REGULATION AND POLICY MANAGEMENT BRANCH
P.O. Box 942883
Sacramento, CA 94283-0001

December 29, 2022

CORRECTED NOTICE OF CHANGE TO TEXT AS ORIGINALLY PROPOSED

The California Department of Corrections and Rehabilitation (CDCR or the department) is providing Notice of Changes to Text as Originally Proposed regarding Computer Voice Stress Analyzer Examinations. You are receiving this notice and revised text because you provided a written comment. Notice of Change to Regulations (NCR) 22-01 was published in the Office of Administrative Law Notice Register and distributed by the department on January 14, 2022. The department inadvertently noticed the wrong version of the modified regulation text on October 13, 2022, and the correct version is the one being noticed now for public comment. All comments received on this modified text will be summarized and responded to in the Final Statement of Reasons.

The originally proposed amendments are shown in original single underline and ~~strikethrough~~ format. The changes provided in this Notice of Change To Text As Originally Proposed are indicated by **bold double underline** for additional added text**,** and **~~bold double strikethrough~~** for additional deleted text to the originally proposed text.

In the attached text:

For additional clarity, the definition of Computer Voice Stress Analyzer Examiner is amended to include the acronym “NITV” in reference to the “National Institute for Truth Verification Federal Services.” The change is necessary because the National Institute for Truth Verification uses the NITV acronym. For additional clarity, the word “the” is added before the reference to the “National Institute for Truth Verification Federal Services.”

In reference to the certification to administer Computer Voice Stress Analyzer Examinations, to analyze and interpret the Computer Voice Stress Analyzer, and to render an opinion as to the veracity of statements made by the examinee, the following text is added for additional clarity, “by NITV Federal Services or the National Association of Computer Voice Stress Analysts.”

Certifications from the above agencies are accepted by the department as these entities are reputable in this field. Additionally, there are no other reputable sources of similar certifications.

The definition of “Examinee” is amended to provide additional clarity and to differentiate between the persons who are administered polygraph examinations, and those who are administered computer voice stress analyzer examinations.

In reference to polygraph examinations, the text “inmate or parolee” is removed and the term “person” is reverted back into the definition as employees may receive polygraph

examinations, and the terms “inmate” or “parolee” did not include this population. The text, “Computer Voice Stress Analyzer Examination” is removed from the beginning part of the definition that references polygraph examinations and placed in the second half of the Examinee definition that references Computer Voice Stress Analyzer Examinations.

The “Examinee” definition now reads:

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

Section 3000 Reference citations are updated for accuracy.

For additional clarity concerning the term “Hiring Authority,” cross-reference to section 3392(a)(11) is added to section 3293(c)(3).

The comment period for these revisions will begin on December 29, 2022, and close on January 13, 2023. Please submit comments by e-mail to RPMB@cdcr.ca.gov, or in writing to Regulation and Policy Management Branch, Department of Corrections and Rehabilitation, P.O. Box 942883, Sacramento, CA, 94283-0001, before the close of the public comment period. Comments must be received or postmarked no later than January 13, 2023. Only those comments relating directly to this notice or the enclosed amendments indicated by **bold double underline** or **~~bold double strikethrough~~** will be considered.

YING SUN, Associate Director
Regulation and Policy Management Branch
Department of Corrections and Rehabilitation

Attachment

CORRECTED RENOTICE TEXT OF PROPOSED REGULATIONS

In the following text, **~~bold double strikethrough~~** indicates deleted text and **bold double underline** indicates added text from the text initially noticed to the public. The original single ~~strikethrough~~ and single underline from the initial Notice of Change to Regulations are retained, showing changes from the current text of the California Code of 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 **the** National Institute for Truth Verification **("NITV")** Federal Services or the National Association of Computer Voice Stress Analysts, and who is certified **by NITV Federal Services or the National Association of Computer Voice Stress Analysts** 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~~ a person** who voluntarily takes a **~~Computer Voice Stress Analyzer Examination or~~** polygraph examination**, or an inmate or parolee who voluntarily takes a Computer Voice Stress Analyzer 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), 3007.05, 3020, 3450, 3550, 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; Section 11007, Health and Safety 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; *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 **E**~~e~~xaminations, 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 **E**~~e~~xamination 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**, as the term is defined in section 3392(a)(11),** 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.