



## Department of Corrections and Rehabilitation NOTICE OF CHANGE TO REGULATIONS

<b>Sections:</b> 3075, 3097, 3122, 3161, 3375.2, 3376.1, 3377.2	<b>NCR Number:</b> 23-01	<b>Publication Date:</b> January 20, 2023	<b>Effective Date:</b> TBD
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### INSTITUTION POSTING AND CERTIFICATION REQUIRED

This Notice announces the proposed amendment of Sections 3075, 3097, 3122, 3161, 3375.2, 3376.1, and 3377.2 of the California Code of Regulations (CCR), Title 15, Crime Prevention and Corrections, Division 3, Chapter 1, regarding the Condemned Inmate Transfer Program.

### PUBLIC COMMENT PERIOD

The public comment period will close on **March 8, 2023**. 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](mailto:RPMB@cdcr.ca.gov). All written comments must be received or postmarked no later than **March 8, 2023**.

### PUBLIC HEARING INFORMATION

A public hearing regarding these proposed regulations will be held **March 8, 2023, from 10:00 a.m. to 11:00 a.m. in Conference Room 150, located at 1515 S Street, Sacramento, CA 95811**. The purpose of the hearing is to receive comments about the proposed regulations. It is not a forum to debate the proposed regulations. No decision regarding the permanent adoption of these regulations will be rendered at this hearing. Written comments submitted during the prescribed comment period are given the same significance and weight as oral comments presented at the hearing. This hearing site is accessible to the mobility impaired.

### 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 Josh Jugum, by mail to California Department of Corrections and Rehabilitation, RPMB, P.O. Box 942883, Sacramento, CA 94283-0001, by telephone at (916) 445-2266, 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 Tracy Snyder, Division of Adult Institutions, at (916) 324-6808.

*Original Signed By:*

JEFF MACOMBER  
Secretary  
California Department of Corrections and Rehabilitation

Attachment

**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 3075, 3097, 3122, 3161, 3375.2, 3376.1, and 3377.2 into Title 15, Division 3, Chapter 1, regarding the Condemned Inmate Transfer Program.

**PUBLIC HEARING**

Date and Time: **March 8, 2023 – 10:00am to 11:00am**  
Place: Department of Corrections and Rehabilitation  
Conference Room 150  
1515 S Street – North Building  
Sacramento, CA 95811  
  
Purpose: To receive comments about this action.

**PUBLIC COMMENT PERIOD**

The public comment period begins **January 20, 2023** and closes on **March 8, 2023**. 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.

**CONTACT PERSONS**

<u>Primary Contact</u>	<u>Back-Up</u>	<u>Program Contact</u>
Josh Jugum Telephone: (916) 445-2266 Regulation and Policy Management Branch P.O. Box 942883 Sacramento, CA 94283-0001	Y. Sun Telephone: (916) 445-2269 Regulation and Policy Management Branch P.O. Box 942883 Sacramento, CA 94283-0001	Tracy Snyder Telephone: (916) 324-6808 Division of Adult Institutions

**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.

## INFORMATIVE DIGEST / POLICY STATEMENT OVERVIEW

On November 8, 2016, the people of the state of California voted in support of the passage of Proposition 66, known as the Death Penalty Reform and Savings Act of 2016. As a result of the passage of this legislation, sections of the California Penal Code (PC) governing how the California Department of Corrections and Rehabilitation (CDCR or the department) manages the condemned population were adopted or amended. Section 3600 of the PC was amended to reflect that CDCR may transfer male condemned inmates to alternate institutions which it has determined can provide a level of security sufficient for that inmate. Previously, PC section 3600 mandated that male condemned inmates be housed at the prison designated by CDCR for the execution of the death penalty, which is San Quentin State Prison (SQSP).

The proposed regulatory changes implement and make specific the statutory authority to move male condemned inmates from SQSP to other institutions throughout the state commensurate with their case factors and security needs. Female condemned inmates will continue to be housed solely at Central California Women's Facility (CCWF) in compliance with PC sections 3601 and 3602, but transitioned to general population housing or other housing consistent with their case factors and security needs.

In addition, Proposition 66 also resulted in the adoption of PC section 2700.1 which requires that condemned inmates in the custody of CDCR be required to work as prescribed by the rules and regulations of the department. This statute also requires that when a condemned inmate owes a restitution fine or order, CDCR shall deduct 70% or the balance owing, whichever is less, from the condemned inmate's trust account deposits, regardless of the source of the income. CDCR is then required to transfer those funds to the California Victim Compensation Board (formally known as the California Victims Compensation and Government Claims Board).

The penal code now mandates that condemned inmates be required to work and pay larger amounts of trust account balances towards restitution fines and direct restitution orders. The institutional design of the condemned housing at SQSP and CCWF limits the availability of work assignments so that the department is unable to fully meet the work mandate as required in the penal code. The proposed regulatory changes will facilitate greater compliance with PC section 2700.1; therefore, CDCR has elected to move male condemned inmates to other institutions and re-house female condemned inmates in the general population at CCWF, consistent with their custody and security levels.

The inmate classification score system (ICSS) assigns a numerical preliminary score and placement score to each inmate. Preliminary scores are determined by a review of an inmate's case factors, including but not limited to: age at first arrest, age at reception to CDCR, length of prison term, and prior incarceration behavior. A mandatory minimum score is a classification score that is applied when an inmate has a case factor that requires that he or she be housed no lower than a specific security level. A mandatory minimum score, if greater than the preliminary score, supersedes the preliminary score and becomes the inmate's placement score. If a mandatory minimum score is less than the preliminary score, the preliminary score is the inmate's placement score. A lower placement score indicates lesser security control needs and a higher placement score indicates greater security control needs. Currently condemned inmates have a mandatory minimum placement score of 60 points, making their housing level placement no lower than that of a Level IV facility. The proposed mandatory minimum placement score of 19 points would allow placement no lower than a Level II facility, except when authorized by the Departmental Review Board (DRB). This change to the mandatory minimum would more accurately reflect the current demographic of the preliminary scores of the condemned population, of which over 50% reflect preliminary scores consistent with Level III and Level IV security levels.

Custody level is another term used to define a level of security assigned to each inmate. CDCR's inmate custody designation determines where an inmate is housed, the jobs that the inmate is eligible to be considered for, and the level of staff supervision that is required to ensure institutional security and public safety. Currently, CDCR houses condemned inmates as MAXIMUM custody at SQSP and

CCWF. This designation is due to the fact that the condemned population is segregated from the rest of the inmate population at each of these facilities in a more restrictive housing unit. Under the proposed regulatory change, CDCR would assign condemned inmates to a Close Custody designation for at least five years. This custody level will afford CDCR the highest custody level for an inmate in a non-segregated environment, while still allowing for the integration of the condemned population into the general population.

**This action will:**

- Bring the department into compliance with Proposition 66, passed by California voters in 2016, which amended PC section 3600 to allow condemned male inmates to be housed at any CDCR institution which has a sufficient security level for that specific inmate.
- Bring the department into compliance with PC section 2700.1 which, as a result of the passage of Proposition 66, requires condemned inmates to work as prescribed by the rules and regulations of the department, and pay restitution when so ordered.
- Establish that condemned inmates shall not be housed in a facility with a security level lower than that which is authorized to house inmates sentenced to life without the possibility of parole.
- Clarify that all condemned male inmates shall be delivered to San Quentin State Prison, and all condemned female inmates shall be delivered to the Central California Women’s Facility, upon arrival in CDCR custody, consistent with PC sections 3600 and 3602, respectively.
- Establish that the department shall deduct 70% or the balance owing, whichever is less, from a condemned inmate’s wages and trust account deposits, pursuant to PC section 2700.1, subject to specified exemptions.
- Ensure condemned inmates are able to continue with appeals of their capital conviction, irrespective of which institution they are housed at.

**SPECIFIC BENEFITS ANTICIPATED BY THE PROPOSED REGULATIONS**

The proposed regulations will bring the department into compliance with Proposition 66, the Death Penalty Reform and Savings Act of 2016. Additionally, victims of crime may receive increased restitution funds as a result of the new requirement that condemned inmates must work and pay greater restitution amounts than previously required.

**DOCUMENTS INCORPORATED BY REFERENCE**

None

**EVALUATION OF INCONSISTENCY/INCOMPATIBILITY 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 housing of condemned inmates.

**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: *Savings of \$21,258,000 annually*
- 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. The proposed regulations may benefit the welfare of California residents by helping victims of crime receive restitution.

## **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](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

In the following, underline indicates additional 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 6.5. Intake, Release and Discharge of Inmates

3075. Initial Intake and County Reimbursements.

Subsections 3075(a) through 3075(h) are unchanged.

New subsections 3075(i) and 3075(j) are adopted.

(i) All condemned male inmates shall be delivered to San Quentin State Prison, pursuant to Penal Code section 3600.

(j) All condemned female inmates shall be delivered to the Central California Women's Facility, pursuant to Penal Code section 3602.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 1202a, 1203.03, 1216, 1217, 2081.5, 2901, 3058.5, 3600, 3601, 3602, 4016.5(a), 4537, 4750, 4751 and 5054, Penal Code; and Section 19853, Government Code.

Subchapter 2.

Article 1.5. Inmate Wages and Deductions

3097. Inmate Restitution Fine and Direct Order Collections.

Existing subsections 3097(a) through 3097(c) are amended:

(a) When an inmate owes any obligation pursuant to a direct order of restitution imposed by a court, the department shall deduct 30 percent or the balance owing, whichever is less, from the inmate's wages and trust account deposits, regardless of the source of such income, subject to the exemptions enumerated in subsection (~~jk~~). In addition, an administrative fee of 10 percent of the deduction shall be deducted to reimburse the department for its administrative costs, for a maximum deduction of 33 percent. A maximum deduction of 33 percent shall remain in effect through December 31, 2004 at which time subsection (b) shall take effect.

(b) Effective January 1, 2005, when an inmate owes any obligation pursuant to a direct order of restitution imposed by a court, the department shall deduct 40 percent or the balance owing, whichever is less, from the inmate's wages and trust account deposits regardless of the source of such income, subject to the exemptions enumerated in subsection (~~jk~~). In addition, an administrative fee of 10 percent of the deduction shall be deducted to reimburse the department for its administrative costs, for a maximum deduction of 44 percent. A maximum deduction of 44 percent shall remain in effect through December 31, 2006 at which time subsection (c) shall take effect.

(c) Effective January 1, 2007 and thereafter, when an inmate owes any obligation pursuant to a direct order of restitution imposed by a court, the department shall deduct 50 percent or the balance owing, whichever is less, from the inmate's wages and trust account deposits regardless of the source of such income, subject to the exemptions enumerated in subsection (jk). ~~In addition, an administrative fee of 10 percent of the deduction shall be deducted to reimburse the department for its administrative costs, for a maximum deduction of 55 percent.~~

**New subsection 3097(d) is adopted to read:**

(d) Effective October 25, 2017 and thereafter, when a condemned inmate owes any obligation pursuant to a direct order of restitution or to a restitution fine imposed by a court, the department shall deduct 70 percent or the balance owing, whichever is less, from the inmate's wages and trust account deposits regardless of the source of such income, subject to the exemptions enumerated in subsection (k). The collection of restitution fines from condemned inmates is stayed until their capital appeals are exhausted. Deductions for direct orders of restitution are not stayed.

**Existing subsection 3097(d) is renumbered to 3097(e) and is amended to read:**

~~(de)~~ When an inmate owes any obligation pursuant to a restitution fine imposed by a court, the department shall deduct 30 percent or the balance owing, whichever is less, from the inmate's wages and trust account deposits, regardless of the source of such income, subject to the exemptions enumerated in subsection(jk). In addition, an administrative fee of 10 percent of the deduction shall be deducted to reimburse the department for its administrative costs, for a maximum deduction of 33 percent. The amount deducted, less the administrative fee, shall be transferred to the ~~California Victim Compensation and Governing Claims Board~~ Victim Compensation Board for deposit in the Crime Victims' Restitution Fund in the State Treasury. The inmate shall be credited for the amount deducted, less the administrative fee, against the amount owing on the fine. A maximum deduction of 33 percent shall remain in effect through December 31, 2004 at which time subsection (ef) shall take effect.

**Existing subsection 3097(e) is renumbered to 3097(f) and is amended to read:**

~~(ef)~~ Effective January 1, 2005, when an inmate owes any obligation pursuant to a restitution fine imposed by a court, the department shall deduct 40 percent or the balance owing, whichever is less, from the inmate's wages and trust account deposits regardless of the source of such income subject to the exemptions enumerated in subsection (jk). In addition, an administrative fee of 10 percent of the deduction shall be deducted to reimburse the department for its administrative costs, for a maximum deduction of 44 percent. The amount deducted, less the administrative fee, shall be transferred to the ~~California Victim Compensation and Government Claims Board~~ Victim Compensation Board for deposit in the Crime Victims' Restitution Fund in the State Treasury. The inmate shall be credited for the amount deducted, less the administrative fee, against the amount owing on the fine. A maximum deduction of 44 percent shall remain in effect through December 31, 2006 at which time subsection (fg) shall take effect.

**Existing subsection 3097(f) is renumbered to 3097(g) and is amended to read:**

~~(fg)~~ Effective January 1, 2007, and thereafter, when an inmate owes any obligation pursuant to a restitution fine imposed by a court, the department shall deduct 50 percent or the balance owing, whichever is less, from the inmate's wages and trust account deposits regardless of the source

of such income subject to the exemptions enumerated in subsection (jk). In addition, an administrative fee of 10 percent of the deduction shall be deducted to reimburse the department for its administrative costs, for a maximum deduction of 55 percent. Effective January 1, 2022 and thereafter, the administrative fee shall no longer be deducted. The amount deducted, less the administrative fee if any, shall be transferred to the California ~~Victim Compensation and Government Claims Board~~ Victim Compensation Board for deposit in the Crime Victims' Restitution Fund in the State Treasury. The inmate shall be credited for the amount deducted, less the administrative fee if any, against the amount owing on the fine.

**Existing subsection 3097(g) is renumbered to 3097(h) and is unchanged.**

(gh) When an inmate owes both a restitution fine and a direct order of restitution from a sentencing court, the department shall collect on the direct order(s) of restitution first. Upon satisfaction of the direct order(s) of restitution, collection of any unsatisfied restitution fine(s) shall commence until paid in full.

**Existing subsection 3097(h) is renumbered to 3097(i) and amended to read:**

(hi) Fines and direct orders of restitution shall be collected from inmates ~~or~~ or parolees who owe restitution while the inmate ~~or~~ or parole violator remains under the jurisdiction of the department, with certain exceptions, set out in subsection (jk).

**Existing subsection 3097(i) is renumbered to 3097(j) and amended to read:**

(ij) Fines and direct orders of restitution may be collected from inmates and parole violators housed in a ~~Reception Center~~ any CDCR facility, Community Correctional Center, Community Correctional Facility, Community Correctional Reentry Center, Restitution Community Correctional Center or Return to Custody Substance Abuse Treatment Facility. Fines and direct orders of restitution may also be collected from inmates in the Community Prisoner Mother, Family Foundations Programs and the Alternative Custody Program.

**Existing subsection 3097(j) is renumbered to 3097(k) and is amended to read:**

(jk) Joint Venture Program deposits, funds designated to pay the costs of a family visit ("family visit funds"), Temporary Community Leave funds, federal disability payments, veteran benefits, any reimbursement to an inmate as a result of a claim for lost or damaged property, or money reimbursed to an inmate due to a failed attempt to purchase merchandise are exempt from deductions for fines and direct orders of restitution enumerated in subsections (a), (b), (c), (d), (e), ~~and (f)~~, and (g).

**Existing subsection 3097(k) is renumbered to 3097(l) and is amended to read:**

(kl) Family visit funds and Temporary Community Leave funds shall be so designated by the sender on Form 1839 (Rev. 5/97), Exemption of Family Visit/Temporary Community Leave Funds From Restitution Fines/Orders, to be completed in its entirety and returned to staff with the appropriate funds. Any funds received for either of these two purposes that are not accompanied by the prescribed form, properly completed, shall be deposited in the inmate's trust account and shall be subject to a deduction for restitution pursuant to subsections (a), (b), (c), ~~(de)~~, ~~(ef)~~, and ~~(f)~~(g).

**Existing subsections 3097(l) through 3097(o) are renumbered to 3097(m) through 3097(p) respectively, and are amended to read:**

~~(lm)~~ Existing funds from the inmate's trust account can be used to pay for a family visit or a Temporary Community Leave. Upon the inmate's request, a hold will be placed on a specified portion of these funds to pay for the upcoming family visit or Temporary Community Leave. The inmate shall not use these designated funds for any other purpose other than the planned family visit or Temporary Community Leave. Should the family visit or Temporary Community Leave not take place then the hold previously placed on the funds shall be removed and no restitution deduction shall be made.

~~(mn)~~ If the family visit does not occur, then the funds provided by the family member and designated for the family visit on Form 1839 (Rev. 5/97), shall have a permanent hold placed on them in the inmate's trust account for a future family visit or until the inmate is released on parole. Should the inmate transfer to another institution, the hold shall be removed, the funds deposited into the inmate's trust account, and no restitution deduction shall be made.

~~(no)~~ If the Temporary Community Leave does not occur, then the funds provided by the family member and designated for the leave on Form 1839 (Rev. 5/97), shall be refunded to the sender.

~~(op)~~ Any remaining balance on the Temporary Community Leave fund provided by a family member for a Temporary Community Leave that took place shall be refunded to the sender.

Note: Authority cited: Sections 5058, 5058.3 and 1170.05, Penal Code. Reference: Sections 1170.05, 2085.5, 2700.1 and 5054, Penal Code

**Article 3. Library.**

**3122. Inmate Law Library.**

**Existing subsections 3122(a) through 3122(b)(7) are unchanged. Subsection 3122(b) is shown for reference.**

(b) Inmates who have established court deadlines may apply for Priority Legal User (PLU) status to the prison law libraries. Inmates who are granted PLU status based on their application shall receive higher priority to prison law library resources than other inmates. All inmates who are not on PLU status are on General Legal User (GLU) status.

**New subsection 3122(c) is adopted to read:**

(c) Following initial classification and custody designation, condemned inmates shall automatically be granted PLU status to prepare appeal(s) of their capital conviction. When a condemned inmate either exhausts their capital appeal(s) or is resentenced by a court to a term other than a death sentence, then section 3122(b) shall apply.

**Existing subsections 3122(c) and 3122(d) are renumbered to 3122(d) and 3122(e) respectively, and are unchanged.**

~~(ed)~~ Inmates may not in any way trade, transfer, or delegate their PLU status to other inmates. An inmate who assists another inmate in the preparation of legal documents, as described in section 3163, may not use the PLU status of the inmate being assisted.

~~(de)~~ An inmate in a facility without a law library and requesting access to such resources shall be transferred to a facility with a law library of departmental choosing for the period of time needed to complete legal work.

## **Article 6. Legal Documents.**

### **3161. Inmate-Owned Legal Materials.**

#### **Section 3161 is amended to read:**

(a) Inmate-owned legal materials, documents, law books, and papers shall be limited to the availability of space authorized by section 3190(b) for personal property in the inmate's quarters or living area, except as specified in this section. Inmates may possess up to one cubic foot of legal materials or documents related to their active cases, in excess of the six cubic feet of allowable property in their assigned quarters or living area. Legal materials, documents, law books, and papers in excess of this limitation shall be disposed of pursuant to section 3191(c). Inmates may request the institution or facility store excess legal materials or documents related to their active cases(s) when such materials/documents exceed this one cubic foot additional allowance. Non-condemned inmate-owned law books in excess of the additional allowance shall not be stored by the institution or facility. Institutions or facilities shall provide for the storage of excess legal materials, law books, or documents related to active commitment cases of condemned inmates.

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

## **Subchapter 4. General Institution Regulations.**

### **Article 10. Classification.**

#### **3375.2 Administrative Determinants.**

**Subsections 3375.2(a)(1) through 3375.2(a)(6) remain unchanged.**

**New subsection 3375.2(a)(7) is adopted to read:**

(7) Condemned inmates shall not be housed in a facility with a security level lower than that which is authorized to house LWOP inmates. A condemned inmate shall not be housed in a facility with a security level lower than Level II, except when authorized by the DRB. Additionally, a condemned inmate housed within a general population facility shall be housed in a facility with a lethal electrified fence as defined in section 3000. Female condemned inmates shall only be housed at the Central California Women's Facility.

**Existing subsections 3375.2(a)(7) through 3375.2(a)(14) are renumbered to 3375.2(a)(8) through 3375.2(a)(15) respectively, to accommodate new subsection 3375.2(a)(7).**

~~(78)~~ An inmate identified as a serial killer shall be excluded from Level I or Level II placement even if ~~his or her~~ their convictions for murders are prosecuted separately.

~~(89)~~ An inmate serving a life term with the possibility of parole shall not be housed in a non-secure facility as defined in section 3000 nor assigned to a program outside a security perimeter unless the exceptional criteria specified within this subsection have been met. Exceptions may only occur

when Board of Parole Hearings (BPH) grants parole, the release date is within 3 years, and the Governor's Office has completed its review and either formally approved parole or taken no action. When all three conditions are met and the inmate is otherwise eligible for a custody reduction, the inmate shall be evaluated by an ICC for the custody reduction.

**Subsection 3375.2(a)(10), formerly subsection 3375.2(a)(9), is amended to read:**

~~(9)~~10) An inmate serving a life term with the possibility of parole shall be housed in a facility with a security level of II or higher, unless the exceptional criteria specified within subsections 3375.2(a)~~(8)~~9 or 3375.2(a)~~(4011)~~(A) through 3375.2(a)~~(4011)~~(I) have been met.

~~(4011)~~ An inmate serving a life term with the possibility of parole may be housed in a secure Level I facility as defined in section 3000 when all of the following criteria are met:

**Subsections 3375.2(a)(11)(A) through 3375.2(a)(11)(I) are unchanged.**

~~(412)~~12) An inmate serving a life term whose placement score is not consistent with a Level I security level shall not be housed in a Level I facility except when approved by the Departmental Review Board.

~~(4213)~~13) An inmate whose death sentence is commuted or modified shall be transferred to a reception center for processing after which an ICC action and subsequent endorsement by a CSR shall determine the inmate's initial facility placement.

~~(4314)~~14) An inmate with a case factor described in subsections 3377.2(b)(2)(A), 3377.2(b)(2)(B) or 3377.2(b)(2)(C), shall be ineligible for minimum custody. An inmate with a history of one or more walkaways from nonsecure settings, not to include Drug Treatment Furlough, Community Correctional Reentry Centers, and Community Reentry Programs, shall not be placed in minimum custody settings for at least 10 years following the latest walkaway.

~~(4415)~~15) A validated STG-I associate or member may be granted Minimum A or Minimum B Custody on a case-by-case basis. Designation of Minimum A or Minimum B Custody for a validated STG-I associate or member requires a review of the totality of the inmate's case factors by an ICC and a determination that their housing with such a level of custody would not pose a threat to the safety and security of the institution, inmates, staff, and public.

**Subsections 3375.2(b) through 3375.2(b)(30) remain unchanged.**

Note: Authority cited: Sections 3600, 5058 and 5058.3, Penal Code. Reference: Sections 3450, 5054 and 5068, Penal Code; *Sandin v. Connor* (1995) 515 U.S. 472; *Madrid v. Gomez* (N.D. Cal. 1995) 889 F.Supp. 1146; *Wright v. Enomoto* (N.D. Cal. 1976) 462 F. Supp. 397; and *Stoneham v. Rushen* (1984) 156 Cal. App. 3d 302.

**3376.1. Departmental Review Board.**

**Subsection 3376.1 initial paragraph is unchanged but is shown for reference.**

The Departmental Review Board (DRB) provides the Secretary's final review of classification issues which are referred by an institution head for a resolution or decision at the headquarters level. The DRB decision serves as the Secretary's level decision which is not appealable and concludes the inmate/parolee's departmental administrative remedy of such issues.

**Subsections 3376.1(a) through 3376.1(c) are unchanged. Subsection 3376.1(d) is unchanged but is shown for reference.**

(d) Referrals shall be made to the DRB when:

**Subsections 3376.1(d)(1) through 3376.1(d)(11) are unchanged. New subsection 3376.1(d)(12) and 3376.1(d)(13) are adopted to read:**

(12) An institution classification committee recommends that a condemned inmate be housed in a facility with a security level lower than Level II.

(13) An institution classification committee recommends that an inmate serving a sentence of life without possibility of parole (LWOP) be housed in a facility with a security level lower than Level II.

**Subsections 3376.1(e) through 3376.1(i) are unchanged.**

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 5054, 5068 and 11191, Penal Code; Sections 8550 and 8567, Government Code; Governor's Prison Overcrowding State of Emergency Proclamation dated October 4, 2006; *Sandin v. Connor* (1995) 515 U.S. 472; and *Madrid v. Gomez* (N.D. Cal. 1995) 889 F.Supp. 1146.

**3377.2. Criteria for Assignment of Close Custody.**

**Subsections 3377.2(a)(1) through 3377.2(b)(5) remain unchanged.**

**Subsection 3377.2(b)(6) is adopted to read:**

(6) Condemned Inmate. A condemned inmate housed within the general population shall be designated Close Custody for at least five years.

**Subsections 3377.2(c) through 3377.2(c)(5) remain unchanged.**

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 5054 and 5068, Penal Code; *Americans With Disability Act (ADA)*, 42 U.S.C. § 12131, et seq.; and *Pennsylvania Department of Corrections v. Yeskey* (1998) 524 U.S. 206.

## **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, Chapter 1, sections 3075, 3097, 3122, 3161, 3375.2, 3376.1, and 3377.2.

On November 8, 2016, the people of the State of California voted in support of the passage of Proposition 66 known as the Death Penalty Reform and Savings Act of 2016 (Prop. 66). As a result, sections of the California Penal Code (PC) governing how the California Department of Corrections and Rehabilitation (CDCR) manages the condemned population were adopted or amended. Section 3600 of the PC was amended to reflect that CDCR may transfer male condemned inmates to alternate institutions which it has determined can provide a level of security sufficient for that inmate. Previously, PC section 3600 mandated that male condemned inmates be housed at the prison designated by CDCR for the execution of the death penalty, which is San Quentin State Prison (SQSP).

Proposition 66 also resulted in the adoption of PC section 2700.1 which requires that inmates sentenced to death, and in the custody of CDCR, be required to work as prescribed by the rules and regulations of CDCR. This statute also requires that when a condemned inmate owes a restitution fine or order, CDCR deducts 70% or the balance owing, whichever is less, from the condemned inmate's trust account deposits, regardless of the source of the income. CDCR is then required to transfer those funds to the California Victim Compensation Board (formerly known as the California Victims Compensation and Government Claims Board).

On January 29, 2020, CDCR received approval from the Office of Administrative Law to implement the Condemned Inmate Transfer Pilot Program (CITPP) pursuant to PC section 5058.1. The two-year CITPP pilot authority expired on January 28, 2022. As of November 2021, 99 male inmates and 4 female inmates are participating in the CITPP and housed in the general population.

The proposed regulatory changes permanently implement and make specific the statutory authority to move male condemned inmates from SQSP to other institutions throughout the state commensurate with their case factors and security needs. Female condemned inmates will continue to be housed solely at Central California Women's Facility (CCWF) in compliance with PC sections 3601 and 3602, but transitioned to general population housing or other housing consistent with their case factors and security needs. SQSP and CCWF will continue to serve as the reception centers for male and female condemned inmates, respectively.

The result of the passage of Proposition 66 and the corresponding changes to the PC necessitate the proposed changes to the California Code of Regulations (CCR), Title 15. The changes will address the management of the condemned population in compliance with current PC requirements.

Specifically, the PC now mandates that condemned inmates shall be required to work and pay larger amounts of trust account balances towards restitution fines and direct restitution orders. CDCR recognizes that the institutional design of the condemned housing at SQSP and CCWF limits the availability of work assignments, which impacts CDCR's ability to fully implement the work mandate as noted in PC Section 2700.1 for all condemned inmates within the confines of SQSP and CCWF's designated condemned housing. The proposed regulatory changes will facilitate greater compliance with PC section 2700.1; therefore, CDCR has elected to move male condemned inmates to other institutions and re-house female condemned inmates in the general population at CCWF, consistent with their custody and security levels.

The inmate classification score system (ICSS) assigns a numerical preliminary score and placement score to each inmate. Preliminary scores are determined by a review of an inmate's case factors, including but not limited to: age at first arrest, age at reception to CDCR, length of prison term, and prior incarceration behavior. A mandatory minimum score is a classification score that is applied when an inmate has a case factor that requires that they be housed no lower than a specific security level. A mandatory minimum score, if greater than the preliminary score, supersedes the preliminary score and becomes the inmate's placement score. If a mandatory minimum score is less than the preliminary score, the preliminary score is the inmate's placement score. A lower placement score indicates lesser security control needs and a higher placement score indicates greater security control needs. Currently condemned inmates have a mandatory minimum placement score of 60 points, making their housing level placement no lower than that of a Level IV facility without a behavioral override. The proposed mandatory minimum placement score of 19 points would allow placement no lower than a Level II facility, except when authorized by the Departmental Review Board (DRB). This change to the mandatory minimum would more accurately reflect the current demographic of the preliminary scores of the condemned population, of which over 50% reflect preliminary scores consistent with Level III and Level IV security levels.

Custody level is another term used to define a level of security assigned to each inmate. CDCR's inmate custody designation determines where an inmate is housed, the jobs that the inmate is eligible to be considered for, and the level of staff supervision that is required to ensure institutional security and public safety. Currently, CDCR houses condemned inmates as MAXIMUM custody at SQSP and CCWF. This designation is due to the fact that the condemned population is segregated from the rest of the inmate population at each of these facilities in a more restrictive housing unit. Under the proposed regulatory change, CDCR will assign condemned inmates to a Close Custody designation for at least five years. This custody level designation (Close) will afford CDCR the highest custody level for an inmate in a non-segregated environment, while still allowing for the integration of the condemned population into the general population.

#### **CONSIDERATION OF ALTERNATIVES:**

CDCR must determine that no reasonable alternatives considered, or that have otherwise been identified and brought to the attention of CDCR, 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 CDCR'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:

#### **Significant Adverse Economic Impact on Business**

The department has made an initial determination the proposed regulations will not have a significant adverse economic impact on business. Additionally, there has been no testimony or other evidence provided that would alter the department's initial determination. The proposed regulations affect the internal management of CDCR only, and place no requirements or restrictions on businesses.

#### **Creation of New, or Expansion or the Elimination of 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 elimination of existing jobs within California as the proposed regulations affect the internal management of prisons only.

#### **Creation of New, or Expansion or Elimination of Existing Businesses Currently Doing Business 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 businesses within California, or affect the expansion of businesses currently doing business in California as the proposed regulations affect the internal management of prisons only.

#### **Local Mandates**

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.

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

The proposed regulations implement and make specific the statutory changes to the PC enacted as part of Prop 66. The proposed regulations will also permit lower level placements and lower custody designations for positively programming condemned inmates, consistent with evidence-based research studies that indicate that preliminary placement scores and an offender's age are the most accurate indicators of an offender's likelihood to commit criminal acts while incarcerated.

**DOCUMENTS RELIED UPON:**

CDCR, in proposing amendments to these regulations, relied in part upon the following document:

2011 Office of Research publication titled “Expert Panel Study of the Inmate Classification Score System”:

<https://cpb-us-e2.wpmucdn.com/sites.uci.edu/dist/0/1149/files/2013/06/Expert-Panel-Study-of-the-Inmate-Classification-Score-System.pdf>.

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

**3075. Initial Intake and County Reimbursements.**

**New subsections 3075(i) and 3075(j) are adopted** to make clear that all condemned male inmates shall be delivered to San Quentin State Prison, consistent with California Penal Code 3600, and condemned female inmates shall be delivered to the Central California Women’s Facility, consistent with California Penal Code 3602. These provisions are necessary to ensure that, while condemned male inmates may now be housed at institutions other than San Quentin, the female condemned inmates may be transferred to the general population within CCWF. Condemned inmates shall continue to be initially received by the institutions required by statute.

**3097. Inmate Restitution Fine and Direct Order Collections.**

**Existing subsections 3097(a) through 3097(c) are amended** to reflect the renumbering of subsections (e)-(l) by correcting the reference in subsections (a) and (b) from 3097(j) to 3097(k).

**New subsection 3097(d) is adopted** to reflect changes to California Penal Code, Section 2700.1 as it pertains to trust accounts for condemned inmates. This adoption is necessary to reflect the requirement that the lesser of 70% or the balance owing be deducted from condemned inmate wages and trust account deposits, regardless of the source of income pursuant to a direct order of restitution or restitution fine imposed by the court.

**Existing subsection 3097(d) is renumbered to 3097(e) to ensure appropriate numbering of the remaining subsections and amended** to reflect the changing of the name of the California Victim Compensation and Government Claims Board to that of the California Victim Compensation Board.

**Existing subsection 3097(e) is renumbered to 3097(f) to ensure appropriate numbering of the remaining subsections and amended** to reflect the changing of the name of the California Victim Compensation and Government Claims Board to that of the California Victim Compensation Board.

**Existing subsection 3097(f) is renumbered to 3097(g)** to ensure appropriate numbering of the remaining subsections and amended to reflect the changing of the name of the California Victim Compensation and Government Claims Board to that of the California Victim Compensation Board. Furthermore, the administrative fee of 10% shall no longer be deducted.

**Existing subsection 3097(g) is renumbered to 3097(h)** to ensure appropriate numbering of the remaining subsections.

**Existing subsection 3097(h) is renumbered to 3097(i)** to ensure appropriate numbering of the remaining subsections.

**Existing subsection 3097(i) is renumbered to 3097(j)** to ensure appropriate numbering of the remaining subsections and to amend that inmates at any CDCR facility can be affected.

**Existing subsection 3097(j) is renumbered to 3097(k) and amended** to ensure appropriate numbering of the remaining subsections and to amend referenced subsections.

**Existing subsection 3097(k) is renumbered to 3097(l) and amended** to ensure appropriate numbering of the remaining subsections and to amend referenced subsections.

**Existing subsection 3097(l) is renumbered to 3097(m)** to ensure appropriate numbering of the remaining subsections.

**Existing subsection 3097(m) is renumbered to 3097(n)** to ensure appropriate numbering of the remaining subsections.

**Existing subsection 3097(n) is renumbered to 3097(o)** to ensure appropriate numbering of the remaining subsections.

**Existing subsection 3097(o) is renumbered to 3097(p)** to ensure appropriate numbering of the remaining subsections and amended to state that if the Temporary Community Leave does not occur, that funds provided by the family member shall be refunded to the sender.

### **3122. Inmate Law Library.**

**Existing subsections 3122(a) through 3122(b)(7) are unchanged** but shown as reference.

**New subsection 3122(c) is adopted** to ensure automatic Priority Legal User (PLU) status for condemned inmates appealing their capital conviction. PLU status is granted to those inmates with active court cases in which there is either a court-imposed deadline

or statutory deadline. Those inmates granted PLU status will have higher priority access to the prison law library resources than those of other inmates. By automatically granting condemned inmates PLU status while their appeals are pending, CDCR will ensure that the condemned inmate population has been afforded the highest level of access to the prison law library so as to prepare appeals related to their capital conviction.

**Existing subsection 3122(c) is renumbered to 3122(d)** to reflect the adoption of new subsection (c) and ensure appropriate numbering of the remaining subsections.

**Existing subsection 3122(d) is renumbered to 3122(e)** to ensure appropriate numbering of the remaining subsections.

### **3161. Inmate-Owned Legal Materials.**

**Existing section 3161 is amended** to ensure that all institutions that house condemned inmates provide for the storage of excess legal material and documents owned by condemned inmates relative to active appeals for current commitment offenses. Currently, SQSP and the CCWF condemned housing units store excess legal materials for condemned inmates. The proposed amendment will ensure that the storage of, and access to, these materials continue regardless of the institution in which the condemned inmate is housed.

### **3375.2 Administrative Determinants.**

**Existing subsections 3375.2(a)(1) through 3375.2(a)(6) remain unchanged.**

**Existing subsection 3375.2(a)(7) is adopted** to reflect that condemned inmates shall not be housed in a facility with a security level lower than that which is authorized to house inmates sentenced to life without the possibility of parole (LWOP). A condemned inmate shall not be housed in a facility with a security level lower than Level II containing a lethal electrified fence, unless authorized by the Departmental Review Board (DRB). The current demographics of the condemned population support the conclusion that the majority of the condemned population's preliminary placement scores warrant housing options other than Level IV placement. By allowing the condemned population to be placed at institutions with a security level no lower than Level II (unless approved by DRB) and with an electrified fence, CDCR can house the condemned population in an institution that is commensurate with the condemned inmate's case factors as indicated by their placement score while ensuring an adequate level of security for staff, inmates and the public; while enhancing the department's ability to assign condemned inmates to jobs consistent with PC 2700.1.

**Existing subsection 3375.2(a)(8) is renumbered 3375.2(a)(9).**

**Existing subsection 3375.2(a)(9) is renumbered 3375.2(a)(10) and amended for corrections on referencing other sections.**

**Existing subsection 3375.2(a)(10) is renumbered 3375.2(a)(11) and amended for corrections on referencing other sections.**

**Existing subsection 3375.2(a)(14) is renumbered 3375.2(a)(15).**

**Existing subsections 3375.2(b) through 3375.2(b)(30) remain unchanged.**

### **3376.1 Departmental Review Board.**

**Existing subsections 3376.1(a) through 3376.1(d)(11) remain unchanged.**

**Subsections 3376.1(d)(12) and 3376.1(d)(13) are adopted** to establish that if any condemned inmate or inmate serving a sentence of life without possibility of parole is recommended by an institution classification committee for a security level lower than Level II, a referral shall be made to the Departmental Review Board. This will ensure that the inmate's case is reviewed further and at the highest level of review prior to endorsement of the inmate to any facility with a security level lower than Level II. This is necessary to ensure an adequate level of security for staff, inmates and the public.

**Subsections 3376.1(e) through 3376.1(i) are unchanged.**

### **3377.2. Criteria for Assignment of Close Custody.**

**Existing subsections 3377.2(a)(1) through 3377.2(b)(5) remain unchanged.**

**Subsection 3377.2(b)(6) is adopted** to establish that a condemned inmate who is housed in the general population must be designated as Close Custody for at least five years. By placing a Close Custody designation on condemned inmates, CDCR will ensure these inmates are closely monitored, affording the highest level of direct supervision available for inmates housed in a general population setting, and allow for the integration of the condemned population into the general population. Inmates designated as Close Custody require direct and constant supervision, are counted more frequently than other inmates, and are housed in a celled environment. This custody level will ensure that the condemned population is appropriately housed at appropriate institutions.

**Existing subsections 3377.2(c) through 3377.2(c)(5) remain unchanged.**