

REGULATION AND POLICY MANAGEMENT BRANCH

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



January 30, 2026

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 the Transgender, Respect, Agency, and Dignity Act (TRADA). The department proposes to amend sections 3075, 3085, 3085.2, 3085.3, 3269, 3287, 3287.1, 3375, and 3376 within the CCR, Title 15, Division 3.

You are receiving this notice because you provided comments or expressed an interest in receiving notice of changes to the proposed regulations concerning the Transgender, Respect, Agency, and Dignity Act (TRADA).

Notice of Change to Regulations 25-04 was noticed to the public on February 28, 2025. The full text of the originally proposed amendments is shown in its original single underline and ~~strikethrough~~ format. The changes provided in the 1st Notice of Change to Text as Originally Proposed are indicated by **bold double underline** for additional added text, and ~~**bold double underline**~~ 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 also appear in **dotted bold underline in italics** and ~~**dotted bold strikethrough in italics**~~ for revisions to the first 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**~~, will be considered.

In the attached text:

Subsection 3075(i) is renumbered to 3075(k) due to other regulation changes that have occurred to section 3075 since the initial notice of these proposed regulations. No other changes are made to this subsection.

Subsection 3085(c) is amended to provide better clarity and consistency with Penal Code (PC) section 2606(a)(4). Language in this subsection is revised for consistency with PC 2604(a)(4). Reference to sections 3375(a), (b), and (c); or 3335(a); or 3269(a)-(h) provide clarification regarding the process for how the department considers “serious consideration” to alternatives, including bed assignments, placement, or programming

decisions. This consideration is done during the classification process and for all incarcerated persons' housing assignments, as well as for all Restricted Housing Unit placements. In addition, the last sentence is revised to remove the language "housing and" as section 3085 applies to the transgender, non-binary, and intersex incarcerated person's health and safety considerations, while their housing considerations are outlined in section 3085.2. The language "in accordance with the procedures set forth in subsections 3375(a), (b), and (c); or 3335(a); or 3269(a)-(h)" is added to provide clarity regarding the process that shall be followed when an incarcerated person raises concerns for their health or safety at any time in relation to a placement.

Section 3085, Note: Authority and Reference Section is amended to make a non-substantive change to add PC 2605 to the Reference Sections, as it should have been included initially.

Subsection 3085.2(a) is amended to align language more closely with PC section 2606(b) regarding denying an incarcerated person's preferred housing preference. The language regarding an incarcerated person's perception of health and safety is captured within section 3085. These changes will provide clarity and consistency with PC section 2606(b). Additionally, the language "in accordance with the procedures set forth in subsection 3085.2(d)" is added to provide clarity regarding the process that shall be followed when an incarcerated person raises concerns for their health and safety in relation to a housing placement.

Subsection 3085.2(c)(5)(B) is amended to separate the language regarding the incarcerated person's right to file a grievance and place it in new subsection 3085.2(c)(5)(B)2. for better organization and understanding of the section.

New subsection 3085.2(c)(5)(B)1. is added to provide additional language for consistency with PC section 2606(d) regarding "disapprovals." The newly added language reflects language used in the statute and provides clarity. The department determined that 15 calendar days after the incarcerated person's receipt of the automated Classification Chrono is a reasonable amount of time to allow for the CC II (Supervisor) to provide the incarcerated person with an opportunity to verbally raise any objections to the disapproval and document those objections on the CDC Form 128-B.

New subsection 3085.2(c)(5)(B)2. is added to clarify that the incarcerated person has the right to file a grievance if they do not agree with the ICC's decision of disapproval. The grievance process is a separate process, and incarcerated persons may grieve the decision pursuant subsection 3482(b)(1).

Subsection 3085.2(d)(5)(B) is amended to separate the language regarding the incarcerated person's right to file a grievance and place it in new subsection 3085.2(d)(5)(B)2. for better organization and understanding of the section.

New subsection 3085.2(d)(5)(B)1. is added to provide additional language for consistency with PC section 2606(d) regarding "disapprovals." The newly added language reflects

language used in the statute and provides clarity. The department determined that 15 calendar days after the incarcerated person's receipt of the automated Classification Chrono is a reasonable amount of time to allow for the CC II (Supervisor) to provide the incarcerated person with an opportunity to verbally raise any objections to the disapproval and document those objections on the CDC Form 128-B.

New subsection 3085.2(d)(5)(B)2. is added to clarify that the incarcerated person has the right to file a grievance if they do not agree with the ICC's decision of disapproval. The grievance process is a separate process, and incarcerated persons may grieve the decision pursuant subsection 3482(b)(1).

Subsections 3085.2(e)(3)(A) and (e)(3)(B) are amended to remove language which appeared to conflict with PC section 2606(c). While the department's intention was to help clarify PC section 2606(c)(3), the department realized that the previous language created further confusion and conflict. Language is revised to clarify that even though there may be a factor present among other incarcerated persons at a transgender, non-binary, or intersex incarcerated person's preferred housing placement, it does not prohibit the department from denying a transgender, non-binary, or intersex person's preferred housing placement if there are individualized underlying facts and information that support management or security concerns as to why the department is unable to accommodate the housing preference. This language provides clarity and consistency with PC 2606(c).

Subsection 3085.2(e)(3)(C) is renumbered 3085.2(e)(3)(B) due to the deletion of subsection 3085.2(e)(3)(B). In addition, language is revised to provide better clarity, removing the vague language "factor," and replacing it with "underlying facts and information that relate to the transgender, non-binary, or intersex incarcerated person."

Subsection 3085.2(f)(1) is amended to add the language "with their previously approved preferred housing placement" for clarity purposes.

Subsection 3085.2(f)(1)(B) is amended to change the word "and" to "or" in the phrase "management and security concerns" for clarity and consistency purposes. Additionally, language which could be perceived as conflicting with PC section 2606(b) is removed, and new language is added to better align with PC section 2606(b), providing clarity and consistency.

Subsection 3085.2(f)(1)(C) is amended to separate the language regarding the incarcerated person's right to grieve the ICC's decision and place it in new subsection 3085.2(f)(1)(C)2. for better organization and understanding of the section. For consistency with language used throughout the text, language is added to specify that "the incarcerated person shall be provided with a copy of the automated Classification Committee Chrono (Rev. 05/19) from the ICC."

New subsection 3085.2(f)(1)(C)1. is added to provide additional language for consistency with PC section 2606(d) regarding "disapprovals." The newly added language reflects

language used in the statute and provides clarity. The department determined that 15 calendar days after the incarcerated person's receipt of the automated Classification Chrono is a reasonable amount of time to allow for the CC II (Supervisor) to provide the incarcerated person with an opportunity to verbally raise any objections to the disapproval and document those objections on the CDC Form 128-B.

New subsection 3085.2(f)(1)(C)2. is added to clarify that the incarcerated person has the right to file a grievance if they do not agree with the ICC's decision of disapproval. The grievance process is a separate process, and incarcerated persons may grieve the decision pursuant to subsection 3482(b)(1).

Subsection 3085.2(f)(2)(A) is amended to revise the language "security and management" to "management or security" for consistency with the language used throughout the text.

Subsection 3085.3(b)(1) is amended to add the word "calendar" to specify "15 calendar days" for clarity and consistency with language used throughout the text. The department determined that 15 calendar days within the PREA Compliance Manager's receipt of the completed GIQ is a reasonable amount of time for the PREA Compliance Manager to interview the incarcerated person, review all pertinent case factors, prepare a SOMS OSPR, and make a recommendation about the approval or denial of the search preference request. The word "is" is replaced with "shall be" for more appropriate wording and consistency with language used throughout the CCR. Additionally, language is added regarding the Chief Deputy Warden's review of the Offender Search Preference Request (OSPR), to provide clarity and consistency with language added in new subsection 3085.3(d)(1)(B). The department determined that 15 calendar days within the Chief Deputy Warden's receipt of the OSPR is a reasonable amount of time for the Chief Deputy Warden to make a determination for approval or disapproval. Minor grammatical edits are made to remove the "/" between "approval/disapproval" and replace it with the word "or" for better specificity and consistency with language used in the text.

Subsection 3085.3(b)(2)(B) is amended to revise the date of the Transgender, Non-Binary and Intersex Access Card to "11/1/2023" for consistency with other form revision dates. No other changes are made to the form.

Subsection 3085.3(b)(2)(C) is deleted to relocate the recission process of the Transgender, Non-Binary, and Intersex Access Card to new subsection 3085.3(d). New subsection 3085.3(d) provides more clarity and specificity regarding the Transgender, Non-Binary, and Intersex Access Card recission process and the process for reevaluation of a previously approved search preference.

Subsections 3085.3(b)(2)(D) and 3085.2(b)(2)(E) are renumbered 3085.3(b)(2)(C) and 3085.2(b)(2)(D) due to the deletion of subsection 3085.3(b)(2)(C) but are otherwise unchanged.

Subsection 3085.3(b)(3)(B) is deleted, as language regarding the search preference request being disapproved was determined to be unnecessary due to it already being included within subsection 3085.3(b)(3). The language stating that “the incarcerated person may grieve the decision pursuant to section 3482(b)(1)” is relocated to subsection 3085.3(b)(3)(A)2. for better organization and understanding of the section.

New subsection 3085.3(b)(3)(A)1. is added to provide additional language for consistency with PC section 2606(d) regarding “disapprovals.” The newly added language reflects language used in the statute and provides clarity. The department determined that 15 calendar days after the incarcerated person’s receipt of the OSPR is a reasonable amount of time to allow for the PREA Compliance Manager to provide the incarcerated person with an opportunity to verbally raise any objections to the disapproval and document those objections on the CDC Form 128-B.

New subsection 3085.3(b)(3)(A)2. relocates the grievance language previously located in 3085.3(b)(3)(B) for better organization and understanding. Additional language is added regarding the incarcerated person’s right to file a grievance if they do not agree with the Chief Deputy Warden’s decision of disapproval. This subsection provides clarity that the grievance process is a separate process. A minor grammatical edit is made for consistency purposes to change the word “section” to “subsection.”

New subsections 3085.3(d) through 3085.3(d)(1)(D)4. are added to provide clarity regarding the process for reevaluation of a previously approved search preference. Although it is not common for a search preference request to be rescinded, there may be an occasion where an incarcerated person may present management or security concerns that would be cause for rescission of the incarcerated person’s search preference. The department determined that 15 calendar days from the Chief Deputy Warden’s receipt of the OSPR is a reasonable amount of time for the Chief Deputy Warden to make a determination whether to continue accommodating the previously approved search preference. The department determined that 15 calendar days after the incarcerated person’s receipt of the OSPR is a reasonable amount of time to allow for the PREA Compliance Manager to provide the incarcerated person with an opportunity to verbally raise any objections to the disapproval and document those objections on the CDC Form 128-B.

Subsection 3269(b)(22)(A) is added to provide further clarity regarding who completes the PREA Screening Form and when it is completed.

Subsection 3287(c) is amended to replace the word “may” with “shall” for correction purposes.

Subsection 3287(d)(2)(A) is amended to revise the date of the Transgender, Non-Binary and Intersex Access Card to “11/1/2023” for consistency with other form revision dates. No other changes are made to the form.

Subsection 3287(e)(2)(A) is amended to revise the date of the Transgender, Non-Binary and Intersex Access Card to “11/1/2023” for consistency with other form revision dates. No other changes are made to the form.

Subsection 3287.1(b)(3)(B) is amended to make a non-substantive change, to hyphenate the words “on duty,” for grammatical correction purposes.

Section 3287.1, Note: Authority and Reference Section is added for correction purposes, as this section was inadvertently left out when it should have been included.

Section 3376 Narratives for Referenced Subsections (d)(D)(2)(E) and (d)(5)(E) are amended to correct inadvertent errors which incorrectly referenced these subsections. These subsections should have been referenced as (d)(2)(E) and (d)5)(D).

Section 3376 Note: Authority and Reference Section is amended to delete the second Note: Authority and Reference Section, as this was an error and should not have been included.

Transgender, Non-Binary, and Intersex Access Card – A non-substantive change is made to the date of the form, which is revised from “11/1/23” to “11/1/2023” for consistency with other forms referenced in the CCR. No other changes are made to the form.

The comment period on these changes shall close on **February 14, 2026**. 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 rpm@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~~**, will be considered.



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 ~~striethrough~~ format. The 1st 15-Day Re-Notice text changes appear in **bold double underline** and ~~**bold double striethrough**~~. The 2nd 15-Day Re-Notice text changes appear in **dotted bold underline**, which indicates additional added text, and ~~**dotted bold striethrough**~~ 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 striethrough 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.

Article 1. Behavior.

3000. Definitions.

[Section 3000 is amended to alphabetically merge the definitions below with existing definitions in this section, and is amended to read:]

Cisgender means a person whose gender identity aligns with the assigned sex at birth.

~~**Gender Dysphoria**~~ means distress caused by a conflict between a person's gender identity and the sex the person had or was identified as having at birth.

Gender Expression means external manifestations of gender, expressed through names, pronouns, clothing, behavior, voice, etc.

Gender Identity means a person's sense of identification ~~as male, female, neither, or both~~ and deeply held sense of being a man, woman, or non-binary person, and is distinct from sexual orientation.

Gender Pronoun means a third-person singular personal pronoun, such as "he," "she," or "they."

Honorific means a form of respectful address typically combined with an individual's surname, such as "Mr.," "Ms.," or "Mx."

Intersex is a term used to describe an individual born with external genitalia, internal reproductive organs, chromosome patterns, and/or endocrine systems that do not seem to fit typical definitions of male or female.

Non-Binary is a term for people with gender identities that fall somewhere outside the traditional conceptions of, strictly, either being a man or woman.

Transgender means a person whose gender identity ~~is different from the person's~~ differs from their assigned sex at birth.

Transgender Man means a person whose assigned sex at birth was female, but understands oneself to be male.

Transgender Woman means a person whose assigned sex at birth was male, but understands oneself to be female.

NOTE: Authority cited: Sections 243(f)(4), 2717.3, 3000.03, 5058, 5058.3 and 1170.05, Penal Code; Section 10115.3(b), Public Contract Code; and Sections 4525(a), 4526 and 14837, Government Code. Reference: Sections 186.22, 243, 314, 530, 532, 600, 646.9, 653, 832.5, 1170.05, 1203.8, 1389, 2080, 2081.5, 2084, 2600, 2601, 2700, 2717.1, 2717.6, 2932.5, 3003.5(a), 3007.05, 3020, 3450, 3550, 4570, 4576, 5009, 5050, 5054, 5068, 7000 et seq., 7286.5, 11180 and 11191, Penal Code; Sections 1132.4, 1132.8 and 1203(b)(1), Labor Code; Sections 10106, 10108, 10108.5, 10115, 10115.1, 10115.2, 10115.3 and 10127, Public Contract Code; Section 999, Military and Veterans Code; Section 391, Code of Civil Procedure; Section 297.5, Family Code; Sections 8550, 8567, 12838 and 12838.7, Government Code; Section 11007, Health and Safety Code; Governor's Prison Overcrowding State of Emergency Proclamation dated October 4, 2006; *In re Bittaker*, 55 Cal.App. 4th 1004, 64 Cal. Rptr. 2d 679; *Madrid v. Cate* (USDC ND Cal. C90-3094 TEH); *Sassman v. Brown* (E.D. Cal. 2015) 99 F.Supp.3d 1223; *Mitchell v. Cate*, USDC ED 2:08-CV-01196-TLN-EFB; *In re Garcia* (2012) 202 Cal.App.4th 892; and *Quine v. Beard*, No. C 14-02726 JST.

Article 2. State-Issued Incarcerated Person Clothing and Linen.

3030. Issuance and Possession of State Clothing and Linen.

[Subsections (a) through (b)(3)(l) remain unchanged.]

[Subsection (c) is amended to read:]

(c) Transgender, non-binary, and intersex incarcerated persons and incarcerated persons having symptoms of gender dysphoria as identified and documented in SOMS by medical or mental health personnel within a CDCR institution the department, shall be allowed to possess the state-issued clothing that corresponds to their gender identities in place in lieu of the state-issued clothing that corresponds to their assigned sex at birth ~~at designated institutions.~~

[Subsections (d) through (f) remain unchanged.]

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 2084 and 5054, Penal Code; and *Quine v. Beard*, No. C 14-02726 JST.

Article 6.5. Intake, Release and Discharge of Incarcerated Persons.

3075. Initial Intake and County Reimbursements.

[Subsections (a) through (h) remain unchanged.]

[New subsection (i) is adopted to read:]

(i) Each incarcerated person shall be asked to participate in a Gender Identity Questionnaire (GIQ) (11/8/2023), which is an electronic document, and is incorporated by reference, during intake processing in Receiving and Release (R&R) at a Reception Center, however, participation is not mandatory.

(1) The custody supervisor shall complete the GIQ with the incarcerated person in a private setting.

(2) If, during the screening, the incarcerated person identifies as transgender, non-binary, or intersex, a copy of the completed GIQ shall be forwarded to the Prison Rape Elimination Act (PREA) Compliance Manager within 24 hours of completion.

(3) An incarcerated person may not be disciplined for refusing to answer, or for not disclosing complete information in response to questions regarding gender identity.

(4) When an incarcerated person arrives from county jail and their gender identity does not align with their assigned sex at birth or the gender designation of the institution at which they were received, and the incarcerated person requests to be housed according to their gender identity, their request shall be processed in accordance with subsection 3085.2(c).

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 1202a, 1203.03, 1216, 1217, 2081.5, 2605, 2606, 2901, 3058.5, 4016.5(a), 4537, 4750, 4751 and 5054, Penal Code; and Section 19853, Government Code.

3075.1. Intake Processing.

[Subsections (a) through (a)(8) remain unchanged, however subsection (a) is shown for reference purposes only.]

(a) A CDC Form 188-L (Rev. 3/89), Cumulative Case Summary, shall be prepared for each incarcerated person committed to the department and shall include:

[Subsection (a)(9) is adopted to read:]

(9) A completed electronic Gender Identity Questionnaire (11/8/2023), incorporated by reference.

[Subsections (b) through (j) remain unchanged.]

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 1203.01, 1203.03, 2605, 2606, 2930, 3002, 5054, and 5068, Penal Code.

[New Article 9 is adopted to read:]

Article 9. Transgender, Non-Binary, and Intersex Incarcerated Persons.

[New section 3085 is adopted to read:]

3085. Transgender, Non-Binary, and Intersex Incarcerated Persons.

(a) An incarcerated person who is transgender, non-binary, or intersex, regardless of anatomy, shall be addressed in a manner consistent with their gender identity.

(b) At any time, an incarcerated person may inform designated facility staff of their gender identity, and designated facility staff shall promptly repeat the process of offering the incarcerated person an opportunity to update the Gender Identity Questionnaire (11/8/2023), incorporated by reference, **which shall be completed in a private setting.**

(c) An incarcerated person who is transgender, non-binary, or intersex, regardless of anatomy, shall have their perception of health and safety given serious consideration in any bed assignment, placement, or programming decision within the facility in which they are housed: including, but not limited to, consideration for single-cell status, housing the individual with another incarcerated person of their choice, or removing the individual or individuals who pose a threat to the transgender, non-binary, or intersex incarcerated person from any location where they may have access to the individual who has expressed a safety concern. **The department shall follow the procedures set forth in subsections 3375(a), (b), and (c); or 3335(a); or 3269(a)-(h) when giving serious consideration to alternatives, including bed assignments, placement, or programming decisions.** If the incarcerated person is not granted ~~their preferred housing an alternative~~ based on their perception of their health and safety pursuant to this subsection, the department shall document ~~and articulate the specific management or security the specific reasons and~~ why the department is unable to accommodate ~~the housing preference~~

and notify the incarcerated person, and share them with the incarcerated person via an CDC Form 128-B (Rev. 4/74), General Chrono, incorporated by reference automated Classification Committee Chrono (Rev. 05/19), which is incorporated by reference. If an incarcerated person raises concerns for their health or safety at any time, their housing and placement shall be reassessed in accordance with the procedures set forth in subsections 3375(a), (b), and (c); or 3335(a); or 3269(a)-(h).

(d) Staff, contractors, and volunteers of the department shall not consistently fail to use the gender pronoun and honorific specified by the incarcerated person in all verbal and written communications.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 2605, 2606, 5054, and 5068, Penal Code.

[New Section 3085.1 is adopted to read:]

3085.1 Gender Identity Questionnaire.

(a) During intake processing in Receiving and Release (R&R) at Reception Centers, the custody supervisor shall ask incarcerated persons to participate in the completion of a Gender Identity Questionnaire (GIQ) (11/8/2023), incorporated by reference, in a private setting.

(b) The GIQ is located within the department's electronic databases. Although participation is not mandatory, this information will be used in a subsequent Institution Classification Committee (ICC) hearing where a determination shall be made relative to housing if the incarcerated person identifies as transgender, non-binary, or intersex and requests housing at an institution for men or women based on the individual's preference. The GIQ information will also be used to give the incarcerated person's perception of health and safety serious consideration in any bed, placement, or programming decision.

(c) If, during the screening, the incarcerated person identifies as transgender, non-binary, or intersex, a copy of the completed GIQ shall be forwarded to the PREA Compliance Manager within 24 hours of completion.

(d) An incarcerated person shall not be disciplined for refusing to answer, or for not disclosing complete information in response to questions regarding gender identity.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 2605, 5054, and 5068, Penal Code.

[New section 3085.2 is adopted to read:]

3085.2 Housing Based on Gender Identity.

(a) An incarcerated person who is transgender, non-binary, or intersex, regardless of anatomy, ~~may~~ shall be housed at a correctional facility designated for men or women based on the individual's preference pursuant to Penal Code section 2606, including, if eligible, at a residential program for incarcerated persons under the jurisdiction of the department **unless the department has management or security concerns with an individual's preferred placement.** The incarcerated person shall have their perception of health and safety given serious consideration in any bed assignment, placement, or programming decision within the facility in which they are housed: including, but not limited to, consideration of single-cell status, housing the individual with another incarcerated person of their choice, or removing the individual or individuals who pose a threat to the transgender, non-binary, or intersex incarcerated person from any location where they may have access to the individual who has expressed a safety concern. If the incarcerated

person is not granted their preferred housing based on their perception of their health and safety, the department shall document the reasons for that denial and share them with the individual. If the incarcerated person is not granted their preferred housing based on their preference, the department shall document and articulate the specific management or security reasons and why the department is unable to accommodate the housing preference and notify share them with the incarcerated person via an CDC Form 128-B (Rev. 4/74), General Chrono automated Classification Committee Chrono (Rev. 05/19), which is incorporated by reference. If an incarcerated person raises concerns for their health or safety at any time, their housing and placement shall be reassessed, in accordance with the procedures set forth in subsection 3085.2(d).

(b) Each incarcerated person shall be asked to participate in the completion of a Gender Identity Questionnaire (GIQ) (11/8/2023), incorporated by reference, as described in section 3085.1, however participation is not mandatory.

(c) Requests to be Housed at an Institution of a Different Gender Designation Made Through Intake Screening:

(1) The Prison Rape Elimination Act (PREA) Compliance Manager shall review all GIQs they receive from the custody supervisor in Receiving and Release at a Reception Center. If the GIQ requests housing at an institution of a different gender designation than which the incarcerated person is housed, the PREA Compliance Manager shall interview the incarcerated person, document the interview, and forward the request to the Classification and Parole Representative (C&PR) for assignment to a Correctional Counselor (CC) II (Supervisor) or designee.

(2) The CC II (Supervisor) or designee shall interview the incarcerated person and prepare a comprehensive summary report for the Institution Classification Committee (ICC). To prepare a comprehensive summary report, the CC II (Supervisor) or designee shall complete a file review to include the incarcerated person's criminal history, CDCR history (housing, work, etc.), disciplinary history, and victimization and abusiveness concerns.

(3) The CC II (Supervisor) or designee shall notify medical and mental health staff of the incarcerated person's request for housing and inform them that the incarcerated person will be scheduled for an ICC hearing. The medical and mental health staff should present related issues or concerns during the ICC hearing.

(4) The CC II (Supervisor) or designee shall contact housing unit custody staff and the incarcerated person's work or program supervisor, if applicable, to gather information.

(5) Upon completion of the comprehensive summary report, the CC II (Supervisor) or designee shall schedule the case for appearance before an ICC in accordance with section 3376. Prior to attending an ICC, the incarcerated person shall be required to complete a pre-transfer course to ensure they make an informed decision regarding their transfer. The ICC shall include the Warden and CC II (Supervisor) or designee, the PREA Compliance Manager (PCM), and a mental health representative. The Warden and PCM at the institution where the incarcerated person will be received for processing, the C&PR, the PREA Coordinator (Headquarters (HQ)), a mental health representative (HQ), and a medical representative (HQ) may be included as additional resources.

(A) If the ICC approves the incarcerated person for placement in a facility consistent with their gender identity, the case shall be forwarded to the Classification Staff Representative (CSR) for endorsement.

(B) If disapproved, the incarcerated person shall be provided with a copy of the automated Classification Committee Chrono (Rev. 05/19), which is incorporated by reference, from the ICC, and:

1. Within a reasonable time but no later than 15 calendar days following the incarcerated person's receipt of the automated Classification Committee Chrono, the CC II (Supervisor) shall provide the incarcerated person with an opportunity to verbally raise any objections to the disapproval and shall document those objections on the CDC Form 128-B (Rev. 4/74), incorporated by reference.

2. Following an incarcerated person's receipt of the automated Classification Committee Chrono, the CC II (Supervisor) shall inform the incarcerated person that they have has the right to file a grievance if they do not agree with the ICC's decision of disapproval. The incarcerated person may grieve the ICC's decision pursuant to subsection 3482(b)(1).

(d) Requests to be Housed at an Institution of a Different Gender Designation Made at Any Other Time:

(1) The incarcerated person shall make a verbal request to a custody supervisor or their assigned Correctional Counselor (CC) to complete a new GIQ requesting housing at an institution of a different gender designation. Upon completion of the new GIQ, the assigned CC or custody supervisor shall notify the CC II (Supervisor) or designee and the PREA Compliance Manager.

(A) A copy of the GIQ shall be forwarded to the PREA Compliance Manager within 24 hours of completion. To prepare a comprehensive summary report, the CC II (Supervisor) or designee shall complete a file review to include the incarcerated person's criminal history, CDCR history (housing, work, etc.), disciplinary history, and victimization and abusiveness concerns.

(3) The CC II (Supervisor) or designee shall notify medical and mental health staff of the incarcerated person's request and inform them that the incarcerated person will be scheduled for an ICC hearing. The medical and mental health staff should be prepared to present related issues or concerns during the ICC hearing.

(4) The CC II (Supervisor) or designee shall contact housing unit custody staff and the incarcerated person's work or program supervisor, if applicable, to gather information.

(5) Upon completion of the comprehensive summary report, the CC II (Supervisor) or designee shall schedule the case for appearance before an ICC in accordance with section 3376. Prior to attending an ICC, the incarcerated person shall be required to complete a pre-transfer course to ensure they make an informed decision regarding their transfer. The ICC shall include the Warden and CC II (Supervisor) or designee, the PCM, and a mental health representative. The Warden and PCM at the institution where the incarcerated person will be received for processing, the PREA Compliance Manager, the C&PR, the PREA Coordinator (HQ), a mental health representative (HQ), and a medical representative (HQ) may be included as additional resources.

(A) If the ICC approves the incarcerated person for placement in a facility consistent with their gender identity, the case shall be forwarded to the CSR for endorsement.

(B) If disapproved, the incarcerated person shall be provided with a copy of the automated Classification Committee Chrono (Rev. 05/19), from the ICC and.

1. Within a reasonable time but no later than 15 calendar days following the incarcerated person's receipt of the automated Classification Committee Chrono, the CC II (Supervisor) shall provide the incarcerated person with an opportunity to verbally raise any objections to the disapproval, and shall document those objections on the CDC Form 128-B.

2. Following an incarcerated person's receipt of the automated Classification Committee Chrono the CC II (Supervisor) shall inform the incarcerated person that they have has the right to file a grievance if they do not agree with the ICC's decision of disapproval. The incarcerated person may grieve the ICC's decision pursuant to subsection 3482(b)(1).

(e) When denying a housing placement, the department shall document and articulate the specific management or security reasons for the denial. The department shall not deny a housing placement based on any discriminatory reason, including, but not limited to, any of the following:

(1) The anatomy, including, but not limited to, the genitalia or other physical characteristics, of the incarcerated person.

(2) The sexual orientation of the incarcerated person.

(3) A factor present among other incarcerated persons housed at the preferred type of facility.

(A) For the purposes of subdivision (e)(3), a factor shall be considered a prohibited discriminatory reason only if that factor is relied upon as a categorical basis to deny the placement request.

(B) For the purposes of subdivision (e)(3), a factor shall be considered on an individualized basis and weighed based on the totality of the circumstances, including any relevant mitigating factors supporting the housing placement request, in assessing whether there

is a management or security reason for denying the request. The mere presence of a factor that is present among other incarcerated persons at a transgender, non-binary, or intersex incarcerated person's preferred housing placement does not prohibit the department from denying a transgender, non-binary, or intersex person's preferred housing placement if there are individualized underlying facts and information that support management or security concerns as to why the department is unable to accommodate the housing preference.

(BCB) For the purposes of subdivision (e)(3), the department may consider any individualized factor underlying facts and information that relate to the transgender, non-binary, or intersex incarcerated person in assessing a housing placement request, including, but not limited to, criminal history, including commitment offenses; documented history of violence, including sexual violence; documented history of sexual harassment; risks posed to the incarcerated person by other incarcerated persons at the current and preferred facility; and risks posed by the incarcerated person to other incarcerated persons at the current and preferred facility.

(f) Return Transfer to Previous Institution Gender Designation:

(1) The institution Warden or their designee may consider referral to the ICC if a transgender, non-binary, or intersex incarcerated person exhibits management or security concerns **with their previously approved preferred housing placement.** The process shall be as follows:

(A) Staff shall document the behavior, utilizing a CDC Form 128-B (Rev. 4/74), General Chrono, **incorporated by reference,** or a Rules Violation Report.

(B) The institution Warden or their designee shall conduct an ICC hearing to address the management **and or** security concerns. If during the ICC hearing, the institution Warden or their designee **believes that the safest housing determines there are specific management or security concerns for the incarcerated person is in a facility of a previous institution gender designation as to why the department is unable to accommodate the housing preference,** the institution Warden or their designee shall make a **housing determination to return the incarcerated person to their previous institution gender designation, and document the specific and articulable basis of their decision in writing and shall provide a copy of the automated Classification Committee Chrono (Rev. 05/19) to the incarcerated person.**

(C) If the institution Warden or their designee recommends the incarcerated person be returned to the previous institution gender designation, **the incarcerated person shall be provided with a copy of the automated Classification Committee Chrono (Rev. 05/19), from the ICC.**

1. **Within a reasonable time but no later than 15 calendar days following the incarcerated person's receipt of the automated Classification Committee Chrono, the CC II (Supervisor) shall provide the incarcerated person with an opportunity to verbally raise any objections to the disapproval and shall document those objections on the CDC Form 128-B.**

2. **Following an incarcerated person's receipt of the automated Classification Committee Chrono, the CC II (Supervisor) shall inform the incarcerated person that they have may the right to file a grievance if they do not agree with the ICC's decision of disapproval. The incarcerated person may grieve the ICC's decision pursuant to subsection 3482(b)(1).**

(2) Criteria that shall be reviewed for an involuntary return transfer to a previous institution gender designation includes the following:

(A) Behavior that is deemed a potential **security and management or management security** threat to the incarcerated person, incarcerated person population, staff, or institution.

(B) New predatory behavior.

(C) Incarcerated person requires type of housing not available at the preferred facility.

(D) Incarcerated person serving or pending adjudication for a Restricted Housing Unit term of a serious Rules Violation Report.

(E) Incarcerated person has two or more serious Rules Violation Reports within a 12-month period for use of or possession of a weapon, indecent exposure, harassment, sexual disorderly conduct, assault or battery including sexual assault or battery with no serious injury.

(F) Incarcerated person is unable to resolve documented enemy concerns.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 2606, 5054, and 5068, Penal Code.

[New section 3085.3 is adopted to read:]

3085.3 Searching Based on Gender Identity.

(a) An incarcerated person who is transgender, non-binary, or intersex, regardless of anatomy, ~~may shall~~ be searched according to ~~the search policy for their gender identity or according to the gender designation of the facility where they are housed, unless the individual's approved search preference dictates otherwise, and in accordance with subsections 3287(b)(1)-(5) the individual's approved search preference, unless the department has management or security concerns with an individual's search preference. If the approved search preference cannot be determined, the search shall be conducted according to the search policy of the gender designation of the facility where the incarcerated person is housed.~~

(1) When denying a search preference, the department shall document and articulate the specific management or security reasons and why the department is unable to accommodate that search preference. The department shall not deny a search preference based on any discriminatory reason, including, but not limited to, any of the following:

(A) The anatomy, including, but not limited to, the genitalia or other physical characteristics, of the incarcerated person; or

(B) The sexual orientation of the incarcerated person.

(b) The PREA Compliance Manager shall receive all incarcerated person search preference requests. Search requests can be made in writing or verbally to the incarcerated person's ~~CC~~ **Correctional Counselor**. A new **Gender Identity Questionnaire (GIQ)** shall be completed and a copy of the GIQ shall be forwarded to the PREA Compliance Manager within 24 hours of completion.

(1) Within 15 ~~calendar~~ days of receipt of the completed GIQ, the PREA Compliance Manager shall interview the incarcerated person, review all pertinent case factors, and prepare a SOMS Offender Search Preference Request (OSPR), (8/27/2024), which is incorporated by reference, outlining the information that has been gathered, and make a recommendation about approval or denial of the search preference request. The OSPR ~~is shall be~~ forwarded to the Chief Deputy Warden and within 15 calendar days of receipt they shall make a determination for approval/ or disapproval.

(2) If the search preference request is approved by the Chief Deputy Warden, the OSPR is signed by the Chief Deputy Warden and returned to the PREA Compliance Manager.

(A) The PREA Compliance Manager shall provide a copy of the OSPR to the incarcerated person.

(B) The PREA Compliance Manager shall make notification to have the incarcerated person's Transgender, Non-Binary, and Intersex Access Card (11/1/2023), which is incorporated by reference, updated to reflect the search preference.

~~(C) The Transgender, Non-Binary, and Intersex Access Card shall only be rescinded if there are management or security concerns present, or if requested by the incarcerated person per completion of a new GIQ~~

~~(DC) The Transgender, Non-Binary, and Intersex Access Card shall be kept on the incarcerated person at all times.~~

~~(ED) In the event an incarcerated person does not have their Transgender, Non-Binary, and Intersex Access Card on their person and a search is required, staff shall make reasonable efforts, such as checking SOMS, to determine the incarcerated person's approved search preference.~~

(3) If the search preference request is disapproved by the Chief Deputy Warden, the OSPR is signed by the Chief Deputy Warden and returned to the PREA Compliance Manager.

(A) The PREA Compliance Manager shall provide a copy of the OSPR to the incarcerated person.

(B) If the search preference request is disapproved,

1. Within a reasonable time but no later than 15 calendar days following the incarcerated person's receipt of the OSPR, the PREA Compliance Manager shall provide the incarcerated person with an opportunity to verbally raise any objections to the disapproval and shall document those objections on the CDC Form 128-B.

2. Following an incarcerated person's receipt of the OSPR the PREA Compliance Manager shall inform the incarcerated person that they have the right to file a grievance if they do not agree with the Chief Deputy Warden's decision of disapproval. The incarcerated person may grieve the decision pursuant to subsection 3482(b)(1).

(c) The search process shall be completed in accordance with section 3287.

(d) Reevaluation of a Previously Approved Search Preference.

(1) The institution PREA Compliance Manager shall refer a previously approved OSPR to the Chief Deputy Warden if a transgender, non-binary, or intersex incarcerated person exhibits management or security concerns related to their previously approved search preference. The process shall be as follows:

(A) Custody staff shall document the management or security concerns on a CDC Form 128-B and forward to the PREA Compliance Manager who shall interview the incarcerated person, review all pertinent case factors, and prepare a new SOMS OSPR outlining the information that has been gathered, and make a recommendation regarding whether to continue accommodating the search preference request or not.

(B) The OSPR is forwarded to the Chief Deputy Warden for approval or disapproval and within 15 calendar days of receipt, the Chief Deputy Warden shall make a determination whether to continue accommodating a previously approved search preference.

(C) If the OSPR is approved by the Chief Deputy Warden, the incarcerated person will maintain their previously approved search preference, and the OSPR shall be signed by the Chief Deputy Warden and returned to the PREA Compliance Manager.

1. The PREA Compliance Manager shall provide a copy of the OSPR to the incarcerated person.

(D) If the OSPR is disapproved by the Chief Deputy Warden the incarcerated person's previously approved search preference shall be rescinded and the OSPR shall be signed by the Chief Deputy Warden and returned to the PREA Compliance Manager.

1. The PREA Compliance Manager shall provide a copy of the OSPR to the incarcerated person.

2. The Transgender, Non-Binary, and Intersex Access Card shall be rescinded, and a new Transgender, Non-Binary, and Intersex Access Card shall be issued showing that their search preference has been removed.

3. Within a reasonable time but no later than 15 calendar days following the incarcerated person's receipt of the OSPR, the PREA Compliance Manager shall provide the incarcerated person with an opportunity to verbally raise any objections to the disapproval and shall document those objections on the CDC Form 128-B.

4. Following the incarcerated person's receipt of the OSPR the PREA Compliance Manager shall inform the incarcerated person that they have the right to file a grievance if they do not agree with the Chief Deputy Warden's decision of disapproval. The incarcerated person may grieve the decision pursuant to subsection 3482(b)(1).

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 2606, 5054, and 5068, Penal Code.

Subchapter 2. Incarcerated Person Resources.

Article 9. Personal Property and Religious Personal Property.

3190. General Policy.

[Subsections (a) through (d) remain unchanged.]

[Subsection (e) is amended to read:]

(e) The Transgender, Non-Binary, and Intersex Inmates Incarcerated Persons Authorized Personal Property Schedule (TNIAPPS) (~~Rev. 11/23~~) Rev. 07/24) identifies a separate list of allowable personal property afforded to transgender, non-binary, and intersex incarcerated persons ~~and incarcerated persons with symptoms of gender dysphoria~~ as identified and documented in SOMS ~~by medical or mental health personnel~~ within a CDCR institution, and is incorporated by reference. The TNIAPPS shall be updated through the collaboration of all mission-based programs within the Division of Adult Institutions no more frequently than twice yearly. All changes to the TNIAPPS shall be adopted in accordance with the rulemaking requirements of the Administrative Procedure Act (Government Code Sections 11340 through 11350.3) and, if applicable, Penal Code Section 5058.3. The following two property lists are incorporated by reference:

(1) TNIAPPS-Designated Male Institutions (~~Rev. 11/23~~) Rev. 07/24). This personal property schedule applies to transgender, non-binary, and intersex incarcerated persons ~~and incarcerated persons having symptoms of gender dysphoria~~ who are housed at male institutions.

(2) TNIAPPS-Designated Female Institutions (~~Rev. 11/23~~) Rev. 07/24). This personal property schedule applies to transgender, non-binary, and intersex incarcerated persons ~~and incarcerated persons having symptoms of gender dysphoria~~ who are housed at female institutions.

[Subsections (f) through (w) remain unchanged.]

NOTE: Authority cited: Sections 5058 and 5058.3, Penal Code. Reference: Sections 2086, 2601, 5006 and 5054, Penal Code; *In re Alcalá*, Marin County Superior Court, No. 117925, December 20, 1984; *Armstrong v. Davis* Court Ordered Remedial Plan, Amended January 3, 2001; *In re Armstrong*, N.D. Cal, No. C 94-02307, March 20, 1998; and *Quine v. Beard*, No. C 14-02726 JST, *Rhoades v. Montgomery*, No. EHC01917, *Taylor v. Hubbard*, No. CV-00404-BAM PC, *Rouser v. White* Settlement Agreement, No. CV-0767-LKK-GGH(PC); and Religious Land Use and Institutionalized Persons Act, 42 United States Code sections 2000cc et seq.

Subchapter 4. General Institution Regulations.

Article 1.6. Incarcerated Person Housing.

3269. Incarcerated Person Housing Assignments.

[Subsection (a) is unchanged.]

[Subsection (b) is unchanged, but is shown for reference:]

(b) Upon arrival at an institution, facility, or Reception Center, a designated screening authority shall screen an incarcerated person for an appropriate housing assignment in a private setting. The screening authority reviewing and approving an incarcerated person's housing assignment shall evaluate all factors to be considered when completing the Initial Housing Review (IHR), including but not limited to:

[Subsections (b)(1) through (19) are unchanged.]

[Proposed changes to regulations concerning Developmental Disability Program have occupied subsection (b)(20), therefore the numbering sequence shown below follows those proposed regulations.]

[New subsections 3269(b)(21) and (22) are adopted to read:]

(21) The completed Gender Identity Questionnaire (11/8/2023), incorporated by reference.

(22) The completed PREA Screening Form (12/12/2023), incorporated by reference.

(A) The PREA Screening Form shall be completed by a custody supervisor at initial intake and upon transfer to a new institution.

[Subsection (c) is unchanged, but is shown for reference:]

(c) Utilizing the department's electronic database, the Strategic Offender Management System (SOMS), the screening authority shall complete the IHR, and indicate whether the incarcerated person is suitable for dorm or cell housing, with or without special restrictions. Restrictions are any case factor; including court ordered housing placement factors, which may limit the incarcerated person's housing placement options. Staff shall ensure that the housing policies for special category incarcerated persons covered under court ordered housing remain in place during their housing assignment. The IHR includes the following SOMS input fields:

[Subsections 3269(c)(1) through (4) are unchanged but are shown for reference.]

(1) Security issues including RHU and Restricted Custody General Population placement.

(2) Request for Protective Custody.

(3) Request for SNY Designation.

(4) Medical, developmental or cognitive impairment, or mental health concerns.

[Subsection 3269(c)(5) is amended to read:]

(5) Personal factors such as age, weight, ~~and height,~~ and gender identity.

[Subsection 3269(c)(6) is unchanged but is shown for reference.]

(6) Integrated Housing Code.

[Subsections (d) through (g) remain unchanged.]

[Subsection (h) is amended to read:]

(h) Transgender, non-binary, and intersex incarcerated persons and ~~incarcerated persons having symptoms of gender dysphoria as identified and documented in SOMS by medical or mental health personnel within a CDCR institution shall be referred to an classification committee~~ Institution Classification Committee (ICC) for determination of appropriate housing at a designated institution, or when the incarcerated person initiates a request to be housed at a facility consistent with their gender identity, pursuant to Article 10 of Subchapter 4. For housing based on gender identity (transgender, non-binary, and intersex incarcerated persons), refer to section 3085.2.

[Subsection (i) remains unchanged.]

Note: Authority cited: Section 5058, Penal Code. Reference: Section 2606, 5054, Penal Code; and *Quine v. Beard*, No. C 14-02726 JST.

Article 2. Security.

3287. Cell, Property, and Body Inspections.

[Subsections (a) through (b) remain unchanged.]

[Subsections (b)(1) through (2) are amended to read:]

(1) Correctional employees, other than qualified medical staff, shall not conduct cross-gender unclothed body inspections of incarcerated persons of the opposite sex except under emergency conditions with life or death consequences, exigent circumstances, or when an incarcerated person has an approved search preference.

(A) For the purposes of this section exigent circumstances is defined as any set of temporary and unforeseen circumstances that require immediate action in order to combat a threat to the security or institutional order of a facility.

(2) Routine inspections of clothed male incarcerated persons may be performed by employees of ~~either sex~~ any gender.

[Subsections (b)(3) through (5) are unchanged but are shown for reference.]

(3) Body inspections of clothed female incarcerated persons shall be conducted by female correctional employees only, except in emergency situations requiring the immediate search of incarcerated persons to avoid the threat of death, escape, or great bodily injury. In such emergency situations, male correctional employees may conduct clothed body inspections only until sufficient numbers of female correctional employees are available to assume critical body search duties.

(4) Male correctional employees shall not, under any circumstances, perform non-emergency body searches of female incarcerated persons.

(5) Any inspection of body cavities, other than visual or metal detector inspections, will be conducted in a medical setting under the direct supervision of a physician. Any physical intrusion into body cavities must be performed by a physician, and then only after all less obtrusive methods have failed to bring the inspection to a conclusion.

[Existing subsections (c) through (d)(3)(B) are relocated to new section 3287.1]

~~(c) Incarcerated Person Body Searches. Incarcerated persons shall submit to body inspections using contraband and metal detection devices and electronic drug detection devices, including but not limited to, ION scanners and low dose, full body x ray scanners. Incarcerated persons shall also submit to inspections of all personal items, including but not limited to, wheelchairs, implants, prostheses, and assistive devices, using contraband and metal detection devices and electronic drug detection devices, including but not limited to, ION scanners.~~

~~(1) Contraband and metal detection devices and electronic drug detection devices, including but not limited to, ION scanners and low dose, full body x ray scanners shall be used on incarcerated persons when they leave a visiting area, upon conclusion of a family visit, upon returning to a yard or facility from vocational or educational classes, upon entering or exiting a secure perimeter, and prior to placement into restrictive housing.~~

~~(2) The use of the low dose, full body x ray scanners shall comply with Code of Federal Regulations, Title 28, Section 115.15(a) (7/1/2012), which is hereby incorporated by reference.~~

~~(3) Low dose, full body x ray scanners shall adhere to the American National Standard Institute's *Radiation Safety for Personnel Security Screening Systems Using X-Ray or Gamma Radiation* (ANSI/HPS N43.17-2009), which is hereby incorporated by reference. Scanner settings shall be set by the manufacturer to 0.25 microsieverts per scan. The annual radiation limit shall be 250 microsieverts per incarcerated person and each scan shall have a radiation dose of 0.25 microsieverts. A low dose, full body x ray scanner shall identify the incarcerated person by CDCR number and determine the annual radiation to which the incarcerated person has been previously exposed as a result of low dose, full body x ray scanning relative to the annual radiation limit before a scan is initiated.~~

~~(4) If the incarcerated person has reached the annual radiation limit pursuant to subsection 3287(c)(3), the machine shall not perform a scan. A scan shall only be conducted when the radiation to which the incarcerated person has been previously exposed as a result of scanning~~

is determined to be under the annual radiation limit, and at least 0.25 microsieverts remain before the incarcerated person reaches their annual radiation limit.

~~(5) An incarcerated person shall be excused from a low-dose, full-body x-ray scanner search in the event of an emergency custody circumstance in which the incarcerated person's behavior creates a safety risk for the incarcerated person, other incarcerated persons, or CDCR staff if the search is performed, and requires immediate staff attention to deescalate the situation and maintain the safety and security of the institution. The staff member who is escorting the incarcerated person to be searched shall make the determination that the incarcerated person cannot safely be searched using the low-dose, full-body x-ray scanner.~~

~~(A) An emergency custody circumstance includes physical aggression from the incarcerated person requiring restraint of the incarcerated person in order to maintain the safety and security of the institution or a circumstance where an incarcerated person refuses to ambulate and stand up on the machine's platform to be scanned.~~

~~(B) The staff member who excused the incarcerated person from a search using the low-dose, full-body x-ray scanner shall document the emergency custody excusal on CDC Form 128-B, General Chrono (Rev. 4/74) as soon as is permissible and forward the completed Form to the warden for signature. The CDC Form 128-B shall be signed by the warden no later than 48 hours after the date of the emergency custody circumstance. A copy of the form shall be given to the incarcerated person, and shall be stored in the Electronic Records Management System (ERMS), as defined in section 3000.~~

~~(6) An excusal for medical circumstances shall be documented on CDC Form 128-C, Chrono-Medical, Psychiatric, Dental (Rev. 01/96), and signed by a CDCR medical staff member of a level no lower than a nurse practitioner. A copy of the form shall be given to the incarcerated person, and shall be stored in the ERMS.~~

~~(7) An incarcerated person who is excused from being scanned with a low-dose, full-body x-ray scanner pursuant to subsections 3287(c)(5) or 3287(c)(6), or who has reached the annual radiation limit pursuant to subsection 3287(c)(3), shall be searched by alternate means, including but not limited to, passive canine air scan searches, hand-held metal detectors, walk-through metal detectors, and ION scanners.~~

~~(8) An incarcerated person shall notify a staff member that they are excused from being searched with a low-dose, full-body x-ray scanner due to an emergency custody or medical circumstance, whereupon verification of excusal is required. At least one of the following two methods of verification shall be used:~~

~~(A) The incarcerated person shall present a copy of the approved CDC Form 128-B or CDC Form 128-C to a staff member operating a low-dose, full-body x-ray scanner, or~~

~~(B) A staff member shall access the copy of CDC Form 128-B or CDC Form 128-C that is stored in ERMS.~~

~~(9) In the event that verification cannot be obtained through one of the methods enumerated in subsections 3287(c)(8)(A) or 3287(c)(8)(B), staff shall search the incarcerated person in accordance with subsection 3287(c)(7).~~

~~(10) An incarcerated person who is excused from being scanned with a low-dose, full-body x-ray scanner for emergency custody circumstances pursuant to subsection 3287(c)(5) shall be subject to disciplinary action in accordance with section 3315.~~

~~(d) Passive Air Scan Searches. Inspections of incarcerated person cell or living areas, property, work areas, and body shall be conducted on an unannounced, random basis as directed by the institution head. Such inspections shall be conducted no more frequently than necessary to control contraband, recover missing or stolen property, or maintain proper security of the institution.~~

~~(1) incarcerated persons shall be subject to passive air scan searches by a passive alert canine.~~

~~(2) Direct Searches of incarcerated persons: The canine handler shall make an announcement informing the incarcerated person(s) that they are conducting passive air scan searches using a passive alert canine and that the purpose of the scan is to detect illegal drugs. The incarcerated person does not have the right to refuse the search. An incarcerated person who refuses to be~~

~~searched may be subject to disciplinary action and subject to additional search and urine testing for the presence of drugs.~~

~~(A) While inadvertent contact is a possibility, the handler shall not instruct the canine to contact the incarcerated person.~~

~~(B) If the incarcerated person seems excessively nervous, the handler shall attempt to reassure the incarcerated person that the procedure is safe.~~

~~(3) Results of a Canine Search. If the canine gives a positive canine alert during a passive air scan search of the incarcerated person, the incarcerated person shall submit to an unclothed body search and urinalysis testing.~~

~~(A) Any confiscated controlled substance shall be handled as evidence.~~

~~(B) Whenever a Canine handler finds contraband, the find shall be reported to the on duty supervisor. The supervisor shall determine what action shall be taken.~~

[Existing subsection (e) is relocated and renumbered (f).]

~~(e) A written record shall be maintained of the disposition of contraband and stolen or missing property confiscated as the result of cell, property, or body inspections.~~

[New subsections (c) through (e) are adopted to read:]

(c) An incarcerated person who is transgender, non-binary, or intersex, regardless of anatomy, ~~may~~ shall be searched according to the search policy for their gender identity or according to the gender designation of the facility where they are housed, unless the individual's approved search preference dictates otherwise, and in accordance with section 3085.3.

(1) If there is no documented approved search preference, the incarcerated person shall be searched under the search policy for the gender designation of the facility in which they are housed.

(d) Female Institutions:

(1) All incarcerated persons at a female institution shall be searched utilizing the female search policy. Except as specified in (d)(2) of this section, this means that clothed and unclothed body inspections of all incarcerated persons, to include transgender, non-binary, and intersex incarcerated persons shall be conducted by a female correctional employee.

(2) If a transgender, non-binary, or intersex incarcerated person wishes to be searched consistent with the male search policy, they must have a search preference request approved in accordance with section 3085.3.

(A) If the search preference request is approved, the reference "male search policy" shall be listed on the Transgender, Non-Binary, and Intersex Access Card (11/1/2023), incorporated by reference, or CDC Form 128-B (Rev. 4/74), General Chrono, incorporated by reference, (signed by the Chief Deputy Warden), and searches shall be conducted as described in (d)(3)-(d)(3)(A) of this section.

(3) For incarcerated persons at a female institution with an approved request to be searched consistent with the male search policy; clothed body inspections may be conducted by a correctional employee of any gender.

(A) For incarcerated persons at a female institution with an approved request to be searched consistent with the male search policy; unclothed body inspections shall only be performed by male correctional staff, except for situations as identified in (d)(5) of this section.

(4) Any search at a female institution inconsistent with (d)(1) or (d)(2) shall be documented as an unusual occurrence via a memorandum and sent to the Hiring Authority.

(5) The only exceptions to the female institution search policies are under emergency conditions with life or death consequences, exigent circumstances as defined in section 3287(b)(1)(A), or when an incarcerated person has an approved search preference.

(A) In such situations, correctional employees of any gender may conduct clothed or unclothed body inspections only until a sufficient number of female correctional staff are available to assume critical body search duties.

(e) Male Institutions:

(1) All incarcerated persons at a male institution shall be searched utilizing the male search policy. Except as specified in (e)(2) of this section, clothed body inspections of all incarcerated persons, to include transgender, non-binary, and intersex incarcerated persons shall be conducted by a correctional employee of any gender and unclothed body inspections shall be performed by male correctional employees.

(2) If a transgender, non-binary, or intersex incarcerated person wishes to be searched consistent with the female search policy, they must have a search preference request approved in accordance with section 3085.3.

(A) If approved, the reference “female search policy” shall be listed on the Transgender, Non-Binary, and Intersex Access Card (11/1/2023) or CDC 128-B (Rev. 4/74), General Chrono (signed by the Chief Deputy Warden) and searches shall be conducted as described in (e)(3) of this section.

(3) For incarcerated persons at male institutions with an approved request to be searched consistent with the female search policy; clothed and unclothed body inspections shall be conducted by a female correctional employee, in accordance with the female search policy, except for situations as identified in (e)(5) of this section.

(4) Any search at a male institution inconsistent with (e)(1) or (e)(2) shall be documented as an unusual occurrence via a memorandum and sent to the Hiring Authority.

(5) The only exceptions to the male institution search policies are under emergency conditions with life or death consequences, exigent circumstances as defined in section 3287(b)(1)(A), or when an incarcerated person has an approved search preference.

(A) In such situations, correctional employees of any gender may conduct unclothed body inspections only until a sufficient number of male correctional staff are available to assume critical body search duties.

[Existing subsection (e) is relocated and renumbered (f) but is otherwise unchanged.]

(f) A written record shall be maintained of the disposition of contraband and stolen or missing property confiscated as the result of cell, property, or body inspections.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 2605, 5054 and 6402, Penal Code; *Jordan v. Gardner*, 986 F.2d 1521; and Title 28, Subsection 115.15, Code of Federal Regulations.

[New section 3287.1 relocates language previously located in section 3287(c) through (d)(3)(B), and is adopted to read:]

3287.1. Body Scans and Passive Air Search.

(a) Incarcerated Person Body Searches. Incarcerated persons shall submit to body inspections using contraband and metal detection devices and electronic drug detection devices, including but not limited to, ION scanners and low-dose, full-body x-ray scanners. Incarcerated persons shall also submit to inspections of all personal items, including but not limited to, wheelchairs, implants, prostheses, and assistive devices, using contraband and metal detection devices and electronic drug detection devices, including but not limited to, ION scanners.

(1) Contraband and metal detection devices and electronic drug detection devices, including but not limited to, ION scanners and low-dose, full-body x-ray scanners shall be used on incarcerated persons when they leave a visiting area, upon conclusion of a family visit, upon returning to a yard or facility from vocational or educational classes, upon entering or exiting a secure perimeter, and prior to placement into restrictive housing.

(2) The use of the low-dose, full-body x-ray scanners shall comply with Code of Federal Regulations, Title 28, Section 115.15(a) (7/1/2012), which is hereby incorporated by reference.

(3) Low-dose, full-body x-ray scanners shall adhere to the American National Standard Institute's *Radiation Safety for Personnel Security Screening Systems Using X-Ray or Gamma Radiation* (ANSI/HPS N43.17-2009), which is hereby incorporated by reference. Scanner settings shall be set by the manufacturer to 0.25 microsieverts per scan. The annual radiation limit shall be 250 microsieverts per incarcerated person and each scan shall have a radiation dose of 0.25 microsieverts. A low-dose, full-body x-ray scanner shall identify the incarcerated person by CDCR number and determine the annual radiation to which the incarcerated person has been previously exposed as a result of low-dose, full-body x-ray scanning relative to the annual radiation limit before a scan is initiated.

(4) If the incarcerated person has reached the annual radiation limit pursuant to subsection 3287.1(a)(3), the machine shall not perform a scan. A scan shall only be conducted when the radiation to which the incarcerated person has been previously exposed as a result of scanning is determined to be under the annual radiation limit, and at least 0.25 microsieverts remain before the incarcerated person reaches their annual radiation limit.

(5) An incarcerated person shall be excused from a low-dose, full-body x-ray scanner search in the event of an emergency custody circumstance in which the incarcerated person's behavior creates a safety risk for the incarcerated person, other incarcerated persons, or CDCR staff if the search is performed, and requires immediate staff attention to deescalate the situation and maintain the safety and security of the institution. The staff member who is escorting the incarcerated person to be searched shall make the determination that the incarcerated person cannot safely be searched using the low-dose, full-body x-ray scanner.

(A) An emergency custody circumstance includes physical aggression from the incarcerated person requiring restraint of the incarcerated person in order to maintain the safety and security of the institution or a circumstance where an incarcerated person refuses to ambulate and stand up on the machine's platform to be scanned.

(B) The staff member who excused the incarcerated person from a search using the low-dose, full-body x-ray scanner shall document the emergency custody excusal on CDC Form 128-B, General Chrono (Rev. 4/74), **incorporated by reference**, as soon as is permissible and forward the completed Form to the Warden for signature. The CDC Form 128-B shall be signed by the Warden no later than 48 hours after the date of the emergency custody circumstance. A copy of the form shall be given to the incarcerated person, and shall be stored in the Electronic Records Management System (ERMS), as defined in section 3000.

(6) An excusal for medical circumstances shall be documented on CDC Form 128-C, Chrono-Medical, Psychiatric, Dental (Rev. 01/96), **incorporated by reference**, and signed by a CDCR medical staff member of a level no lower than a nurse practitioner. A copy of the form shall be given to the incarcerated person, and shall be stored in the ERMS.

(7) An incarcerated person who is excused from being scanned with a low-dose, full-body x-ray scanner pursuant to subsections 3287.1(a)(5) or 3287.1(a)(6), or who has reached the annual radiation limit pursuant to subsection 3287.1(a)(3), shall be searched by alternate means, including but not limited to, passive canine air scan searches, hand-held metal detectors, walk-through metal detectors, and ION scanners.

(8) An incarcerated person shall notify a staff member that they are excused from being searched with a low-dose, full body x-ray scanner due to an emergency custody or medical circumstance, whereupon verification of excusal is required. At least one of the following two methods of verification shall be used:

(A) The incarcerated person shall present a copy of the approved CDC Form 128-B or CDC Form 128-C to a staff member operating a low-dose, full-body x-ray scanner, or

(B) A staff member shall access the copy of CDC Form 128-B or CDC Form 128-C that is stored in ERMS.

(9) In the event that verification cannot be obtained through one of the methods enumerated in subsections 3287.1(a)(8)(A) or 3287.1(a)(8)(B), staff shall search the incarcerated person in accordance with subsection 3287.1(a)(7).

(10) An incarcerated person who is excused from being scanned with a low-dose, full-body x-ray scanner for emergency custody circumstances pursuant to subsection 3287.1(a)(5) shall be subject to disciplinary action in accordance with section 3315.

(b) Passive Air Scan Searches. Inspections of incarcerated person cell or living areas, property, work areas, and body shall be conducted on an unannounced, random basis as directed by the institution head. Such inspections shall be conducted no more frequently than necessary to control contraband, recover missing or stolen property, or maintain proper security of the institution.

(1) Incarcerated persons shall be subject to passive air scan searches by a passive alert canine.

(2) Direct Searches of incarcerated persons: The canine handler shall make an announcement informing the incarcerated person(s) that they are conducting passive air scan searches using a passive alert canine and that the purpose of the scan is to detect illegal drugs. The incarcerated person does not have the right to refuse the search. An incarcerated person who refuses to be searched may be subject to disciplinary action and subject to additional search and urine testing for the presence of drugs.

(A) While inadvertent contact is a possibility, the handler shall not instruct the canine to contact the incarcerated person.

(B) If the incarcerated person seems excessively nervous, the handler shall attempt to reassure the incarcerated person that the procedure is safe.

(3) Results of a Canine Search. If the canine gives a positive canine alert during a passive air scan search of the incarcerated person, the incarcerated person shall submit to an unclothed body search and urinalysis testing.

(A) Any confiscated controlled substance shall be handled as evidence.

(B) Whenever a Canine handler finds contraband, the find shall be reported to the on-duty supervisor. The supervisor shall determine what action shall be taken.

[New subsection 3287.1(c) is adopted to read:]

(c) A written record shall be maintained of the disposition of contraband and stolen or missing property confiscated as the result of cell, property, or body inspections.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 5054 and 6402, Penal Code; *Jordan v. Gardner*, 986 F.2d 1521; and Title 28, Subsection 115.15, Code of Federal Regulations.

Article 10. Classification.

3375. Classification Process.

[Subsections (a) through (b) remain unchanged.]

[Subsection (c) is amended to read:]

(c) Each determination affecting an incarcerated person's placement within an institution or facility, transfer between an institution or facilities, program participation, privilege groups, or custody designation, shall be made by a classification committee composed of staff knowledgeable in the classification process. Exceptions include waiting list placements and assignments to Cognitive Behavioral Interventions (CBI) which can be made without a classification committee action based upon a health care services referral; or a guilty finding pursuant to subsection 3315(f)(5)(J)2. or 3315(f)(5)(J)3.

[Subsections (d) through (f) remain unchanged.]

[Subsections (g) through 3375(g)(1)(C) are amended to read:]

(g) Every decision of a classification committee shall be documented on an automated Classification Committee Chrono (Rev. 05/19), which is incorporated by reference.

- (1) Each classification committee's documentation shall include, but not be limited to the following:
- (A) The reason or purpose for the committee hearing without compromising the personal safety of the incarcerated person.
 - (B) The action taken.
 - (C) The specific reasons for the action, including the general information upon which the decision was based, without compromising the personal safety of the incarcerated person.

[Subsections (g)(1)(D) through (I) remain unchanged.]

Note: Authority cited: Sections 5058 and 5058.3, Penal Code. Reference: Sections 1203.8, 3020, 5054, 5068 and 11191, Penal Code; Sections 8550 and 8567, Government Code; and Governor's Prison Overcrowding State of Emergency Proclamation dated October 4, 2006; *Wright v. Enomoto* (1976) 462 F.Supp. 397; *Stoneham v. Rushen* (1984) 156 Cal.App.3d 302; and *Castillo v. Alameida, et al.*, (N.D. Cal., No. C94-2847).

3376. Classification Committees.

[Subsections (a) through (d)(D)(2)(E) remain unchanged.]

[Subsection (d)(3) is unchanged but is shown for reference purposes.]

- (3) Institution and Facility Classification Committees shall:

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

- (A) Recommend transfer of incarcerated persons, including gender identity-based transfer requests, pursuant to Penal Code section 2606.

[Subsections (d)(3)(B) through (d)(5)(E) remain unchanged.]

Note: Authority cited: Sections 3303 and 3309, Welfare and Institutions Code; and Sections 5058 and 6252, Penal Code. Reference: Sections 2606, 2933, 5054 and 5068, Penal Code.

~~Note: Authority cited: Section 5058, Penal Code. Reference: Sections 2606, 5054, 5068 and 11191, Penal Code; Sections 8550 and 8567, Government Code; Governor's Prison Overcrowding State of Emergency Proclamation dated October 4, 2006; *Sandin v. Connor* (1995) 515 U.S. 472; and *Madrid v. Gomez* (N.D. Cal. 1995) 889 F.Supp. 1146.~~

3401.6. Staff Sexual Harassment.

[Subsections (a) through (e) remain unchanged.]

[New subsection (f) is adopted to read:]

- (f) Staff, contractors, and volunteers of the department shall use the gender pronoun and honorific specified by the incarcerated person in all verbal and written communications once notified of the incarcerated person's pronouns and honorifics. Staff, contractors, and volunteers of the department shall not consistently fail to use the gender pronoun and honorific specified by the incarcerated person in all verbal and written communications.**

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 289.6, 293.5, 2605, and 5054, Penal Code; Section 6254, Government Code; and 28 CFR Sections 115.67 and 115.76.

CUT ALONG PERFERATED LINE – FOLD DOWN CENTER

CUT ALONG PERFERATED LINE – FOLD DOWN CENTER

TRANSGENER, NON-BINARY, & INTERSEX ACCESS CARD

NOT AN ID CARD

This card is not valid without possession of state issued identification card.

TRANSGENER, NON-BINARY, & INTERSEX ACCESS CARD

TRANSGENER, NON-BINARY, & INTERSEX ACCESS CARD

NOT AN ID CARD

Gender Identity:

Pronoun:

Honorific:

Search Preference:

TRANSGENER, NON-BINARY, & INTERSEX ACCESS CARD

TRANSGENER, NON-BINARY, & INTERSEX ACCESS CARD

NOT AN ID CARD

This card is not valid without possession of state issued identification card.

TRANSGENER, NON-BINARY, & INTERSEX ACCESS CARD

TRANSGENER, NON-BINARY, & INTERSEX ACCESS CARD

NOT AN ID CARD

Gender Identity:

Pronoun:

Honorific:

Search Preference:

TRANSGENER, NON-BINARY, & INTERSEX ACCESS CARD

CUT ALONG PERFERATED LINE – FOLD DOWN CENTER

TRANSGENER, NON-BINARY, & INTERSEX ACCESS CARD

NOT AN ID CARD

This card is not valid without possession of state issued identification card.

TRANSGENER, NON-BINARY, & INTERSEX ACCESS CARD

TRANSGENER, NON-BINARY, & INTERSEX ACCESS CARD

NOT AN ID CARD

Gender Identity:

Pronoun:

Honorific:

Search Preference:

TRANSGENER, NON-BINARY, & INTERSEX ACCESS CARD

TRANSGENER, NON-BINARY, & INTERSEX ACCESS CARD

NOT AN ID CARD

This card is not valid without possession of state issued identification card.

TRANSGENER, NON-BINARY, & INTERSEX ACCESS CARD

TRANSGENER, NON-BINARY, & INTERSEX ACCESS CARD

NOT AN ID CARD

Gender Identity:

Pronoun:

Honorific:

Search Preference:

TRANSGENER, NON-BINARY, & INTERSEX ACCESS CARD

CUT ALONG PERFERATED LINE – FOLD DOWN CENTER

CUT ALONG PERFERATED LINE – FOLD DOWN CENTER