



Department of Corrections and Rehabilitation
NOTICE OF CHANGE TO REGULATIONS

Sections: 3173.2, 3174, and 3176	NCR Number: 23-05	Publication Date: June 23, 2023	Effective Date: To Be Determined
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INSTITUTION POSTING AND CERTIFICATION REQUIRED

This Notice announces the proposed amendment of Sections 3173.2, 3174, and 3176 of the California Code of Regulations (CCR), Title 15, Crime Prevention and Corrections, Division 3, Chapter 1, regarding Visiting.

PUBLIC COMMENT PERIOD

The public comment period will close on **August 9, 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. All written comments must be received or postmarked no later than **August 9, 2023**.

PUBLIC HEARING INFORMATION

A public hearing regarding these proposed regulations will be held on **August 9, 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 these 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 S. Pollock, by mail to California Department of Corrections and Rehabilitation, RPMB, P.O. Box 942883, Sacramento, CA 94283-0001, by telephone at (916) 445-2308, or e-mail to RPMB@cdcr.ca.gov. Inquiries regarding the subject matter of these regulations should be directed to Justin Penney, Division of Adult Institutions, at (916) 323-4219.

Original signed by:

TAMMY FOSS
Undersecretary, Operations
California Department of Corrections and Rehabilitation

Attachments

NOTICE OF PROPOSED REGULATIONS
California Code of Regulations
Title 15, Crime Prevention and Corrections
Department of Corrections and Rehabilitation

NOTICE IS HEREBY GIVEN that the Secretary of the California Department of Corrections and Rehabilitation (CDCR or department), proposes to amend Sections 3173.2, 3174, and 3176 in Title 15, Division 3, Chapter 1, regarding Visiting.

PUBLIC COMMENT PERIOD

The public comment period begins **June 23, 2023** and closes on **August 9, 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, 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>
S. Pollock Telephone: 916 445-2308 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	Justin Penney Telephone: (916) 323-4219 Division of Adult Institutions P.O. Box 942883 Sacramento, CA 94283-0001

PUBLIC HEARING

Date and Time:	August 9, 2023 – 10:00 a.m. to 11:00 a.m.
Place:	Department of Corrections and Rehabilitation Conference Room 150 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

The proposed revisions will clarify that the reason for any clothed or unclothed body search shall be documented on the CDCR Form 888, Notice of Request for Search, to exclude any confidential information. Additionally, the CDCR Form 888 will provide new language regarding a visitor's right to refuse to be searched and forgo visiting for the day. These revisions will help to ensure transparency regarding the visitor search process, and provide for visitors' rights to a fair and honest process. Revisions also add language to specify that an unclothed body search consists of a visual inspection of a person's body and body cavities. This revision will help to provide a clear understanding to visitors of what an unclothed body search consists of, and will help to prevent the introduction of contraband into institutions and facilities. Further, verbiage updates will provide clarity, and consistency with current language and terminology that is used.

This action will:

- Revise the CDCR Form 888, Notice of Request for Search, to include documenting the specific reasons for the search, along with comments; adding new language regarding a visitor's right to refuse to be searched and forego their visit for the day; and adding clarifying information to define the unclothed body search process.
- Add language to the regulatory text specifying that the CDCR Form 888 shall include all information regarding the reason(s) for the search excluding any confidential information.
- Specify that an unclothed body search involves a visual inspection of a person's body and body cavities.
- Clarify language regarding acceptable clothing or accessories of visitors.
- Update language from "probable cause" to "reasonable suspicion."
- Update the CDCR Form 887-B, Notice of Visitor Warning/Termination/Suspension/Denial/Revocation, to make minor revisions such as updating the acronym from "CDC" to "CDCR," and updating a reference within the form.

DOCUMENTS INCORPORATED BY REFERENCE

CDCR Form 888 (Rev. 03/23), Notice of Request for Search.

CDCR Form 887-B (Rev. 02/23), Notice of Visitor Warning/Termination/Suspension/Denial/Revocation.

SPECIFIC BENEFITS ANTICIPATED BY THE PROPOSED REGULATIONS

The department anticipates the proposed regulatory amendment will benefit the public by ensuring that visitors understand the reason for a search, and that they have the right to refuse the search and forgo the visit for the day, or stop the search at any time and forgo the visit for the day. The revisions will ensure transparency, fairness, honesty, and due process for visitors. Additionally, safety and security within CDCR institutions/facilities will be enhanced by proper inspection and searching of visitors to remove the threat of any introduction of contraband into institutions/facilities.

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 visiting searches and inspections.

LOCAL MANDATES

This action imposes no mandates on local agencies or school districts, or a mandate which requires reimbursement of costs or savings pursuant to Government Code Sections 17500 - 17630.

FISCAL IMPACT STATEMENT

- Cost or savings to any state agency: *None*
- Cost to any local agency or school district that is required to be reimbursed: *None*
- Other nondiscretionary cost or savings imposed on local agencies: *None*
- Cost or savings in federal funding to the state: *None*

EFFECT ON HOUSING COSTS

The department has made an initial determination that the proposed action will have no significant effect on housing costs.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

The department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT ON BUSINESS

The department has made an initial determination that the proposed regulations will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states, because the proposed regulations place no obligations or requirements on any business.

EFFECT ON SMALL BUSINESSES

The department has determined that the proposed regulations will not affect small businesses. This action has no significant adverse economic impact on small business because they place no obligations or requirements on any business.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

The department has determined that the proposed regulation will have no effect on the creation of new, or the elimination of existing, jobs or businesses within California, or effect the expansion of businesses currently doing business in California. The department has determined that the proposed regulation will have no effect on the state's environment. These regulations may benefit worker safety, and the welfare of CDCR staff and inmates by helping to make CDCR institutions safer. 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.

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; underline indicates added text.

California Code of Regulations, Title 15, Division 3, Adult Institutions, Programs and Parole

Chapter 1. Rules and Regulations of Adult Operations and Programs

Subchapter 2. Inmate Resources

Article 7. Visiting

3173.2. Searches and Inspections.

[Subsections 3173.2(a) through 3173.2(c)(3)(F) are unchanged.]

[Subsection 3173.2(c)(3)(G) is amended to read:]

(G) All requests for unclothed~~/~~ or clothed body searches, the reason for the request, and specific facts on which the search is based shall be documented on CDCR Form 888 (Rev. ~~04/15~~ 03/23), Notice of Request for Search, which is incorporated by reference. This form shall include the subject's name, date, all information regarding the reason(s) for the search excluding any confidential information, and the signature of the person authorizing or refusing the to be searched. Should the visitor refuse to be searched or in instances where drugs or contraband are discovered, a CDCR Form 887-B (~~04/03~~ Rev. 02/23), Notice of Visitor Warning/Termination/Suspension/Denial/Revocation, which is incorporated by reference, shall be completed. This form shall specify the reason(s) for the denial of visiting and time frames for which the denial~~/~~ or suspension are in effect.

[Subsections 3173.2(c)(4) through 3173.2(d)(6) are unchanged.]

[Subsection 3173.2(d)(7) is amended to read:]

(7) Unclothed body search: An unclothed body search is a security procedure that involves visual inspection of a person's body and body cavities with all of their clothing removed and a thorough inspection of the person's clothing for the purpose of detecting contraband. This procedure ~~may~~ shall be conducted with the visitor's consent and when there is a reasonable suspicion that the visitor is may be carrying contraband and when no less intrusive means are available to conduct the search.

[Subsections 3173.2(e) through 3173.2(i) are unchanged.]

[Subsection 3173.2(i)(1) is renumbered as (j), and is amended to read:]

(4i) The ~~inmate and the~~ visitor who refused to be searched shall be notified in writing as described in section 3176(a)(3)(b).

[Subsection 3173.2(i)(2) is renumbered as 3173.2(j)(1), and is amended to read:]

(21) Future visits may be conditioned upon the visitor's willingness to submit to a search prior to each visit for as long as institution/ or facility officials have reasonable suspicion to believe that the visitor ~~will~~ is attempting to introduce contraband or unauthorized substances into the institution/ or facility.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 4573, 4573.5, 4576, 5054 and 6402, Penal Code.

Section 3174. Standards of Dress for Inmate Visitors.

[Subsections 3174(a) through 3174(b)(3) are unchanged, but are shown for reference purposes.]

(a) Visitors are expected to dress appropriately and maintain a standard of conduct during visiting that is not offensive to others. Consistent with the goal of making visiting a safe, positive, constructive time for families and staff, the following standards shall apply:

(1) Visitors shall remain fully clothed at all times in the visiting room.

(2) Appropriate attire includes undergarments; a dress or blouse/shirt with skirt/pants/ or shorts; and shoes or sandals.

(3) For security reasons, no brassiere will have metal underwires.

(b) Prohibited attire consists of:

(1) Clothing that resembles state-issued inmate clothing worn to visiting (blue denim or blue chambray shirts and blue denim pants);

(2) Clothing that resembles law enforcement or military-type clothing, including rain gear, when not legitimately worn by an individual on active duty or in an official capacity.

(3) Clothing or garments that:

[Subsection 3174(b)(3)(A) is amended to read:]

(A) Expose the breast/ or chest area, genitals or buttocks;

[Subsections 3174(b)(3)(B) through 3174(b)(3)(E) are unchanged, but are shown for reference purposes.]

(B) By design, the manner worn, or due to the absence of, excessively allows the anatomical detail of body parts or midriff to be clearly viewed;

(C) Are sheer, transparent or excessively tight;

(D) Expose more than two inches above the knee, including slits when standing.

(E) Undergarments shall be worn beneath translucent clothing, under all circumstances.

[Subsection 3174(b)(4) is amended to read:]

(4) Clothing or accessories displaying ~~obscene~~ sexualized, violent, or offensive language, drawings or objects.

[Subsections 3174(b)(5) through 3174(b)(6) are unchanged.]

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

Section 3176. Denial, Restriction, Suspension, Termination or Revocation of Visits and Exclusion of a Person.

[Section 3176 initial paragraph is unchanged.]

[Subsection 3176(a) is amended to read:]

(a) The official in charge of visiting may deny an approved visitor access to an institution/or facility, terminate, or restrict a visit in progress for the following reasons:

[Subsections 3176(a)(1) through 3176(a)(2) are unchanged.]

[Subsection 3176(a)(3) is amended to read:]

(3) The visitor refuses to submit to a search ~~and~~ or inspection of ~~his/her~~ their person, property, or vehicles ~~and property~~ brought onto the institution/or facility grounds.

[Subsection 3176(a)(3)(A) is amended to read:]

(A) Visitors who refuse to submit to an unclothed body search, where ~~probable cause~~ reasonable suspicion exists, shall have their visiting privileges denied for that day. Future visits may be conditioned upon the visitor's willingness to submit to an unclothed body search prior to being allowed to visit. Such searches may be repeated on subsequent visits for as long as institution/or facility officials have ~~probable cause~~ reasonable suspicion to believe ~~that~~ the visitor ~~will~~ is attempting to introduce contraband, ~~or~~ unauthorized substances, or items into the institution/or facility.

[Subsections 3176(a)(3)(B) through 3176(a)(10) are unchanged.]

[Subsection 3176(b) is amended to read:]

(b) Written notification on a CDCR Form 887-B shall be provided to the visitor when action is taken by the official in charge of visiting to deny, terminate or restrict a visit. The written notification shall contain information instructing the visitor how to appeal the action as outlined in section 3179.

[Subsections 3176(c) through 3176(d) are unchanged.]

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

NOTICE OF REQUEST FOR SEARCH
CDCR 888 (Rev. 03/23)

NOTICE OF REQUEST FOR SEARCH

INSTITUTION CONDUCTING THE SEARCH

Table with 3 columns: VISITOR NAME, NAME OF INMATE, CDCR #

Institution staff has cause to suspect that you might be carrying some form of contraband. Consistent with the posted notice at the entrance of this facility, we request your voluntary submission to a clothed/un clothed search of your person and any minor(s) accompanying you.

All visitors have the right to refuse the search and forego the visit for the day. All visitors have the right to stop the search at any time and forego the visit for the day. If a minor is to be subjected to a clothed/un clothed search, only the parent or legal guardian may authorize the search...

An unclothed body search is a security procedure that involves visual inspection of a person's body and body cavities with all of their clothing removed and a thorough inspection of the person's clothing for the purpose of detecting contraband.

ADVANCED PERMISSION FOR THIS SEARCH (OFFICIAL ORDERING THE SEARCH) WAS SECURED FROM:

Table with 3 columns: NAME, TITLE, DATE GRANTED

Table with 2 columns: POSITION, TIME PERMISSION GRANTED

SPECIFIC REASON(S) FOR SEARCH AND COMMENTS

Table with 2 columns: WATCH COMMANDER/VISITING LIEUTENANT SIGNATURE, DATE

I VOLUNTARILY AGREE to be searched. Options: Clothed, Unclothed. Fields for Signature of Visitor and Date.

I VOLUNTARILY AUTHORIZE the search of minor. Options: Clothed, Unclothed. Fields for Name of Minor, Age, Signature of Visitor, Relationship to Minor, Date.

I REFUSE to be searched. I understand by refusing to be searched, I will be foregoing my visit today. Fields for Signature of Visitor and Date.

I REFUSE TO AUTHORIZE the search of minor. I understand by refusing the search, we will be foregoing the visit today. Fields for Name of Minor, Age, Signature of Visitor, Relationship to Minor, Date.

Table with 3 columns: Staff Member Conducting Search, NAME, POSITION

Table with 3 columns: Staff Member Witnessing Search, NAME, POSITION

SEARCH RESULTS: [] POSITIVE [] NEGATIVE

DESCRIPTION OF CONTRABAND

VISITOR IS: [] PERMITTED to visit inmate. [] NOT PERMITTED to visit inmate.

Table with 3 columns: NAME (Staff Completing Form), TITLE, DATE

DISTRIBUTION: Original: C-File (Visiting) Copies: Institution Head, ISU, Visitor

Notice of Visitor Warning/Termination/Suspension/Denial/Revocation
CDCR 887-B (Rev. 02/23)

**NOTICE OF VISITOR
WARNING/TERMINATION/SUSPENSION/DENIAL/REVOCATION**

TO: (Inmate's Name)	CDCR NUMBER	INSTITUTION	UNIT
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REGARDING: (Name of Visitor)

VISITING VIOLATION

ACTION TAKEN (Check the box(es) that apply):

- | | |
|--------------------------------------------------------|----------------------------------------------------------------|
| <input type="checkbox"/> Verbal Warning _____
DATE | <input type="checkbox"/> Termination for the Day _____
DATE |
| <input type="checkbox"/> Written Warning _____
DATE | <input type="checkbox"/> Other: _____
DATE |

DESCRIPTION OF VISITING VIOLATION INCIDENT:

REASON FOR ACTION TAKEN:

Action taken by _____ on _____ DATE

PRINT NAME OF OFFICIAL

SIGNATURE OF OFFICIAL

FINAL ACTION TAKEN (If applicable):

- | | |
|------------------------------------------------------------|-------------------------------------------------------|
| <input type="checkbox"/> One (1) Month Suspension | <input type="checkbox"/> Six (6) Month Suspension |
| <input type="checkbox"/> Three (3) Month Suspension | <input type="checkbox"/> Twelve (12) Month Suspension |
| <input type="checkbox"/> Twenty-four (24) Month Suspension | |

REASON FOR FINAL ACTION TAKEN:

SIGNATURE OF DIRECTOR / WARDEN / DESIGNEE

DATE

The Termination/Suspension/Denial will expire:

on (DATE) _____ after which time you may continue to visit, provided you adhere to all rules and regulations related to visiting within the facility.

on (DATE) _____ after which time you may write a letter to the Warden requesting to have your visiting privileges reinstated. You must also submit a CDCR Form 106, Visiting Questionnaire.

Visitors may appeal any action taken above by following the established appeal process outlined in the California Code of Regulations, Title 15, Division 3, Section 3179, Complaints Relating to Visiting.

INITIAL STATEMENT OF REASONS

The California Department of Corrections and Rehabilitation (CDCR or the department) proposes to amend the California Code of Regulations (CCR), Title 15, Division 3, sections 3173.2, 3174, and 3176, regarding Visiting.

Any person coming onto the property of a CDCR institution or facility shall be subject to search and inspection as necessary to ensure institution or facility security, including prevention of the introduction of contraband. Inspections may include a search of the visitor's person, personal property, and vehicle(s) when there is reasonable suspicion to believe the visitor is attempting to introduce contraband or unauthorized items or substances into the institution or facility.

Proposed revisions update the CDCR Form 888, Notice of Request for Search, to clarify that the reason(s) for any clothed or unclothed body search shall be documented on the CDCR Form 888 excluding any confidential information. The CDCR Form 888 is revised to include clearer language describing the search process and to include the rights of the person being searched. The CDCR Form 888 (Rev. 03/23), is incorporated by reference into these regulations, and a copy is made available in this rulemaking.

When a clothed or unclothed body search of a visitor is authorized, the visitor shall be verbally informed of the reason(s) for the search and the name of the official ordering the search. Before the search is conducted, the visitor shall provide written consent by signing a CDCR Form 888. Staff shall complete the section of the CDCR Form 888 titled "ADVANCED PERMISSION (OFFICIAL ORDERING THE SEARCH) FOR THIS SEARCH WAS SECURED FROM" prior to obtaining the visitor's signature consenting to the search. Staff shall provide descriptive language in the section of the CDCR Form 888 titled "SPECIFIC REASON(S) FOR SEARCH AND COMMENTS". All information regarding the reason(s) for the search shall be documented excluding any confidential information. Confidential information includes: (1) Information which, if known to the inmate, would endanger the safety of any person; (2) Information which would jeopardize the security of the institution; (3) Specific medical or psychological information which, if known to the inmate, would be medically or psychologically detrimental to the inmate; and (4) Information provided and classified as confidential by another governmental agency. Staff documenting the reason(s) for the search as "random," or only quoting sections from the Title 15 or Department Operations Manual without any additional language, is insufficient and unacceptable.

A CDCR Form 888 shall be completed for each person searched. A copy of the CDCR Form 888 and all information relied upon for ordering the search shall be sent to the institution head or designee immediately following the search. Within 24 hours, a detailed written report shall be submitted to the institution head and shall include the following information: the reason(s) for the clothed or unclothed search of the visitor's person, property, or vehicle, the visitor's response, and the results of the search. On weekends and holidays, this report shall be submitted to the institution head on the first working day following the search.

Staff shall fill out the CDCR Form 888 in its entirety. Should the visitor refuse to be searched, or in instances where drugs or contraband are discovered, a CDCR Form 887-B (Rev. 02/23), Notice of Visitor Warning/Termination/Suspension/Denial/Revocation, shall be completed. This form shall specify the reason for the denial of visiting and time-frames for which the denial or suspension are in effect. Staff shall provide the visitor a completed copy of the CDCR Form 888, and a CDCR Form 887-B when applicable. The CDCR Form 887-B is amended to update the acronym of the form title from "CDC" to "CDCR," to remove the distribution list as it is no longer necessary due to the form now being electronic and located within the Strategic Offender Management System (SOMS), and to update the Title 15 section 3179 title heading, which is referenced at the bottom of page. The CDCR Form 887-B (Rev. 02/23) is incorporated by reference into these regulations, and a copy is made available in this rulemaking.

At any time, the visitor can refuse a clothed or unclothed body search. A visitor who refuses to participate in a clothed or unclothed body search, or fails to clear any contraband/metal detection device shall be denied visits for that day. Searches are conducted in a humane and private setting, by staff members of the same sex as the visitor being searched. The search process is progressive, with the less intrusive search method being used first (clothed), prior to the more intrusive search method (unclothed). A clothed search is conducted first if the visitor did not pass the metal detectors/scanners; then after a clothed search if the visitor still did not pass metal detectors/scanners, an unclothed body search is conducted.

Other revisions add language regarding unclothed body searches. Text is clarified to specify that unclothed body searches involve visual inspection of a person's body "and body cavities." It is necessary to add this language so that visitors have a clear understanding of what an unclothed body search consists of. Contraband is commonly concealed in a person's body cavities to evade the security process, therefore a search of a person's body cavities is necessary to ensure that contraband is not introduced into the institution or facility. This will help to ensure the safety and security of inmates and staff within the institutions and facilities.

Additionally, revisions remove the verbiage "obscene" in regards to unacceptable clothing and accessories, and replace it with the verbiage "sexualized, violent," which provides a clearer definition of prohibited clothing or accessories.

Lastly, revisions update "probable cause" verbiage to "reasonable suspicion." Reasonable suspicion is the standard used in criminal procedure, and is used in determining the legality of a police officer's decision to perform a search. Revising this language will provide consistency with the current terminology that is used in criminal procedures, and will also provide consistency with the language used throughout section 3173.2.

CONSIDERATION OF ALTERNATIVES:

The department must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the department, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Currently, no reasonable alternatives have been brought to the attention of the department that would alter the department's initial determination.

ECONOMIC IMPACT ASSESSMENT:

In accordance with Government Code Section 11346.3, subdivision (b), the department has made the following assessments regarding the proposed regulations:

Creation of New Jobs or the Elimination of Existing Jobs within the State of California

The department has determined that the proposed regulations will not have an impact on the creation of new jobs or 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 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 only 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 may impact the health and welfare of California residents and worker safety by increasing safety and security within the institutions. The proposed regulations will have no impact on the state's environment.

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 only affect the internal management of prisons, and place no requirements or restrictions on businesses.

BENEFITS OF THE REGULATIONS:

The department anticipates the proposed regulatory amendment will benefit the public by ensuring that visitors understand the reason for a search, and that they have the right to refuse the search and forgo the visit for the day, or stop the search at any time and forgo the visit for the day. This will ensure human rights and due process for visitors. Additionally, safety and security within CDCR institutions and facilities will be enhanced by proper inspection and searching of visitors to remove the threat of any introduction of contraband into institutions and facilities.

DOCUMENTS RELIED UPON:

In proposing additions and/or 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):

Section 3173.2(c)(3)(G) is amended to reflect the revision date of the CDCR Form 888, and to clarify that all information regarding the reason(s) for a search excluding any confidential information, shall be documented on the CDCR Form 888. As mentioned above, confidential information includes: (1) Information which, if known to the inmate would endanger the safety of any person; (2) Information which would jeopardize the security of the institution; (3) Specific medical or psychological information which, if known to the inmate would be medically or psychologically detrimental to the inmate; and (4) Information provided and classified as confidential by another governmental agency. Additionally, for consistency with the CDCR Form 888, text is revised to specify that the form shall include the signature of the person authorizing or refusing to be searched. These revisions are necessary to ensure the visitor knows why they are being searched, who ordered the search, and to have the knowledge that they may refuse to be searched. Revisions to this section also provide a revision date for the CDCR Form 887-B, and update the “CDC” acronym on this form to “CDCR.” The CDCR Form 887-B is updated to remove the distribution list as it is no longer necessary due to the form now being electronic and located within SOMS, and to update the Title 15 section 3179 title heading, which is referenced at the bottom of the page. These changes are necessary to update the form for consistency with current procedures, and to correctly reference recently revised regulations. Other minor revisions make grammatical corrections to replace “/”s, for better specificity, and consistency with language now used in the CCR.

Section 3173.2(d)(7) is amended to clarify the definition of an unclothed body search, which shall include visual inspection of a person’s body and body cavities. As stated above, it is necessary to add this language so that visitors have a clear understanding of what an unclothed body search consists of. Contraband is commonly concealed in a person’s body cavities to evade the security process, therefore a search of a person’s

body cavities is necessary to ensure that contraband is not introduced into the institution or facility, which will help to ensure the safety and security of inmates and staff within the institutions and facilities. Other minor grammatical changes are made for consistency and clarification purposes.

Existing section 3173.2(i)(1) is renumbered 3173.2(j), and is amended. The section is renumbered for a more accurate numbering of the section, as the language within this subsection is separate from 3173.2(i). Text language is amended for correction purposes to remove reference to the inmate being notified in writing, as only the visitor is notified in writing; and to replace the reference to 3176(a)(3) with the correct reference of 3176(b).

Existing section 3173.2(i)(2) is renumbered 3173.2(j)(1), and is amended. This subsection is renumbered as a result of the renumbering of the previous subsection. Additionally, minor grammatical corrections are made to replace “/”s, for better specificity, and consistency with the language now used in the CCR. Text language is also revised to remove the word “will” and replace it with “is attempting” for more appropriate language, as “will” indicates a future act, that the visitor is going to introduce contraband or unauthorized substances or items, and “is attempting” indicates a current act. This provides for more appropriate language that should be used when an institution or facility official may require searches on future visits should there be reasonable suspicion.

Section 3174(b)(3)(A) is amended for grammatical correction purposes, to replace the “/”, for better specificity, and consistency with the language now used in the CCR.

Section 3174(b)(4) is amended to replace the word “obscene” with more clearly defined language to avoid any confusion. The words “sexualized, violent” clarify what types of clothing and accessories are prohibited within the institution.

Section 3176(a) is amended for grammatical correction purposes, to replace the “/”, for better specificity, and consistency with the language now used in the CCR.

Section 3176(a)(3) is amended for grammatical correction purposes, including reordering of words for better clarity, and to replace the pronouns “his/her” with “their” for consistency with terms now used by the department, which provide for equity and inclusivity for all genders, and help to prevent discrimination.

Section 3176(a)(3)(A) is amended to replace the verbiage “probable cause” with “reasonable suspicion,” as reasonable suspicion is more appropriate language. Reasonable suspicion is when staff believe the visitor is attempting to introduce contraband or unauthorized items or substances into the institution or facility. As stated above, reasonable suspicion is also the standard used in criminal procedure, and is used in determining the legality of a police officer's decision to perform a search. Examples of reasonable suspicion that would warrant a search of a visitor include, but are not limited to: if a visitor has a scent coming from their person or vehicle that has the smell of marijuana, or the Investigative Services Unit has received confidential information that a visitor is going to attempt to smuggle in or conceal contraband during a visit. Additionally,

language is revised to remove the word “will” and replace it with “is attempting” for more appropriate language, as “will” indicates a future act, that the visitor is going to introduce contraband or unauthorized substances or items, and “is attempting” indicates a current act. This provides for more appropriate language that should be used when an institution or facility official may require searches on subsequent visits should there be reasonable suspicion. Other minor revisions make grammatical corrections to replace “/”s, for better specificity, and consistency with language now used in the CCR.

Section 3176(b) is amended to specify that written notification of a denial, termination, or restriction of a visit shall be provided to a visitor on the CDCR Form 887-B. As stated above, the CDCR Form 887-B is revised to update the form, providing a new revision date, and changing the acronym of the form title from “CDC” to “CDCR.”