

REGULATION AND POLICY MANAGEMENT BRANCH

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



April 17, 2024

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 notice of proposed changes made to CCR Sections regarding Hunger Strike. The department proposes to amend sections 3298 and 3298.2, and CDCR Form 128-HS within the CCR, Title 15, Division 3, Chapter 1. You are receiving this notice because you provided a comment regarding these proposed regulations.

Notice of Change to Regulations 24-01 was noticed to the public on January 26, 2024. The full text of the originally proposed amendments is shown in its original single underline and ~~striketrough~~ format. The changes provided in this Notice of Change to Text as Originally Proposed are indicated by **bold double underline** for additional added text, and ~~**bold double striketrough**~~ for additional deleted text to the originally proposed text. Additionally, CDCR Form 128-HS is revised as described below. Only those comments relating directly to the amendments indicated by **bold double underline** or ~~**bold double striketrough**~~, or as described below for the CDCR Form 128-HS, will be considered.

In the attached text:

Section 3298 is renumbered to add “(a)” to the first paragraph, which resulted in a renumbering of subsequent subsections in this section.

Subsection 3298(a), the word “section” was replaced with “article” to clarify that the definitions apply to Article 3.5, not just the section.

Subsection 3298(a)(1), “or fluids” was removed from the definition of a hunger strike to clarify that refusing fluids would not be considered a hunger strike.

Subsection 3298.2 is renumbered to add “(a)” to be consistent with other numbering within Title 15.

Revisions to CDCR Form 128-HS, Initial Hunger Strike Chrono:

After further review, the department determined that an additional revision to the CDCR Form 128-HS was necessary for clarity and corrective purposes. CDCR Form 128-HS instruction number “3” on page 1, which read “Refer the incarcerated person for an urgent Mental Health referral,” is revised to “Refer the incarcerated person for a Mental Health Assessment to be completed within 72 hours of referral.” This revision is necessary to clarify the time frame for completion of the Mental Health Assessment.

Additionally, this revision aligns with existing regulations in CCR Title 15, Division 3, Chapter 2, subsection 3999.427(c)(3)(B), which states that when custody staff identifies that an incarcerated person is a hunger strike participant, "Within 72 hours, mental health staff shall conduct a mental health evaluation for patients in the Mental Health Services Delivery System (MHSDS) or Developmental Disability Program (DDP)."

The comment period on these changes shall close on **May 2, 2024**. Please submit comments to Regulation and Policy Management Branch, Department of Corrections and Rehabilitation, P.O. Box 942883, Sacramento, CA, 94283-0001; or e-mail to rpb@cdcr.ca.gov before the close of the comment period. Only those comments relating directly to the enclosed changes indicated by **bold double underline** or ~~**bold double strikethrough**~~, or as described for the CDCR Form 128-HS, will be considered.



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

Attachment(s)

15-DAY RE-NOTICE TEXT OF PROPOSED REGULATIONS

In the following, **bold double underline** indicates additional text and ~~**bold double underline**~~ indicates additional deleted text to the originally proposed text presented in the original single underline and strikethrough format.

California Code of Regulations, Title 15, Crime Prevention and Corrections

Division 3. Adult Institutions, Programs, and Parole

Subchapter 4. General Institution Regulations.

New Article 3.5 is adopted to read:

Article 3.5. Hunger Strike

New section 3298 is adopted to read:

3298. Definitions.

(a) The following terms are defined for the purposes of this ~~section~~ **article**:

(a1) Hunger Strike is a method of non-violent resistance or pressure in which an incarcerated person refuses to consume food ~~or fluids~~ with the objective of achieving a specific goal.

(b2) Hunger Strike Participant is an incarcerated person who has refused nine consecutive meals, either individually or as part of a mass hunger strike, with the objective of achieving a specific goal.

(c3) Initiation of Hunger Strike is the day the incarcerated person has refused their ninth consecutive meal.

(d4) Mass Hunger Strike is three or more hunger strike participants assigned to an area united with a common goal or set of demands disrupting institution operations and requiring statewide or institutional mobilization.

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

New section 3298.1 is adopted to read:

3298.1. Individual Hunger Strike.

(a) When a staff member becomes aware of an incarcerated person who has refused nine consecutive meals, they shall immediately notify the respective facility or unit Sergeant or Lieutenant where the hunger strike participant is housed.

(b) The same day, the facility or unit Sergeant or Lieutenant shall interview the hunger strike participant, shall make every effort to resolve the hunger strike, and shall document initial hunger strike information on CDCR Form 128-HS (12/23), Initial Hunger Strike Chrono, which is incorporated by reference.

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

New section 3298.2 is adopted to read:

3298.2. Mass Hunger Strike.

(a) During a mass hunger strike, institutions shall follow the procedure detailed in section 3298.1 for each individual hunger strike participant.

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

INITIAL HUNGER STRIKE CHRONO
 CDCR 128-HS (12/23)

NAME

CDCR#

HOUSING

MH LEVEL OF CARE

DDP CODE

DPP CODE

Instructions

This Chrono shall be utilized in the following scenarios:

1. Incarcerated person refused nine consecutive meals.
2. Incarcerated person participating in an individual or mass hunger strike.

The following shall happen:

1. Immediately notify the respective Facility (or Unit) Sergeant, or Lieutenant where the incarcerated person is housed. The Lieutenant will in turn notify their Facility (or Unit) Captain, or Administrator of the Day (AOD) during non-business hours. **The Associate Director (AD) of their respective mission, shall be notified no later than 24 hours or the first business day of all hunger strikes.**
2. Document the date, time of discovery by staff, and first meal missed on this CDCR 128-HS. In the case of mass hunger strike, document this information on this form (one per participating incarcerated person), as well as in an Incident Report in Strategic Offender Management System. If the hunger strike occurs in a Restricted Housing Unit, document meal refusals on the Automated Restricted Housing Record.
3. Refer the incarcerated person for a Mental Health Assessment to be completed within 72 hours of referral.
4. Once this form is completed, a copy shall be sent to the Facility (or Unit) Captain, or Associate Warden (AW), Warden, incarcerated person's Facility (or Unit) Clinic Registered Nurse (RN), Chief Executive Office (CEO), Chief Medical Executive (CME), Chief Nurse Executive (CNE), Chief of Mental Health (CMH), Chief Psychiatrist, Records, Public Information Officer (PIO) and if after hours or on weekends or holidays, the Triage Treatment Area (TTA) nursing staff. A copy shall also be filed in the Electronic Health Records Systems (EHRS), Electronic Records Management System (ERMS), and sent the hunger strike email distribution list. Subject of email shall state, "Hunger strike, incarcerated person's name, CDCR number and housing unit".
5. Answer all questions on this form.

Additional space for comments is provided at the end of this Chrono.

Date:

INITIAL HUNGER STRIKE CHRONO

Institution or Facility:

NAME

CDCR#

HOUSING

MH LEVEL OF CARE

DDP CODE

DPP CODE

1. Hunger Strike Participant Interview:

- a) What is the reason for the hunger strike? _____
- b) What is the incarcerated person requesting to end their hunger strike? _____
- c) When was the last meal the incarcerated person consumed (Date/meal)? _____
- d) Has the incarcerated person participated in past hunger strikes in the past 12 months?
- 1) If yes, how many? _____
- 2) When did the prior hunger strike(s) occur? _____
- 3) What were the reasons? _____

2. Incarcerated Person Information:

- | | YES | NO | REFUSED |
|--|--------------------------|--------------------------|--------------------------|
| a) Was the incarcerated person weighed? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| If yes, Date: _____ Time: _____ Weight: _____ | | | |
| b) Is the incarcerated person still drinking water or liquids? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| If no, notify Facility (or Unit) Captain, or AW. | | | |
| c) Were the incarcerated person's vital signs checked? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Date: _____ By who: _____ | | | |
| d) Is the incarcerated person taking medication as prescribed? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

3. Canteen

- | | YES | NO | REFUSED |
|--|--------------------------|--------------------------|--------------------------|
| a) Have all food items been removed from the incarcerated person's cell? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Date: _____ By who: _____ | | | |
| b) Were the food items inventoried on a CDCR Form 1083, Inmate Property Inventory, or within the departmental approved record keeping system, and secured in an area where only the Supervisor or Property Officer has access? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

Date:

INITIAL HUNGER STRIKE CHRONO

Institution or Facility:

DISTRIBUTION

Original: ERMS File **Copies:** Warden, Facility AW, Facility Captain, Facility Lieutenant, Unit AW, Unit Captain, Unit Lieutenant, PIO, CEO, CNE, CME, CMH, Chief Psychiatrist, Facility/Unit RN, EHRS, TTA, and Records

NAME

CDCR#

HOUSING

MH LEVEL OF CARE

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4. Additional Information

- a) Unit Lieutenant notified by: **Name:** _____ **Date:** _____ **Time:** _____
- b) Watch Commander notified by: **Name:** _____ **Date:** _____ **Time:** _____
- c) Mental Health Referral Chrono
CDCR 128-MH5 requested by: **Name:** _____ **Date:** _____ **Time:** _____
- d) Email with CDCR Form 128-HS sent
by: **Name:** _____ **Date:** _____ **Time:** _____

Additional Comments:

Signature: _____

Name: _____

Title: _____

Date:

INITIAL HUNGER STRIKE CHRONO

Institution or Facility:

DISTRIBUTION

Original: ERMS File **Copies:** Warden, Facility AW, Facility Captain, Facility Lieutenant, Unit AW, Unit Captain, Unit Lieutenant, PIO, CEO, CNE, CME, CMH, Chief Psychiatrist, Facility/Unit RN, EHRS, TTA, and Records