

**State of California
Office of Administrative Law**

In re:
Department of Corrections and
Rehabilitation

Regulatory Action:

Title 15, California Code of Regulations

Adopt sections:

Amend sections: 3006, 3044, 3090, 3178,
3190, 3282, 3314, 3315,
3323

Repeal sections:

**NOTICE OF APPROVAL OF REGULATORY
ACTION**

Government Code Section 11349.3

OAL Matter Number: 2026-0219-03

OAL Matter Type: Regular (S)

In this rulemaking action, the Department of Corrections and Rehabilitation amends its regulations to allow the special issuance of authorized wireless communication devices, set forth a user agreement, and establish disciplinary actions for violating terms of the user agreement. It further discusses an approved attorney's confidential calls with the incarcerated person they represent.

OAL approves this regulatory action pursuant to section 11349.3 of the Government Code. This regulatory action becomes effective on 4/3/2026.

Date: April 3, 2026



Thanh Huynh
Senior Attorney

For: Kenneth J. Pogue
Director

Original: Jeffrey Macomber, Secretary
Copy: Alison Colavita

REGULAR

NOTICE PUBLICATION/REGULATIONS SUBMISSION

For use by Secretary of State only

STD. 400 (REV. 10/2019)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-2025-0825-03	REGULATORY ACTION NUMBER 2026-0219-035	EMERGENCY NUMBER
For use by Office of Administrative Law (OAL) only		REGULATIONS	
NOTICE		REGULATIONS	

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

APR 03 2026

1:26 PM
[Signature]

OFFICE OF ADMIN. LAW
2026 FEB 19 PM 3:26

AGENCY WITH RULEMAKING AUTHORITY
California Department of Corrections and Rehabilitation

AGENCY FILE NUMBER (if any)
23-28

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

1. SUBJECT OF NOTICE	TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	NOTICE REGISTER NUMBER 2025, 38-2	PUBLICATION DATE 9/19/25

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Incarcerated Person Calls and Property Rule Violation	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related) SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT
	AMEND 3006, 3044, 3090, 3178, 3190, 3282, 3314, 3315, 3323
	REPEAL 15

3. TYPE OF FILING	<input checked="" type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
	<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
	<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))	<input type="checkbox"/> Other (Specify) _____		

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

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a)) <input checked="" type="checkbox"/> Effective on filing with Secretary of State <input type="checkbox"/> \$100 Changes Without Regulatory Effect <input type="checkbox"/> Effective other (Specify) _____

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY
<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660) <input type="checkbox"/> Fair Political Practices Commission <input type="checkbox"/> State Fire Marshal <input type="checkbox"/> Other (Specify) _____

7. CONTACT PERSON Alison Colavita	TELEPHONE NUMBER (279) 223-2314	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional) alison.colavita@cdcr.ca.gov
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE <i>Jason Johnson</i>	DATE 2/19/2026
TYPED NAME AND TITLE OF SIGNATORY Jason D. Johnson, Undersecretary, Operations	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

APR 03 2026

Office of Administrative Law

TEXT OF ADOPTED REGULATIONS

In the following text, all new language is indicated by underline and deleted text is indicated by ~~strikethrough~~.

California Code of Regulations, Title 15: Crime Prevention and Corrections Division 3. Rules and Regulations of Adult Institutions, Programs and Parole Chapter 1. Rules and Regulations of Adult Operations and Programs Article 1. Behavior

Section 3006. Contraband.

Subsection 3006(a) is amended to read:

(a) Dangerous Property. Incarcerated persons shall not possess or have under their control or constructive possession any weapons, explosives, explosive making material, poisons, or any destructive devices, nor shall they possess or assist in circulating any writing or voice recording which describes the making of any weapons, explosives, poisons, or destructive devices. Incarcerated persons shall not possess communication devices capable of making or receiving wireless communications, except as expressly authorized by the Secretary, pursuant to subsections 3190(l)(7) and 3190(m).

Subsections 3006(b) through 3006(c)(19) are unchanged.

Subsection 3006(c)(20) is amended to read:

(20) Any wireless communication device accessory or component including, but not limited to, a Subscriber Identity Module (SIM) card, memory storage device, battery, wired or wireless headset, and charger, except as expressly authorized by the Secretary, pursuant to subsections 3190(l)(7) and 3190(m).

Subsections 3006(c)(21) and 3006(d) are unchanged.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 311(a), 2600, 2601, 2772, 2790, 4574, 4576, 5030.1, 5054 and 5057, Penal Code.

Article 3.4. Incarcerated Person Work and Privileges

3044. Incarcerated Person Work Groups and Privilege Groups.

Subsections 3044(a) through 3044(d)(2)(G) are unchanged.

Subsection 3044(d)(2)(H) is amended to read:

(H) The receipt of four incarcerated person packages, 30 pounds maximum weight each, per year. Incarcerated persons may also receive special purchases and special issuances, as provided in subsections 3190(j) ~~and~~ through (kn).

Subsections 3044(d)(2)(I) through 3044(e)(2)(G) are unchanged.

Subsection 3044(e)(2)(H) is amended to read:

(H) The receipt of four incarcerated person packages, 30 pounds maximum weight each, per year. Incarcerated persons may also receive special purchases and special issuances, as provided in subsections 3190(j) ~~and~~ through (k).

Subsections 3044(e)(2)(I) through 3044(f)(2)(E) are unchanged.

Subsection 3044(f)(2)(F) is amended to read:

(F) No incarcerated person packages. Incarcerated persons may receive special purchases and special issuances, as provided in subsections 3190(j) ~~and~~ through (k).

Subsections 3044(f)(2)(G) through 3044(g)(3)(E) are unchanged.

Subsection 3044(g)(3)(F) is amended to read:

(F) The receipt of one incarcerated person package, 30 pounds maximum weight each, per year. Incarcerated persons shall be eligible to acquire an incarcerated person package after completion of one year of Privilege Group D assignment. Incarcerated persons may also receive special purchases and special issuances, as provided in subsections 3190(j) ~~and~~ through (k).

Subsections 3044(g)(3)(G) through 3044(h)(2)(F) are unchanged.

Subsection 3044(h)(2)(G) is amended to read:

(G) No incarcerated person packages. Incarcerated persons may receive special purchases and special issuances, as provided in subsections 3190(j) ~~and~~ through (k).

Subsections 3044(i) through 3044(i)(3)(G) are unchanged.

Subsection 3044(i)(3)(H) is amended to read:

(H) Receipt of incarcerated person packages, 30 pounds maximum weight each. Incarcerated persons may also receive special purchases and special issuances, as provided in subsections 3190(j) ~~and~~ through (k). ICC shall designate between one and four packages per year.

Subsections 3044(i)(3)(I) through 3044(j) are unchanged.

Note: Authority cited: Cal. Const., article I, Section 32(b); and Sections 2700, 2701 and 5058, Penal Code. Reference: Cal. Const., article I, Section 32(a)(2); Sections 2932, 2933, 2933.05, 2933.3, 2933.6, 2935, 5005, 5054 and 5068, Penal Code; and *In re Monigold*, 205 Cal.App.3d 1224 (1988).

Subchapter 2. Incarcerated Person Resources

Article 1. Canteens

3090. Incarcerated Person Canteen Establishment and Draw Limits.

Subsections 3090(a) through 3090(c) are unchanged.

Subsection 3090(d) is amended to read:

(d) An incarcerated person's trust account deductions for canteen purchases shall not be restricted beyond limits established by the Secretary for all incarcerated persons in like work groups, except by following an adjudicated guilty finding after formal disciplinary action for any of the following:

(1) a A violation involving canteen,

(2) ~~or the~~ intentional or negligent destruction, damage, or misuse of state property, or any authorized wireless communication device, as defined in subsection 3282(a)(6).

(3) ~~for~~ violations of subsections 3016(a), 3016(b), 3016(d), or 3290(d), or in accordance with subsections 3315(fg)(5)(K) and 3315(fg)(5)(M).

Subsection 3090(e) is unchanged.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 5005 and 5054, Penal Code.

Article 7. Visiting

3178. Attorney Visitations and Consultation.

Subsection 3178(a) is amended to read:

(a) The provisions of this section apply to any attorney or legal service organization as identified in section 3141(c)(~~8~~10) authorized to practice law in California, another state, or the District of Columbia.

Subsections 3178(b) through 3178(c)(4) are unchanged.

Subsection 3178(d) is amended to read:

(d) An attorney who wishes to consult in person with an incarcerated person shall contact the institution/ or facility at which the incarcerated person is housed. The request shall be made by calling or writing via U. S. Postal Service, facsimile, or electronic message (including via facsimile) to the staff designated (usually the ~~L~~Iitigation ~~e~~Coordinator) in the institution/ or facility operational supplement. In order to obtain approval/ and clearance, the attorney shall provide the following personal and professional information in writing (including via facsimile): name; mailing address; date of birth, valid driver's license or state-issued identification card number; proof of current registry and good standing with a governing bar association; and indication of the jurisdiction(s) licensed to practice law.

Requesting attorneys must also report any prior felony convictions, explain any prior suspension or exclusion from a correctional facility and declare one or more of the following:

Subsections 3178(d)(1) through 3178(d)(4) are unchanged but shown for reference:

- (1) They are the incarcerated person's attorney either by appointment by the court or at the incarcerated person's request;
- (2) They have been requested by a judge to interview a named incarcerated person for purposes of possible appointment as counsel by the same court;
- (3) They are requesting to visit an incarcerated person who may be a witness directly relevant to a legal process, purpose, or proceeding;
- (4) They are seeking to interview a named incarcerated person, at the request of the incarcerated person, for the purpose of representation of the incarcerated person in a legal process, for a legal purpose or in a legal proceeding.

Subsection 3178(d)(5) is amended to read:

- (5) They have been requested by a ~~third party~~ legally authorized representative to consult with the named incarcerated person when the incarcerated person cannot do so because of a medical condition, disability or other circumstance.

Subsections 3178(e) through 3178(t) are unchanged.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 2601, 4570.5 and 5054, Penal Code; and *Procurier v. Martinez*, 94 S. Ct. 1800 (1974).

Article 9. Personal Property and Religious Personal Property

3190. General Policy.

Subsections 3190(a) through 3190(k) are unchanged.

Subsection 3190(l) is unchanged but shown for reference:

(l) Incarcerated persons shall be allowed special purchases of authorized personal property items from either departmentally-approved package vendors, departmentally-approved vendors of religious items, or locally-approved special purchase vendors. The institution head or their designee shall ensure approved vendor catalogs and order forms are available to eligible incarcerated persons. Special purchases are limited to the following:

Subsections 3190(l)(1) through 3190(l)(6) are unchanged.

Subsection 3190(l)(7) is unchanged but shown for reference:

(7) Network capable tablets. Incarcerated persons expressly authorized by the Secretary to possess network capable tablets are listed in the Authorized Personal Property Schedules, pursuant to subsections 3190(b)(1) through (b)(5).

New subsection 3190(m) is adopted to read:

(m) Incarcerated persons shall be allowed special issuances of authorized items from departmentally-approved vendors. Special issuances include wireless communication devices, such as a network capable tablet or laptop computer, authorized for incarcerated person use, provided at no-cost to the incarcerated person to facilitate incarcerated persons' communications and programming. Incarcerated persons may possess (but do not own) a wireless communication device via a special issuance, and special issuances are not itemized within the Authorized Personal Property Schedules. Prior to a special issuance of an authorized wireless communication device, incarcerated persons shall sign the mandatory CDCR Form 2293 (06/24), Authorized Wireless Communication Device User Agreement, which is incorporated by reference.

Existing subsections 3190(m) through 3190(w) are renumbered to 3190(n) through 3190(x), but are otherwise unchanged.

~~(m)~~ Incarcerated persons may be allowed to possess appliances and one musical instrument as follows:

(1) Incarcerated persons assigned to Privilege Groups A or B may possess up to three approved appliances in their quarters/living area, facility physical plant limitations permitting, and shall not exceed the six cubic feet maximum limitation. One musical instrument with case not exceeding 46" x 24" x 12" may be substituted as one of the three appliances.

(2) Incarcerated persons assigned to Privilege Group C may not possess entertainment appliances and/or a musical instrument. Incarcerated persons placed on Privilege Group C pursuant to a disciplinary action pursuant to subsections 3314(e)(3), 3315(g)(5)(C), or classification committee action shall have the disallowed property stored at the incarcerated person's institution.

Incarcerated persons assigned to Privilege Group C by a classification committee as a result of being deemed a program failure as defined in Section 3000 who receive one or more additional Administrative or Serious Rules Violation Reports shall be required to mail out, return, donate, or dispose of disallowed property in accordance with Subsection 3191(c).

(3) Incarcerated persons assigned to a RHU or other restricted housing may possess or acquire one television or one radio or one television/radio combination unit, through the Special Purchase process, facility physical plant limitations permitting, and shall not exceed the six cubic feet maximum limitation. Incarcerated persons assigned to RHU are authorized two entertainment appliances. Eligibility to possess an entertainment appliance commences on the date of Privilege Group D assignment. An incarcerated person who is deemed to be a program failure, as defined in section 3000, based on

conduct prior to or while in the RHU or other restricted housing shall have their entertainment appliance stored by the institution pending removal of program failure designation. Incarcerated persons deemed a program failure as defined in section 3000 who receive one or more additional Administrative or Serious Rules Violation Reports while assigned to program failure status shall be required to mail out, return, donate or dispose of disallowed property in accordance with subsection 3191(c). An incarcerated person who has not been deemed a program failure, but who is found guilty of any Rules Violation Report based on conduct while in the RHU or other restricted housing, is subject to temporary loss of the entertainment appliance as follows: (1) thirty days for the first offense; (2) sixty days for the second offense; and (3) ninety days for the third and subsequent offenses. Incarcerated persons assigned to Privilege Group D shall not possess a musical instrument.

(4) Incarcerated persons assigned to Privilege Group U shall not possess any appliances or musical instruments.

(5) Incarcerated persons housed at conservation camps shall not possess a television or television/radio combination.

(6) An incarcerated person deemed to be a program failure, based on conduct prior to or while in the RHU or other restricted housing, shall have their maximum monthly canteen draw items limited to stationery, stationery supplies, personal hygiene, vitamins, and medications. Incarcerated persons may maintain their current canteen items, which must be verified with a current receipt. Any subsequent canteen purchases while deemed a program failure shall be limited to stationery, stationery supplies, personal hygiene, vitamins, and medication.

(~~h~~) All appliances shall be sealed by staff by covering exterior pieces of the appliance that may be used to access the interior of the appliance with hotglue.

(~~e~~) Incarcerated persons who break or tamper with the seal of an appliance(s) may be subject to disciplinary action and confiscation of the item.

(~~p~~) Incarcerated persons ordering new or replacement appliances shall be required to purchase clear-case appliances, as they become available.

(~~r~~) Incarcerated person correspondents shall be permitted to purchase appliances for qualifying incarcerated persons, including health care appliances, and Entertainment Appliances, Headphones/Earbuds and Musical Instruments, from either a departmentally-approved incarcerated person package vendor or a locally-approved special purchase vendor, pursuant to section 3044.

(~~s~~) In addition to the six cubic feet limitation of authorized property, incarcerated persons who participate in institution academic or Career Technical Educational programs shall be allowed to possess, in their quarters/living area, state provided textbooks/materials necessary to complete their education requirements. In accordance with section 3011, incarcerated persons who do not return state textbooks in serviceable condition, may be

charged a replacement fee, as determined by the supervisor of correctional education programs.

~~(st)~~ Incarcerated persons may acquire and possess correspondence course materials, including textbooks, in their quarters/living area as approved by the supervisor of correctional education programs and designated custody staff pursuant to limitations in section 3190(b). Correspondence courses requiring tools, construction kits, or other materials that may pose a threat to the institution's security or the safety of persons shall not be allowed.

~~(tu)~~ The amount charged an incarcerated person for a special purchase or incarcerated person package shall include normal taxes and a 10% service charge based upon the purchase price. Service charges shall be deposited in the Incarcerated Welfare Fund. Exception: The 10% service charge shall not be added to purchases of health care appliances, correspondence courses, nonfiction books, religious items, and legal materials.

~~(uv)~~ Incarcerated persons shall be permitted to possess membership cards, identification cards, or service-type cards in addition to those issued by the department in accordance with subsection 3237(c).

~~(vw)~~ All allowable incarcerated person property shall be inventoried, documented, and stored for incarcerated persons transferred Out-to-Medical or Out-to-Court, or placed in restricted housing, a Correctional Treatment Center, or an Outpatient Housing Unit, until the incarcerated person returns. Specific to publications, incarcerated persons in restricted housing units shall be afforded the opportunity to choose which publications they want to maintain in their assigned living quarters and the publications that shall be stored as excess personal property.

~~(wx)~~ Privilege Group A or B incarcerated persons placed in RHU shall have their property inventoried and stored pending the outcome of Initial Classification Committee review. If the incarcerated person is released to general population and maintains their Privilege Group A or B assignment, all allowable property shall be returned. If the incarcerated person is retained in RHU, all allowable property as determined by current departmental regulations shall be reissued to the incarcerated person. If the incarcerated person received a RHU term, the incarcerated person shall be required to dispose of unallowable property due to privilege group and/or security level and/or institution mission change in accordance with subsection 3191(c).

Note: Authority cited: Sections 5058 and 5058.3, Penal Code. Reference: Sections 2086, 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 *Prison Legal News v. Schwarzenegger* Settlement Agreement, No. Civ-07-02058 CW and Religious Land Use and Institutionalized Persons Act, 42 United States Code Sections 2000cc et seq.

Subchapter 4. General Institution Regulations
Article 2. Security

Section 3282 is amended to read:

3282. Use of ~~Telephones~~ Communication Devices by Incarcerated Persons.

Subsections 3282(a) through 3282(a)(2) are unchanged but shown for reference:

(a) For purposes of this section:

- (1) An “emergency call” means a telephone call regarding the serious illness or injury, or the death of an incarcerated person’s immediate family member.
- (2) A “confidential call” means a telephone call between an incarcerated person and their attorney which both parties intend to be private.

Subsection 3282(a)(3) is amended to read:

- (3) An “incarcerated person telephone” means a telephone designated solely to accommodate incarcerated person-originated, non-confidential personal calls.

Subsections 3282(a)(4) and 3282(a)(5) are unchanged but shown for reference:

- (4) An “intrafacility telephone” means a telephone which is not capable of direct-dial connections to telephones outside of the facility.
- (5) A “prison telephone” means a telephone that is capable of outside access and is not monitored or recorded.

New subsections 3282(a)(6) through 3282(a)(10) are adopted to read:

(6) An “authorized wireless communication device” is a wireless communication device, such as a network capable tablet, that is departmentally approved for incarcerated person use in accordance with subsections 3190(l)(7) and 3190(m).

(7) A “contact” is a person who communicates with an incarcerated person via an authorized wireless communication device.

(8) An “electronic message” is a non-confidential method of written communications between an incarcerated person and a contact, and an incarcerated person receiving photographs, images, and video from a contact, using an authorized wireless communication device.

(9) A “device call” is an incarcerated person-originated, non-confidential voice call made using an authorized wireless communication device.

(10) A “video call” is an incarcerated person-originated, non-confidential call made using an authorized wireless communication device with a camera and a screen, allowing participants to see each other as they communicate.

(11) “Electronic communications” are all forms of communication transmitted by an authorized wireless communication device. Electronic communication includes the exchange of written electronic messages between an incarcerated person and their contact, the receipt of photographs, images and video messages from an incarcerated person’s contact, and incarcerated person-originated device calls and video calls.

Subsection 3282(b) is amended to read:

(b) Facilities shall provide incarcerated person telephones for use by incarcerated persons consistent with their assigned privilege group. Incarcerated persons may place ~~collect~~ telephone calls or device calls to persons outside the facility at designated times and on designated telephones or on authorized wireless communication devices, as set forth in local procedures. Limitations may be placed on the frequency and length of such calls based on the incarcerated person's privilege group as outlined in section 3044, and to ensure equal access. Telephone calls requiring the use of a Telecommunication Device for the Deaf (TDD), or voice relay service, or video relay service shall have extended time scheduled due to the time delay which results from the TDD relay process.

Subsection 3282(c) is unchanged but shown for reference:

(c) An incarcerated person shall not:

Subsections 3282(c)(1) through 3282(c)(8) are unchanged.

Subsection 3282(c)(9) is amended to read:

(9) Knowingly participate in a forwarded, transferred, or three-party call on an incarcerated person telephone, device call, or video call.

New subsections 3282(c)(10) through 3282(c)(13) are adopted to read:

(10) Intentionally manipulate the blurred background feature while making a video call to reveal background images or people.

(11) Violate the provisions of the mandatory CDCR Form 2293 (06/24), Authorized Wireless Communication Device User Agreement, which is incorporated by reference. Violations of the provisions of CDCR Form 2293 (06/24) are subject to disciplinary action, and possible device use suspension and reimbursement of the cost of device repair or replacement in accordance with section 3314.

(12) Send obscene text via electronic message, as defined in subsection 3006(c)(15). Violations of this provision are subject to disciplinary action in accordance with sections 3314 and 3315.

(13) Commit acts of indecent exposure or sexual disorderly conduct, as defined in section 3000, or sexual behavior or obscenity, as specified in sections 3007 and 3008, while utilizing electronic communications. Violations of this provision are subject to disciplinary actions pursuant to sections 3315 and 3323, and possible device use suspension in accordance with section 3315.

New subsections 3282(d) through 3282(d)(3) are adopted to read:

(d) An incarcerated person's contact shall not:

(1) Send via electronic communications to an incarcerated person: obscene text as defined in subsection 3006(c)(15), sexually explicit images as defined in section 3006(c)(16), including disturbing or offensive material as defined in section 3135, or material reasonably deemed to be a threat to legitimate penological interests. Violation of this provision shall result in the following consequences:

(A) The rejection of the electronic communication by the reviewing staff member, which will generate an electronic rejection notification message sent to the incarcerated person's contact.

(B) For the first offense, the incarcerated person's contact shall be notified of the nature of the violation and advised that future similar behavior shall result in the restriction of electronic communications with the incarcerated person.

(C) For the second offense, the incarcerated person's contact shall be restricted from electronic communications with the incarcerated person for 90 days.

(D) For the third offense, the incarcerated person's contact shall be restricted from electronic communications with the incarcerated person indefinitely. To request reinstatement of the ability to send electronic communications with the incarcerated person, the incarcerated person's contact shall submit a complaint in accordance with subsection 3137(c) in writing to the Warden or Director of the Division of Adult Institutions (DAI). A decision by the Warden or Director of DAI to approve or deny a request for reinstatement shall be made on a case-by-case basis, in consideration of the totality of circumstances resulting in the restriction of electronic communications. Factors for consideration include, but are not limited to, the seriousness of the prior offenses and any additional violations of departmental rules.

(2) Display nudity, engage in sexual behavior, wear see-through clothing, or share the nude images of any person, consistent with sexually explicit images as defined in section 3006(c)(16), while on a video call with an incarcerated person. Violation of this provision shall result in the disconnection of the call by the reviewing staff member, and the consequences listed in subsection 3282(d)(1).

(3) Send electronic communications that constitute a criminal activity or would facilitate violations of state or federal law. Violation of this provision shall result in the consequences listed in subsection 3282(d)(1), and possible referral for criminal prosecution in accordance with section 3316.

Existing subsections 3282(d) through 3282(g) are renumbered to 3282(e) through 3282(h), and are amended to read:

(de) Except as provided in this section, no limitation shall be placed on the identities or relationships of persons to whom an incarcerated person may place a collect call, or with whom an incarcerated person conducts electronic communications.

(ef) All incarcerated person calls placed on intrafacility and incarcerated person telephones, and electronic communications may be subject to monitoring and recording at any time by institution staff.

(fg) A conspicuous notice in English and Spanish shall be posted at each incarcerated person telephone capable of recording and monitoring stating in both languages: "All numbers dialed and conversations on this telephone may be recorded and may be monitored without any further notice. By using this telephone, you agree to the monitoring and recording. It is your responsibility to notify the person called that their conversation and telephone number may be monitored and will be recorded." Staff who authorize an incarcerated person to use an unposted telephone for a nonconfidential call shall inform that incarcerated person before the call is made regarding the notice of monitoring/recording requirement.

(gh) If staff designated by the institution head determine that an incoming call concerns an emergency or confidential matter, the caller's name and telephone number shall be obtained and the incarcerated person promptly notified of the situation. The incarcerated person shall be permitted to place an emergency or confidential call, either collect or by providing for the toll to be deducted from the incarcerated person's trust account. A confidential call shall not be made on an incarcerated person telephone and shall not be monitored or recorded. If a call is determined to be an attorney and incarcerated person confidential phone call, in order for the incarcerated person to place or receive the call it must have already received approval or clearance in accordance with subsections (gh)(12), (gh)(23) and (gh)(45).

New subsection 3282(h)(1) is adopted to read:

(1) The department shall grant an approved attorney's request to have a confidential call with the incarcerated person they represent. The approved confidential call shall be at least 30 minutes once per month, per incarcerated person, per case, unless the incarcerated person or attorney requests less time. Incarcerated persons with vision or hearing disabilities shall receive confidential phone calls of at least 60 minutes once per month, per incarcerated person, per case, to account for the additional time it may take to communicate. Upon receipt of a request for a confidential call, a confidential call shall be scheduled in consideration of institutional security and available resources.

Existing subsections 3282(g)(1) through 3282(g)(5) are renumbered to 3282(h)(2) through 3282(h)(6), and are amended to read:

~~(12) A Confidential calls may be approved on a case-by-case basis by the institution head or designee, upon written request from an attorney shall be in writing on the attorney's office letterhead stationery. The request shall be made by written request and may be submitted via U. S. Postal Service mail, or facsimile, or electronic message to the Institution Litigation Coordinator or designee. To obtain approval and clearance, the attorney shall provide in writing the following personal and professional information:~~

- ~~(A) Name,~~
- ~~(B) Mailing address,~~
- ~~(C) Date of Birth,~~
- ~~(D) Valid driver's license or state-issued identification card number,~~
- ~~(E) Proof of current registry and good standing with a governing bar association, and~~
- ~~(F) Indication of the jurisdiction(s) licensed to practice law. If the requesting attorney wishes to have a representative conduct the confidential phone call, the attorney representative must provide all applicable information listed above in addition to the attorney submitting their information. Refer to Title 15, subsection 3178(c)(1) for attorney representative criteria.~~

~~(23) Requesting attorney or attorney representative shall report any prior felony convictions or pending arrest dispositions, describe and explain any prior suspension or exclusion from a correctional facility, and declare under penalty of perjury one or more of the following:~~

- ~~(A) They are the named incarcerated person's attorney either by appointment by the court or at the incarcerated person's request,~~
- ~~(B) They have been requested by a judge to interview a named incarcerated person for purposes of possible appointment as counsel by the same court,~~
- ~~(C) They are requesting to call a named incarcerated person who may be a witness directly relevant to a legal process, purpose, or proceeding,~~
- ~~(D) They are seeking to interview a named incarcerated person, at the request of the incarcerated person, for the purpose of representation of the incarcerated person in a legal process, for a legal purpose or in a legal proceeding, and~~
- ~~(E) They have been requested by a third party legally authorized representative to consult with the named incarcerated person when the incarcerated person cannot do so because of a medical condition, disability or other circumstance.~~

(34) Any false statement or deliberate misrepresentation of facts specific to the information required in subsection (gh)(23) shall be grounds for denying the request or cause for subsequent suspension or exclusion from all institutions/ and facilities administered by the department.

(45) Upon receipt of the information specified in (gh)(42), a California law enforcement telecommunications system (CLETS) check of the attorney/ and attorney representative, as applicable, through the Department of Justice and verification of the attorney's credential through the governing state bar ~~will~~ shall be conducted. Once the clearance and state bar verification have been obtained and approved, the attorney shall be contacted to schedule the confidential telephone call with the specified incarcerated person. Attorneys and attorney representatives shall immediately report to the Institution Litigation Coordinator any change in personal or professional information, arrest history, ~~and~~ or pending dispositions and declarations made in subsections (gh)(42) and (gh)(23) to retain their approval/ and clearance. In addition, a CLETS check ~~will~~ shall be conducted at least annually and as needed based on changes provided to the above listed information or information from any source that such changes had occurred.

(56) The date, initiating time, ~~duration~~, and place where the incarcerated person will make or receive the call, ~~and manner of the call~~ are within the discretion of the institution head, except as restricted herein. A confidential call from an incarcerated person shall be placed ~~as a collect call or by providing for the toll to be deducted from the incarcerated person's trust account and made~~ from a prison telephone or, with appropriate authentication of the caller, may be received from an attorney.

Existing subsection 3282(g)(6) is deleted.

~~(6) It is within the discretion of the institution head, or their designee, to approve or deny a confidential call. As long as the attorney/client communication privilege is not violated, a confidential call may be denied where the institution head, or their designee, determines that normal legal mail or attorney visits were appropriate means of communication and were not reasonably utilized by the incarcerated person or attorney. Where demand for confidential calls seriously burdens institutional operations, the institution head, or their designee, shall prioritize confidential calls.~~

Existing subsection 3282(g)(7) is renumbered to 3282(h)(7) but is otherwise unchanged and shown for reference:

(7) Emergency calls on prison telephones between an incarcerated person and clergy, other religious advisors, or health care professionals shall be approved or denied on a case-by-case basis by staff designated by the institution head.

Existing subsections 3282(g)(8) through 3282(i) are renumbered to 3282(h)(8) through 3282(j) and are amended to read:

(8) Approved attorneys, approved attorney representatives, and confidential phone call applicants ~~still pending approval~~ may file a complaint regarding departmental policies,

local procedures, or staff decisions related to confidential phone calls with the Warden or other official responsible for that housing unit.

(hi) Telecommunication Device for the Deaf (TDD) telephones shall be made available to incarcerated persons with a documented ~~severe~~ hearing impairment for personal, emergency, and confidential calls, which shall be subject to the provisions of this section.

(1) Assistive device telephones and additional time on telephones may be necessary to provide accommodations for incarcerated persons and their callers with disabilities.

(2) The facility shall provide for the procedures necessary to ensure effective telephone communications for incarcerated persons with disabilities and/or the disabled person(s) with whom they are communicating.

(ij) All calls made on incarcerated person telephones shall have an announcement before and at random intervals during the calls stating that the call is from an incarcerated person at a California state correctional facility and is being recorded.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 5054 and 5058.7, Penal Code.

Article 5. incarcerated Person Discipline

3314. Administrative Rule Violations.

Subsections 3314(a) through 3314(a)(2)(G) are unchanged.

Subsection 3314(a)(3) is unchanged but shown for reference:

(3) Administrative rule violations include but are not limited to:

Subsections 3314(a)(3)(A) through 3314(a)(3)(C) are unchanged.

Subsection 3314(a)(3)(D) is amended to read:

(D) Misuse of telephone privileges on an incarcerated person telephone, or an authorized wireless communication device capable of electronic messaging, making device calls or video calls, as defined in subsection 3282(a), presenting no threat to facility security.

Subsections 3314(a)(3)(E) through 3314(a)(3)(M) are unchanged.

Existing subsection 3314(a)(3)(N) is renumbered to 3314(a)(3)(N)1 and new subsection 3314(a)(3)(N) is adopted to read:

(N) Violations of the provisions of the mandatory CDCR Form 2293 (06/24), Authorized Wireless Communication Device User Agreement, which is incorporated by reference, include but are not limited to:

Existing subsection 3314(a)(3)(N) is renumbered to 3314(a)(3)(N)1, and is amended to read:

1.(N) Possession or constructive possession of another incarcerated person's authorized wireless communication device. Constructive possession includes the use of another incarcerated person's personal identification information to gain access on an authorized wireless communication device.

New subsection 3314(a)(3)(N)2 is adopted to read:

2. Intentional or negligent damage or destruction of an authorized wireless communication device, or the corruption or modification or attempted corruption or modification of any files, programs, or applications on the device.

Subsections 3314(b) through 3314(d) are unchanged.

Subsection 3314(e) is unchanged but shown for reference:

(e) The hearing official may find the incarcerated person guilty and order one or more of the following dispositions:

Subsections 3314(e)(1) through 3314(e)(9) are unchanged.

Subsection 3314(e)(10) is unchanged but shown for reference.

(10) Incarcerated persons placed in a Restricted Housing Unit, Privilege Group D, who are found guilty of any RVR deemed administrative per this section are subject to temporary loss of entertainment appliances as follows:

Subsections 3314(e)(10)A through 3314(e)(10)C are renumbered to 3314(e)(10)(A) through 3314(e)(10)(C) and are amended to read:

~~(A).~~ Thirty calendar days for the first offense.

~~(B).~~ Sixty calendar days for the second offense.

~~(C).~~ Ninety calendar days for the third offense.

New subsections 3314(e)(11) through 3314(e)(11)(E) are adopted to read:

(11) Incarcerated persons who are found guilty of a RVR due to the intentional or negligent damage or destruction of an authorized wireless communication device, or the corruption or modification or attempted corruption or modification of any files, programs, or applications on the device, shall be responsible for reimbursing the replacement or repair cost of the device, and shall be subject to the following device use restrictions:

(A) For the first offense, the incarcerated person shall be restricted from receiving or accessing another authorized wireless communication device equivalent to the device associated with the violation for 90 calendar days.

(B) For the second offense, the incarcerated person shall be restricted from receiving or accessing another authorized wireless communication device equivalent to the device associated with the violation for 180 calendar days.

(C) For the third offense and subsequent offenses, the incarcerated person shall be suspended indefinitely from usage of another authorized wireless communication device equivalent to the device associated with the violations.

(D) Repaired or replacement authorized wireless communication devices shall not be issued to the incarcerated person until the RVR is adjudicated as not guilty, or, in the case of a guilty finding, until completion of the appropriate restricted use period and reimbursement for the damaged or destroyed device is received. The restricted authorized wireless communication device use period shall begin on the day the intentional damage or destruction was discovered by staff as documented in the RVR.

(E) To reinstate authorized wireless communication device use prior to the completion of the restricted use period or indefinite suspension, the incarcerated person shall submit a grievance in accordance with section 3482 to the Institutional Office of Grievances. If the incarcerated person is not satisfied with the grievance decision, the grievance can be appealed to the Office of Appeals in accordance with section 3484. Factors for consideration to reinstate authorized wireless communication device use include the incarcerated person's disciplinary history since the restriction began, including any pending RVRs, and if reinstating device use would pose a risk of harm to the safety and security of incarcerated persons, or staff or other members of the public.

Subsections 3314(f) through 3314(k) are unchanged.

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

3315. Serious Rules Violations.

Subsection 3315(a) is unchanged but shown for reference.

(a) Incarcerated person misconduct reported on a RVR shall be classified serious if:

Subsections 3315(a)(1) through 3315(a)(2)(E) are unchanged.

Subsection 3315(a)(3) is unchanged but shown for reference.

(3) Serious rule violations include but are not limited to:

Subsection 3315(a)(3)(A) is unchanged.

Subsection 3315(a)(3)(B) is amended to read:

(B) Theft, embezzlement, destruction, or damage to another's personal property, rented or leased property, state funds, or state property.

Subsections 3315(a)(3)(C) through 3315(a)(3)(W) are unchanged.

Subsection 3315(a)(3)(X) is amended to read:

(X) Possession or constructive possession of any wireless communication device or any component thereof including, but not limited to, a Subscriber Identity Module (SIM) card, memory storage devices, batteries, wired or wireless headsets, or chargers, except as expressly authorized by the Secretary, pursuant to subsections 3190(k)(87) and 3190(m).

Subsections 3315(a)(3)(Y) through 3315(a)(3)(AA) are unchanged.

New subsection 3315(a)(3)(BB) is adopted to read:

(BB) Violation of Indecent Exposure, Sexual Behavior, or Sexual Disorderly Conduct of sections 3007, 3323(d)(9), 3323(f)(4), and 3323(g)(7), including while using an authorized wireless communication device.

Subsections 3315(b) through 3315(f)(3) are unchanged.

Subsection 3315(g) is unchanged but shown for reference.

(g) Disposition. Upon completion of the fact-finding portion of the disciplinary hearing, the incarcerated person may be found:

Subsections 3315(g)(1) through 3315(g)(4)(C) are unchanged.

Subsection 3315(g)(5) is unchanged but shown for reference.

(5) The disposition may or when mandated shall include assessment of one or more of the following:

Subsections 3315(g)(5)(A) through 3315(g)(5)(J)3 are unchanged.

Subsections 3315(g)(5)(K) through 3315(g)(5)(K)2 are amended to read:

(K) Violation of Indecent Exposure, Sexual Behavior, or Sexual Disorderly Conduct of sections 3007, 3323(d)(9), 3323(f)(4), and 3323(g)(7), including while using an authorized wireless communication device, shall result in:

1. First offense violation(s) shall result in loss of any or all of the following for up to 90 calendar days: canteen, appliances, authorized wireless communication devices, incarcerated person packages, telephone privileges, and personal property.

2. Second offense and subsequent offense violation(s) shall result in loss of any or all of the following for up to 180 calendar days: canteen, appliances, authorized wireless communication devices, incarcerated person packages, telephone privileges, and personal property.

New subsection 3315(g)(5)(K)3 is adopted to read:

3. To request the reinstatement of any suspended privileges prior to the suspension timeframe, the incarcerated person shall be required to submit a grievance in accordance with section 3482 to the Institutional Office of Grievances. If the incarcerated person is not satisfied with the grievance decision, the grievance can be appealed to the Office of Appeals in accordance with section 3484. Factors for consideration to reinstate authorized wireless communication device use include the incarcerated person's disciplinary history since the restriction began, including any pending RVRs, and if reinstating device use would pose a risk of harm to the safety and security of incarcerated persons, or staff or other members of the public.

Subsections 3315(g)(5)(L) through 3315(j) are unchanged.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 295, 295.1, 295.2, 296, 296.1, 296.2, 297, 298, 298.1, 298.2, 298.3, 299, 299.5, 299.6, 299.7, 300, 300.1, 300.2, 300.3, 314, 530, 532, 646.9, 647, 653, 2931, 2932, 2933, 4501.1, 4573.6, 4576, 5054 and 5068, Penal Code.

Section 3323. Disciplinary Credit Forfeiture Schedule.

Subsections 3323(a) through 3323(f)(13) are unchanged.

Subsection 3323(f)(14) is amended to read:

(14) Possession or constructive possession of a wireless communication device, not expressly authorized by the Secretary pursuant to subsections 3190(k)(87) and 3190(m). Penal Code section 4576(c) provides that an incarcerated person found to be in possession of a wireless communication device shall be subject to time credit denial or loss of up to 90 days. An incarcerated person in possession of a wireless communication device, authorized by the Secretary, shall not receive any time credit denial or loss.

Subsections 3323(f)(15) through 3323(k)(4) are unchanged.

Note: Authority cited: Sections 5058, 5058.3 and 1170.05, Penal Code. Reference: Sections 148, 241, 243, 295-300.3, 314, 647, 1170.05, 2932, 2933, 4500, 4501, 4501.1, 4573.6, 4576, 4600, 5054 and 12020, Penal Code.

AUTHORIZED WIRELESS COMMUNICATION DEVICE USER AGREEMENT

CDCR 2293 (06/24)

Authorized Wireless Communication Device User Agreement

This User Agreement is to be read, agreed to, and signed by the user as it contains important information about the rules you must adhere to once you are granted access to use an authorized wireless communication device (device), as defined in Title 15, section 3282. Devices include tablets authorized for incarcerated person personal use.

Your signature shall indicate that you understand, acknowledge, and agree to the terms of the User Agreement as a condition to the privilege of utilizing the device.

If you choose to not sign this User Agreement, you may still have access to the Kiosk, for electronic messaging, account balance, commissary, etc., but shall not have access to a personal device, such as a tablet.

If you violate any terms of this User Agreement, your device privileges may be suspended, either temporarily or permanently, depending on the severity of the violation in accordance with Title 15, sections 3314 and 3315.

Violations of this User Agreement may result in a Rules Violation Report in accordance with Title 15, sections 3314 and 3315.

Rules of the User Agreement:

1. The devices shall not be used to conduct criminal activity of any kind, or activity that violates the California Department of Corrections and Rehabilitation’s (CDCR’s) policies and procedures.
2. The user acknowledges that the device is leased by the vendor who has assigned its rights to CDCR to prevent modification, destruction or damage to the device as well as collect repair costs to devices.
3. The user shall not intentionally or negligently damage or destroy a device, or corrupt/modify or attempt to corrupt/modify any files, programs, or applications on the device. Upon a guilty finding for intentional or negligent damage or destruction of a device (internal or external components), the user, including indigent incarcerated persons, shall be **required to reimburse the vendor for the replacement cost or repair cost of the intentionally or negligently damaged or destroyed device prior to issuance of a replacement device.** Users shall submit a CDCR Form 193, Trust Withdrawal (Rev. 07/24), to pay the replacement cost of the intentionally or negligently damaged or destroyed device. The user is limited to a total of two (2) replacement devices due to intentional or negligent damage or destruction within a calendar year.
4. At no time shall the user possess another incarcerated person’s device.
5. The user shall be responsible for their assigned device and shall not lend the device to any persons.
6. The user shall not attempt to install or use any equipment, lines, or cable, nor install any software, on the device.
7. The user shall not give their username and password to another incarcerated person.
8. The user shall not use another incarcerated person’s username and password to access a device.
9. The user shall be responsible for any unauthorized content, pursuant to sections 3090(d)(2), 3135, and 3282, found on their device.
10. It is the user’s responsibility to immediately report any damage, loss, or theft of their device to staff.
11. The devices are only to be used in designated areas per each institution’s operational procedures.
12. Users who are temporarily out-to-court or an outside health care facility shall retain their device in their personal property at the institution. If the incarcerated person returns to the facility, the device will be returned to the user.
13. The device is to be returned upon the user’s release with all issued working items (device, earbuds, and barrel charger, if applicable).

Device Type: _____ **Device Serial #:** _____

User Printed Name: _____ User CDCR #: _____

User Signature: _____ Date: _____

AUTHORIZED WIRELESS COMMUNICATION DEVICE USER AGREEMENT

CDCR 2293 (06/24)

For Official Use Only:	
Did the incarcerated person decline to sign the User Agreement and refuse device? Yes / No (circle one)	
Does the incarcerated person have a qualifying disability, as defined in section 3000, requiring effective communication? Yes / No (circle one)	
If yes, cite the source document and/or observations:	
What type of accommodation or assistance was provided to the user to achieve effective communication?	
Staff Witness: _____	Date: _____
Upon Return of Device, complete the following:	
Return Date: _____	
Condition of Device: _____	
Staff Witness: _____	

FINAL STATEMENT OF REASONS

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

DETERMINATIONS, ASSESSMENTS, MANDATES, AND FISCAL IMPACT:

The department has determined that no alternative considered would be more effective in carrying out the purpose for which this regulation is proposed, or would be as effective and less burdensome to affected private persons, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law, than the action proposed. No such alternatives were proposed or brought to the department's attention during the adoption of this rulemaking action.

The department has made an initial determination that the action will not have a significant adverse economic impact on business. Additionally, there has been no testimony or other evidence provided that would alter the department's initial determination.

The department has determined that this action imposes no mandates on local agencies or school districts, or a mandate which requires reimbursement pursuant to Part 7 (Section 17561) of Division 4 of the Government Code.

The department has determined that no reasonable alternatives to the regulation have been identified or brought to the attention of the department that would lessen any adverse impact on affected private persons or small businesses than the action planned.

The department has relied upon the results of the Economic Impact Assessment, which can be found in the Notice of Proposed Regulations and is available for review as part of the rulemaking file.

UPDATES TO THE INITIAL STATEMENT OF REASONS:

On September 19, 2025, the California Department of Corrections and Rehabilitation (CDCR or the department) published the Notice of Proposed Regulations regarding Incarcerated Person Calls and Property Rule Violation, which began the public comment period. The department's Notice of Change to Regulations (NCR) #25-08 was mailed the same day to individuals who had requested to be on the department's mailing list for regulation changes, posted on the department's website, and copies were posted in CDCR institutions. Forty-seven written public comments were received during the public comment period. The comments are summarized and responded to below under the heading *Summaries and Responses to Written Public Comments Received During the Comment Period*. A public hearing was held on November 6, 2025; there were no attendees.

The department has determined that the following update to the ISOR regarding the purpose and necessity for subsection 3282(c)(12) is needed.

Subsection 3282(c)(12): This subsection states that an incarcerated person shall not: "Send obscene text via electronic message, as defined in subsection 3006(c)(15). Violations of this provision are subject to disciplinary action in accordance with sections 3314 and 3315." It is necessary to include section 3314 as a disciplinary action for sending obscene text as this is an administrative rule violation pursuant to subsections

3314(a)(3)(D) and (a)(3)(N) of the proposed regulations. It is necessary to include section 3315 as a disciplinary action for sending obscene text as this can be a serious rule violation pursuant to subsection 3315(a)(3)(M) when sending obscene text becomes a repeated pattern by the incarcerated person.

NON-SUSTANTIVE AMENDMENTS TO TEXT AFTER PUBLIC COMMENT PERIOD:

The following non-substantive amendments to the text were made after the end of the public comment period. These changes do not alter the meaning or effect of the proposed regulations.

- Subsection 3090(d)(3): The noticed text included the cross-reference to subsections 3315(g)(5)(K) and (g)(5)(M), which is not the existing text that references 3315(f)(5)(K) and (f)(5)(M). The text is revised to include the strikethrough and underline of the cross-references to read 3315(~~g~~fg)(5)(K) and (~~g~~fg)(5)(M). This is a non-substantive edit as the section 3315 lettering was revised as part of a prior rulemaking, OAL Matter 2024-0124-01, and cross-referencing of subsection 3315(g) within section 3090 was not updated in the prior rulemaking.
- Subsection 3282(d)(2): The word “sexually” is added before the verbiage “explicit images” to form the defined term “sexually explicit images.” This is a non-substantive change as this subsection is cross-referencing subsection 3006(c)(16) regarding the definition of sexually explicit images.
- Subsection 3282(d)(3): The term “deemed as” is replaced with “that constitute a” to read “Send electronic communications that constitute a criminal activity...” This is a non-substantive edit as the intent of regulation has not changed, while making the provision more understandable to the reader.
- Subsection 3314(e)(11): The word “authorized” is added before the verbiage “wireless communication device” to form the defined term “authorized wireless communication device.” This is a non-substantive edit as “authorized wireless communication device” is a defined term in subsection 3282(a)(6) and this aligns with usage throughout the proposed regulations. Additionally, the letter “n” is added to form “an” for proper grammar prior to the defined term.

NOTE REGARDING CDCR FORMS INCORPORATED BY REFERENCE (CCR, TITLE 1, SECTION 20):

The CDCR Form 2293 (06/24), Authorized Wireless Communication Device User Agreement, is incorporated by reference into these regulations. This document was made available to the public in the Notice of Change to Regulations. And, as stated in the Notice of Change to Regulations, all documents pertaining to the rulemaking file were available on request.

The department uses over 1,500 regulatory forms, and because of this high volume it would be unduly cumbersome, expensive, and impractical to print all forms in the California Code of Regulations, Title 15. Therefore, department forms are incorporated by reference into Title 15 where appropriate.

NON-SUSTANTIVE AMENDMENTS TO CDCR FORM 2293 AFTER PUBLIC COMMENT PERIOD:

The following non-substantive amendments to CDCR Form 2293 were made after the end of the public comment period. These changes do not alter the meaning or effect of the proposed regulations.

- On page 1, under the “Rules of the User Agreement” section, Rule #9 is amended to add the cross-references and verbiage “, pursuant to sections 3090(d)(2), 3135, and 3282,” to read: “9. The user shall be responsible for any unauthorized content, pursuant to sections 3090(d)(2), 3135, and 3282, found on their device.” This is a non-substantive edit as cross-references to unauthorized content are added. The meaning or effect of the proposed regulations are unchanged.
- On page 2, under the “For Official Use Only” section, the second question is amended to add the cross-reference and verbiage “, as defined in section 3000,” to read: “Does the incarcerated person have a qualifying disability, as defined in section 3000, requiring effective communication?” This is a non-substantive edit as the cross-reference to the previously defined term “disability” is added to the text.

SUMMARIES AND RESPONSES TO WRITTEN PUBLIC COMMENTS RECEIVED DURING THE PUBLIC COMMENT PERIOD:

Commenter #1

Comment: In reference to proposed California Code of Regulations (CCR), Title 15, Chapter 1, subsection 3315(a)(3)(BB), the Commenter, an incarcerated person at California Health Care Facility, states that the proposed regulation is rigid, outdated, counterproductive to the First Amendment right of self-sexual expression and consenting adults. The Commenter goes on to ask the reader if they have been to a nudist colony, and discusses how children’s dolls should be anatomically correct to teach children the truth about nudity, but no child pornography. The Commenter additionally states that the department should create sex chatrooms for authorized tablets and profit from the chatrooms and use the profits to fund agriculture and sex education for children. The Commenter goes on to discuss nudity as being an advancement for the whole world.

Response: The department acknowledges the Commenter’s opposition to the proposed regulations, but will continue with the rulemaking action for the reasons stated in the Notice of Proposed Regulations and the ISOR.

Commenter #2

Comment 2A: The Commenter, an incarcerated person at R.J. Donovan Correctional Facility, is writing in opposition to the proposed regulation changes to subsections 3282(c)(12) and 3282(d)(1), which refer to obscene text as defined in subsection 3006(c)(15) and sexually explicit images as defined in subsection 3006(c)(16). The Commenter further elaborates that subsection 3006(c)(15)(D) clearly states “Text-only

material shall not be considered obscene unless designated by [The Division of Adult Institutions] DAI.”

Response 2A: The definitions of obscene text [section 3006(c)(15)] and sexually explicit images [3006(c)(16)] have been established in a prior rulemaking regarding Incarcerated Person Mail (OAL Matter 2024-1009-01). These are established definitions that are applied to text and images received on authorized wireless communication devices. The definitions themselves are not the subject of these regulations. Additionally, the Commenter is referring to an older version of section 3006, prior to the Incarcerated Person Mail regulations. Section 3006(c)(15)(D) no longer exists. The department will continue with this rulemaking action for the reasons provided in the Notice of Proposed Regulations and the ISOR.

Comment 2B: The Commenter states that for incarcerated persons communicating, using electronic devices is the closest the incarcerated persons will come to visiting due to distance, age, disabilities, or funds. The Commenter states that CDCR is claiming that these regulations are made in recognition and consideration of the value of incarcerated person visitation, maintaining family and community connections, and preparing incarcerated persons for successful release and rehabilitation. Yet, the proposed regulations will discipline incarcerated persons and their contacts if either one wants to text intimate desires and sexual pleasures to one another. The Commenter believes that this discipline is contrary to maintaining family and community connections.

Response 2B: The department recognizes the importance of incarcerated persons staying connected to family and loved ones as stated in the ISOR. However, incarcerated persons and their contacts must adhere to previously established definitions of obscene text and sexually explicit images as contraband. The department believes that there is sufficient latitude in the definition of obscene text (as stated in Response 3B) for incarcerated persons and their contacts to have meaningful electronic messages. Additionally, the possession of contraband, including digitally within electronic communications, necessitates a disciplinary response from the department to prevent repeated prohibited behavior. The department will continue with this rulemaking action for the reasons provided in the Notice of Proposed Regulations and the ISOR.

Comment 2C: The Commenter states that regarding sexually explicit material, section 3006(17)(A), defines frontal nudity of either gender, including fully exposed female breasts or genitalia. The Commenter asserts that this definition is arbitrary and being judged differently by staff. The Commenter does not think someone should be punished or disciplined if they want to express various intimate and passionate details through harmless texting of these desires to their partners. The illusion of personal intimacy through descriptive text messages is the closest that many incarcerated persons will get to their loved ones. The Commenter goes on to state that this is a Constitutional issue regarding Freedom of Speech.

Response 2C: The definitions of sexually explicit images as stated in subsection 3006(c)(16) and obscene text in subsection 3006(c)(15), have been established in a prior rulemaking regarding Incarcerated Person Mail (OAL Matter 2024-1009-01). These are established definitions that are applied to images and text on authorized wireless communication devices. The definitions themselves are not the subject of these

regulations. Additionally, the Commenter is referring to an older version of section 3006, prior to the Incarcerated Person Mail regulations. Subsection 3006(c)(17)(A) no longer exists.

The department believes that there is sufficient latitude in the definitions of sexually explicit images and obscene text for incarcerated persons to have meaningful electronic communications with their contacts. Additionally, the possession of contraband, including digitally within electronic communications, necessitates a disciplinary response from the department to prevent repeated prohibited behavior. The department will continue with this rulemaking action for the reasons provided in the Notice of Proposed Regulations and the ISOR.

Commenter #3

Comment 3A: The Commenter expresses concern over the proposed regulations and the constitutionally protected rights of incarcerated persons, specifically regarding access to courts, legal counsel, and communication with family and spouses. The Commenter states that under Assembly Bill (AB) 3043, California mandates that every incarcerated person must be provided with a minimum of 30 minutes per month to communicate with legal counsel, and this minimum should not be interpreted as a cap. The Commenter states that the limited amount of time is an obstruction of justice and a denial of the right to meaningful legal access, as established by court decisions *Bounds v. Smith*, 430 U.S. 817 (1977), and reaffirmed in *Lewis v. Casey*, 518 U.S. 343 (1996).

Response 3A: As stated in the ISOR, these regulations comply with AB 3043 and Penal Code (PC) section 5058.7, by proposing subsection 3282(h)(1). This proposed subsection establishes that approved confidential calls shall be “at least” 30 minutes in length, and the department extends that minimum length of confidential call to “at least” 60 minutes for incarcerated persons with vision or hearing disabilities. There is no mention in the proposed regulations of a time limit on the confidential calls. The department will continue with this rulemaking action for the reasons provided in the Notice of Proposed Regulations and the ISOR. Additionally, see Responses 15A and 47B.

Comment 3B: The Commenter states the importance of maintaining regular and unrestricted communication between incarcerated persons and their spouses and family. The Commenter states that these calls provide emotional and psychological support, relationship maintenance, a sense of normalcy and hope, and successful community reentry. Additionally, sexual intimacy communicated between an incarcerated person and their partner carries significant emotional and psychological value. The Commenter does not believe that any communication, especially with a life partner, should be restricted, because that would jeopardize the previously discussed positive behavior and rehabilitative outcomes from communication with loved ones.

Response 3B: The department recognizes the importance of incarcerated persons staying connected to family and loved ones as stated in the ISOR. However, incarcerated persons and their contacts must adhere to previously established definitions of obscene text [subsection 3006(c)(15)] and sexually explicit images [subsection 3006(c)(16)] as contraband. The department believes that there is sufficient latitude in the definitions of

obscene text and sexually explicit images (see examples below) for incarcerated persons and their contacts to have meaningful and/or romantic electronic communications.

The existing definition of obscene text in subsection 3006(c)(15)(B) includes the following examples of obscene text:

- “1. Bestiality, sadomasochism, or an excretory function including urination, defecation, or semen.
2. Sexual conduct which appears to be non-consensual behavior.
3. Sexual conduct which is or appears to be forceful, threatening, or violent.
4. Sexual conduct where one of the participants is a minor, or appears to be under 18 years old.”

The existing definition of sexually explicit images in subsection 3006(c)(16)(A) includes the following examples of sexually explicit images:

- “1. The fully exposed breast that appears to be female.
2. The genitalia of any gender.
3. Penetration of the vagina or anus, or contact between the mouth and the genitals.
4. Bestiality, sadomasochism, or an excretory function including urination, defecation, or semen.
5. Nudity of a minor, or person who appears to be under 18 years old.
6. Sexual conduct which appears to be non-consensual behavior.
7. Sexual conduct, which is or appears to be forceful, threatening, or violent.
8. Sexual conduct where one of the participants is a minor, or appears to be under 18 years old.”

Additionally, the possession of contraband, including digitally within electronic communications, necessitates a disciplinary response from the department to prevent repeated prohibited behavior. The department will continue with this rulemaking action for the reasons provided in the Notice of Proposed Regulations and the ISOR.

Commenter #4

Comment 4A: The Commenter, an incarcerated person’s family member and advocate, opposes the proposed regulations. The Commenter believes that the rules end up making it harder to communicate with loved ones and punish communication. The Commenter states that Governor Newsom’s SB 551 (Family Connection and Liberty Restoration Act) made it clear that family connection is a protected liberty interest in California. The purpose of the bill was to recognize that staying in touch with family and community is not a privilege, but that it is essential for mental health, rehabilitation, and successful community reentry. The Commenter believes these regulations do the opposite by deeming messages “inappropriate” or for something subjective like “sexual behavior” on a video visit. The Commenter asserts that the proposed regulations will hurt families and

public safety, by saying every study shows that people who stay connected to their families are more likely to succeed when they reenter the community. When the communication is missing, people and families fall apart, and children grow up without hearing from their parents. The tablets and video calls are lifelines, especially when in-person visits are limited or impossible, and taking away this communication for “violations” that may be taken out of context or misinterpreted by staff as “obscene” is cruel and unnecessary.

Response 4A: See Response 3B.

Comment 4B: The Commenter states that there is no due process in the punishment for misuse of communications. The Commenter further states that, as a family contact member who is not incarcerated, they should not be indefinitely suspended from electronic communication as they are not incarcerated. They should not be punished by prison rules without notice, evidence, or appeal rights. That is not how justice works.

Response 4B: The department disagrees with the Commenter that there is no due process in the punishment for the misuse of communications. As stated in sections 3314 and 3315, incarcerated persons are only subject to consequences after an adjudicated guilty Rules Violation Report. Additionally, the incarcerated person, as stated in proposed regulations subsections 3314(e)(11)(E) and 3315(g)(5)(K)3, can utilize the grievance and appeal process to end their restricted use period or indefinite suspension from authorized wireless communication device use.

An incarcerated person’s contact found to have violated the provisions of the proposed regulations in subsection 3282(d) have opportunities (a warning with the nature of the offense, and a 90-day suspension) to stop sending contraband, such as obscene text and sexually explicit images, prior to an indefinite suspension of electronic communications with the incarcerated person. Additionally, as stated in proposed regulations subsection 3282(d)(1)(D), the incarcerated person’s contact can reinstate their ability to send electronic messages to the incarcerated person by submitting a complaint in writing to the institution’s Warden or the Director of the Division of Adult Institutions, in accordance with subsection 3137(c).

The Commenter states that a contact who is not incarcerated should not be subject to punishment for violating department rules. The department recognizes that contacts are not incarcerated, however, communications with incarcerated persons are subject to rules that shall not be violated without consequence, which have been established in prior regulations regarding incarcerated persons’ correspondents (mail) and in-person visitors. An incarcerated person’s correspondent that violates the provisions of CCR, Title 15, Chapter 1, Subchapter 2, Article 4, Mail (including section 3135, Disturbing or Offensive Mail), may result in the temporary suspension or denial of mail between the persons involved as stated in subsection 3132(a). Additionally, in-person visitors who violate the provisions of visiting standards may be subject to denial, suspension, termination, or exclusion from visiting as detailed in sections 3176 through 3176.4. The department will continue with this rulemaking action for the reasons provided in the Notice of Proposed Regulations and the ISOR.

Comment 4C: The Commenter recommends that the department 1) Creates education programs on respectful communication and online behavior instead of banning people; 2) Use graduated, time-limited restrictions, not indefinite suspensions; 3) Guarantee that families have a real appeal process before any restriction is imposed; 4) Make enforcement transparent (track and publish data on suspension and appeals); and 5) Include a statement that all communication policies must be interpreted in line with SB 551's family-connection protections.

Response to 4C: The department denies the Commenter's recommendations based on the following, 1) Incarcerated persons are made aware of department policies and regulations (they are provided copies of Title 15, notice of changes to regulations are posted in facilities), and incarcerated persons shall sign the CDCR Form 2293, which provides the user with rules to follow. To ensure complete understanding of the user agreement, effective communication is utilized as needed depending on the user's needs, such as adaptive supports, as described in section 3000. Additionally, there is a banner message during video calls that states the calls are monitored and recorded and includes that prohibited behavior (e.g., third party calling, nudity or explicit behavior, intimidation) may result in disciplinary action and/or loss of privileges; 2) There is a proposed graduated/tiered restriction process prior to infinite suspension detailed in subsection 3282(d) that involves first a warning with the nature of the offense so that future offenses can be avoided, and second a 90-day restriction; 3) There is an appeal process as detailed in proposed subsection 3282(d)(1)(D) and that cites existing subsection 3137(c), which states that "Persons other than incarcerated persons may address any complaint relating to department policy and regulations to the Director, Division of Adult Institutions (DAI). Complaints relating to a specific institution procedure or practice may be addressed in writing to the Warden, or Associate Director of the institution where the issue arises. A written response shall be provided within 15 business days. Complaints that are not satisfactorily resolved at this level may be forwarded in writing to the Director, DAI who shall provide a written response within 20 business days."; 4) Subsection 3261.2(e) dictates what information the department can release regarding an incarcerated person without a signed authorization. Data on suspensions and grievances are not information the department can release. Additionally, the Office of Research currently tracks RVRs and appeals; and 5) See Response 3B as these are already established contraband definitions and the ISOR states the importance of communication between incarcerated persons and their loved ones.

Commenter #5

Comment: The Commenter, an incarcerated person at Pleasant Valley State Prison, opposes the proposed regulations, as they believe the regulations continue a harmful pattern of dehumanization, censorship, and overreach that directly violates the spirit and purpose of SB 551. The Commenter believes that the proposed regulations criminalize natural human expression and intimacy by labeling consensual, private messages between adults as "obscene" or "indecent," and that tablet messages and video calls are the only way to express love, connection, and emotional intimacy. Taking that communication away would be inhumane. The Commenter believes these regulations violate freedom of speech and that CDCR has an obligation to uphold dignity, encourage connection, and support family stability.

Response: See Response 3B.

Commenter #6

Comment 6A: The Commenter, an incarcerated person's loved one, is opposed to the proposed regulations, specifically the prohibition of "obscene" and "sexual behavior" during electronic communications. The Commenter believes that these communications are not simply messages, but are a lifeline that keep relationships intact especially when they cannot visit in-person. The Commenter states that placing a blanket ban, or punishing consensual adult conversations is a violation of basic human and ethical rights, and the ban would cause dysregulation and promote agitation among other concerns. Emotional and physical intimacy are fundamental human needs, and intimate communication assists with the incarcerated person's empathy, self-control, and promotes mental health, which will support rehabilitation and lower violence.

Response 6A: See Response 3B.

Comment 6B: The Commenter recommends CDCR revise the regulations to include 1) Distinguish between consensual intimacy and indecent conduct; 2) Protect the rights of adults in committed relationships to communicate freely and privately, in settings that are necessary; 3) Recognize that emotional and romantic connection reduces violence, aggression, and sexual tension within institutions; 4) Clarify vague terms like "obscene" and "sexual behavior" to prevent misuse or arbitrary punishment; and 5) Distinguish settings where intimate behavior is permitted and where it is not.

Response 6B: The department denies the Commenter's recommendations based on the following, 1) The existing definitions of obscene text and sexually explicit images in section 3006, and disturbing or offensive material in section 3135 are sufficient to determine what conduct or materials are prohibited; 2) The department encourages incarcerated persons to communicate with their loved ones, however, the communications must be within the existing regulatory requirements. Additionally, electronic messages, and video and device calls are non-confidential communication methods. 3) The department recognizes the importance of communications with loved ones as stated in the ISOR, however, these communications must be consistent with existing regulations and the department believes there is sufficient latitude within these regulations to allow for meaningful communications (see Response 3B); 4) See Response 3B; and 5) The department does have Family Visiting Areas, see section 3177, that are designated for family intimate behavior. Tablet and phone communication is not permitted for intimate behavior. The department will continue with this rulemaking action for the reasons provided in the Notice of Proposed Regulations and the ISOR.

Commenter #7

Comment 7A: The Commenter opposes the proposed regulations and states the importance of communication and maintaining relationships for incarcerated persons. The Commenter does not believe that there is a clear and concise list of what is appropriate and not appropriate and there needs to be precise definitions. The Commenter uses the example that side boob [Sic] is allowed but not nipples, and that is stupid and vague.

Response 7A: The department believes there are very clear existing definitions of obscene text and sexually explicit images in section 3006, and disturbing or offensive material in section 3135, and these definitions are sufficient to determine what conduct or materials are prohibited. The example provided by the Commenter in terms of female anatomy is very clear and understandable. See Response 3B.

Comment 7B: The Commenter states that there needs to be an appeal option for a denied message with options to speak to a live person. Additionally, the Commenter states that for a denied message, the sender should be refunded.

Response 7B: The department has an appeal process as outlined in Response 4B. Regarding a refund for denied messages, the vendor applications used for electronic communications with incarcerated persons have user agreements and terms users agree to when utilizing the application. To contact the vendor, an incarcerated person's contact would have to call a CDCR Customer Care Center or email the vendor from the information on the website. The incarcerated person would utilize a help application on their tablet or kiosk if they have any issues with the tablet. The department will continue with this rulemaking action for the reasons provided in the Notice of Proposed Regulations and the ISOR.

Comment 7C: The Commenter disagrees with the new rule of obscene messages, conversations, pictures, etc., and that we are all adults. The Commenter states that adult magazines should be discontinued for incarcerated persons given these regulations. The Commenter believes that the intent of these regulations is to just punish more people for whatever reasons.

Response 7C: The existing definitions of obscene text and sexually explicit images are not new rules and are existing regulations that are being applied to electronic communications, see Response 3B. Regarding adult magazines, the Commenter is incorrect; publications that violate the provisions of section 3006 are contraband and are prohibited. The intent of these regulations is to define new methods of communication available to incarcerated persons, to apply restrictions on the device use in terms of obscene text and sexually explicit images and intentional damage/modification of authorized wireless communication devices, and to comply with AB 3043 and PC section 5058.7. The department will continue with this rulemaking action for the reasons provided in the Notice of Proposed Regulations and the ISOR.

Commenters #8 and #9 are duplicative and aggregated for response.

Commenters #8 and 9

Comment: The Commenters have either an incarcerated friend or an incarcerated loved one and are opposed to the proposed regulations. The Commenters state that the emotional connection that incarcerated persons are able to make by communicating promotes mental health, stability, and rehabilitation. The Commenters believe that the proposed regulations are vague and subjective. The Commenters request that CDCR reconsider or revise these proposed regulations to protect healthy communication and support rehabilitation and reentry goals.

Response: See Response 3B.

Commenter #10

Comment: The Commenter, an incarcerated person's loved one, is opposed to the proposed regulations. The Commenter states how important their communication is to their loving relationship despite the physical distance, and taking away the ability to share intimate or affectionate messages, photos, or conversations would potentially impact that relationship and cause distance, loneliness, and a heavy reality of separation. The Commenter asks CDCR to consider allowing meaningful, private, and consensual communication between committed partners.

Response: See Response 3B.

Commenter #11

Comment 11A: The Commenter, a PhD candidate, opposes the proposed regulations, specifically subsections 3282(c)(9)-(13) and (d)(1)-(3) that introduce new, vague, disciplinary rules and communication restrictions. The Commenter states the importance of communication with loved ones as it reduces recidivism, promotes institutional security, and improves reentry outcomes. Regarding subsections 3282(c)(9)-(13), the Commenter states that the list of prohibited behaviors is expanded to include, (c)(9) – participation in three-way calls, (c)(10) – intentional manipulation of blurred background on video calls, (c)(11) – violations of CDCR Form 2293, (c)(12) – sending obscene text messages (which the Commenter states is undefined), and (c)(13) – engaging in sexual or disorderly conduct via electronic communications. The Commenter believes that these proposed regulations redefine communication as a privilege contingent upon constant surveillance and perfect compliance.

Response 11A: Regarding the comments pertaining to subsection 3282(c)(9), participating in a forwarded, transferred, or three-party call being a new violation, this provision was an existing rule related to incarcerated person telephones; this existing rule is being extended to new forms of communication to include electronic communications. Regarding the comments pertaining to subsection (c)(10), intentionally manipulating the blurred background feature while participating in a video call, this is necessary for security and privacy reasons as stated in the ISOR. Further, the blurred background is referring to the incarcerated person's video call and does not apply to the contact's background. Regarding the comments pertaining to subsection (c)(11), violating the terms of CDCR Form 2293, is necessary because the use of a wireless communication device is a privilege and intentionally damaging the device necessitates a response as stated in the ISOR. Regarding comments pertaining to subsection (c)(12), the department disagrees with the Commenter that obscene text is not defined, see Response 3B. Regarding the comments related to subsection (c)(13), and committing acts of indecent exposure or sexual disorderly conduct (both are defined in section 3000) or sexual behavior (section 3007) or obscenity (section 3008) are all existing regulations and prohibited behaviors that are now being applied to the use of authorized wireless communication devices. The department acknowledges the Commenter's opposition to the proposed regulations; however, for the reasons provided in the Notice of Proposed Regulations and the ISOR, the department will continue with this rulemaking action.

Comment 11B: The Commenter states that proposed subsection 3282(d) extends the disciplinary authority beyond the incarcerated population to their outside support systems. These violations may lead to a permanent ban.

Response 11B: See Response 4B.

Comment 11C: The Commenter urges the CDCR to 1) remove provisions related to “obscene” communications and to: 2) Narrowly and explicitly define prohibited conduct in a manner that minimizes subjective interpretation; 3) Provide clear procedural safeguards, and independent appeal mechanisms for both incarcerated persons and their contacts; 4) Eliminate indefinite communication bans; 5) Remove or revise provisions that criminalize minor technological or behavioral infractions; and 6) Reaffirm the rehabilitative purpose of communication.

Response 11C: 1) The department will not remove the definition of “obscene text” as it is an existing definition in subsection 3006(c)(15). 2) The definitions utilized in this proposed rulemaking pertaining to obscene text and sexually explicit images (see Response 3B), indecent exposure or sexually disorderly conduct (both defined in section 3000), sexual behavior (section 3007), obscenity (section 3008), and disturbing or offensive material (section 3135) are all existing regulations and prohibited behaviors that are now being applied to the use of authorized wireless communication devices. These definitions are clear and were established in prior rulemaking actions. 3) See Response 4B. 4) Indefinite bans are necessary, as discussed in the ISOR, to cease repeated ongoing prohibited behavior; additionally, the incarcerated person’s contact may restore their communications (see Response 4B). 5) For the reasons stated in the ISOR, the department will not remove consequences for committing prohibited acts. 6) The department has acknowledged the importance of incarcerated persons’ communications with loved ones as stated in the ISOR.

Commenter #12

Comment 12A: The Commenter, the spouse of an incarcerated person, opposes the proposed regulations. The Commenter states that under the current system, only adults can create GTL/GettingOut accounts that are used to message and video call incarcerated persons. Therefore, if a parent or guardian’s account is suspended or permanently restricted due to the proposed regulations, all communication between the incarcerated parent and their child would effectively end resulting in punishing children for actions that may not even be intentional or serious on the part of the parent. This would impact family connection which is a cornerstone of rehabilitation and reentry success.

Response 12A: As discussed in Response 4B, proposed subsection 3282(d) provides the incarcerated person’s contact with a warning of the nature of the violation upon first offense prior to any suspension of electronic communications. This warning allows for the correction of this behavior prior to any suspension of electronic communication. The department recognizes the importance of communication between incarcerated persons and their loved ones, and provides incarcerated persons with an incarcerated person telephone (at no cost), as defined in subsection 3282(a)(3), to contact family members if there is any sort of electronic communication suspension impacting either the

incarcerated person or their contact. Additionally, see Response 12D. The department will continue with this rulemaking action for the reasons provided in the Notice of Proposed Regulations and the ISOR.

Comment 12B: The Commenter states that the incarcerated person will receive an RVR for “destruction of a tablet” if staff determine that the damage was intentional. The Commenter believes that the rule is excessive, vague, and open to subjective interpretation. The Commenter states that incarcerated people already pay for their tablets through deductions in their trust accounts, and the current process requires them to report a damaged device and have the replacement cost deducted before receiving a new one. Adding a serious RVR, which can result in credit loss, loss of privileges, and a disciplinary record is a disproportionate response, especially when staff are determining intent. The Commenter states that it is understandable to issue an administrative write-up or financial charge for broken devices, but a serious RVR with possible credit loss is cruel, excessive, and inconsistent with rehabilitative purposes.

Response 12B: Incarcerated persons are currently provided with a tablet at no cost. The department disagrees with the Commenter’s assertion that the intentional destruction of a tablet will automatically result in a serious RVR. The incarcerated person will only be subject to consequences (suspension of tablet use, and reimbursement of repair or replacement costs of the damaged tablet) after being found guilty via due process (see Response 4B) of intentionally damaging their tablet. The intentional damage of a tablet is specified as administrative within subsection 3314(a)(3), Administrative Rule Violations. By definition, the intentional damage of a tablet is an administrative RVR, and is excluded as a serious RVR per subsection 3315(a)(1) which states that an “RVR shall be classified serious if: (1) it is a serious disciplinary offense not specified as administrative in subsection 3314(a)(3)...”.

In subsection 3315(a)(3)(B), regarding serious RVRs, proposed text included the intentional destruction of rented or leased property. It was necessary to add rented or leased property to include items like rented medical equipment, and leased vehicles, kiosks, and tablets. The type of damage referenced in subsection 3315(a)(3)(B) that would result in a serious RVR that would include credit forfeiture would be a high dollar amount damage that is in excess of \$400 (section 3323) or a combination of offenses (not the intentional destruction of a single tablet alone). For example, an incarcerated person who was found to have intentionally damaged a single tablet with no other damaged property would result in an administrative RVR. Whereas an incarcerated person who was found to have intentionally damaged two tablets may result in a serious RVR and credit loss. The department will continue with this rulemaking action for the reasons provided in the Notice of Proposed Regulations and the ISOR.

Comment 12C: The Commenter requests that the department revise the regulations to, 1) Remove indefinite suspensions; 2) Protect children’s rights to remain in contact with their incarcerated parents; and 3) Limit the disciplinary process to remove serious RVRs resulting in credit loss.

Response 12C: The department maintains, 1) Indefinite bans are necessary, as discussed in the ISOR, to cease repeated ongoing prohibited behavior; additionally, the incarcerated person’s contact may restore their communications (see Response 4B). 2)

See Response 12A. 3) See Response 12B. The department will continue with this rulemaking action for the reasons provided in the Notice of Proposed Regulations and the ISOR.

Comment 12D: The Commenter states that the proposed indefinite suspension from electronic communication will have devastating effects on mental health. For incarcerated persons, regular contact with loved ones is their only source of emotional stability and provides motivation to rehabilitate. Taking the communication away, especially permanently, can have negative impacts including severe depression, anxiety, and hopelessness which can lead to self-harm and behavioral issues. This will also impact families and create an emotional toll and a sense of loss.

Response 12D: The department maintains that indefinite restrictions are necessary, as discussed in the ISOR, to cease repeated ongoing prohibited behavior; additionally, incarcerated persons and their contacts may restore their communications (see Response 4B). The department recognizes the importance of communication between incarcerated persons and their loved ones, and provides incarcerated persons with an incarcerated person telephone (at no cost), as defined in subsection 3282(a)(3), to contact family members if there is any sort of electronic communication suspension impacting either the incarcerated person or their contact. The department will continue with this rulemaking action for the reasons provided in the Notice of Proposed Regulations and the ISOR.

Comment 12E: The Commenter reiterated Comment 12D and included punishing family members for communication violations has the risk of undoing years of the rehabilitative progress. The Commenter believes that adding layers of punishment for “violations” and “indecent conduct” are subjective and could be misunderstood.

Response 12E: See Responses 3B, 12A, and 12D.

Comment 12F: The Commenter states that “prohibited conduct” and “unauthorized use” appears overly broad creating the risk of unfair discipline. Even the inclusion of “constructive possession” or the “use of another person’s PIN” could lead to punishment for accidental or harmless actions.

Response 12F: The department maintains the proposed regulations include clear and easy to understand violations and definitions. See Response 3B. Additionally, the violation of “constructive possession” was an existing regulation that was only moved in the proposed regulations to new subsection 3314(a)(3)(N)1, and expanded upon by the addition of the definition of what constructive possession would mean in terms of an authorized wireless device by using another incarcerated person’s identification information to gain access on a device. The department only clarified what constructive possession meant for ease of understanding. While the Commenter believes that constructive possession of a tablet is harmless, it is an existing regulation and a violation as it may pose risk to the security of the facility or facilities, as incarcerated persons would be able to communicate with one another throughout and across facilities if they know each other’s passwords. This could lead to the planning of dangerous events, such as riots, hunger strikes, and attacks on other incarcerated persons or staff, and accessing another incarcerated person’s sensitive information. Additionally, if an incarcerated

person is restricted from using electronic communications, they could bypass this restriction by utilizing another incarcerated person's information. The department will continue with this rulemaking action for the reasons provided in the Notice of Proposed Regulations and the ISOR.

Comment 12G: The Commenter recommends that CDCR 1) Remove indefinite suspension from all communication related language and replace with time-limited restrictions that include a path to restoration; 2) Provide clearer definitions; 3) Offer re-education or counseling for minor or first-time violations; 4) Preserve access to communication as a rehabilitative right, not just a privilege; and 5) Include a clear and transparent appeals process for incarcerated persons and their contacts.

Response 12G: 1) See Response 12D. 2) See Response 3B. 3) The proposed text does provide incarcerated persons' contacts with a warning stating the nature of the violation upon the first offense, which allows for the correction of behavior. Additionally, incarcerated persons sign the CDCR Form 2293, which provides the user with rules to follow, and to ensure complete understanding of this agreement, effective communication is utilized as needed depending on the user's needs, such as adaptive supports, as described in section 3000. Additionally, there is a banner message during video calls that states the calls are monitored and recorded and includes that prohibited behavior (e.g., third party calling, nudity or explicit behavior, intimidation) may result in disciplinary action and/or loss of privileges. 4) The use of authorized electronic devices by incarcerated persons is a privilege and rules must be followed to maintain that privilege. Other communication forms, mail, in-person visiting, and incarcerated person telephones all have established rules to follow to use these methods of communication. 5) See Response 4B. The department will continue with this rulemaking action for the reasons provided in the Notice of Proposed Regulations and the ISOR.

Commenter #13

Comment 13A: The Commenter is opposed to the proposed regulations and believes that these changes introduce punitive measures that threaten rehabilitation, family unity, and stability. The Commenter states that the disciplinary authority over "authorized wireless communication devices" is overly broad and lacks meaningful standards. The regulation would allow CDCR to issue rule violations for loosely defined misconduct related to communication devices that would leave room for arbitrary or inconsistent enforcement.

Response 13A: The department disagrees with the Commenter that the violations related to communication devices are loosely defined. The definitions utilized in this proposed rulemaking pertaining to obscene text and sexually explicit images (see Response 3B), indecent exposure or sexually disorderly conduct (both defined in section 3000), sexual behavior (section 3007), obscenity (section 3008), and disturbing or offensive material (section 3135) are all existing regulations and prohibited behaviors that are now being applied to the use of authorized wireless communication devices. These definitions are clear and have already been established in prior rulemaking actions. The department will continue with this rulemaking action for the reasons provided in the Notice of Proposed Regulations and the ISOR.

Comment 13B: The Commenter states that the banning of access to communication platforms is cutting off incarcerated persons from their loved ones. The indefinite suspension without a time limit or review process means that these sanctions can easily become permanent. This undermines the intended purpose of these devices to promote safe, positive, and rehabilitative communication. The Commenter states that these tablets are the only consistent means of staying connected to loved ones.

Response 13B: See Responses 3B, 12A, and 12D.

Comment 13C: The Commenter states that family communication is not a privilege, it is a critical rehabilitative resource proven to lower disciplinary incidents and reduce recidivism. The Commenter recommends that rather than instituting bans and restrictions, CDCR should be investing in digital education, fair accountability system, and restorative approaches that teach responsible communication while preserving family ties.

Response 13C: The use of authorized electronic devices by incarcerated persons is a privilege and rules must be followed to maintain that privilege. Other communication forms, mail, in-person visiting, and incarcerated person telephones all have rules to follow to use these methods of communication. Regarding digital education, incarcerated persons are made aware of department policies and regulations (they are provided copies of Title 15, and notice of changes to regulations are posted in facilities), and incarcerated persons sign the CDCR Form 2293, which provides the user with rules to follow. To ensure complete understanding of this user agreement, effective communication is utilized as needed depending on the user's needs. Additionally, there is a banner message during video calls that states the calls are monitored and recorded and includes that prohibited behavior (e.g., third party calling, nudity or explicit behavior, intimidation) may result in disciplinary action and/or loss of privileges. The department will continue with this rulemaking action for the reasons provided in the Notice of Proposed Regulations and the ISOR.

Commenter #14

Comment 14A: The Commenter is opposed to the proposed regulations. The Commenter states that if approved, the regulations would effectively prohibit any sexually suggestive communications between incarcerated persons and their loved ones, with consequences including banning communication between loved ones indefinitely. The Commenter believes that the regulations are overreaching by CDCR and a strain on CDCR resources. The Commenter states that these regulations are unlikely to be enforced fairly, excessively punitive for families, and potentially a violation of the non-incarcerated person's First Amendment rights. The Commenter asks who makes the decision that a text message is too explicit in nature? There is a wide gap between sexually suggestive "flirting" and obscenely detailed descriptions of sexual activity. The Commenter believes that what one officer believes is excessively sexual may not be considered such by a different officer.

Response 14A: The department disagrees with the Commenter's assertion that these regulations would prohibit any romantic electronic communications between incarcerated persons and their loved ones, and that the definitions of what is sexually prohibited is unclear making the officers' decisions inconsistent. The definitions utilized in this

proposed rulemaking pertaining to obscene text and sexually explicit images (see Response 3B), indecent exposure or sexually disorderly conduct (both defined in section 3000), sexual behavior (section 3007), obscenity (section 3008), and disturbing or offensive material (section 3135) are all existing regulations and they clearly define prohibited behaviors that are now being applied to the use of authorized wireless communication devices.

Regarding violating the rights of incarcerated persons' loved ones, and whom makes the decisions of what is sexually explicit, see Response 4B. The department will continue with this rulemaking action for the reasons provided in the Notice of Proposed Regulations and the ISOR.

Comment 14B: The Commenter believes that the punishments for violating the proposed regulations are severe and excessively restrictive. The Commenter states that these punishments would be left entirely to the individual discretion of the officer screening the message. The Commenter believes that this could serve as a method for officer retaliation towards incarcerated persons and their families.

Response 14B: See Response 4B.

Comment 14C: The Commenter states that the existing language of obscene text under 3006(c)(15) is overly broad as it simply states that obscene text “depicts sexual conduct that lacks serious literary, artistic, political, or scientific value”, which in this overly broad and unfairly applied.

Response 14C: See Response 3B.

Comment 14D: The Commenter argues that the justification that obscene text will “contribute to a hostile atmosphere, can lead to harassment, non-consensual acts, or violence against staff and incarcerated persons”, as well as “prohibited communications posing a threat to the safety and security of the institution and are contraband as defined in section 3006” need to be justified.

Response 14D: As stated in Response 3B, the previously approved regulations for obscene text includes written depictions of bestiality, sadomasochism, or an excretory function including urination, defecation, or semen; sexual conduct which appears to be non-consensual behavior; sexual conduct which is or appears to be forceful, threatening, or violent; and sexual conduct where one of the participants is a minor, or appears to be under 18 years old. Allowing text to circulate, whether on paper or digitally, amongst incarcerated persons that include the above examples of obscenity would promote such behavior within the institutions and create a dangerous environment for staff and vulnerable incarcerated persons.

Regarding prohibited (obscene) text being contraband, these are established definitions from prior rulemakings – See Response 3B. The department will continue with this rulemaking action for the reasons provided in the Notice of Proposed Regulations and the ISOR.

Comment 14E: The Commenter states that most dangerous contraband is introduced to facilities by staff members, and that rather than focusing on this contraband, the

department is wasting resources screening communications for sexually suggestive content instead of other safety concerns. Additionally, these regulations will cause an increase in rules violations across institutions as incarcerated persons will resort to contraband devices (such as cell phones) to maintain the lost intimacy with loved ones. The Commenter states that contraband devices are more of a safety risk.

Response 14E: The department maintains that obscene text promotes such behavior within the facilities and creates a dangerous environment for staff and vulnerable incarcerated persons – see Response 14D. All contraband, including obscene text, poses a danger to institutions and the department is committed to reducing the introduction of all contraband into institutions. CDCR houses incarcerated individuals with a myriad of offenses and mental health issues. Prohibition of contraband, including obscene materials, is necessary to ensure the rehabilitation of all incarcerated persons and maintain the safety and security of staff and incarcerated persons. The department will continue with this rulemaking action for the reasons provided in the Notice of Proposed Regulations and the ISOR.

Comment 14F: The Commenter states that the United States (US) Supreme Court has ruled that the First Amendment entitles incarcerated persons and their loved ones to receive and send communications subject only to the institution’s need to protect security. The Commenter states that the proposed regulation on sexually suggestive communication does not serve a legitimate penological purpose, nor any other valid purpose. The Commenter believes these regulations are an exaggerated response that widens the divide between incarcerated persons and their loved ones, and deemphasizes legitimate security issues.

Response 14F: Obscenity is not protected under First Amendment rights to free speech, *Roth v. United States* (1957). The definition and examples of obscene text are clearly stated in previously approved regulations in section 3006. See Responses 3B and 14D. The department will continue with this rulemaking action for the reasons provided in the Notice of Proposed Regulations and the ISOR.

Comment 14G: The Commenter states that intentional or negligent damage to a tablet will result in an RVR, restricted communication, and repayment of damages or repairs. The regulations do not account for accidental damage, such as the incarcerated person falling and accidentally damaging their tablet in the process. The Commenter states that it is unclear how CDCR has any authority to order vendor reimbursement on damaged property that belongs to another entity. The rented/leased equipment addendum in the NCR document is overly broad and does not address the issue.

Response 14G: The department uses the word “intentional” damage as that would be a deliberate act, and the word “negligence” is used as that would be the failure to take proper care of the device. The Commenter’s example of an incarcerated person accidentally falling and damaging the device is neither intentional nor negligent. The incarcerated person has their due process rights to defend themselves during an RVR hearing – see Response 4B.

Regarding the Commenter’s assertion that the department has not clarified how CDCR has any authority to act on behalf of the vendor, the department disagrees. As stated in

CDCR Form 2293, the user must acknowledge “that the device is leased by the vendor who has assigned its rights to CDCR to prevent modification, destruction or damage to the device as well as collect repair costs to devices.” The department will continue with this rulemaking action for the reasons provided in the Notice of Proposed Regulations and the ISOR.

Commenter #15

Comment 15A: The Commenter, an attorney on behalf of UnCommon Law, generally applauds the proposed changes related to confidential calls and AB 3043; however, they remain wary of staff compliance as they have encountered numerous issues since 2021 (AB 3043 effective). The Commenter states that additional language is needed to ensure that staff do not impose additional documentary requirements to schedule confidential calls, such as case names, court names, and case types. The Commenter suggests that CDCR adds language in section 3282 to reinforce that staff cannot request additional information prior to approving a confidential call – specifically, “No further information shall be required of the requesting attorney.”

Response 15A: The department recognizes the Commenter’s concern; however, the language of what documentary requirements are needed to schedule a confidential call are clear. The applicant can file a complaint pursuant to subsection 3282(h)(8) if there are any concerns that arise from the confidential phone call scheduling process. The department declines the recommendation to add language to section 3282, and will continue with this rulemaking action for the reasons provided in the Notice of Proposed Regulations and the ISOR.

Comment 15B: The Commenter applauds that the proposed regulations state that the minimum duration for a confidential call is 30 minutes, however, in the experience of the Commenter, numerous institutions operate with an unlawful 30-minute maximum.

Response 15B: See Responses 3A, 15A, and 47B.

Comment 15C: The Commenter welcomes the proposed change to subsection 3282(h)(6) that makes explicit that the duration of confidential calls is not within the institution’s discretion. However, the Commenter states that the change may not be sufficient given their experiences. The Commenter recommends added language at the end of proposed subsection 3282(h)(1) to include: “Upon receipt of a request for a confidential call, a confidential call shall be scheduled and for the requested duration unless the request would impose an unreasonable burden in consideration of institutional security and available resources.” The Commenter is mindful that there are “institutional security and available resources” considerations when scheduling confidential calls, but CDCR “cannot justify the lack of telephone access by claiming staff or budget shortages. Neither administrative inconvenience nor lack of resources can provide justification for deprivation of constitutional rights,” here, the right to counsel, which includes “telephone communication” with counsel. (*In re Grimes* (1989) 208 Cal.App.3d 1175, 1182–83.)

Response 15C: The department declines the Commenter’s suggestion to add language to proposed subsection 3282(h)(1) as the department maintains that this subsection is compliant with AB 3043 and PC section 5058.7. Additionally, see Responses 3A and 15A.

CDCR understands that access to confidential calls is a right for incarcerated persons. Upon the receipt of a request for a confidential call, the call shall be scheduled in consideration of institutional security and available resources. The department will continue with this rulemaking action for the reasons provided in the Notice of Proposed Regulations and the ISOR.

Commenter #16

Comment: The Commenter is writing in opposition to the proposed regulations. The Commenter states the regular, affordable, and confidential communication is vital for the rehabilitation and well-being of incarcerated persons and helps maintain family bonds, all of which contribute significantly to community reintegration and reduced recidivism. The Commenter believes that the proposed restrictions on communication content punish people for minor rule infractions and create barriers to communication. The Commenter believes that while rules are important, the proposed changes are overly punitive.

Response: See Responses 3B and 12A. Additionally, confidential calls are only between an incarcerated person and their attorney, and not between an incarcerated person and their loved ones. The department will continue with this rulemaking action for the reasons provided in the Notice of Proposed Regulations and the ISOR.

Commenter #17

Comment: The Commenter, a spouse of an incarcerated person, is opposed to the proposed regulations. The Commenter states that the indefinite ban on communication between incarcerated persons and their loved ones undermines rehabilitation efforts and could cause profound harm to families, children, communities, and within facility walls. The Commenter states the research shows that incarcerated persons that receive regular visits are 13% less likely to be convicted of a new felony and 25% less likely to violate parole after release (Duwe & Clark, 2013). Additionally, a 2011 Journal of Criminology study reported that strong family ties can reduce the likelihood of reoffending by up to 40%. Conversely, policies that limit communication have documented negative effects that can increase depression, anxiety, and self-harm for incarcerated persons, and the children of incarcerated persons face increased risk of behavioral problems, academic decline, and emotional trauma. The Commenter relays that as a spouse of an incarcerated person, they have the responsibility to encourage their incarcerated spouse to focus on their goals when they are feeling overwhelmed. The Commenter believes the lifetime bans would also make institutions less safe and secure.

Response: See Responses 3B and 12A.

Commenter #18

Comment: The Commenter, a fiancé of an incarcerated person, is opposed to the proposed regulations and relays a personal story of their relationship, marriage proposal, and future marriage ceremony. The Commenter believes the proposed regulations will limit the Commenter and fiancé's intimate moments and sex life. The Commenter states that sex is not a bad word, rather a biological need. The Commenter states that sending "appropriate" sexual photos or sexual messages helps them keep connected and the relationship healthy. The Commenter respects the rules of CDCR, however the proposed

regulations threaten the health of their relationship and are over-reaching and unfair. The Commenter does not like the “three strikes and you’re out” system regarding photos that are “too explicit” or if they exchange sexual text messages. The Commenter asks, “will loved ones receive adequate education on what “too explicit” is?” The Commenter states that the current CDCR rules already address much of what lewd behavior is (related to children, non-consenting adults, and animals), but consenting adults sending sexy messages or a photo of a consenting adult in appropriate underwear is reaching. The Commenter states they will be in fear every time she sends a new message. The Commenter recommends CDCR: 1) sits with a board of prison wives and listens to the concerns to create better rules; 2) consider marriage counseling services if you plan to eliminate the entire sexual element out of thousands of marriages; and 3) create extremely specific, detailed rules for the actual inappropriate messages and content.

Response: See Responses 3B, 4C, and 12A.

Commenters #19 through #43 are duplicative and aggregated for response.

Commenters #19 through #43:

Comment 19-43A: The Commenters, largely loved ones of incarcerated persons, are opposed to the proposed regulations. The Commenters support and understand the necessity of prohibiting sexually explicit images as defined in subsection 3006(c)(16), however they believe that the written and voice call rules go far beyond what is reasonably required for institutional safety and order. The Commenters believe that the term “obscene text” in subsection 3006(c)(15), and as referenced in proposed subsection 3282(c)(12), is overreaching and vague. The Commenters state that the US Supreme Court has long held that in *Stanley v. Georgia*, 394 U.S. 557 (1969) that the right to receive and send intimate content is protected under the First Amendment, especially when it does not pose a legitimate penological threat, and the use of “obscene” language in messages or calls violates this principle.

Response 19-43A: See Responses 3B, 4B, and 14F.

Comment 19-43B: The Commenters maintain that the proposed regulations violate recognized human rights and rehabilitation goals. The Commenters state that incarcerated persons do not lose their right to love, connect, and maintain healthy intimate relationships. The Commenters cite subsection 3130(c), “Mail and correspondence are critical in maintaining family and community relationships and are important to the rehabilitative process.” Limiting expressions of intimacy, particularly through non-visual means, undermines the rehabilitative goal of preserving close relationships during incarceration.

Response 19-43B: The department was unable to locate the quoted subsection 3130(c) or the quoted text itself within Title 15; however, the department recognizes the importance of incarcerated persons staying connected to family and loved ones as stated in the ISOR. See Response 3B. The department will continue with this rulemaking action for the reasons provided in the Notice of Proposed Regulations and the ISOR.

Comment 19-43C: The Commenters state that the progressive punishment of contacts under subsection 3282(d)(1), which escalates to communication bans after three

offenses, effectively severs critical bonds between incarcerated persons and their loved ones. The form of collective punishment assumes malicious intent and punishes expressions of love or desire that fall well short of criminal or dangerous conduct.

Response 19-43C: Regarding indefinite electronic communication restrictions, see Responses 12A, 12B, and 12D. While the Commenters state that there may not be malicious intent behind the sending of obscene text, this obscene text is contraband and does pose a security risk to the institutions (see Response 14D). The department will continue with this rulemaking action for the reasons provided in the Notice of Proposed Regulations and the ISOR.

Comment 19-43D: The Commenters state that precedent already exists for permissible erotic expression. The Commenters state that possession of sexually explicit material is permitted in certain circumstances by citing subsection 3134.1(b), “The department will not consider as contraband material that, while sexually suggestive, is not sexually explicit as defined in section 3006.” The Commenters state that this implies that erotic suggestive, or romantic expression is not automatically prohibited, and clear distinctions already exist between content that is permissible and that which crosses the line into “sexually explicit” or “obscene” territory. The Commenters assert that the proposed regulations do not account for these distinctions, and instead treat all intimate content as punishable.

Response 19-43D: The department was unable to locate the quoted subsection 3134.1(b) or the quoted text itself within Title 15; however, the department disagrees that the proposed regulations do not distinguish what is sexually explicit or obscene. See Responses 3B and 14A.

Comment 19-43E: The Commenters request that CDCR revises subsections 3282(c)(12), (c)(13), and (d)(1) to clarify that, 1) Written or verbal expressions of intimacy, eroticism, or romantic love that do not involve threats, coercion, or explicit visual material are permitted between incarcerated persons and their contacts; 2) The term “obscene” should be narrowly defined in accordance with constitutional standards (e.g., The *Miller* Test) and should not encompass consensual adult conversations or messages; 3) Provisions should be added to ensure incarcerated persons can maintain healthy intimate and emotional relationships through non-confidential, department-monitored means without facing arbitrary or overly broad censorship.

Response 19-43E: See Responses 3B and 14A, and The *Miller* Test is already applied to the existing definition of obscene text in subsection 3006(c)(15). The department declines the Commenters’ requests and will continue with this rulemaking action for the reasons provided in the Notice of Proposed Regulations and the ISOR.

Commenter #44

Comment 44A: The Commenter, a spouse of an incarcerated person, is opposed to the proposed regulations. The Commenter states that the regulation threatens to suspend communication for broad and vaguely defined definitions. This would severely harm the mental health of incarcerated individuals and their loved ones. The Commenter provides a personal example during visiting of a write-up and how they feel that they have been treated unfairly, targeted, and discriminated against by CDCR staff which has caused a

severe impact on both their emotional, mental, and physical health. The Commenter also states that the proposed regulations will undermine efforts at rehabilitation and reintegration, and how the regulations will make it easier to lose communication privileges, thus harming incarcerated persons and their families. The Commenter shares a personal example of the struggle to maintain communication over their ten-year marriage.

Response 44A: See Responses 3B, 12A, and 12D.

Comment 44B: The Commenter states that the proposed regulations are overly broad, which could lead to inconsistent enforcement and unfair punishment. The Commenter states that the disciplinary actions should include clear time limits, opportunities for review, and an appeal process. The Commenter revisits a prior personal story regarding a verbal warning versus a write-up during an in-person visit.

Response 44B: See Responses 4B and 14D. Additionally, clear time limits are provided in these regulations for violations. The department will continue with this rulemaking action for the reasons provided in the Notice of Proposed Regulations and the ISOR.

Comment 44C: The Commenter states that the penalties for destroying tablets are excessive and subjective. Given that the incarcerated person is paying for the broken devices, a formal RVR is unnecessary and overly harsh. The Commenter provides a personal story regarding their husband's property being taken and destroyed by officers in the past, and why should he be held accountable? This is why incarcerated persons demand 602s for officers to be investigated. The Commenter states that their husband and the Commenter do not agree to pay for the destruction of a tablet.

Response 44C: See Responses 4B, 12B and 14G.

Comment 44D: The Commenter recommends that the 1) Department replaces indefinite suspensions with time-limited restrictions; 2) Offers re-education or counseling for minor violations; 3) Provides a clear and more proportional disciplinary framework; 4) and the Commenter advocates for protecting children's rights to maintain contact with incarcerated parents and limiting tablet-related discipline to restitution after reviewing the officer's cameras.

Response 44D: 1) See Response 12D. 2) Incarcerated persons are made aware of department policies and regulations (they are provided copies of Title 15, and the notice of changes to regulations are posted in facilities), and incarcerated persons sign the CDCR Form 2293, which provides the user with rules to follow. To ensure complete understanding of the user agreement, effective communication is utilized as needed depending on the user's needs, such as adaptive supports, as described in section 3000. Additionally, there is a banner message during video calls that states the calls are monitored and recorded and includes that prohibited behavior (e.g., third party calling, nudity or explicit behavior, intimidation) may result in disciplinary action and/or loss of privileges. 3) The department believes that the restrictions are appropriate for the violations per the ISOR. See Responses 44A, 44B, and 44C. 4) See Response 12A. The department declines the Commenter's requests and will continue with this rulemaking action for the reasons provided in the Notice of Proposed Regulations and the ISOR.

Commenter #45

Comment 45A: The Commenter, writing on behalf of Indigenous Justice, opposes the proposed regulations. The Commenter maintains these regulations are overly punitive, inconsistent with the goals of rehabilitation, and fail to address the chronic technical issues that limit the fair and meaningful access to these devices. The proposed rules allow staff to issue disciplinary write-ups when an incarcerated person logs into another incarcerated person's account, which punishes cooperation among individuals who are helping each other navigate malfunctioning technology. According to reports, approximately 36% of tablets are malfunctioning at any given time, and these devices and accessories are cheaply made, break easily, and not repaired in a timely manner. Furthermore, proposed subsection 3090(d) allows CDCR to take away canteen privileges for so-called "negligent damage" to tablets. This provision is unjustified and punitive given device failures from poor quality and normal wear, rather than negligence or intentional damage.

Response 45A: Regarding utilizing another incarcerated person's account to log into an authorized wireless communication device (constructive possession), see Response 12F. Regarding reports of damage to devices, the department is not sure where the Commenter obtained their reports of damaged tablets and percentage of damage. CDCR acknowledges that there is a backlog in tablet repairs, which should be mitigated by a new vendor and the repayment of intentional damage to the tablets by incarcerated persons.

Proposed amendments to subsection 3090(d) add authorized wireless communication devices to the list of property that is subject to trust account deductions for the "intentional or negligent destruction, damage, or misuse" of the property. "Negligent" damage is existing text, and tablets are added as property. As stated in the ISOR, intentional or negligent destruction, damage, and misuse of departmentally authorized wireless communication devices, such as vendor-supplied tablets and kiosks, need to be included as the incarcerated population have access to these devices and need to be deterred from damaging them as well. It is the intent of these regulations to deter intentional and negligent damage, and lead to faster repair and replacement times. Additionally, if damage is due to normal wear and tear, the incarcerated person has due process rights as detailed in Response 4B. The Commenter's assertion that the tablets are failing due to poor quality is subjective, and the tablets were designed and built specifically for a correctional setting. The department will continue with this rulemaking action for the reasons provided in the Notice of Proposed Regulations and the ISOR.

Comment 45B: The Commenter recommends CDCR prioritize 1) Reliable maintenance and repair protocols, including consistent access to qualified technicians and replacement equipment; 2) Consultation with the incarcerated population to determine practical and fair policies for technology use; and 3) Positive incentives or recognition for maintaining equipment and demonstrating responsible technology use.

Response 45B: 1 and 2) CDCR refutes that it is not providing reliable maintenance repair protocols. CDCR is in regular contact with incarcerated advisory groups and will address any verifiable failures in products or repairs of same. 3) The use of an authorized wireless communication device is a privilege. The positive incentive for maintaining equipment and

demonstrating responsible technology use is continued use of this equipment, which was provided at no cost as a privilege, without needed repairs or delays. The department declines the Commenter's requests and will continue with this rulemaking action for the reasons provided in the Notice of Proposed Regulations and the ISOR.

Commenter #46

Comment 46A: The Commenter is opposed to the proposed regulations. The Commenter states that the proposed regulations interfere with marital rights and intimacy, negatively affect marriages (erode stability and trust, increased emotional isolation, mental health issues), and that marriage is constitutionally protected as a fundamental right under the Due Process Clause of the 14th Amendment. The US Supreme Court has affirmed that incarcerated persons do not lose their right to marry or maintain marital relationships simply because of incarceration and the Commenter cites *Turner v. Safley*, 482 U.S. 78 (1987), and *Zablocki v. Redhail*, U.S. 374 (1978). By prohibiting any form of sexual intimate communication, CDCR risks undermining the very essence of marital relationships.

The Commenter states that CDCR has publicly stated that it prioritizes family connection and rehabilitation as key components of successful reentry, and research consistently shows that strong family ties reduce recidivism and improve post-release outcomes. Limiting the ability of married couples to communicate authentically, including emotionally or romantically intimate ways, damages family bonds and undermines rehabilitation efforts.

Response 46A: See Responses 2C, 3B, and 14A.

Comment 46B: The Commenter states that that definitions of “sexually explicit” or “sexual behavior” during electronic communications are vague and overly broad, the definitions invite inconsistent enforcement and subjective interpretation by staff, and it chills lawful, private, and constitutionally protected marital expression. Courts have struck down similarly overbroad restrictions that unnecessarily infringe on an incarcerated person's free speech and First Amendment rights, and the Commenter cites, *Procurier v. Martinez*, 416 U.S. 396 (1974) and *Thornburgh v. Abbott*, 490 U.S. 401 (1989). The Commenter believes that the proposed regulations fail these tests as these categories of communication pose no legitimate threat to safety or order when conducted privately between spouses.

Response 46B: See Responses 3B, 4B, 13A, 14A, 14D, and 14F.

Comment 46C: The Commenter states that if adopted these regulations could be challenged under: *Turner v. Safley* (1987), for failing to show a rational connection between the restriction and legitimate penological interests; *Overton v. Bazzeta*, 539 U.S. 126 (2003), the Court upheld some visitation restrictions, it emphasized that a total or indefinite ban on family contact may violate the Eighth Amendment if it becomes arbitrary or punitive; *Procurier v. Martinez* (1974), for overbroad censorship of communication; and *Roe v. Wade* (1974) and *Lawrence v. Texas* (2003), though not prison cases, these decisions recognize privacy and autonomy in intimate relationships and that this, in principle, extends, in limited form, to incarcerated persons and their spouses.

Response 46C: See Responses 2A, 3B and 14F. Additionally, categories of speech that are given lesser or no protection by the First Amendment (and therefore may be restricted) include obscenity. The test for obscenity is well settled. The Supreme Court’s *Miller v. California* case (1973) established a test for obscenity, which is the basis for CDCR’s contraband regulations and definitions. Non-explicit, affectionate, and romantic communications are clearly outside these definitions. Because of these exceptions, this restriction is neither total nor indefinite. Further, in balancing the factors in the *Turner* case, CDCR will be able to establish the penological interest of maintaining the safety and security of staff and incarcerated persons with varying commitment offenses, while providing other alternative means of maintaining family connections such as Family Visiting Areas (as defined in section 3177). The department will continue with this rulemaking action for the reasons provided in the Notice of Proposed Regulations and the ISOR.

Comment 46D: The Commenter requests that CDCR, 1) Clarify definitions of “sexual behavior” and “obscene content” to exclude non-explicit, affectionate, or romantic communication between spouses; 2) Include an exception allowing monitored but non-punitive expressions of marital intimacy that do not involve nudity or explicit sex acts; and 3) Reaffirm CDCR’s commitment to family connection by ensuring that communication policies strengthen, rather than weaken, marital and familial bonds.

Response 46D: CDCR declines the Commenter’s requests based on 1) and 2) See Responses 3B and 14A; and 3) The department has acknowledged the importance of incarcerated persons’ communications with loved ones as stated in the ISOR. The department will continue with this rulemaking action for the reasons provided in the Notice of Proposed Regulations and the ISOR.

Commenter #47

Comment 47A: The Commenter, an Attorney representing Legal Services for Prisoners with Children, opposes the proposed regulations. The Commenter states that the proposed revision of existing subsection 3178(d)(5) that “third party” with “legally authorized representative” is a narrowing of scope that adds a hurdle with no basis in the law and conflicts with the norms of access to justice. The proposed amendment reads “They [the requesting attorney] have been requested by a ~~third party~~ legally authorized representative to consult with the named incarcerated person when the incarcerated person cannot do so because of a medical condition, disability or other circumstance.”

The Commenter states that incarcerated persons have the right to consult with attorneys, including prospective clients. There is no reasonable relation to legitimate penological interests served by extraordinarily burdening incarcerated persons’ ability to consult with lawyers (PC sections 2600 and 2601, recognizing the right of prisoners to confidential communication with attorneys). The Commenter states that the new rule, by requiring unclear “authorization” for even a mere consult, is not consistent with fairness and justice.

The Commenter cites California State Bar’s Rules of Professional Conduct (RPC), Rule 1.8.6, that discusses various scenarios where an attorney is compensated by a person other than the person represented. It requires, in the case of private attorneys, that written consent be obtained before or “as soon [...] as reasonably practicable” after such an

arrangement is entered into. In the case of court-ordered representation or lawyers working for nonprofits providing legal aid, no such written consent is required. The Commenter states that the department's proposed regulation imposes burdens on attorney visits that would restrict what is legally allowed under RPC 1.8.6 and RPC 7.3, and this impedes access to justice for incarcerated persons, a violation of their constitutional rights, and imposes economic losses on legal practitioners. The Commenter states that the negative results can be averted by keeping the existing version of subsection 3178(d)(5) intact.

Response 47A: See Response 3A. Additionally, PC section 5058.7(a) states, in pertinent part that the department shall approve an attorney's request to have a confidential call with the incarcerated person that they REPRESENT (emphasis added). Prospective attorneys may be interviewed via non-confidential calls in housing units, on tablets or in-person. There is no need for a confidential setting for PROSPECTIVE attorneys. Insofar as clearances for confidential calls require a court order or an attorney who makes a declaration for the authorized representative, the terminology change reflects the actual requirements better than the generic "third party" terminology in existing subsection 3178(d)(5) and proposed renumbered subsection 3282(h)(3)(E). CDCR recognizes all court orders for confidential calls as well as legally authorized representatives who are working with attorneys representing incarcerated individuals. The department will continue with this rulemaking action for the reasons provided in the Notice of Proposed Regulations and the ISOR.

Comment 47B: The Commenter states that the implementation of PC section 5058.7, concerning confidential attorney-client calls, in proposed subsection 3282(h)(1) tracks the statutory language and represents minimal compliance with the statute and that the goals of the statute are best achieved by a regulation that provides for more than the bare statutory minimum.

The Commenter states that the way to improve the section is to strengthen the language in the proposed subsection 3282(h)(1) final line of "Upon receipt of a request for a confidential call, a confidential call shall be scheduled in consideration of institutional security and available resources." The ISOR states that this "is necessary to ensure an institution schedules confidential calls at times when the pertinent equipment, and staffing are readily available and do not adversely impact institutional security and operational needs." The Commenter states that there are positive and negative aspects to the consideration of available resources. The negative aspect would be limiting visits to less than the statutory minimum due to the operational and security needs, which would be a violation of PC section 5058.7. On the other hand, the positive side of the consideration of security and resources would be increased allotted times for confidential calls when this is practically feasible. Such an upward departure from the minimum "at least" 30 minutes per month per client would better achieve the statutory aims of furthering legal representation and interests of an effective system of justice with less burden on the affected attorneys and clients.

The Commenter recommends that the regulation would be improved by explicitly stating that confidential calls of duration or frequency greater than 30 minutes a month minimum are to be permitted unless impracticable due to compelling interest in security based on

an unforeseeable emergency. In such a case, the institution's Warden should be required to certify the compelling interest in writing, reviewable by the head of the Division of Adult Institutions or the department's Secretary.

Response 47B: See Responses 3A, 15A, and 15C. Additionally, CDCR must accommodate every incarcerated person's valid request for confidential calls within the meaning of PC section 5058.7. This access must ensure equal access to all requestors. CDCR makes every effort to accommodate requests in excess of 30 minutes as resources and staffing permit while keeping timeslots open for other requestors. Equipment and physical plant limitations may require consecutive calls over a period of time or combinations of calls and in-person visits. Because each CDCR facility is different in terms of physical plant space, population and staffing, there is no "one size fits all" mechanism to addressing confidential calls of a duration or frequency greater than 30 minutes other than to say requests are accommodated as feasible. The department will continue with this rulemaking action for the reasons provided in the Notice of Proposed Regulations and the ISOR.

Comment 47C: The Commenter states that the responsibility for damage wrongfully caused and the possibility of remedies to parties whose proprietary interests are injured are basic principles of common law and have long been affirmed, and some accountability for damages to equipment is appropriate. The Commenter states that the compensation in the proposed regulations flies in the face of fundamental norms by ignoring due process and the distinction between adjudicative and executive roles of officials.

The rationale for the proposed subsection 3282(c)(11) states that the regulations are necessary for discipline and accountability, but there is no explanation of why this process is necessary rather than one which has greater procedural protections and adjudicative fairness. The statement that is provided about assigning rights of the private vendors suggests the opposite. "These regulations establish the leasehold status of the tablets and the department's assigned right to pursue the vendor's interests in preventing damage to the devices as well as collect repair costs in cases of negligent or willful damage." The Commenter states that party A cannot assign to party B a right or power that party A lacks, and a private actor does not have the power to unilaterally and without civil legal protections impose damage remedies on an "alleged tortfeasor or debtor." The Commenter states that the vendor cannot "assign" such a right to the department, and the rationale of assigning rights would support the pursuit of a civil case through the judicial process.

The proposed regulations add the intentional or negligent damage of an authorized wireless communication device as an administrative rule violation in proposed subsection 3314(a)(3)(N)2. Per existing regulations subsection 3314(b), administrative violation hearings are conducted by department employees "not below the level of a correctional lieutenant, or an experienced correctional counselor I, parole agent I or correctional sergeant." There is no right to witnesses or the assignment of an investigative employee. The Commenter states that these provisions fall well below the procedural standards of a civil proceeding.

The Commenter notes that the consequences of intentional or negligent damage or destruction of an authorized wireless communication device are substantial and include

property deprivation, and reimbursement. The Commenter states that this amounts to the deprivation of property without due process of law and cites *Matthews v. Eldridge*, 424 U.S. 319 (1976). The Commenter states that this constitutes a violation of due process under the state Constitution (California Constitution, Article I, Section 7(a)).

The Commenter adds that statutory recognition of personal property is expressly provided for incarcerated persons. PC subsection 2601(a) enumerates personal property as a civil right retained by those who are imprisoned and is inclusive of the right to “own, sell, or convey real or personal property...” The monetary assets from which the proposed rule would obligate compensatory payments constitute personal property within the meaning of the statute and are protected against arbitrary invasion. The Commenter asserts that the reimbursement process proposed in these regulations is legally deficient.

Response 47C: See Responses 4B and 12B. Additionally, the incarcerated person can utilize the grievance and appeal process to challenge any administrative decision (including the subject RVR process). Completion (exhaustion) of the grievance process then affords the incarcerated person access to the judicial system for ultimate determination of any administrative decision. This access is well established and provides multiple levels of due process. The department will continue with this rulemaking action for the reasons provided in the Notice of Proposed Regulations and the ISOR.