.

Note: Authority cited: Section 5058, Penal Code. Reference: Section 4570, 4570.1 and 5054, Penal Code.

FINAL STATEMENT OF REASONS

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

UPDATES TO THE INITIAL STATEMENT OF REASONS:

The Notice of regulations was published in the California Regulatory Notice Register on April 23, 2021, with the public comment period commencing that day through June 11, 2021. The Notice of Proposed Regulations, including the text of the regulations and ISOR, was mailed six days later on April 29, 2021. Due to the delay in sending the proposed rulemaking action to all persons who requested to be placed on the department's mailing list to receive notifications of rulemaking actions, the department included a Notice of Extension of Written Comment Period extending the public comment period until June 18, 2021.

These documents were also posted on the department's websites. During the 45-day comment period, no written comments were received except for two requests for a public hearing. The two requests were sent by mail and were inadvertently lost. In response to these two requests, the department scheduled and sent notice of a teleconference public hearing to be held at 9:00 a.m. on June 18, 2021. Inadvertently there was an error made on the Notice of Teleconference Public Hearing regarding the close of comment period. The notice stated the close of comment period as June 11, 2021 which was incorrect because it did not include the seven day extension that was mailed out. There were no public comments received during the teleconference.

On March 2, 2022, 15-day re-notice published, posted and mailed. The revision reflected in the re-notice include revisions to the text that were necessary to comply with the Clarity and Consistency standards of the Administrative Procedure Act. The public comment period for the 15-day re-noticed closed on March 17, 2022 and no comments were received.

Changes in the text that was re-notice on March 2, 2022 included the following:

Subsection 3261.5(d)(3) is amended to remove "with a limit of \$1 million," because it was inadvertently included due to a misunderstanding that it was a statutory requirement. The department reviewed this section and made the proposed change pursuant to California Labor Code sections 3700, 1860, and 1861 which have also been included in the note section. For additional clarity, the department added California Insurance Code Section 11580.1 and California Vehicle Code Sections 16450 to 16457 in the note section, as the initial proposed changes to regulations in this subsection were pursuant to these California Vehicle and Insurance Codes.

Subsection 3261.6(c) is amended to clarify that CDCR or California Correctional Health Care Services (CCHCS) will be the department to receive the request from news and non-news media representatives to visit contracted health care facilities in order to coordinate with the contractor for access in accordance with section 3261.6(a).

Subsection 3261.6(f) is amended to clarify that random face-to-face interviews permitted will be in accordance with section 3261.6(a). This amendment also makes clear that the Health Care Chief Executive Officer and the Warden are authorized to restrict specified aspects of such interviews including time, place, duration of interviews, size of technical crews, and the amount and type of equipment.

New subsection 3261.6(h) is amended to include a non-substantial change which is to include the words "news and non-news" for consistency with the text. The term "should" has been replaced with the term "shall" for clarity, to denote a mandatory requirement

when news and non-news media interviews shall not be permitted with an incarcerated patient who lacks to capacity to give informed consent.

Subsection 3261.6 “Note:” is amended to remove the reference to section 3999.98 in Title 15 California Code of Regulations.

Subsection 3261.7(a) is amended to include State or leased property under CDCR’s jurisdiction. The purpose of this change is to clarify that staff cannot prohibit a person who is not on State or leased property under CDCR’s jurisdiction from photographing, filming, videotaping or otherwise recording department facilities, employees, offenders or equipment.

Minor non-substantial strikethrough and grammar changes that were inadvertently left out in the initial notice to the public were made to sections 3261.2 and 3261.7.

Minor non-substantial change was made to the “Note:” section in 3261.5 to italicize court case *Pell v. Proconier*.

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 the 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 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 (commencing with Section 17500) 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 business than the action planned.

DOCUMENTS RELIED UPON:

A listing and explanation of documents relied upon in the development of the proposed regulations, and links to the documents may be found on page four of ISOR. The documents themselves are available in the rulemaking file.