



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

<b>Section:</b> <b>3268.1</b>	<b>NCR Number:</b> <b>23-04</b>	<b>Publication Date:</b> <b>May 5, 2023</b>	<b>Effective Date:</b> <b>To Be Determined</b>
----------------------------------	------------------------------------	--	---

**INSTITUTION POSTING AND CERTIFICATION REQUIRED**

This Notice announces the proposed amendment of Section 3268.1 of the California Code of Regulations (CCR), Title 15, Crime Prevention and Corrections, Division 3, Chapter 1, regarding Institutional Executive Review Committee Timeframe.

**PUBLIC COMMENT PERIOD**

The public comment period will close on **June 23, 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 **June 23, 2023**.

**PUBLIC HEARING INFORMATION**

A public hearing regarding these proposed regulations will be held **June 26, 2023**, from 10:00 a.m. to 11:00 a.m. in Room 150N, 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 Dmitriy Kostyuk, by mail to California Department of Corrections and Rehabilitation, RPMB, P.O. Box 942883, Sacramento, CA 94283-0001, by telephone at (916) 445-2276, 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:*

TAMMY FOSS  
Undersecretary, Operations  
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 Section 3268.1 into Title 15, Division 3, Chapter 1, regarding Institutional Executive Review Committee Timeframe.

**PUBLIC COMMENT PERIOD**

The public comment period begins **May 5, 2023** and closes on **June 23, 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**

Primary Contact

D. Kostyuk  
Telephone: (916) 445-2276  
Regulation and Policy  
Management Branch  
P.O. Box 942883  
Sacramento, CA 94283-0001

Back-Up

Y. Sun  
Telephone: (916) 445-2269  
Regulation and Policy  
Management Branch  
P.O. Box 942883  
Sacramento, CA 94283-0001

Program Contact

T. Snyder  
Telephone: (916) 324-6808  
Division of Adult Institutions

**PUBLIC HEARING**

Date and Time: **June 26, 2023 – 10:00 a.m. to 11:00 a.m.**  
Place: Department of Corrections and Rehabilitation  
Room 150N  
1515 S Street – North Building  
Sacramento, CA 95811

**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**

As part of the Institutional Executive Review Committee (IERC) process, the Use of Force Coordinator shall schedule all logged use of force cases for review within 30 calendar days of their logged occurrence. CDCR proposes to increase the review period to 60 calendar days because there has been an increase in the use of different types of video recording devices such as fixed, mobile, hand-held cameras, and body-worn cameras. With the increase of video recording devices, the Use of Force Coordinator is required to review more video footage. This time extension will provide the Use of Force Coordinator with sufficient time to conduct a thorough review of all video footage. These regulations will also establish when the IERC will refer an incident package to Allegation Inquiry Unit (AIU) for an investigation and when an initial review may be put on pause by the IERC.

### **This action will:**

- Increase the timeframe for the Use of Force Coordinator to schedule a review of all logged use of force cases from within 30 calendar days to within 60 calendar days, as part of the IERC review process.
- Increase the IERC review timeframe from within 30 calendar days to within 60 calendar days to provide sufficient time to allow for a thorough review of all video footage from fixed, mobile, hand-held cameras, and body-worn cameras.
- Establish when an incident being reviewed by the IERC shall be referred to AIU for an investigation.
- Establish when the IERC may put an initial review on pause.

## **DOCUMENTS INCORPORATED BY REFERENCE**

None

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

The department anticipates that the proposed regulatory action will have a long-term beneficial effect on CDCR's use of force committees in scheduling and meeting use of force review deadlines, by establishing when the IERC shall refer an incident to AIU and how it will affect the IERC. The proposed regulations will also establish when the IERC may pause an initial review. Additionally increasing the timeframe for the IERC will allow additional time to gather and review camera footage, which will better equip the IERC members in their review.

## **EVALUATION OF INCONSISTENCY/INCOMPATIBILITY WITH EXISTING 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 revising the IERC Timeframe.

## **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 businesses 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 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 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 text, ~~strikethrough~~ indicates deleted text and underline indicates added or amended text.

### 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

#### Subchapter 4. General Institution Regulations

#### Article 1.5. Use of Force and Restraining Devices

#### Section 3268.1. Reporting and Investigating the Use of Force for Institution/ and Facility Staff

**[Subsections 3268.1 (a) through 3268.1 (e)(2)(C) are unchanged.]**

**[Subsection 3268.1 (e)(2)(D) is amended to read:]**

(D) Use of Force Coordinator Review. The Use of Force Coordinator shall ~~normally~~ schedule all logged use of force cases for review within ~~30~~ 60 calendar days of their logged occurrence. The Use of Force Coordinator shall document their review on a CDCR Form 3034 (Rev. 10/15), IERC Allegation Review, and a CDCR Form 3036 (Rev. 10/15), IERC Critique and Qualitative Evaluation, which are hereby incorporated by reference.

**[Subsections 3268.1(e)(2)(E) through 3268.1(e)(2)(E)6. are unchanged but shown for reference:]**

(E) Institutional Executive Review Committee (IERC). Normally, the IERC is comprised of the following staff:

1. Institution Head or Chief Deputy Warden, as chairperson and final decision maker.
2. At least one other manager assigned on a rotational basis.
3. In-Service Training Manager.
4. One health care practitioner or clinician.
5. A Use of Force Coordinator.
6. Other designated supervisors and rank and file staff may also attend, as determined by the Institution Head. A representative of the OIG may also attend and monitor IERC meetings.

**[Subsection 3268.1(e)(2)(E)7. is renumbered to 3268.1(e)(2)(F) and is amended to read:]**

~~7.~~(F) The IERC shall meet to review its cases on at least a monthly basis, or on a schedule to ensure all cases are reviewed within ~~30~~60 calendar days. If the IERC determines a potential use of force violation occurred during their review, the incident shall be referred to the Allegation Inquiry Unit (AIU) for an investigation. Once an incident is referred to AIU, the 60 calendar day timeframe shall be tolled and shall resume after the incident is forwarded to the Hiring Authority for final determination. The IERC shall document their review on a CDCR Form 3035 (Rev. 10/15), IERC Use of Force Review & Further Action Recommendation, which is hereby incorporated by reference.

**[Subsection 3268.1(e)(2)(F)1. is adopted to read:]**

1. During the initial incident review, IERC may pause the review for additional information or clarification. If the incident review is paused, IERC shall re-review the incident package within 30 calendar days of the initial IERC meeting.

**[Subsection 3268.1(e)(2)(F) is renumbered 3268.1(e)(2)(G):]**

(FG) Department Executive Review Committee (DERC)

**[Subsections 3268.1 (f) through 3268.1 (g)(6) are unchanged.]**

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 196, 835a, 2651, 2652 and 5054, Penal Code; Section 50, Civil Code; and *Madrid v. Cate* (U.S.D.C. N.D. Cal. C90-3094 TEH).

## **INITIAL STATEMENT OF REASONS**

The California Department of Corrections and Rehabilitation (CDCR or the department) proposes to amend California Code of Regulations (CCR), Title 15, Division 3, Section 3268.1 regarding the Institutional Executive Review Committee (IERC).

As part of the IERC process, the Use of Force Coordinator shall schedule all logged use of force cases for review within 30 calendar days of their logged occurrence. CDCR proposes to increase the review period to 60 calendar days because there has been an increase in the use of different types of video recording devices such as fixed, mobile, hand-held cameras, and body-worn cameras. With the increase of video recording devices, the Use of Force Coordinator is required to review more video footage. This time extension will provide the Use of Force Coordinator with sufficient time to conduct a thorough review of all video footage.

The IERC may put an incident review on pause, after the initial review for additional information, or clarification from involved staff. If the initial review is paused, the IERC shall re-review the incident package within 30 calendar days of the initial IERC meeting. Furthermore, if an incident is referred to the Allegation Inquiry Unit (AIU) for an investigation, the 60 calendar day timeframe shall pause. The timeframe will recommence from where it was paused, upon return of their findings to the Hiring Authority for final determination, which will be included as material reviewed by the IERC.

## **CONSIDERATION OF ALTERNATIVES:**

In accordance with Government Code Section 11346.5 (a)(13), the department must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, be as effective and less burdensome to affected private persons than the proposed action, or be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

CDCR has no reasonable alternatives to 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 the proposed regulations will not have a significant adverse economic impact on business. Additionally, there have been no facts, documents, testimonies 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 Jobs or the Elimination of Existing Jobs within the State of California**

The department has determined that the proposed regulations will have no impact on the creation of new jobs or the elimination of existing jobs within California as the proposed regulations only affect the internal management of prisons.

## **Creation of New Businesses or Elimination or Expansion of Existing Businesses within the State of California**

The department has determined that the proposed regulations will have no 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.

## **Benefits to the Health and Welfare of California Residents, Worker Safety, and the State's Environment**

The department has determined that the proposed regulations will have no impact on the health and welfare of California residents, worker safety, or the State's environment.

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

The department anticipates that the proposed regulatory action will have a long-term beneficial effect on CDCR's use of force committees in scheduling and meeting use of force review deadlines, by establishing when the IERC shall refer an incident to AIU and how it will affect the IERC. As well as when the IERC may pause and initial review. Additionally increasing the timeframe for the IERC will allow additional time to gather and review camera footage, which will better equip the IERC members in their review.

### **DOCUMENTS RELIED UPON:**

In proposing additions and amendments to these regulations, the department 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):**

#### **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**

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

#### **Article 1.5. Use of Force and Restraining Devices**

#### **Section 3268.1 Reporting and Investigating the Use of Force for Institutions/Facility Staff**

**The title for section 3268.1 is amended to** include a non-substantive change to replace "/" with "and." The title is amended to read, "Section 3268.1 Reporting and Investigating the Use of Force for Institutions and Facility Staff."

**Subsections 3268.1 (a) through 3268.1 (e)(2)(C) are unchanged.**

**Subsection 3268.1 (e)(2)(D) is amended to** increase the timeframe for the Use of Force Coordinator to schedule a review of all logged use of force cases from within 30 calendar days to within 60 calendar days. This change provides additional time for the Use of Force



Coordinator to complete a timely review of all video footage of the use of force incidents. Additional time for review is necessary because the department determined that there has been an increase in video footage due to the use of different video recording devices such as fixed, mobile, hand-held cameras, and body-worn cameras. The word “normally” is deleted, as it is unnecessary, the cases are to be scheduled for review within 60 calendar days.

**Subsections 3268.1(e)(2)(E)1. through 3268.1(e)(2)(E)6. are unchanged.**

**Subsection 3268.1(e)(2)(E)7. is renumbered to 3268.1(e)(2)(F) and is amended** to increase the IERC review from within 30 calendar days to within 60 calendar days. This change is necessary because the department determined the Use of Force Coordinator needs additional time to complete their review of all video footage from fixed, mobile, hand-held cameras, and body-worn cameras during the IERC review process. The department made this determination because there has been an increased use of various video recording devices resulting in an increased amount of video footage that needs to be reviewed. If the IERC determines a potential violation of the use of force policy has occurred, the incident will be referred to AIU to complete their review of the incident. The department determined that if an incident is referred to the AIU for an investigation, the 60 calendar day timeframe for review by the IERC shall be tolled. The timeframe will be tolled because the incident will be under investigation with AIU, not the IERC. After the investigation is complete, the final findings will be forwarded to the Hiring Authority, which will recommence the IERC and the 60 calendar days for review will continue from where it was tolled. The Hiring Authority will make a final determination to ensure an appropriate review of the incident package is conducted.

**Subsection 3268.1(e)(2)(F)1. is adopted** to establish that during an IERC review, the committee may pause the initial review for acquiring additional information or to seek additional clarification to aid in the completion of a thorough review. The department has determined that if an initial review is paused by the IERC, it shall be paused and re-reviewed within 30 calendar days of the initial IERC meeting to provide a timely review.

**Existing Subsection 3268.1(e)(2)(F) is renumbered 3268.1(e)(2)(G) and is left unchanged.**

**Subsections 3268.1 (f) through 3268.1 (g)(6) are unchanged.**