

REGULATION AND POLICY MANAGEMENT BRANCH

P.O. Box 942883
Sacramento, CA 94283-0001



January 25, 2024

2nd NOTICE OF CHANGE TO TEXT AS ORIGINALLY PROPOSED

Pursuant to the provisions of Government Code Section 11346.8(c) and Section 44 of Title 1 of the California Code of Regulations (CCR), the California Department of Corrections and Rehabilitation (CDCR or the department) hereby provides this 2nd notice of proposed changes made to CCR sections regarding Visiting. The department proposes to amend sections 3173.2, 3176, and CDCR Form 888 within the CCR, Title 15, Division 3, Chapter 1.

You are receiving this notice because you provided comments or expressed an interest in receiving notice of changes to the proposed regulations concerning Visiting.

Notice of Change to Regulations 23-05 was noticed to the public on June 23, 2023. The full text of the originally proposed amendments is shown in its original single underline and ~~strikethrough~~ format. The changes provided in the first Notice of Change to Text as Originally Proposed are indicated by **bold double underline** for additional added text, and ~~**bold double strikethrough**~~ for additional deleted text to the originally proposed text.

The changes provided in this 2nd Notice of Change to Text as Originally Proposed are indicated by **dotted bold underline** or ~~**dotted bold strikethrough**~~. Changes will also appear in **dotted bold underline in italics** and ~~**dotted bold strikethrough in italics**~~ for revisions to the 1st 15-Day Re-Notice text which appears in **bold double underline** and ~~**bold double strikethrough**~~. Only those comments relating directly to the amendments indicated by **dotted bold underline** and ~~**dotted bold strikethrough**~~, or **dotted bold underline in italics** and ~~**dotted bold strikethrough in italics**~~, or as described below for the CDCR Form 888, will be considered.

In the attached text:

Subsection 3173.2(a) is amended to provide consistency with the section. Revisions made in the initial Notice of Change to Regulations changed the wording in subsection 3173.2(d)(7) from “*is* carrying contraband ...” to “*may be* carrying contraband ...” for clarification purposes. After the 1st 15-Day Re-Notice, the department determined it was necessary to amend other subsections within the section for consistency with the “*may be*” language as used in subsection 3173.2(d)(7). In addition, to better explain why the wording was revised from “*is*” to “*may be*,” this language was revised because “*may be*” better reflects the standard for reasonable suspicion. The standard articulated in *Terry v. Ohio* for reasonable suspicion was a reasonable conclusion that criminal activity “may be afoot.” (*Terry v. Ohio* (1968) 392 U.S. 1, 30.). Other revisions to this subsection replace slashes (*/*) with the word “*or*” for better specificity and consistency with language now used in the CCR.

Subsection 3173.2(c)(3)(G) is amended to provide a new revision date for the CDCR Form 888, due to additional revisions to the form. Additionally, new language is added to this subsection to add a reference to section 3321, to clarify what information shall constitute “confidential information.”

Subsection 3173.2(d)(7) is amended to add the words “by staff” to the previous revision which added language specifying that “The visitor’s body will not be touched during the unclothed body search.” This revision will clarify that the visitor’s body will not be touched by staff during the unclothed body search.

Subsection 3173.2(j) is amended to clarify what the visitor shall be notified in writing of. The words “of the denied visit” clarify that the visitor is notified in writing of the denied visit.

Subsection 3173.2(j)(1) is amended for consistency with changes made within the section to replace the language “is” with “*may be*.” This revision is necessary for consistency with the revisions made in the initial Notice of Change to Regulations to subsection 3173.2(d)(7), and to better reflect the standard for reasonable suspicion. The standard articulated in *Terry v. Ohio* for reasonable suspicion was a reasonable conclusion that criminal activity “may be afoot.” (*Terry v. Ohio* (1968) 392 U.S. 1, 30.)

Subsection 3176(a)(3)(A) is amended for consistency with changes made within the section to replace the language “is” with “*may be*.” This revision is necessary for consistency with the revisions made in the initial Notice of Change to Regulations to subsection 3173.2(d)(7), and to better reflect the standard for reasonable suspicion. The standard articulated in *Terry v. Ohio* for reasonable suspicion was a reasonable conclusion that criminal activity “may be afoot.” (*Terry v. Ohio* (1968) 392 U.S. 1, 30.)

Revisions to CDCR Form 888, Notice of Request for Search:

After further review, the department determined that additional revisions to the CDCR Form 888 were necessary for clarity and corrective purposes. The revision date on the CDCR Form 888, is revised to “(Rev. 01/24).” Revisions to the CDCR Form 888 are as follows:

In the second paragraph, second to last sentence which read: “Absent positive proof of relationship, (e.g., birth certificate, court order, notarized authorization by parent or legal guardian), a search of a minor will not be conducted and visiting will not be allowed” the sentence is revised to correctly state that “... *the minor’s visit* will not be allowed” rather than “... *visiting* will not be allowed.”

In the third paragraph language is added for clarification purposes to further explain the visiting progressive search process. A clothed body search is conducted if the visitor does not clear metal detectors/scanners, then after a clothed body search if additional attempts to clear the metal detectors/scanner fail, an unclothed body search would be requested.

Also in the third paragraph, new language is added to clarify that “Exceptions to the gender of the staff member conducting the search will only be allowed for those identifying as transgender, intersex, or non-binary.” This language is necessary to allow for transgender, intersex, or non-binary individuals to be able to select the gender of their preference to perform the search. This will provide for equity and nondiscrimination of these individuals and align with emerging changes in today’s culture. Additionally, new language provides clarity regarding the gender of the person witnessing the search, and specifies “A second staff member, of the same gender as the staff member conducting the search, will serve as the witness to the search.”

New checkboxes are added for “Gender Identification,” and “Gender Search Preference.” The Gender Identification checkbox allows for visiting individuals to identify their gender so that an individual’s gender is not left up to the perception of Visiting staff, which will help to avoid any possible misidentification by Visiting staff. The Gender Search Preference checkbox is added to allow for transgender, non-binary, and intersex individuals to select the gender of their choice to conduct the search. This will allow for transgender, intersex, or non-binary individuals to be able to select the gender of their preference to perform the search, which will provide for equity and nondiscrimination of these individuals and align with emerging changes in today’s culture.

The comment period on these changes shall close on **February 9, 2024**. Please submit comments to Regulation and Policy Management Branch, Department of Corrections and Rehabilitation, P.O. Box 942883, Sacramento, CA, 94283-0001; fax to (916) 324-6075; or e-mail to rpmb@cdcr.ca.gov before the close of the comment period. Only those comments relating directly to the enclosed changes indicated by **dotted bold underline** or **~~dotted bold strikethrough~~**, or ***dotted bold underline in italics*** or **~~*dotted bold strikethrough in italics*~~**, or as described for the CDCR Form 888, will be considered.

Original signed by:

Ying Sun, Associate Director
Regulation and Policy Management Branch
Department of Corrections and Rehabilitation

Attachment(s)

2nd 15-DAY RE-NOTICE TEXT OF PROPOSED REGULATIONS

In the following, the originally proposed text appears in single underline and single ~~striketrough~~ format. The 1st 15-Day Re-Notice text changes appear in **bold double underline** and ~~**bold double striketrough**~~. The 2nd 15-Day Re-Notice text changes appear in **dotted bold underline**, which indicates additional added text, and ~~**dotted bold striketrough**~~ which indicates additional deleted text to the originally proposed text. Additionally, revisions to the 1st 15-Day Re-Notice text appear in **dotted bold underline in italics** and ~~**dotted bold striketrough in italics**~~ format.

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.

[Subsection 3173.2(a) is amended to read:]

(a) Any person coming onto the property of an institution~~/ or~~ or facility shall be subject to inspection as necessary to ensure institution~~/ or~~ 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 may be attempting to introduce or remove contraband or unauthorized items or substances into, or out of, the institution~~/ or~~ or facility.

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

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

(G) All requests for unclothed~~/ or~~ 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~~ 09/23 ~~01/24~~), 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 as referenced in section 3321. 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~~ 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. **The visitor's body will not be touched by staff during the unclothed body search.** 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:]

(4j) The ~~inmate and the~~ visitor who refused to be searched shall be notified ~~of the denied visit~~ 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:]

(2j) 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~~ may...be 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 ~~is~~ may be 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 (Rev. 02/23), Notice of Visitor Warning/Termination/Suspension/Denial/Revocation, which is incorporated by reference, 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. 01/24)

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INSTITUTION CONDUCTING THE SEARCH

VISITOR NAME	NAME OF INMATE	CDCR #
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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/unclothed search of your person and any minor(s) accompanying you. The search may include your personal possessions and your vehicle.

All visitors have the right to refuse the search and forego the visit for a 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/unclothed search, only the parent or legal guardian may authorize the search and must be present during the search. Absent positive proof of relationship, (e.g., birth certificate, court order, notarized authorization by parent or legal guardian), a search of a minor will not be conducted and the minor's visit will not be allowed. A separate CDCR Form 888 is required for each minor.

A clothed body search is conducted if the visitor does not clear metal detectors/scanners, then after a clothed body search if additional attempts to clear the metal detectors/scanner fail, an unclothed body search would be requested. 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 shall be conducted with the visitor's consent and when there is a reasonable suspicion that the visitor may be carrying contraband and when no less intrusive means are available to conduct the search. This search shall be conducted in a private setting and by staff members of the same gender as the adult or minor visitor. Exceptions to the gender of the staff member conducting the search will only be allowed for those identifying as transgender, intersex, or non-binary. A second staff member, of the same gender as the staff member conducting the search, will serve as the witness to the search.

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

NAME	TITLE	DATE GRANTED
POSITION		TIME PERMISSION GRANTED

SPECIFIC REASON(S) FOR SEARCH AND COMMENTS

WATCH COMMANDER/VISITING LIEUTENANT SIGNATURE	DATE
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GENDER IDENTIFICATION:	GENDER SEARCH PREFERENCE (Only for those that identify as Transgender, Intersex, or Non-Binary)
<input type="checkbox"/> Male <input type="checkbox"/> Transgender	<input type="checkbox"/> Male
<input type="checkbox"/> Female <input type="checkbox"/> Intersex <input type="checkbox"/> Non-Binary	<input type="checkbox"/> Female

<input type="checkbox"/> I VOLUNTARILY AGREE to be searched	Signature of Visitor	Date
<input type="checkbox"/> Clothed <input type="checkbox"/> Unclothed		

<input type="checkbox"/> I VOLUNTARILY AUTHORIZE the search of minor	Signature of Visitor (Parent or Legal Guardian)	Date
<input type="checkbox"/> Clothed <input type="checkbox"/> Unclothed	Relationship to Minor	
_____	_____	_____
Name of Minor	Age	

<input type="checkbox"/> I REFUSE to be searched. I understand by refusing to be searched, I will be foregoing my visit today.	Signature of Visitor	Date
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<input type="checkbox"/> I REFUSE TO AUTHORIZE the search of minor. I understand by refusing the search, the minor will be foregoing the visit today.	Signature of Visitor (Parent or Legal Guardian)	Date
_____	Relationship to Minor	_____
_____	_____	_____
Name of Minor	Age	

Staff Member Conducting Search	NAME	POSITION
Staff Member Witnessing Search	NAME	POSITION

SEARCH RESULTS: POSITIVE NEGATIVE

DESCRIPTION OF CONTRABAND

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

NAME (Staff Completing Form)	TITLE	DATE
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DISTRIBUTION: Original: C-File (Visiting) Copies: Institution Head, ISU, Visitor

ADDENDUM - INITIAL STATEMENT OF REASONS

After publication of the initial Notice of Change to Text as Originally Proposed and also the 15-Day Re-Notice Text of Proposed Regulations, it was determined that revisions to the Initial Statement of Reasons were necessary for correction purposes and to further comply with the Necessity and Clarity standards of the Administrative Procedure Act (APA).

In the section titled "Specific Purpose and Rationale for Each Section, Per Government Code Section 11346.2(b)(1)," the following subsections are corrected:

Section 3173.2(d)(7) – The last sentence for this subsection in the ISOR stated: "Other minor grammatical changes are made for consistency and clarification purposes." The department wishes to correct this statement as it relates to the change to revise the language "... the visitor *is* carrying contraband" to "... the visitor *may be* carrying contraband." The revision to change the language from "*is*" to "*may be*" was revised because "*may be*" better reflects the standard for reasonable suspicion. The standard articulated in *Terry v. Ohio* for reasonable suspicion was a reasonable conclusion that criminal activity "may be afoot." (*Terry v. Ohio* (1968) 392 U.S. 1, 30.).

Existing section 3173.2(i)(1) renumbered 3173.2(j) – Further rationale is given to provide additional necessity and clarity for removing the word "inmate." The language in this subsection referring to the "inmate," was removed because it could have been interpreted as meaning the inmate was being searched, when only the visitor is searched. In addition, the prior language in section 3173.2(i)(1) now renumbered as (j) had a reference to section 3176(a)(3), which was incorrect because 3176(a)(3) was not applicable to the inmate or visitor receiving written notification. The original wording of this section was incorrect, problematic, confusing, and therefore needed to be corrected.

Section 3176(a)(3)(A) – The second sentence for this section incorrectly stated: "Reasonable suspicion is when staff believe the visitor *is* attempting to introduce contraband or unauthorized items or substances into the institution or facility," the sentence should have stated: "Reasonable suspicion is when staff believe the visitor *may be* attempting to introduce contraband or unauthorized items or substances into the institution or facility." After the 1st 15-Day Re-Notice the department realized that language used throughout the section was inconsistent, and therefore made revisions in the 2nd 15-Day Re-Notice to provide consistency with language used throughout the section. Additionally, while the initial explanation for the revisions to this section, which stated "the language '*will attempt*' is replaced with '*is attempting*' was done because '*will attempt*' indicates a future act and '*is attempting*' indicates a current act, and is more appropriate language" was initially correct, the department determined the language needed to be revised for consistency with the section, and to better reflect the standard for reasonable suspicion, as articulated in *Terry v. Ohio*.