

**State of California  
Office of Administrative Law**

In re:  
Department of Corrections and  
Rehabilitation

Regulatory Action:

Title 15, California Code of Regulations

Adopt sections:

Amend sections: 3268.1

Repeal sections:

NOTICE OF APPROVAL OF REGULATORY  
ACTION

Government Code Section 11349.3

OAL Matter Number: 2023-0712-01

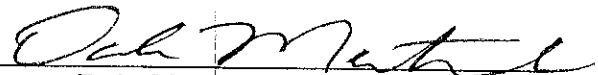
OAL Matter Type: Regular (S)

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This rulemaking action extends the time for review of use-of-force cases from 30 to 60 calendar days from the date of their logged occurrence. The action requires the Institutional Executive Review Committee (IERC) to refer incidents of use of force to the Allegation Investigation Unit for investigation and tolls the 60-day review period until after the incident is forwarded to the Hiring Authority for a final determination. The action also authorizes the IERC to pause the 60-day review period to obtain additional information or clarification.

OAL approves this regulatory action pursuant to section 11349.3 of the Government Code. This regulatory action becomes effective on 10/1/2023.

Date: August 21, 2023



Dale Mentink  
Assistant Chief Counsel

For: Kenneth J. Pogue  
Director

Original: Jeffrey Macomber, Secretary  
Copy: Dmitriy Kostyuk

NOTICE PUBLICATION/REGULATIONS SUBMISSION

STD. 400 (REV. 10/2019)

REGULAR

For use by Secretary of State only

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

AUG 21 2023 1:41 PM

Form header with fields: OAL FILE NUMBERS (Z-2023-0418-03), NOTICE FILE NUMBER (2023-0712-015), REGULATORY ACTION NUMBER, EMERGENCY NUMBER, AGENCY WITH RULEMAKING AUTHORITY (California Department of Corrections and Rehabilitation), AGENCY FILE NUMBER (23-04)

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

Form A: PUBLICATION OF NOTICE. Fields include: 1. SUBJECT OF NOTICE, TITLE(S), FIRST SECTION AFFECTED, 2. REQUESTED PUBLICATION DATE, 3. NOTICE TYPE, 4. AGENCY CONTACT PERSON, TELEPHONE NUMBER, FAX NUMBER (Optional), OAL USE ONLY, ACTION ON PROPOSED NOTICE, NOTICE REGISTER NUMBER (2023, 18-2), PUBLICATION DATE (5/5/23)

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

Form B: SUBMISSION OF REGULATIONS. Fields include: 1a. SUBJECT OF REGULATION(S) (Institutional Executive Review Committee), 1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S), 2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)

Form B continued: SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.), TITLE(S) (15), ADOPT, AMEND (3268.1), REPEAL

Form B continued: 3. TYPE OF FILING. Includes checkboxes for Regular Rulemaking, Resubmittal of disapproved or withdrawn nonemergency filing, Emergency, Certificate of Compliance, Emergency Readopt, Changes Without Regulatory Effect, File & Print, Print Only, Other (Specify)

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

Form B continued: 5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100). Includes checkboxes for Effective January 1, April 1, July 1, or October 1, Effective on filing with Secretary of State, §100 Changes Without Regulatory Effect, Effective other (Specify)

Form B continued: 6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY. Includes checkboxes for Department of Finance, Fair Political Practices Commission, State Fire Marshal, Other (Specify)

Form B continued: 7. CONTACT PERSON (Dmitriy Kostyuk), TELEPHONE NUMBER ((916) 445-2276), FAX NUMBER (Optional), E-MAIL ADDRESS (Optional) (Dmitriy.Kostyuk@cdcr.ca.gov)

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

Form B continued: DocuSigned by: SIGNATURE OF AGENCY HEAD OR DESIGNEE (Tammy Foss), DATE (7/7/2023), TYPED NAME AND TITLE OF SIGNATORY (Tammy Foss, Undersecretary, Operations)

For use by Office of Administrative Law (OAL) only. ENDORSED APPROVED. AUG 21 2023. Office of Administrative Law

## TEXT OF ADOPTED 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, during their review, a potential use of force violation occurred, the incident shall be referred to the Allegation Investigation 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).

## **FINAL STATEMENT OF REASONS**

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

### **UPDATES TO THE INITIAL STATEMENT OF REASONS:**

On May 5, 2022, the California Department of Corrections and Rehabilitation (CDCR or the department) published the Notice of Change to Regulations for Institutional Executive Review Committee Timeframe, which began the public comment period. The department's Notice of Change to Regulations #23-04 was mailed the same day to individuals who had requested to be on the department's mailing list for regulation changes, was posted on the department's website, and copies were posted in CDCR institutions. The department received zero comments. A public hearing was held on June 26, 2023, and there were no attendees.

After the 45-day public comment period there was a non-substantive change made to the proposed text due to a departmental name change. The Allegation Inquiry Unit was revised to state Allegation Investigation Unit. This change does not change the purpose or meaning of the proposed regulations.

### **DETERMINATIONS, ASSESSMENTS, MANDATES, AND FISCAL IMPACT:**

The department has determined that no alternative considered would be more effective in carrying out the purpose for which this regulation is proposed, or would be as effective and less burdensome to affected private persons, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the action proposed. No such alternatives were proposed or brought to the department's attention during the adoption of this rulemaking action. The department has made an initial determination that the action will not have a significant adverse economic impact on business. Additionally, there has been no testimony or other evidence provided that would alter the department's initial determination. The department has determined that this action imposes no mandates on local agencies or school districts, or a mandate which requires reimbursement pursuant to Part 7 (Section 17561) of Division 4 of the Government Code (GC). The department has determined that no reasonable alternatives to the regulation have been identified or brought to the attention of the department that would lessen any adverse impact on affected private persons or small businesses than the action planned. The department, in proposing the adoption of these regulations, has not identified nor has it relied upon any technical, theoretical, or empirical study, report, or similar document. The department has relied upon the results of the Economic Impact Assessment, which can be found in the Notice of Proposed Regulations and is available for review as part of the rulemaking file.