

**State of California
Office of Administrative Law**

In re:
Department of Corrections and
Rehabilitation

NOTICE OF APPROVAL OF REGULATORY
ACTION

Regulatory Action:

Government Code Section 11349.3

Title 15, California Code of Regulations

OAL Matter Number: 2026-0225-03

Adopt sections: 3085, 3085.1, 3085.2,
3085.3, 3287.1

Amend sections: 3000, 3030, 3075, 3075.1,
3190, 3269, 3287, 3375,
3376, 3401.6

OAL Matter Type: Regular Resubmittal (SR)

This rulemaking action by the Department of Corrections and Rehabilitation adopts and amends regulations that implement The Transgender Respect, Agency, and Dignity Act, Senate Bill 132 (Stats. 2020, c. 182), including the adoption and amendment of terminology relating to transgender, non-binary, and intersex incarcerated persons ("TNI incarcerated person(s)"), establishing procedures concerning the search and housing preferences of TNI incarcerated persons, and establishing the initial gender identity intake and classification process.

OAL approves this regulatory action pursuant to section 11349.3 of the Government Code. This regulatory action becomes effective on 4/9/2026.

Date: April 9, 2026



Stephen P. Mehlert
Senior Attorney

For: Kenneth J. Pogue
Director

Original: Jeffrey Macomber, Secretary
Copy: Sarah Pollock

RESUBMITTAL

For use by Secretary of State only

STD. 400 (REV. 10/2019)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-	REGULATORY ACTION NUMBER 2026-0225-03	EMERGENCY NUMBER SR
For use by Office of Administrative Law (OAL) only			
NOTICE		REGULATIONS	

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

APR 09 2026

jj 1:55 pm

OFFICE OF ADMIN. LAW
 2026 FEB 25 PM 2:11

AGENCY WITH RULEMAKING AUTHORITY
 California Department of Corrections and Rehabilitation

AGENCY FILE NUMBER (If any)
 23-05

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 Disapproved/Withdrawn	NOTICE REGISTER NUMBER	PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Transgender Respect, Agency, and Dignity Act (TRADA)	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) 2025-1211-01S
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 3085, 3085.1, 3085.2, 3085.3, and 3287.1
	AMEND. 3000, 3030, 3075, 3075.1, 3190, 3269, 3287, 3375, 3376, 3401.6
TITLE(S) 15	REPEAL

3. TYPE OF FILING

<input 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 checked="" 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)
 August 21, 2025 - September 5, 2025, January 30, 2026 - February 14, 2026

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) _____
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6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

<input checked="" 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 Sarah Pollock	TELEPHONE NUMBER 279 223-2308	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional) sarah.pollock@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.

Signed by:

SIGNATURE OF AGENCY HEAD OR DESIGNEE <i>Jason D. Johnson</i>	DATE 2/24/2026
TYPED NAME AND TITLE OF SIGNATORY JASON D. JOHNSON, Undersecretary, Operations, CDCR	

For use by Office of Administrative Law (OAL) only

APR 09 2026

Office of Administrative Law

PER AGENCY REQUEST

FINAL TEXT OF ADOPTED REGULATIONS

In the following text, underline indicates additional text and ~~strikethrough~~ indicates deleted text.

California Code of Regulations, Title 15, Division 3, Adult Institutions, Programs, and Parole

Chapter 1. Rules and Regulations of Adult Operations and Programs.

Article 1. Behavior.

3000. Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

NOTE: Authority cited: Sections 243(f)(4), 2717.3, 3000.03, 3411, 3414, 5058, 5058.3, 6252 and 1170.05, Penal Code; Section 10115.3(b), Public Contract Code; and Sections 4525(a), 4526 and 14837, Government Code. Reference: Sections 186.22, 243, 314, 530, 532, 600, 646.9, 653, 832.5, 1170.05, 1203.8, 1389, 2080, 2081.5, 2084, 2600, 2601, 2700, 2717.1, 2717.6, 2932.5, 2905, 3003.5(a), 3007.05, 3020, 3450, 3550, 4570, 4576, 5005, 5009, 5050, 5054, 5068, 6250,

6250.5, 6258.1, 7000 et seq., 7286.5, 11180 and 11191, Penal Code; Sections 1132.4 and 1132.8, Labor Code; Sections 10106, 10108, 10108.5, 10115, 10115.1, 10115.2, 10115.3 and 10127, Public Contract Code; Section 999, Military and Veterans Code; Section 391, Code of Civil Procedure; Section 297.5, Family Code; Section 4512, Welfare and Institutions Code; Sections 8550, 8567, 12838 and 12838.7, Government Code; Sections 11007, 11351, 11352, 11378 and 11379, Health and Safety Code; Governor's Prison Overcrowding State of Emergency Proclamation dated October 4, 2006; *In re Bittaker*, 55 Cal.App. 4th 1004, 64 Cal. Rptr. 2d 679; *Madrid v. Cate* (USDC ND Cal. C90-3094 TEH); *Sassman v. Brown* (E.D. Cal. 2015) 99 F.Supp.3d 1223; *Mitchell v. Cate*, USDC ED 2:08-CV-01196-TLN-EFB; *In re Garcia* (2012) 202 Cal.App.4th 892; and *Quine v. Beard*, No. C 14-02726 JST; *Clark v California* (2002) USDC-ND (No. C-96-1486-CRB); and Americans with Disabilities Act, Public Law 101-336, July 26, 1990, 104 Stat. 328.

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

3030. Issuance and Possession of State Clothing and Linen.

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

[Subsection (c) is amended to read:]

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

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

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

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

3075. Initial Intake and County Reimbursements.

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

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

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

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

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

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

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

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 1202a, 1203.03, 1216, 1217, 2081.5, 2605, 2606, 2901, 3058.5, 3600, 3601, 4016.5(a), 4537, 4750, 4751 and 5054, Penal Code; and Section 19853, Government Code.

3075.1. Intake Processing.

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

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

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

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

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

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

[New Article 9 is adopted to read:]

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

[New section 3085 is adopted to read:]

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

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

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

(c) An incarcerated person who is transgender, non-binary, or intersex, regardless of anatomy, shall have their perception of health and safety given serious consideration in any bed assignment, placement, or programming decision within the facility in which they are housed: including, but not limited to, consideration for single-cell status, housing the individual with another incarcerated person of their choice, or removing the individual or individuals who pose a threat to the transgender, non-binary, or intersex incarcerated person from any location where they may have access to the individual who has expressed a safety concern. The department shall follow the procedures set forth in subsections 3375(a), (b), and (c); or 3335(a); or 3269(a)-(h) when giving serious consideration to alternatives, including bed assignments, placement, or programming decisions. If the incarcerated person is not granted an alternative based on their perception of their health and safety pursuant to this subsection, the department shall document the specific reasons why the department is unable to accommodate the incarcerated person, and share them with the incarcerated person via an automated Classification Committee Chrono (Rev. 05/19), which is incorporated by reference. If an incarcerated person raises concerns for their health or safety at any time, their placement shall be reassessed in accordance with the procedures set forth in subsections 3375(a), (b), and (c); or 3335(a); or 3269(a)-(h).

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

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

[New Section 3085.1 is adopted to read:]

3085.1 Gender Identity Questionnaire.

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

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

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

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

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

[New section 3085.2 is adopted to read:]

3085.2 Housing Based on Gender Identity.

(a) An incarcerated person who is transgender, non-binary, or intersex, regardless of anatomy, shall be housed at a correctional facility designated for men or women based on the individual's preference pursuant to Penal Code section 2606, including, if eligible, at a residential program for incarcerated persons under the jurisdiction of the department unless the department has management or security concerns with an individual's preferred placement. The incarcerated person shall have their perception of health and safety given serious consideration in any bed assignment, placement, or programming decision within the facility in which they are housed: including, but not limited to, consideration of single-cell status, housing the individual with another incarcerated person of their choice, or removing the individual or individuals who pose a threat to the transgender, non-binary, or intersex incarcerated person from any location where they may have access to the individual who has expressed a safety concern. If the incarcerated person is not granted their preferred housing, the department shall document and articulate the specific management or security reasons why the department is unable to accommodate the housing preference and share them with the incarcerated person via an automated Classification Committee Chrono (Rev. 05/19), which is incorporated by reference. If an incarcerated person raises concerns for their health or safety at any time, their housing and placement shall be reassessed, in accordance with the procedures set forth in subsection 3085.2(d).

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) A copy of the GIQ shall be forwarded to the PREA Compliance Manager within 24 hours of completion. To prepare a comprehensive summary report, the CC II (Supervisor) or designee

shall complete a file review to include the incarcerated person's criminal history, CDCR history (housing, work, etc.), disciplinary history, and victimization and abusiveness concerns.

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

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

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

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

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

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

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

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

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

(2) The sexual orientation of the incarcerated person.

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

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

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

(f) Return Transfer to Previous Institution Gender Designation:

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

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

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

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

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

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

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

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

(B) New predatory behavior.

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

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

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

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

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

[New section 3085.3 is adopted to read:]

3085.3 Searching Based on Gender Identity.

(a) An incarcerated person who is transgender, non-binary, or intersex, regardless of anatomy, shall be searched according to the individual's approved search preference, unless the department has management or security concerns with an individual's search preference. If the approved search preference cannot be determined, the search shall be conducted according to the search policy of the gender designation of the facility where the incarcerated person is housed.

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

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

(B) The sexual orientation of the incarcerated person.

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

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

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

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

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

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

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

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

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

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

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

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

(d) Reevaluation of a Previously Approved Search Preference.

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

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

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

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

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

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

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

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

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

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

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

Subchapter 2. Incarcerated Person Resources.

Article 9. Personal Property and Religious Personal Property.

3190. General Policy.

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

[Subsection (e) is amended to read:]

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

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

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

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

NOTE: Authority cited: Sections 5058 and 5058.3, Penal Code. Reference: Sections 2086, 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*

Subchapter 4. General Institution Regulations.

Article 1.6. Incarcerated Person Housing.

3269. Incarcerated Person Housing Assignments.

[Subsection (a) is unchanged.]

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

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

[Subsections (b)(1) through (20) are unchanged.]

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

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

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

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

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

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

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

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

(2) Request for Protective Custody.

(3) Request for SNY Designation.

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

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

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

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

(6) Integrated Housing Code.

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

[Subsection (h) is amended to read:]

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

[Subsection (i) remains unchanged.]

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

Article 2. Security.

3287. Cell, Property, and Body Inspections.

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

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

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

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

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

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

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

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

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

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

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

implants, prostheses, and assistive devices, using contraband and metal detection devices and electronic drug detection devices, including but not limited to, ION scanners.

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

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

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

~~(4) If the incarcerated person has reached the annual radiation limit pursuant to subsection 3287(c)(3), the machine shall not perform a scan. A scan shall only be conducted when the radiation to which the incarcerated person has been previously exposed as a result of scanning is determined to be under the annual radiation limit, and at least 0.25 microsieverts remain before the incarcerated person reaches their annual radiation limit.~~

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

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

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

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

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

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

~~(A) The incarcerated person shall present a copy of the approved CDC Form 128-B or CDC Form 128-C to a staff member operating a low-dose, full-body x-ray scanner, or~~
~~(B) A staff member shall access the copy of CDC Form 128-B or CDC Form 128-C that is stored in ERMS.~~
~~(9) In the event that verification cannot be obtained through one of the methods enumerated in subsections 3287(c)(8)(A) or 3287(c)(8)(B), staff shall search the incarcerated person in accordance with subsection 3287(c)(7).~~
~~(10) An incarcerated person who is excused from being scanned with a low-dose, full-body x-ray scanner for emergency custody circumstances pursuant to subsection 3287(c)(5) shall be subject to disciplinary action in accordance with section 3315.~~

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

~~(1) Incarcerated persons shall be subject to passive air scan searches by a passive alert canine.~~
~~(2) Direct Searches of incarcerated persons: The canine handler shall make an announcement informing the incarcerated person(s) that they are conducting passive air scan searches using a passive alert canine and that the purpose of the scan is to detect illegal drugs. The incarcerated person does not have the right to refuse the search. An incarcerated person who refuses to be searched may be subject to disciplinary action and subject to additional search and urine testing for the presence of drugs.~~

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

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

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

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

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

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

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

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

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

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

(d) Female Institutions:

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

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

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

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

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

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

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

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

(e) Male Institutions:

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

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

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

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

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

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

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

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

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

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

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

3287.1. Body Scans and Passive Air Search.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Article 10. Classification.

3375. Classification Process.

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

[Subsection (c) is amended to read:]

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

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

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

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

(1) Each classification committee's documentation shall include, but not be limited to the following:

(A) The reason or purpose for the committee hearing without compromising the personal safety of the incarcerated person.

(B) The action taken.

(C) The specific reasons for the action, including the general information upon which the decision was based, without compromising the personal safety of the incarcerated person.

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

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

3376. Classification Committees.

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

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

(3) Institution and Facility Classification Committees shall:

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

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

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

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

3401.6. Staff Sexual Harassment.

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

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

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

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



Gender Identity Questionnaire

Date of Questionnaire: Time:

CDCR Number: Name: Institution:

Reason for Completion: Reception Center Intake Requested by Inmate

To be completed during Reception Center Intake and/or when the inmate requests to change responses.

Custody Supervisor shall read the following to the inmate:

The following questions have been established to assist CDCR in facilitating respectful communication and determining appropriate housing and services for all inmates. You may consider these questions to be very personal because they relate to your gender identity. However, the answers you provide will play a vital role in appropriately assessing your needs. Although not mandatory, your participation will assist in determining the most appropriate housing and services for you. You should also know that regardless of how you answer these questions today, you can request to change your answers in the future. If you choose not to answer any of these questions, you will not be disciplined for refusing to answer.

I acknowledge that I have read the statement above to the inmate.

1. Which of the following gender identities do you most often use to describe yourself?

2. Do you identify as transgender, non-binary or intersex?

2a. If yes, what do you identify as:

3. What pronouns should people use when they are referring to you?

4. What honorific or title should people use when they are addressing you?

- Inmate is not transgender, intersex, or non-binary, no additional information is needed
- Inmate is transgender intersex or non-binary

The next two additional questions are being asked to determine if your case needs to be referred to a Classification Committee for consideration.

5. Custody Supervisor shall read the following to the inmate:

In general, inmates at male prisons are searched consistent with the male inmate search policy and inmates at female prisons are searched consistent with the female inmate search policy. These policies do allow for exceptions due to emergency situations. The male inmate search policy means that clothed body (pat) searches can be conducted by male or female staff but unclothed body (strip) searches shall be conducted by male staff only. The female inmate search policy means that clothed body (pat) searches and unclothed body (strip) searches shall be conducted by female staff only.

I acknowledge that I have read the statement above to the inmate.

Would you like to identify a search preference?

If yes, select search preference:

6. Would you prefer to be housed in a male or female institution?

7. Reason for GIQ?

Comments:

Date Signed



TRANSGENDER, NON-BINARY OR INTERSEX INMATE SEARCH PREFERENCE REQUEST

Offender Name:

CDC #:

On [] received a request from inmate [] to be searched utilizing the [] search policy, consistent with their gender identity. A review of the following information in SOMS/ERMS has been conducted:

The inmate's Gender Identity is recorded on the most recent Gender Identity Questionnaire as: []

The inmate identifies as transgender, non-binary or intersex on question #2 on the most recent Gender Identity Questionnaire: []

The inmate has the following disciplinary history relative to Sexual Offenses while incarcerated:

[Empty text box for disciplinary history]

The inmate has the following Sex Offenses/Convictions, prior to incarceration:

[Empty text box for sex offenses/convictions]

Additional Information:

[Empty text box for additional information]

PREA Decision []

PREA Compliance Manager (PCM) []

Institution []

Date/Time []

Warden Decision

If denied provide reason(s):

[Empty text box for warden decision reasons]

Chief Deputy Warden (CDW) []

Institution []

Date/Time []

PREA Screening Form

[Submit to ERMS](#)

CDCR Number	<input type="text"/>	Date of Screening	<input type="text"/>	Institution	<input type="text"/>
First Name	<input type="text"/>	Middle Name	<input type="text"/>	Last Name	<input type="text"/>

Reason for Screening

New Arrival
 Layover (less than 72 hours)
 New/Additional Information

For layovers, only complete highlighted questions

Section A ----- Risk of Sexual Victimization -----

Instructions: Complete Section A, select 'Yes' or 'No' for all drop downs that apply, using available information obtained from SOMS/ERMS and the interview with the incarcerated person (see instruction on page 3).

1A. Victim of a **substantiated** or **unsubstantiated** incident of sexual violence in a correctional setting (not including sexual harassment) in the last 10 years?

If Yes, provide document type and date. Document Date

Document Type

1B. Have you experienced sexual victimization in a correctional setting that you have not previously reported?

2. Have you experienced sexual victimization in a non-correctional setting?

3. Mental, Physical, or Developmental Disability?

4. Age? (21 and under or 65 and over)

5. Physical build? Male: 5'2" or less in height and/or weighs less than 120 lbs. Female: 5' or less in height and/or weighs less than 90 lbs.

6. Any prior or current convictions for sex offenses against an adult or child?

If Yes, provide document type and date. Document Date

Document Type

7. Do you consider yourself or have you ever been perceived by others to be Lesbian, Gay, Bi-Sexual, Transgender, Intersex, Non-Binary, or Gender Non-Conforming?

8. First incarceration in state prison?

9. Exclusively non-violent criminal history (convictions only)?

10. Incarcerated person currently considers themselves vulnerable to sexual victimization?

When five (5) or more answers are "Yes" to questions 2 through 10, or "Yes" was answered to question 1A and/or 1B the scoring routine will suggest the incarcerated person is "AT RISK AS A VICTIM." When less than five (5) answers are "Yes" to questions 2 through 10, the scoring routine will suggest the incarcerated person is "NOT IDENTIFIED AS BEING AT RISK" unless question 1A and/or 1B were answered "Yes."

ATRISKASAVICTIM
 NOT IDENTIFIED AS BEING AT RISK

Section B ----- Risk of Sexual Abusiveness -----

Instructions: Complete Section B, select 'Yes' or 'No' for all drop downs that apply, using information obtained from SOMS/ERMS and the interview with the incarcerated person (see instruction on page 3).

1. History of Sexual Violence in a correctional setting?

No Selection

If Yes, provide document type and date.

Document Date

Document Type

2. Prior convictions for sex offenses in a non-correctional setting?

No Selection

3. Conviction for non-sexual violent offenses in a non-correctional setting, within 5 years?

No Selection

4. Guilty finding for non-sexual violent offense in a correctional setting; meeting the criteria defined as Division A-1, A-2, or B offense within 5 years?

No Selection

When all (3) answers are "Yes" to questions 2, 3, and 4, or "Yes" was answered to question 1, the scoring routine will suggest the incarcerated person is "AT RISK AS AN ABUSER." When less than three (3) answers are "Yes" to questions 2, 3, and 4, the scoring routine will suggest the incarcerated person is "NOT IDENTIFIED AS BEING A RISK" unless question 1 was answered "Yes."

AT RISK AS AN ABUSER

NOT IDENTIFIED AS BEING A RISK

Section C ----- Mental Health Referral -----

If questions 1A, 1B, 2, or 6 in Section A or questions 1 or 2 in Section B are "Yes", staff shall **ASK** the incarcerated person if they would like a Mental Health Referral and must check one of the following:

- Incarcerated person declined the Mental Health referral. Incarcerated person accepted the Mental Health referral; complete a **CDCR 128-MH5 Mental Health Referral Chrono and submit it to Mental Health.**

----- Screening Results -----

Instructions: If identified as both, "At Risk as a Victim" and "At Risk as an Abuser" in Sections A and B above then Section B shall take precedence and the incarcerated person will be identified as "AT RISK AS AN ABUSER."

FINAL RISK LEVEL:

AT RISK AS A VICTIM

AT RISK AS AN ABUSER

NOT IDENTIFIED AS A RISK

Non-Confidential Comments

PREA Compliance Manager email:

@cdcr.ca.gov

Submitted By:

Instructions for Completion of the PREA Screening Form

Date of Screening: Enter the date the PREA Screening Form is being completed.

Reason for Screening: Check the appropriate reason: New Arrival for a new arrival to an institution, Layover (less than 72 hours) for incarcerated persons who are going to be housed at your institution for less than 72 hours, or New/Additional information, which is for receipt of any additional relevant information that was not previously considered that bears on the incarcerated person's risk of sexual victimization or abusiveness.

If the PREA Screening Form is being completed for an incarcerated person who will be housed at your institution for less than 72 hours, only complete the boxes that are highlighted on the form (questions 7 and 10). The incarcerated person's status as "At Risk as a Victim" or "At Risk as an Abuser" will not change as a result of completing PREA screening for a layover incarcerated person due to their temporary housing status. It will be the custody supervisor's responsibility to review/consider the information contained on the most recently completed PREA Screening Form and the responses to questions 7 and 10 on the PREA Screening Form for the layover, in determining appropriate housing for the incarcerated person.

For the purposes of completing the PREA Screening Form, "Sexual Violence" as committed by an incarcerated person, is defined as:

1) Abusive Sexual Contact

Contact of any person without their consent, or by coercion, or contact of a person who is unable to consent or refuse AND intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person.

2) Non-consensual Sex Acts

Contact of any person without their consent, or by coercion, or contact of a person who is unable to consent or refuse AND contact between the penis and vagina or the penis and the anus including penetration, however slight; or contact between the mouth and the penis, vagina, or anus or penetration of the anal or genital opening of another person by the hand, finger, or other object.

Section A: Risk of Sexual Victimization

1A. Select "Yes" if there is documented information in SOMS/ERMS which indicates they were the victim of a substantiated or unsubstantiated incident of sexual violence in a correctional setting in the last 10 years (not including sexual harassment). Correctional setting includes prisons, jails, or other confinement facilities.

Substantiated means the allegation was investigated and determined to have occurred, based on the preponderance of evidence.

1B. Select "Yes" if the incarcerated person self-reports being sexually assaulted in a correctional setting and not previously reported. Make appropriate notifications and initiate appropriate PREA protocols.

2. Select "Yes" if the incarcerated person self-reports being sexually assaulted in any setting as an adult or child, other than a correctional setting.

3. Select "Yes" if there is information in the incarcerated person's file which indicates they are at the Enhanced Out-Patient (EOP) Level of Care or higher; is designated as DD-1 or higher under the Clark Remedial Plan; or is designated as a class-member under the Armstrong Remedial Plan.

4. Auto populates "Yes" if the incarcerated person is age 21 and under or if the incarcerated person is over age 65 and over.

5. Select "Yes" if the incarcerated person is: 1) a male of small stature which means they are 5'2" or less in height and/or weighs less than 120 pounds; or 2) a female of small stature which means they are 5' or less in height and/or weighs less than 90 pounds.

6. Select "Yes" if there is information in the incarcerated person's file which indicates they have been convicted of a sex offense against any person. Sex offenses are identified as rape (PC 261), unlawful sexual intercourse (PC 261.5), Rape by spouse (PC 262), Sodomy (PC 286), L & L (PC 288), oral cop (PC 288a) or sexual penetration against will (PC 289) or any other forcible sexual offenses against an adult or child.

7. Select "Yes – Transgender/Intersex/Non-Binary" if, when asked, the incarcerated person replies they identify as transgender, intersex or non-binary or have been perceived to be transgender, intersex or non-binary.

Select "Yes – LGB/GNC" if, when asked, the incarcerated person replies they identify as or have been perceived to be lesbian, gay, bisexual or gender non-conforming.

Also select "Yes – Transgender/Intersex/Non-Binary" if you as a custody supervisor perceive the incarcerated person to be transgender. A transgender person may or may not have completed gender-reassignment surgery.

8. Select "Yes" if this is the incarcerated person's first time in a state prison. This would include incarceration in any state, federal, or foreign adult correctional facility.

9. Select "Yes" if the incarcerated person's file does not demonstrate any convictions for violent offenses. This should be based on the final adjudicated criminal charge. Violent offenses are defined in Penal Code section 667.5(c).

10. Select "Yes" if the incarcerated person responded to the question that they are concerned about their Sexual Violence Vulnerability.

When five (5) or more answers are "Yes" to questions 2 through 10, or "Yes" was answered to question 1A and/or 1B the scoring routine will suggest the incarcerated person is "AT RISK AS A VICTIM." When less than five (5) answers are "Yes" to questions 2 through 10, the scoring routine will suggest the incarcerated person is "NOT IDENTIFIED AS BEING AT RISK" unless question 1A and/or 1B were answered "Yes."

Section B: Risk of Sexual Abusiveness

1. Select "Yes" if the incarcerated person's file contains documentation that the incarcerated person was found guilty (criminally or administratively) of being the aggressor/ perpetrator of Sexual Violence (Abusive Sexual Contact or Non-consensual Sex Acts) in a correctional setting. Correctional setting includes prison, jail, or other confinement facilities.
 2. Select "Yes" if the incarcerated person's file indicates they have been convicted as a predator or aggressor of sexual abuse, sexual assault, or rape, other than in a correctional institution, or if the incarcerated person self-reports as being adjudicated as a sexual predator or aggressor in a setting other than a correctional institution.
 3. Select "Yes" if the incarcerated person's file contains documentation that they were convicted of having been involved in non-sexual violent offenses in a non-correctional setting within the last 5 years. Violent offenses are defined in Penal Code section 667.5(c).
 4. Select "Yes" if the incarcerated person's file contains documentation that they have been found guilty of non-sexual violent offenses within 5 years, identified as a Division A-1, A-2, or B offense, as defined in CCR, Title 15, section 3323 (b) through (d) (in a correctional setting).
- When all (3) answers are "Yes" to questions 2, 3, and 4, or "Yes" was answered to question 1, the scoring routine will suggest the incarcerated person is "AT RISK AS AN ABUSER." When less than three (3) answers are "Yes" to questions 2, 3, and 4, the scoring routine will suggest the incarcerated person is "NOT IDENTIFIED AS BEING A RISK" unless question 1 was answered "Yes."

Section C: Mental Health Referral

If questions 1A, 1B, 2, or 6 in Section A or questions 1 or 2 in Section B are "Yes," staff shall ask the incarcerated person if they would like a Mental Health Referral and must indicate the response by checking one of the two boxes: incarcerated person declined the Mental Health referral or incarcerated person accepted the Mental Health referral. If the MH Referral is accepted then complete a CDCR 128-MH5, Mental Health Referral Chrono, checking the "PREA Routine" box and submit it to Mental Health.

Follow the instructions on the SOMS PREA Screening Job Aid to input the required information when the incarcerated person is identified as either being "At Risk as an Abuser" or "At Risk as a Victim."

CUT ALONG PERFERATED LINE – FOLD DOWN CENTER

CUT ALONG PERFERATED LINE – FOLD DOWN CENTER

TRANSGENER, NON-BINARY, & INTERSEX ACCESS CARD

NOT AN ID CARD

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

TRANSGENER, NON-BINARY, & INTERSEX ACCESS CARD

TRANSGENER, NON-BINARY, & INTERSEX ACCESS CARD

NOT AN ID CARD

Gender Identity:

Pronoun:

Honorific:

Search Preference:

TRANSGENER, NON-BINARY, & INTERSEX ACCESS CARD

TRANSGENER, NON-BINARY, & INTERSEX ACCESS CARD

NOT AN ID CARD

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

TRANSGENER, NON-BINARY, & INTERSEX ACCESS CARD

TRANSGENER, NON-BINARY, & INTERSEX ACCESS CARD

NOT AN ID CARD

Gender Identity:

Pronoun:

Honorific:

Search Preference:

TRANSGENER, NON-BINARY, & INTERSEX ACCESS CARD

CUT ALONG PERFERATED LINE – FOLD DOWN CENTER

CUT ALONG PERFERATED LINE – FOLD DOWN CENTER

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Gender Identity:

Pronoun:

Honorific:

Search Preference:

TRANSGENER, NON-BINARY, & INTERSEX ACCESS CARD

CUT ALONG PERFERATED LINE – FOLD DOWN CENTER

CUT ALONG PERFERATED LINE – FOLD DOWN CENTER

TRANSGENDER, NON-BINARY, AND INTERSEX INMATES INCARCERATED PERSONS

AUTHORIZED PERSONAL PROPERTY SCHEDULE

(11/23) Rev. 07/24

DESIGNATED MALE INSTITUTIONS.....PAGE 2

DESIGNATED FEMALE INSTITUTIONS.....PAGE 5

~~Transgender, non-binary, and intersex inmates incarcerated persons and inmates having symptoms of gender dysphoria as identified and documented in SOMS by medical or mental health personnel within a CDCR institution who are housed at male institutions may possess the authorized personal property items listed in the “DESIGNATED MALE INSTITUTIONS” section of this schedule and in the Authorized Personal Property Schedule (APPS) (11/23 07/24), which is incorporated by reference in Section 3190(b), specific to their security levels and privilege groups as described in Subsections 3190(b)(1) through 3190(b)(4). Transgender, non-binary, and intersex inmates incarcerated persons and inmates having symptoms of gender dysphoria as identified and documented in SOMS by medical or mental health personnel within a CDCR institution who are housed at female institutions may possess the authorized personal property items listed in the “DESIGNATED FEMALE INSTITUTIONS” section of this schedule and in the APPS specific to their security levels and privilege groups as described in Subsection 3190(b)(5).~~

Despite the increase in allowable personal property items, the combined volume of state-issued and allowable personal property items possessed by a transgender, non-binary, or intersex inmate incarcerated person or an inmate having symptoms of gender dysphoria shall not exceed six cubic feet per Subsection 3190(ef).

DESIGNATED MALE INSTITUTIONS

PERSONAL CLOTHING ITEMS FOR TRANSGENDER NON-BINARY, AND INTERSEX INMATES INCARCERATED PERSONS ~~INMATES HAVING SYMPTOMS OF GENDER DYSPHORIA~~

- ~~INMATES~~ INCARCERATED PERSONS ARE PERMITTED TO WEAR SOLID COLORS ONLY, UNLESS OTHERWISE INDICATED.
- ~~INMATES~~ INCARCERATED PERSONS ARE PROHIBITED FROM POSSESSING, USING, OR WEARING PERSONAL CLOTHING ITEMS IN ANY SHADE OR TINT OF GREEN, BLACK, BROWN, TAN, RED, OR BLUE, UNLESS OTHERWISE INDICATED.
- ~~INMATES~~ INCARCERATED PERSONS ARE PROHIBITED FROM POSSESSING, USING, OR WEARING ITEMS WHICH ARE OBSCENE OR WHICH HAVE LOGOS, LETTERING, OR PICTURES WHICH ADVERTISE OR DEPICT ALCOHOL, GANGS, PROFANITY, SEX, WEAPONS, DRUGS, OR DRUG PARAPHERNALIA.

[The table portion of this schedule is unchanged.]

PERSONAL CARE/HYGIENE ITEMS FOR TRANSGENDER, NON-BINARY, AND INTERSEX INMATES INCARCERATED PERSONS ~~INMATES HAVING SYMPTOMS OF GENDER DYSPHORIA~~

- NO ALCOHOL-BASED PRODUCTS AND NO AEROSOL CONTAINERS ALLOWED.
- NO METAL CONTAINERS OR CONTAINERS HAVING METAL TOPS OR BOTTOMS.
- PRODUCTS CONTAINING PHOSPHATES ARE NOT ALLOWED.
- MAKE UP PRODUCTS ARE ALLOWED AS DESCRIBED BELOW. THEY MUST BE NATURAL SKIN TONES PER CALIFORNIA CODE OF REGULATIONS, TITLE 15, SECTION 3062, INMATE GROOMING STANDARDS.

ITEM DESCRIPTION	GENERAL POPULATION LEVELS I, II, and III			GENERAL POPULATION LEVEL IV			RHU
	A	B	C	A	B	C	D
With additional requirements and restrictions.							
BODY SPLASH (10 oz. each max. No sprays or pumps.)	2	2	2	2	2	2	0

BLUSH (Natural skin tones only.)	2	2	2	2	2	2	0
COTTON BALLS	400	400	400	400	400	400	0
DOUCHE (10 oz. each max.)	4	4	4	4	4	4	0
EMERY BOARD (Non-metal only.)	6	6	6	6	6	6	0
EYEBROW PENCIL/EYELINER (Factory sealed. Pencil only, no liquid. Natural skin tones only, e.g., black or brown in color.)	2	2	2	2	2	2	0
EYE SHADOW KIT (No mirrors. Kit shall not be altered. Natural skin tones only.)	2	2	2	2	2	2	0
FABRIC SOFTENER (Liquid, one bottle only, 36 oz. max.)	1	1	1	1	1	1	0
FACE POWDER (10oz. each max.)	2	2	2	2	2	2	0
FACIAL ASTRINGENT (10 oz. each max.)	2	2	2	2	2	2	1
FACIAL CLEANSER (10 oz. each max.)	2	2	2	2	2	2	1
FEMININE HYGIENE WASH	2	2	2	2	2	2	1
FOUNDATION (Natural skin tones only.)	2	2	2	2	2	2	0
HAIR GEL, SPRAY AND GEL CURL, BRAID SPRAY AND LOCK GEL	2	2	2	2	2	2	1
HAIR ROLLERS (Non-electric.)	30	30	30	30	30	30	0
LIP GLOSS/LIPSTICK/LIP LINER (Natural skin tones only.)	2	2	2	2	2	2	0
MASCARA (Factory sealed. Natural skin tone, e.g, black or brown.)	1	1	1	1	1	1	0
PUMICE BAR/PUMICE SPONGE (Combined with shower puffs/loofahs and washcloths. Washcloths are as allowed in the APPS.)	3	3	3	3	3	3	0
SCRUNCHIES (Black, white, or gray only. Combined total with hair ties. Hair ties are as allowed in the APPS.)	10	10	10	10	10	10	0
SHOWER BAG (At Warden's discretion. Mesh construction.)	1	1	1	1	1	1	0
SHOWER CAP (Must be both clear and colorless.)	1	1	1	1	1	1	0
SHOWER PUFFS/LOOFAHS (White only. Combined with pumice bar/pumice sponge and washcloths. Washcloths are as allowed in the APPS.)	3	3	3	3	3	3	0
TWEEZERS (Plastic only. Maximum of 3" long.)	1	1	1	1	1	1	0
TAMPONS / SANITARY PADS / PANTY LINERS	<u>YES</u>	<u>YES</u>	<u>YES</u>	<u>YES</u>	<u>YES</u>	<u>YES</u>	<u>YES</u>

REGISTERABLE PROPERTY FOR TRANSGENDER, NON-BINARY, AND INTERSEX INMATES INCARCERATED PERSONS /~~INMATES HAVING SYMPTOMS OF GENDER DYSPHORIA~~

[The table portion of this schedule is unchanged.]

ADDOPT

DESIGNATED FEMALE INSTITUTIONS

PERSONAL CLOTHING ITEMS FOR TRANSGENDER, NON-BINARY, AND INTERSEX INMATES INCARCERATED PERSONS /~~INMATES HAVING SYMPTOMS OF GENDER DYSPHORIA~~

- ~~INMATES~~ INCARCERATED PERSONS ARE PERMITTED TO WEAR SOLID COLORS ONLY, UNLESS OTHERWISE INDICATED.
- ~~INMATES~~ INCARCERATED PERSONS ARE PROHIBITED FROM POSSESSING, USING, OR WEARING PERSONAL CLOTHING ITEMS IN ANY SHADE OR TINT OF GREEN, BLACK, BROWN, TAN, RED, OR BLUE, UNLESS OTHERWISE INDICATED.
- ~~INMATES~~ INCARCERATED PERSONS ARE PROHIBITED FROM POSSESSING, USING, OR WEARING ITEMS WHICH ARE OBSCENE OR WHICH HAVE LOGOS, LETTERING, OR PICTURES WHICH ADVERTISE OR DEPICT ALCOHOL, GANGS, PROFANITY, SEX, WEAPONS, DRUGS, OR DRUG PARAPHERNALIA.

[The table portion of this schedule is unchanged.]

PERSONAL CARE/HYGIENE ITEMS FOR TRANSGENDER, NON-BINARY, AND INTERSEX INMATES INCARCERATED PERSONS /~~INMATES HAVING SYMPTOMS OF GENDER DYSPHORIA~~

- NO ALCOHOL-BASED PRODUCTS AND NO AEROSOL CONTAINERS ALLOWED.
- NO METAL CONTAINERS OR CONTAINERS HAVING METAL TOPS OR BOTTOMS.
- PRODUCTS CONTAINING PHOSPHATES ARE NOT ALLOWED.

[The table portion of this schedule is unchanged.]

FINAL STATEMENT OF REASONS

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

UPDATES TO THE INITIAL STATEMENT OF REASONS:

On February 28, 2025, the Notice of Proposed Regulations for the Transgender Respect, Agency, and Dignity Act (TRADA) was published, which began the public comment period. The California Department of Corrections and Rehabilitation (CDCR or the department) mailed the Notice of Change to Regulations (NCR) 25-04 to the individuals who had requested to be on the department's mailing list for regulation changes the same day. In addition, NCR #25-04 was posted on the department's website, and copies were posted in CDCR institutions. The department received 148 written comments during the initial public comment period, and those comments are included below under *Summaries and Responses to the Written Public Comments Received During the Initial Comment Period*. A public hearing was held on April 15, 2025. There was one commenter at the public hearing and that comment is included below under *Summaries and Responses to the Verbal Public Comments Received During the Public Hearing Held April 15, 2025*.

After publication of the Notice of Proposed Regulations, it was determined that additional changes to the proposed regulations were necessary. Additionally, the department discovered that due to an oversight, the "August 2023 Special Review" report of the Office of the Inspector General, titled "The California Department of Corrections and Rehabilitation's Implementation of the Transgender Respect, Agency, and Dignity Act" was not included as a document relied upon in the Initial Statement of Reasons. The amendments to the originally proposed text and the reasons for these revisions are explained below under the heading *Notice of Change to Text as Originally Proposed – 1st Re-Notice*. The Notice of Change to Text as Originally Proposed (1st Re-Notice), also included a link to the "2023 Special Review," as a Document Relied Upon, and was distributed on August 21, 2025, to those who provided comments during the public comment period or expressed an interest in receiving notice of changes to the proposed regulations concerning TRADA, and was posted on the department's website the same day. The department accepted public comments from this date through September 5, 2025. The department received nine comments during the 1st Re-Notice comment period. These comments are included below under *Summaries and Responses to the Written Public Comments Received during the 1st 15-Day Re-Notice Comment Period*.

After publication of the 1st Re-Notice, the department determined that additional changes were necessary for clarity and consistency purposes. The amendments to the originally proposed text and the reasons for these revisions are explained below under the heading *Notice of Change to Text as Originally Proposed – 2nd Re-Notice*. The Notice of Change to Text as Originally Proposed (2nd Re-Notice) was distributed on January 30, 2026, to those who provided comments during the public comment period or expressed an interest in receiving notice of changes to the proposed regulations concerning TRADA and was posted on the department's website the same day. In accordance with Govt. Code 11346.8(c), and CCR, Title 1, Division 1, Section 44, which requires "15 calendar days"

the department noted the public comment period closure on the 2nd Re-Notice as February 14, 2026. However, in recognition of Govt. Codes 6707 and 6800 the department accepted public comments through February 17, 2026. The department received eight comments during the 2nd Re-Notice comment period. These comments are included below under *Summaries and Responses to the Written Public Comments Received During the 2nd 15-Day Re-Notice Comment Period*.

After the close of the 2nd Re-Notice comment period, non-substantive corrections were made as follows:

The Note section for section 3000 was revised to provide the current authority and reference citations for this section, as the Note section was updated due to other rulemakings adopted since these regulations were initially drafted.

The narrative for section 3075, which previously stated “subsections(a) through (h)” was updated to reflect “subsections (a) through (j)” due to other updates to this section since these regulations were initially drafted.

The Note section for section 3075 was revised to provide the current authority and reference citations for this section, as this Note section was updated due to other rulemakings adopted since these regulations were initially drafted.

In subsection 3085.3(b) the acronym for “PREA” was spelled out for clarity and consistency with acronyms used throughout the CCR, Title 15.

In subsection 3190(e) extra spaces were removed prior to “Rev. 07/24” for proper formatting; and a misspelling of the word “persons” in the strikethrough text of the first sentence was corrected.

The Note section for section 3190 was revised to provide the current authority and reference citations for this section, as this Note section was updated since these regulations were initially drafted.

In subsection 3269(h) existing text was inadvertently missing from the regulation text. The word “a” prior to the word “determination” was added to match the existing CCR.

In the Note section for section 3269, the word “and” was added after “2606,” and an “s” was added to the word “Section,” for consistency with CCR, Title 15, reference citations.

In the strikethrough text for existing subsection 3287(d)(1) the first word “incarcerated” was corrected, as this word is capitalized in the existing CCR.

In subsections 3287(d)(3), (d)(3)(A), and (e)(3), semicolons were revised to commas for grammatical correction purposes.

In the Note section for section 3375, the word “and” prior to “Governor’s Prison Overcrowding ...” was removed to match the existing CCR.

In the Note section for section 3401.6 a comma is added after the reference to PC section 293.5, for consistency with CCR, Title 15, reference citations.

DOCUMENTS INCORPORATED BY REFERENCE:

The Gender Identity Questionnaire (GIQ) (11/8/2023), is incorporated by reference into these regulations.

The Transgender, Non-Binary, and Intersex Access Card (11/1/2023), is incorporated by reference into these regulations.

The PREA Screening Form (12/12/2023), is incorporated by reference into these regulations.

The Offender Search Preference Request (OSPR) (8/27/2024), is incorporated by reference into these regulations.

The Transgender, Non-Binary, and Intersex Incarcerated Persons Authorized Personal Property Schedule (TNIAPPS) (Rev. 07/24), is incorporated by reference into these regulations.

These documents were 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 made available upon 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.

DETERMINATION:

The department has determined that no alternative considered would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the action proposed, 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. This determination was reached by a consensus of the department's Division of Adult Institutions.

Except as set forth and discussed in the summary and response to the comments received, no other alternatives have been proposed or otherwise brought to the department's attention that would alter the department's decision.

LOCAL MANDATES:

This action imposes no mandates on local agencies or school districts, or a mandate which requires reimbursement of costs or savings pursuant to Government Code Sections 17500 – 17630, because this action only affects the internal management of California prisons.

NOTICE OF CHANGE TO TEXT AS ORIGINALLY PROPOSED – 1st RE-NOTICE

Section 3030:

In subsection 3030(c) the language “a CDCR institution” is replaced with “the department” to provide for more inclusive language.

Section 3085:

In subsection 3085(b) the language “which shall be completed in a private setting” is added to the end of the paragraph to make clear that the Gender Identity Questionnaire shall be completed in a private setting.

In subsection 3085(c), for correction purposes, the reference to the CDC Form 128-B (Rev. 4/74), General Chrono, is replaced with the automated Classification Committee Chrono (Rev. 05/19), which is incorporated by reference, as the department determined the incorrect form was previously referenced. The automated Classification Committee Chrono has already been incorporated by reference in Title 15, section 3335, as well as other sections within Title 15, and no changes are made to the automated Classification Committee Chrono in this rulemaking.

Section 3085.2

In subsection 3085.2(a) the word “may” is replaced with “shall,” and additional language is added to revise the subsection to better align with the language in Penal Code section 2606. Additionally, for correction purposes, the reference to the CDC Form 128-B (Rev. 4/74), General Chrono, is replaced with the automated Classification Committee Chrono (Rev. 05/19), which is incorporated by reference, as the department determined the incorrect form was previously referenced. The automated Classification Committee Chrono has already been incorporated by reference in Title 15, section 3335, as well as other sections within Title 15, and no changes are made to the automated Classification Committee Chrono in this rulemaking.

In subsection 3085.2(e) a minor non-substantive correction is made to correct the subsection numbering, which incorrectly referenced two subsection 3085.2(e)(3) “(B)’s,” the second (B) is now corrected to “(C).” Additionally, a punctuation correction is made to add the end parentheses to the first reference of the subsection “(B),” which was inadvertently left off.

In subsection 3085.2(f)(1)(A), for correction purposes, the language “incorporated by reference” is added after the reference to the CDC Form 128-B (Rev. 4/74), General Chrono, as it is now a requirement that this language be stated once per section for all forms incorporated by reference. Additionally, to better align with Penal Code

section 2606, in subsection 3085.2(f)(1)(B) language is added to reflect that when the Warden or their designee makes a housing determination, they shall document their decision in writing and shall provide a copy of the automated Classification Chrono (Rev. 05/19) to the incarcerated person.

Section 3085.3

In subsection 3085.3(a) the word “may” is replaced with “shall” to better align with the language in Penal Code section 2606. In addition, language in this subsection is revised for better clarity.

In subsection 3085.3(b) minor non-substantive grammatical edits are made to spell out the acronyms for “Correctional Counselor” and “Gender Identity Questionnaire,” for correction purposes to align with proper grammatical rules.

In subsection 3085.3(b)(2) additional subsections (C), (D), and (E) are added to clarify that the Transgender, Non-Binary, and Intersex Access Card shall only be rescinded if there are management or security concerns present, or if requested by the incarcerated person per completion of a new GIQ; the Transgender, Non-Binary, and Intersex Access Card shall be kept on the incarcerated person at all times; and in the event an incarcerated person does not have their Transgender, Non-Binary, and Intersex Access Card on their person and a search is required, staff shall make reasonable efforts, such as checking SOMS, to determine the incarcerated person’s approved search preference. These revisions will provide for additional clarity throughout the institutions and ensure the search preferences of Transgender, Non-Binary, and Intersex individuals are maintained in compliance with Penal Code section 2606.

Section 3287.1

In subsections 3287.1(a)(5)(B) and 3287.1(a)(6), the language “incorporated by reference” is added after the reference to the forms CDC Form 128-B, General Chrono (Rev. 4/74), and CDC Form 128-C, Chrono-Medical, Psychiatric, Dental (Rev. 01/96), as it is now a requirement that this language be stated once per section for all forms incorporated by reference. These forms are already incorporated by reference in various sections within Title 15, and there are no changes to these forms in this rulemaking.

Section 3401.6

In subsection 3401.6(f) language regarding “staff, contractors, and volunteers of the department shall use the gender pronoun and honorific specified by the incarcerated person in all verbal and written communications...” is revised, as the department determined the previous language provided in the initially proposed regulations for section 3401.6(f) was not consistent with Penal Code section 2605(d), and was also inconsistent with section 3085(d), therefore the department revised this section for consistency with Penal Code section 2605(d), and section 3085(d).

NOTICE OF CHANGE TO TEXT AS ORIGINALLY PROPOSED – 2ND RE-NOTICE

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

Subsection 3085(c) is amended to provide better clarity and consistency with Penal Code (PC) section 2606(a)(4). Language in this subsection is revised for consistency with PC section 2604(a)(4). Reference to sections 3375(a), (b), and (c); or 3335(a); or 3269(a)-(h) provide clarification regarding the process for how the department considers “serious consideration” to alternatives, including bed assignments, placement, or programming decisions. This consideration is done during the classification process and for all incarcerated persons’ housing assignments, as well as for all Restricted Housing Unit placements. In addition, the last sentence is revised to remove the language “housing and” as section 3085 applies to the transgender, non-binary, and intersex incarcerated person’s health and safety considerations, while their housing considerations are outlined in section 3085.2. The language “in accordance with the procedures set forth in subsections 3375(a), (b), and (c); or 3335(a); or 3269(a)-(h)” is added to provide clarity regarding the process that shall be followed when an incarcerated person raises concerns for their health or safety at any time in relation to a placement.

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

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

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

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

New subsection 3085.2(c)(5)(B)2. is added to clarify that the incarcerated person has the right to file a grievance if they do not agree with the ICC’s decision of disapproval. The

grievance process is a separate process, and incarcerated persons may grieve the decision pursuant subsection 3482(b)(1).

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

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

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

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

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

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

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

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

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

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

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

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

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

Subsection 3085.3(b)(2)(C) is deleted to relocate the rescission process of the Transgender, Non-Binary, and Intersex Access Card to new subsection 3085.3(d). New subsection 3085.3(d) provides more clarity and specificity regarding the Transgender,

Non-Binary, and Intersex Access Card rescission process and the process for reevaluation of a previously approved search preference.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Commenter #1

Comment 1A: Commenter states they are a clothing room supervisor responsible for providing state-issued clothing to the incarcerated population. The regulatory changes do not go far enough to provide needed guidance regarding individuals identifying as non-binary. CCR, section 3030(c) is being updated to allow non-binary and intersex incarcerated persons to possess the state-issued clothing that corresponds to their gender identity in lieu of the state-issued clothing that corresponds to their assigned sex at birth. However, CCR, sections 3030(2)(A)-(G) and (3)(A)-(I) clearly state which items and quantities of state-issued clothing male and female identifying incarcerated persons are allowed to possess. Commenter states in their experience, and their co-workers', individuals identifying as non-binary want to pick and choose items of both male and female clothing for their use. For example, male shirts, pants, boxers, and undershirts, and female button-up shirts and sweaters. Based on the regulations, incarcerated persons are currently provided either a full complement of male clothing OR female clothing based on their decision, not a mixture of both, which has led to a lot of accusations and threats of violence and discrimination. We need clearer guidance to

specify what clothing items and quantities those who identify as non-binary and intersex are allowed to have in their possession. Are they allowed to mix and match clothing from each gender even though policy states they must choose one or the other?

Response 1A: At this time, incarcerated persons are only allowed to have one set of state-issued clothing that is either male or female. The department is pursuing revising the current authorized personal property matrices in future regulations.

Commenter #2

Comment 2A: Commenter states they find it offensive and dangerous to place biological males with female incarcerated persons [Sic]. Section 3085.2(e)(3) is worded to disregard the legitimate concerns of those who will be affected and likely victimized by these transfers. Change these dangerous and unrealistic regulations.

Response 2A: This language is necessary to comply with Penal Code section 2606. These regulations will support the health and safety of transgender, non-binary, and intersex incarcerated persons by lessening the likelihood of sexual harassment and abuse of these incarcerated persons. Any denial of a housing request would be based upon management or security concerns and would be determined on a case-by-case review. The department takes into consideration the safety of all incarcerated persons when making a housing assignment. Housing assignments shall be determined in a manner that ensures the safety, security, treatment, and rehabilitative needs of the incarcerated person, as well as the safety and security of the public, staff, and institutions.

Commenter #3

Comment 3A: Commenter states TRADA violates the orders of Mr. [Sic] Trump and will remove all federal funding from the state of California. Trump has removed all funding for transgenders and CDCR making an act in the name of transgenders is in violation of federal law. Trump stated there is no sex of transgender, only two sexes exist, male and female.

Response 3A: The department acknowledges the commenter's opposition, however the department is merely enacting the TRADA statutes.

Comment 3B: Commenter states that Governor Newsome is being recalled because he violated federal law by making California a state to harbor illegals, and a federal law has already been established that anyone who protects illegals is in violation of the law. Trump is clearing out all illegals from every state and California is no exception.

Response 3B: The comment is either insufficiently related to the specific action proposed or to the procedures followed by the department in proposing or adopting these regulations, or generalized or personalized to the extent that no meaningful response can be formulated by the department in refutation or accommodation of the comment, therefore the comment is irrelevant pursuant to Government Code section 11346.9(a)(3).

Commenter #4

Comment 4A: Commenter states there is a problem that is not addressed with the process for CCR sections 3085.2(c)(1) and (d)(1) regarding when an incarcerated person requests to be housed at a facility according to their gender identity. It says that the CCII will prepare a comprehensive summary report to be used for the ICC, but it does not allow the opportunity for the incarcerated person to review the report before it is presented to the ICC. Without the opportunity to review, they are called into a room with no idea what is about to happen. The CCII running the hearing says to hold all questions until the end and then talks for an hour and a half straight. If they deny the transfer request, they give the incarcerated person an opportunity to make a statement, but without a copy of the report in front of them, or any way to take notes, it is impossible to make any meaningful objection to what was said. By the time an opportunity to speak is given, you don't remember everything that has been said. By giving the incarcerated person a chance to see what will be said about them at the ICC it gives them a chance to prepare for the hearing. This is due process they deserve and will reduce the mistakes that lead to appeals, during which time the incarcerated person is inappropriately housed.

Response 4A: All Classification Committee processes abide by CCR section 3375. The classification process is governed, in part, by CCR section 3375, which provides: "(h) An incarcerated person shall be provided a copy of all non-confidential CDCR staff-generated documentation and reports placed in the incarcerated person's central file unless otherwise requested in writing by the incarcerated person." This process does not provide for review of these documents prior to the ICC hearing. Furthermore, CCR section 3375(g)(2) provides, in part: "(2) In addition to the preceding, documentation for transfer reviews shall also include the following: (A) The incarcerated person's requested transfer preference(s) and stated reason(s) for preferring that location; (B) The institution to which the committee recommends transfer with an alternate recommendation, if different from those requested by the incarcerated person, and the specific reasons for both recommendations."

Comment 4B: Proposed section 3085.2(a) does not meet the clarity standards of the APA insofar as it uses the word "may" in place of the word "shall." Penal Code section 2606(a) states that "[a]n individual incarcerated... who is transgender, nonbinary, or intersex, regardless of anatomy, shall... [b]e housed... at a correctional facility designated for men or women based on the individual's preference." By using the word "shall," the legislature made housing TGI inmates according to their preference mandatory within the limits set by Penal Code section 2606(b) and (c). CCR, section 3085.2(a), on the other hand, which uses the word "may," which is generally used to indicate discretion, in this context makes it appear that housing TGI inmates according to their preference is discretionary. In fact, by reading the entirety of CCR section 3085.2, as proposed, it becomes clear that housing TGI inmates according to their preference is still mandatory. This is so because the sub-directives in 3085.2 pertaining to 3085.2(a) all use the mandatory word "shall." However, readers of the proposed regulation should not have to read the entirety of the section to assure themselves that the inconsistent use of the word "may" in 3085.2(a) does not render the entire section discretionary instead of mandatory. The department should amend section 3085.2(a) to use the word "shall" instead of "may."

Response 4B: The department revised the language in sections 3085.2 and 3085.3 in the 1st 15-Day Re-Notice Text of Proposed Regulations to replace the wording “may” with “shall” for better alignment with the language in Penal Code section 2606.

Comment 4C: Proposed CCR section 3085.2(e) is inconsistent with Penal Code section 2606(b) insofar as it contains a far less demanding requirement for certifying the reason for denial of an incarcerated TNI individual’s preferred housing. Penal Code section 2606(b) states that “... the Secretary... shall... certify in writing a specific and articulable basis why the department is unable to accommodate that... housing preference.” Proposed CCR section 3085.1(e) [Sic] [the department believes Commenter means 3085.2(e)] on the other hand, only requires the department to “document and certify the specific management and security reasons for denial.” This far less demanding requirement is inconsistent with the more exact requirement contained in the legislation. For example, consider that the department was concerned that a transgender female who required single-cell housing while housed in a male facility because of victimization concerns could not be properly housed in a female facility because of the lack of celled housing in those facilities. CCR section 3058.1(e) [Sic] [the department believes Commenter means 3085.2(e)] as proposed, would only require the department to document and certify their management concern. That is, they would only be required to document that the inmate’s required single celled housing could not be accommodated in the female prisons in order to deny the housing request. Penal Code section 2606(b) on the other hand, would require the department to adequately explain why the inmate’s required single celled housing could not be accommodated in the female prisons. The department would be required, at a minimum, to certify that there was inadequate celled housing in the female prisons. Perhaps more importantly, the department would be required to explain that the inmate required single celled housing at the female facility, if the department could not truthfully certify that the inmate’s victimization concerns would not be alleviated by housing in a female facility, they could not deny the housing request. This scenario demonstrates the vast difference between the statutory and regulatory standards for certifying a specific and articulable basis for denying a transfer request and shows that the different standards can be outcome determinative. Clearly proposed CCR section 3085.2(e)’s less demanding certification requirement is inconsistent with Penal Code section 2606(b) and should be amended to be consistent with the statute’s more exacting requirement.

Response 4C: In the 2nd 15-Day Re-Notice Text of Proposed Regulations (2nd Re-Notice), the department revised language in sections 3085(c) and 3085.2(a) to be more consistent with Penal Code section 2606(b) regarding denying an incarcerated person’s preferred housing preference. Language in subsection 3085.2(a), Housing Based on Gender Identity, now states: “If the incarcerated person is not granted their preferred housing, the department shall document and articulate the specific management or security reasons why the department is unable to accommodate the housing preference and share them with the incarcerated person via an automated Classification Committee Chrono (Rev. 05/19), which is incorporated by reference.” In addition, in the 2nd Re-Notice the department added language to the specific sections of the proposed regulations that outline the disapproval process, to clarify and provide consistency with PC section

2606(d), which provides that incarcerated individuals shall receive a copy of the disapproval and within a reasonable amount of time following their receipt of the disapproval, be provided with a meaningful opportunity to verbally raise any objections to the denial, and have those objections documented. This language was made more specific and is provided in subsections 3085.2(c)(5)(B)1., 3085.2(d)(5)(B)1., 3085.2(f)(1)(C)1, 3085.3(b)(3)(A)1., and 3085.3(d)(1)(D)3. Subsection 3085.2(e) implements PC section 2606(c) regarding not denying a housing placement based on any discriminatory reason. Language that was previously identified in subsections 3085.2(e)(1)(A) and (B) was revised in the 2nd Re-Notice to remove conflicting language and provide better consistency with PC section 2606(c).

Commenter #5

Comment 5A: Commenter is an incarcerated person at Correctional Training Facility (CTF) in Soledad, CA and is a non-binary transgender who is the LGBT representative for the IAC (Inmate Advisory Council) at CTF. Commenter was told on 3/12/25 that all transgender incarcerated persons (IP) must immediately be transferred out to a facility considered a “transgender hub.” Commenter states they had to reclassify as a male IP and give up their Transgender Access Card in order to stay at CTF where they are currently programming and attending college and VOC classes. The Commenter previously grieved transfer to CTF but has now settled in after 3 years. Commenter has read through the proposed regulations housing section, and it still states what they received on their grievance, that if they do not rescind their transgender status transfer is to happen. Commenter has spoken with a counselor at their institution and was told that the directive was due to the housing population matrix which does not specify CTF housing for transgender IPs. Commenter asks that the department please contact CTF to update their housing policy so it reflects that transgender IPs can be housed at CTF.

Response 5A: These regulations address the issues identified in Penal Code sections 2605 and 2606; the department may address transgender hubs in future regulations.

Comment 5B: Commenter asks that a property matrix be sent to staff at CTF regarding purchase items from canteen and package catalogs. Commenter would like one item added to the property matrix, hairbrush with handle (no metal). Females can purchase them, and the transgender population can use them for their long hair as well. It is difficult to use palm brush/comb for long hair.

Response 5B: The property matrix is determined by the Office of Policy Standardization. All institutions have access to the authorized personal property matrices. All incarcerated persons may also contact their Correctional Counselor regarding the Authorized Personal Property Schedule (APPS). At this time the department is only making necessary changes to the TNIAPPS to align with the changes due to Penal Code (PC) section 2606. The department is pursuing revising the current authorized personal property matrices in future regulations.

Commenter #6:

Comment 6A: [Note - portions of Commenter's comment are unintelligible and cannot be deciphered as to exactly what Commenter is requesting. The comment is summarized as best as possible.] Commenter is an incarcerated person at SVSP and states they filed a PREA (Prison Rape Elimination Act) complaint against a Medical Assistant for unwanted touching, no custody would aid them, and Commenter received an RVR from the same staff named in their PREA complaint. That RVR put a stop to their annual requested transfer... to having a stroke, to be hospitalized [Sic], and PCP Dr. changed their level of care, twice – to SOP for custody to put them up for transfer endorsement to “CMF or CHCH” noting they have 2 documented hardships in file. Each time it's done their family has called the Warden at SVSP, to not get a call back. Commenter informed a yard Captain days before their annual of where they wanted to transfer, CMF, every time they ask for CMF, with noted permanent High-Risk Medical, they sent down south, to now being held in SVSP with PREA being ignored. (Commenter continues at length with personal details related to their complaint against Medical Asst.) The Commenter feels they are being held against their health and safety, 602's filed. Commenter's MCC for SOP has been ignored twice for custody to using CDCR endorsement process for CMF or CHCF bed after they were hospitalized again to medical level of care being changed twice. Commenter is writing to address the “Right Prison, Right Person” and the Transgender be on their Medical Classification Chrono (MCC) 128-C3 to having to file SVSP PREA to retaliation, harassment, 602 filed for they were found guilty of RVR from same custody staff named in PREA complaint, to be held against their health and safety: 602's filed. Commenter asks where on the Medical Classification Chrono is the transgender section? Commenter has completed the “Right Person Right Prison,” to not receive their Chrono – to future hold and delay their transfer – with noted unwanted touching PREA filed, and Hearing Lt. telling them “I don't see anything about a PREA here, but you can get your time back,” and Commenter showed him PREA paperwork. Commenter attached documents related to their grievance and medical status, copy of Transgender Access Card, etc.

Response 6A: The comment is either insufficiently related to the specific action proposed or to the procedures followed by the department in proposing or adopting these regulations or generalized or personalized to the extent that no meaningful response can be formulated by the department in refutation or accommodation of the comment, therefore the comment is irrelevant pursuant to Government Code section 11346.9(a)(3).

Commenter #7

Comment 7A: Commenter is a public health researcher at the University of California, Los Angeles, whose research centers on the harms of policing and incarceration, and has studied in-custody death in Los Angeles County for over four years with the Bio Critical Studies Lab. Commenter identifies as a nonbinary person. Commenter states that transgender, nonbinary, and intersex (TNI) people are extremely vulnerable in interactions with law enforcement. Prisons are dangerous places for anyone who enters them, and TNI individuals are especially vulnerable to sexual harassment, assault, and violence. To suppress the chosen expression of a TNI person's gender is also a threat to their mental health. This is not a frivolous matter, but a matter of life and death. The Commenter urges the department to implement their recommendations. Commenter

states since the statute took effect in January 2021, incarcerated TNI people have reported many challenges and failures with its implementation. CDCR has approved only 49 out of 951 requests to transfer to a facility designated for men or for women pursuant to SB 132, and only four since 2022. The small number of TNI people that have succeeded in transferring to a different facility, as well as the large number of TNI that have not been transferred have reported poor and discriminatory treatment by staff, refusals to honor their housing placement concerns and search preferences. CDCR's approach to SB 132 has been to ignore, or even undermine, the protections required by the law. CDCR's proposed regulations would go even further in gutting the carefully constructed protections enshrined in SB 132. As proposed, the regulations would give CDCR nearly unlimited discretion to deny legitimate requests by TNI people to be housed according to their gender. They virtually eliminate SB 132's prohibition on discrimination in housing decisions and they are likely unconstitutional. Commenter proposes alternative language that would better fulfill the spirit of SB 132 and promote respect, agency, and dignity for incarcerated people in CDCR's custody. Commenter encourages CDCR to meaningfully engage transgender, non-binary, and intersex people, including but not limited to those who are currently or formerly incarcerated, both in revising and finalizing these regulations and in developing, evaluating, and maintaining other protocols and procedures for implementing SB 132. Commenter states, as advocates, we have benefitted over and over again from incarcerated TNI individuals' knowledge, thoughtfulness, and astute analysis. The involvement of TNI people, both in the regulatory process and in evaluating individual requests, would be invaluable in fulfilling the Legislature's intent.

Response 7A: The department is committed to providing a safe, humane, respectful and rehabilitative environment for all incarcerated people, including the transgender, non-binary and intersex community, and is working to implement the law. The department realizes that transgender, non-binary and intersex people may be singled out for violent attacks by other incarcerated people and are at a higher risk for victimization, therefore, the department makes every effort to protect this vulnerable population. Housing transgender people according to their gender identity, when safe to do so, increases safety in prisons, upholds CDCR's duty to protect all incarcerated people and promotes successful rehabilitation. Evaluating gender-based housing requests is part of CDCR's existing case-by-case classification process used for all incarcerated people. It includes a review of an incarcerated person's central file, various reports, and a thorough review of their history prior to and during incarceration; their crime, arrest and criminal history; trial and sentencing documentation; medical and mental health needs; custody level; time to serve; safety concerns, and other factors including security and program needs. Medical and mental health care staff members are part of this process. Findings are then presented to the Institutional Classification Committee (ICC) to assist them in determining the incarcerated person's housing, security level, custody requirements and program needs. This process varies with each incarcerated person. Although, CDCR may deny a housing request based on management or security concerns; CDCR must give serious consideration to the perceptions of health and safety of the person making the request, and under no circumstances can the denial be based on any discriminatory reason, including anatomy, physical characteristics, and sexual orientation. This is in compliance with Penal Code 2606, which the department is working to codify in these proposed

regulations. In addition, in the 2nd Re-Notice, the department revised language in section 3085.2(e) to remove conflicting language and better align with PC section 2606(c).

Comment 7B: *Proposed section 3000: Definitions.* Commenter proposes the following changes:

(Italics indicate proposed new wording.)

- Cisgender *describes* a person whose gender identity aligns with *their* assigned sex at birth.
- Transgender *describes* a person whose gender identity differs from their assigned sex at birth.

These changes are necessary to make clear that “transgender” and “cisgender” are adjectives, not nouns, and that it is not respectful or appropriate to refer to a person as “a transgender.”

- Gender Identity means a person’s deeply held sense of being a man, woman, or non-binary person, and is distinct from sexual orientation.

We suggest cutting “sense of identification and” from the Gender Identity definition as redundant and confusing.

- Transgender Man means a person who is a man and was assigned female at birth.
- Transgender Woman means a person who is a woman and was assigned male at birth.

These changes will focus attention on individuals’ current reality rather than their erroneously assigned sex at birth.

- Non-Binary describes a person whose gender is *neither solely male nor solely female*.

This language, recommended by Advocates for Trans Equality, better captures the range of nonbinary experiences and avoids reliance on “traditional conceptions” of gender, which is a subjective and often Eurocentric framing. Alternatively, CDCR could draw from the language found in the legislative Findings and Declarations for SB 132: “‘Nonbinary’ is an inclusive term used to describe individuals who may experience a gender identity that is neither exclusively male nor female or is in between or beyond both of those genders, including, but not limited to, gender fluid, agender or without gender, third gender, genderqueer, gender variant, and gender nonconforming.”

We appreciate the inclusion of Mx. as an example in the definition of Honorific and encourage the department to instruct staff on appropriate use of this honorific in written and verbal contexts.

Finally, we suggest adding a definition for gender fluidity:

- Gender fluid describes a person whose gender identity and/or expression is not fixed and instead shifts, fluctuates, or changes over time.

Including and defining this term, as referenced in the legislative Findings and Declarations for SB 132, will help clarify that some individuals experience gender fluidity and that

changes in gender expression and/or self-reported gender identity over time are not inherently suspicious behavior or valid reasons to deny an incarcerated person's gender-related requests.

Response 7B: State law uses these terms as adjectives, and federal law uses them as both adjectives and nouns. State law, SB 132, Section 2 (uncodified) uses the terms “transgender,” “nonbinary,” and “intersex” as adjectives. “Transgender men in California prisons also report ...” (Sec. 2 (d).) “‘Nonbinary’ is an inclusive term used to describe individuals who may experience a gender identity that is not exclusively male nor female or is in between ...” (Sec. 2(a).) “‘Nonbinary’ is an inclusive term used to describe individuals ...” ((Sec. 2(a).) “Forty percent of transgender women ...” (Sec.2(g).) ETC. Federal law, PREA regulations use these terms as adjectives and as nouns. Adjectives: “The facility shall not search or physically examine a transgender or intersex inmate ...” (28 CFR 115.15 (e).) “... searches of transgender and intersex inmates ...”(28 CFR 115.15(f).). Nouns: “Intersex means a person whose sexual or reproductive anatomy or chromosomal pattern does not seem to fit ...” and “Transgender means a person whose gender identity (i.e., internal sense of feeling male or female) is different from the person's assigned sex at birth.” (28 CFR 115.5.). The department's use of the phrase “sense of identification” in the definition for “Gender Identity” is consistent with federal law and PREA. (28 CFR 115.5.). The department's proposed regulations are consistent with State law, SB 132. The department acknowledges the Commenter's opposition to the proposed regulations; however, the department will continue with this rulemaking action for the reasons provided in the Notice of Proposed Regulations and the Initial Statement of Reasons. The definitions were chosen to mirror federal law and PREA.

Comment 7C: Overall Compatibility with SB 132 Statute. SB 132, as codified in Penal Code section 2606, states that TNI people “shall ... be housed at a correctional facility designated for men or women based on the individual's preference,” and “shall ... be searched according to the search policy for their gender identity.” The proposed regulations erroneously state that a TNI person may be housed and searched according to their gender. While CDCR claims it aims to codify the Penal Code, CDCR's codification in Title 15 cannot fundamentally alter the law's content, and CDCR cannot create more permissive regulations (i.e., “[TNI people] may be housed ... based on the individual's preference”) to avoid its pre-existing mandate (i.e., “[TNI people] shall be housed ... based on the individual's preference.”). We ask that CDCR ensure throughout these regulations that their wording mirrors SB 132's statutory language, including substituting “shall” for “may” and otherwise adopting mandatory language so as to accurately reflect the department's existing legal obligations.

Response 7C: See Response to Comment 4B.

Comment 7D: Housing.

Proposed Section 3085.2(a): Housing Based on Gender Identity.

As noted above, this section should specify that TNI individuals shall, not “may,” be housed at facilities designated for men or for women based on those individuals' preference.

Proposed Section 3085.2(e): Housing Based on Gender Identity: Denials. SB 132 prohibits CDCR from denying a transfer request based on any discriminatory reason, including but not limited to someone’s anatomy, sexual orientation, or a factor present among other incarcerated persons housed at the preferred type of facility. The proposed regulations introduce a novel definition of “discriminatory” and state that a denial rationale is discriminatory only if it is a categorical basis to deny housing placements. This definition creates an exception that swallows the entire rule. It essentially permits prison officials to use discriminatory factors and rationales so long as the discriminatory reason is not relied on as the exclusive, categorical basis to deny a placement request. In other words, if CDCR relies on multiple factors—even if those factors are present at the requested type of facility and thus the type of factors SB 132 states are discriminatory—CDCR can deny placement for anyone for any combination of reasons. We urge CDCR to strike the proposed novel definition of “discriminatory” and instead mirror the language of SB 132 in order to affect the statute’s intent. SB 132 establishes a strong default presumption in favor of an individual’s preferred housing placement. SB 132 provides that at a TNI individual's request, CDCR shall house that person based on their gender. The dispositive inquiry for such requests is, where would CDCR house a non-TNI person with similar case factors? Case factors constrain where and how someone can be housed in a given facility, not whether TNI people are permitted to benefit from existing statutory protections. SB 132 does not permit prison officials to pick and choose which TNI people benefit from statutory benefits, and CDCR’s regulations should guard TNI individuals against arbitrary and harmful discrimination by emphasizing the presumption that TNI individuals must be treated with respect, agency, and dignity. It is unacceptable and likely unconstitutional for CDCR to make an end run around SB 132 by purporting to allow by regulation the denial of transfer requests based on discriminatory factors specifically disallowed by Penal Code Section 2606(c).

Response 7D: Regarding the use of the language “may” rather than “shall” in section 3085.2(a), see Response to Comment 4B. In the 2nd Re-Notice the department revised language in section 3085.2(e) to remove confusing and conflicting language that did not appear to align with PC section 2606(c). New language was added to better clarify that “the mere presence of a factor that is present among other incarcerated persons at a transgender, non-binary, or intersex incarcerated person’s preferred housing placement does not prohibit the department from denying a transgender, non-binary, or intersex person’s preferred housing placement if there are individualized underlying facts and information that support management or security concerns as to why the department is unable to accommodate the housing preference.” PC section 2606(b) authorizes the department to deny a search preference or housing request if the department has management or security concerns, as long as the department certifies in writing a specific and articulable basis why the department is unable to accommodate the search or housing preference. As stated in the ISOR, the department must have the flexibility to take individual factors into account while determining housing placement, while not placing blanket prohibitions on housing placements based on generalized factors that are not specific to the incarcerated person’s individual case factors.

Comment 7E: Proposed Section 3085.2(f): Return Transfer to Previous Institution. The proposed regulations give wardens and other custody staff virtually limitless discretion to

coercively transfer a TNI person back to a facility aligned with their sex assigned at birth. This provision creates a discriminatory, two-tiered system where TNI people can coercively be returned to their original facilities for any reason, including engaging in behavior that would never result in a non-TNI person being transferred to a different gender designated facility. The proposed regulations purport to center the safety of the TNI person, but CDCR's criteria focus exclusively on case factors that are present across all genders in prisons. For instance, the proposed criteria permit wardens to transfer someone back who engages in "behavior that is deemed a potential security and management threat" to themselves, the population, staff, or institution. This provision would give wardens essentially infinite discretion to transfer someone back for any number of reasons, including self-harm or mental health incidents, for *pending* adjudication of a disciplinary report, for their inability to solve enemy concerns, and for undefined "predatory" behavior, which invites anti-trans targeting and allegations. Incarcerated people of all gender identities receive Rules Violation Reports (disciplinary write-ups, or RVRs). CDCR officials often weaponize or foment RVRs, as well as false allegations giving rise to RVRs. RVRs can result in various types of discipline, but advocates are unaware of any disciplinary action that results in cisgender women and transgender men getting moved coercively to a men's designated prison and vice versa. It is unfathomable that a cisgender woman would be moved to a men's prison because she received an RVR, but this is exactly what these regulations would do to transgender people. CDCR's proposed regulations create a separate disciplinary regime and punitive track for transgender people, primarily transgender women, given that they permit wardens to coercively transfer them and only them over simply pending adjudication of an RVR, for being unable to resolve enemy concerns, for serving a Restricted Housing Unit (RHU) term for an RVR, or for any vague allegation which may or may not result in an RVR. We suggest revising this section to specify that coercive transfers contravening an individual's safety-based housing preference are permissible only in extremely limited circumstances. For instance, if someone were proven to have expressed that they falsified their gender identity with intent to harm individuals at a prison, they would fall outside of SB 132's protections and could thus be transferred back to the previous facility. We further suggest specifying in this section that additional personnel with relevant expertise, including members of the PREA Compliance Statewide Office, the Integrated Gender Affirming Healthcare Program (IGAHP), the Office of Legal Affairs, and others, shall be consulted prior to approval of any coercive transfer to a facility incongruent with the individual's safety-based housing preference.

Response 7E: The criteria and process for Return Transfer to Previous Institution Gender Designation per proposed section 3085.2(f) provides a clear process to document behavior that poses a management and or security concern allowing the Warden or their designee to conduct an ICC hearing to address the management or security concerns. Proposed sections 3085.2(f)(2)(A)-(F) provide a list of criteria that shall be reviewed for an involuntary transfer to a previous institution gender designation to ensure all case factors are appropriately addressed and documented, allowing the Warden or their designee to make an appropriate determination. As stated in section 3085.2(c)(5), all Institutional Classification Committees shall be in accordance with section 3376 ensuring a multidisciplinary team. In the 1st 15-Day Re-Notice Text of Proposed Regulations and in the 2nd Re-Notice, the department revised language in section 3085.2(f)(1)(B), for better

clarity and consistency with PC section 2606(b) to clarify that if the Warden or their designee determine there are specific management or security concerns as to why the department is unable to accommodate the housing preference, the institution Warden or their designee shall make a determination to return the incarcerated person to their previous institution gender designation, and document the specific and articulable basis of their decision in writing and shall provide a copy of the automated Classification Committee Chrono to the incarcerated person. Additionally, in the 2nd Re-Notice, subsection 3085.2(f)(1)(C) was revised to provide consistency with PC section 2606(d). Subsection 3085.2(f)(1)(C)1. was added to clarify that within 15 calendar days of the incarcerated person's receipt of the automated Classification Chrono, the CC II (Supervisor) shall provide the incarcerated person with an opportunity to verbally raise any objections to the disapproval and document those objections on the CDC Form 128-B. Subsection 3085.2(f)(1)(C)2. was also added to clarify that following an incarcerated person's receipt of the automated Classification Committee Chrono, the CC II (Supervisor) shall inform the incarcerated person that they have the right to file a grievance if they do not agree with the ICC's decision of disapproval. The incarcerated person may grieve the ICC's decision pursuant to subsection 3482(b)(1). This subsection was added to clarify that the grievance process is a separate process.

Comment 7F: *Proposed Section 3085.2(a)-(d): Housing Requests.* CDCR's proposed regulations do not include any timeline—required or suggested—for evaluating requests for transfer. CDCR's lack of timely reviews has seriously impeded its implementation of SB 132. As of January 2025, CDCR reported that 849 TNI individuals in men's-designated prisons had requested to be evaluated for transfer to a women's-designated institution. Of those requests, the majority—580 requests—are still pending review and adjudication. At its current pace and not accounting for new requests or individuals who request to be reevaluated, it would take CDCR over eight years to address the backlog. Timelines are clearly required for meaningful implementation. We suggest that CDCR incorporate in this section (3085.2(a)-(d)) timelines similar to those of the Gender-Affirming Surgery Review Committee (GASRC) process: 90 days maximum to prepare the requisite information for ICC and 90 days maximum to review, schedule, and hold the ICC meeting. We also recommend that CDCR meaningfully define "serious consideration." Under PREA, "serious consideration" requires that prison officials consider and give substantial weight to the TNI's persons views as to where they would be safely housed; the PREA Resource Center's FAQs advise prison officials to truly consider a TNI person's requested placement and determine its feasibility, not merely treat a TNI person's views as one factor equal to all others.

Response 7F: Evaluating gender-based housing requests is part of CDCR's existing policy per Title 15, section 3376. The case-by-case classification process is used for all incarcerated persons and is consistent with section 3376. Consistent with the department's case-by-case classification process, serious consideration is demonstrated and given by conducting a thorough review of an incarcerated person's central file, various reports, and a thorough review of their history prior to and during incarceration; their crime, arrest and criminal history; trial and sentencing documentation; medical and mental health needs; custody level; time to serve; safety concerns and other factors including security and program needs. Medical and mental health care staff members

are part of this process. Findings are then presented to the Institutional Classification Committee (ICC) to assist them in determining the incarcerated person's housing, security level, custody requirements and program needs. This process varies with each incarcerated person, and because of this, the department is unable to give a specific timeline for evaluating requests for transfer. In addition, in the 2nd Re-Notice, subsection 3085(c), the department clarified that the department follows the procedures set forth in subsections 3375(a), (b), and (c); or 3335(a); or 3269(a)-(h), when giving "serious consideration" to alternatives, including bed assignments, placement, or programming decisions.

Comment 7G: Searches.

Proposed section 3085.3(a)-(e), Searching Based on Gender Identity.

As noted above, this section should specify that TNI individuals shall, not "may," be searched according to the search policy of their preference.

Although CDCR may deny a search preference for security and management concerns, they must articulate those in writing and explain why the department cannot accommodate the search request, and they must not deny a person for any of the reasons provided under PC 2606(c). Advocates have observed prison officials deny individuals for decades-old case factors, for alleged conduct (e.g., arrests that were never adjudicated nor resulted in convictions), for typical RVRs, and for other reasons that do not presently constitute a "security and management concern." The security and management provision does not permit CDCR to require an invasive and discriminatory process of approval for transgender, nonbinary and intersex people's search preferences. Therefore, to ensure this section is consistent with California law, CDCR should strike "unless the individual's approved search preference dictates otherwise" from section 3085.3(a) and remove the reference to "male" in section 3287(e)(5)(A) because it ignores the existence of the female search preference policy that applies to transgender, nonbinary and intersex people.

We also suggest that CDCR include language in these regulations stating that search preferences and Transgender Access Cards (TACs) are valid statewide once issued, not subject to warden-by-warden discretion or arbitrary cancellation. The regulations should also spell out meaningful due process before a previously approved search preference may be rescinded, and such process should limit rescission of search preference approval to situations involving imminent, ongoing, and intolerable safety and management concerns, which should be regularly re-evaluated to determine if the management concerns are still relevant and sufficient to sustain the denial or revocation. Advocates have observed that when some TNI individuals are transferred between prisons, their TAC is revoked, and their previously approved search preferences are rescinded without cause or due process. These individuals then must re-apply and sometimes wait many months for resolution of their requests to restore TACs and search preferences, despite never having received notice of a formal revocation.

We also recommend that CDCR consider and address in these regulations how other types of searches, including body scanners, implicate its search policy by gender. If CDCR's scanners show body contours, including breast, buttocks, or genital outlines, this

implicates gender-related search policies and requires appropriate staffing of the scanning station. Applicable PREA Resource Center guidance provides additional detail.

Response 7G: Regarding the use of the language “may” rather than “shall,” and other language in section 3085.3, see Response to Comment 4B. In addition, PC section 2606(b) states “If the Department of Corrections and Rehabilitation has management or security concerns with an incarcerated individual's search preference pursuant to paragraph (2) of subdivision (a) or preferred housing placement pursuant to paragraph (3) of subdivision (a), the Secretary of the Department of Corrections and Rehabilitation, or the secretary's designee, shall, before denying a search preference or housing the incarcerated individual in a manner contrary to the person's preferred housing placement, certify in writing a specific and articulable basis why the department is unable to accommodate that search or housing preference.” Proposed section 3287(e)(1) and (2) state: “All incarcerated persons at a male institution shall be searched utilizing the male search policy. Except as specified in (e)(2) of this section, clothed body inspections of all incarcerated persons, to include transgender, non-binary, and intersex incarcerated persons shall be conducted by a correctional employee of any gender and unclothed body inspections shall be performed by male correctional employees;” (2) “If a transgender, non-binary, or intersex incarcerated person wishes to be searched consistent with the female search policy, they must have a search preference request approved in accordance with section 3085.3.” Section 3287(e)(5)(A) is specific to the search policy for male institutions and does not disregard the Transgender, Non-Binary, and Intersex search policies outlined in sections 3085.3 and 3287(c). In regard to Transgender, Non-Binary, and Intersex Access Cards, in the 1st 15-Day Re-Notice Text of Proposed Regulations the department revised language in section 3085.3(b), language specifies that the Transgender, Non-Binary, and Intersex Access Card shall be kept on the incarcerated person at all times; and in the event an incarcerated person does not have their Transgender, Non-Binary, and Intersex Access Card on their person and a search is required, staff shall make reasonable efforts, such as checking SOMS, to determine the incarcerated person's approved search preference. In the 2nd Re-Notice, the department added subsections 3085.3(d) through (d)(1)(D)4. to provide clarity regarding the process for reevaluation of a previously approved search preference. These revisions will provide for additional clarity throughout the institutions and ensure the search preferences of Transgender, Non-Binary, and Intersex individuals are maintained in compliance with PC section 2606. Language in previously numbered subsection 3287(c)(2) (now 3287.1(a)(2)) addresses the issue of body scanners and refers to the Federal Standards on PREA, standard 115.15(a), which the department complies with.

Comment 7H: *Proposed Section 3030: Issuance & Possession of State Clothing & Linen.*

We appreciate the shift away from making gender-appropriate clothing available only at “transgender hub”-designated institutions but request two adjustments to section 3030(c) of the proposed regulations. First, the phrase “within a CDCR institution” should be cut from this section. SB 132, like other laws governing the department's treatment of incarcerated people, is a state law in effect statewide, across all the institutions that CDCR operates. However, incarcerated TNI people have reported many issues with lack of access to gender-appropriate clothing and other items at Reception Centers, as well as at various facilities in the aftermath of a transfer. Removing the “within a CDCR institution”

will help keep clear that TNI people have the right to access gender-appropriate clothing throughout their time in CDCR custody, regardless of housing location. Further, we urge CDCR to address the problem of TNI people losing access to gender-appropriate clothing upon transfer by adding, either in these regulations or elsewhere, written directions to staff.

Second, the proposed language states that TNI people “shall be allowed to possess the state-issued clothing that corresponds to their gender identity in lieu of the state-issued clothing that corresponds to their assigned sex at birth.” We ask that the department change this to read “shall be allowed to possess the state-issued clothing that *best aligns* with their gender identity.” This language will better accommodate nonbinary people, for whom neither the set of clothing items designated male, nor the set of clothing items designated female will necessarily “correspond with their gender identity.” Cutting the “in lieu of” portion will also appropriately ensure that nonbinary individuals are permitted to access both “male” and some “female” clothing items, as they already are at some institutions.

Response 7H: The department revised language in section 3030(c) in the 1st 15-Day Re-Notice Text of Proposed Regulations, to replace the language: “within a CDCR institution language” with “within the department,” to provide for more inclusive language. All personal property, including the transfer of those items, shall comply with section 3190. See also, Response to Comment 1A.

Comment 7I: *Gender Identity Questionnaire.*

Proposed Section 3085.1: Gender Identity Questionnaire.

Proposed Section 3075: Initial Intake and County Reimbursements.

We support memorializing in regulations CDCR’s current practice of administering a voluntary Gender Identity Questionnaire during intake processing, while requesting the following changes and clarifications. At subsection 3085.1(b), we are concerned that the proposed language presumes all TNI people will be processed through Reception Centers aligned with their sex assigned at birth rather than their gender identity and further treats housing at an institution whose designation aligns with their sex assigned at birth as the default or presumptive placement for all TNI people in department custody. In order to comply with Penal Code Section 2606 and the federal PREA Standards, the department must consider housing in either a facility designated for men or one designated for women as valid potential options for TNI people from the outset.

In subsection 3075(i) and again at subsection 3085.1(a), we urge the department to add language specifying that the GIQ will be offered within 5 days of initial arrival at a Reception Center. This is necessary to ensure that TNI people are promptly able to state their preferences and have those preferences respected – such as how they are addressed both in writing and verbally, what clothing they can access, and so forth – rather than enduring a long wait under conditions that exacerbate internal distress about gender incongruence and fuel the biases of staff and other incarcerated people.

We also encourage the department to add language at subsection 3075(i)(2) noting that if an individual identifies as TNI on the GIQ, staff will within 3 days offer them access to

gender-appropriate clothing (cross-referencing section 3030(c)) and the items specified on the Transgender, Non-Binary, and Intersex Incarcerated Persons Authorized Personal Property Schedule (TNIAPPS) (cross-referencing section 3190(e)).

In subsection 3085.1(d), we ask the department to add language specifying that incarcerated TNI people will not be penalized for giving different answers to the GIQ over multiple administrations. Incarcerated people have reported that “inconsistent” answers to GIQ questions over time have been held against them in consideration of their transfer applications and otherwise deemed suspicious. CDCR personnel participating in the GIQ and ICC processes need to gain a fuller understanding of the safety concerns and social pressures, varying over time and from facility to facility, that impact many TNI individuals’ responses to the GIQ, as well as the fluidity and evolution over time of sincerely held gender identity that many individuals experience. We recommend that CDCR add language to the regulations that prohibits punishment or retaliation against TNI individuals for giving “inconsistent” answers. The regulations should also affirmatively state that CDCR will provide TNI individuals opportunities in the ICC process to explain safety concerns, gender fluidity, and/or other factors that impacted their GIQ answers over time.

Response 7I: Pursuant to subsection 3075(i) each incarcerated person shall be asked to participate in the completion of a Gender Identity Questionnaire (GIQ) during their initial intake processing in Receiving and Release at a Reception Center (RC). The custody supervisor shall complete the GIQ in a private setting pursuant to Penal Code section 2605 and the incarcerated person can request to complete a GIQ at any other time. Since initial intake processing times can vary, the language pertaining to GIQ processing will remain. Additionally, pursuant to subsection 3075(i)(3) an incarcerated person may not be disciplined for refusing to answer, or for not disclosing complete information in response to questions regarding gender identity. The department acknowledges Commenter’s concerns; however the department will continue with the rulemaking action for the reasons noted in the Notice of Proposed Regulations and the Initial Statement of Reasons.

Comment 7J: *Respectful Address and Sexual Harassment Prevention.*

Proposed Section 3085: TNI Incarcerated Persons.

We support the addition of section 3085 regarding acknowledgment of TNI people’s existence and needs. However, at subsection 3085(a), we urge the department to revise the language to state that “Staff, contractors, and volunteers of the department shall address an incarcerated person who is transgender, non-binary, or intersex in a manner consistent with their gender identity, regardless of anatomy.” This language, which is consistent with the wording proposed at subsection 3401.6(f), will make the responsibility of staff, contractors, and volunteers to use respectful forms of address clearer than the current passive voice construction. It will also help mitigate false assertions by anti-trans advocates, including the plaintiffs in the pending *Chandler v. CDCR* litigation, that the department is violating their free speech rights by compelling them to communicate about TNI peers in specific ways.

Proposed Section 3401.6: Staff Sexual Harassment.

We support the addition of section 3401.6(f), explicitly requiring that staff, contractors, and volunteers of the department shall use the gender pronoun and honorific specified by each individual. Adopting and enforcing this regulation will help foster respect, agency, and dignity for TNI people in the department's custody.

Response 7J: Section 3085(d), which complies with and is consistent with Penal Code section 2605(d), states: "staff, contractors, and volunteers of the department shall not consistently fail to use the gender pronoun and honorific specified by the incarcerated person in all verbal and written communications." The department determined that the previous language provided in the initially proposed regulations for section 3401.6(f) was not consistent with Penal Code 2605(d), and was also inconsistent with section 3085(d), therefore the department revised section 3401.6(f) for consistency with Penal Code 2605(d), and section 3085(d). The department acknowledges Commenter's opposition to the proposed regulations; however, the department will continue with the rulemaking action for the reasons noted in the Notice of Proposed Regulations and the Initial Statement of Reasons.

Commenter #8

Comment 8A: Proposed sections 3085.2(e)(3)(A) and 3085.2(e)(3)(B) do not meet the APA standards for clarity or consistency and violate Govt. Code 11342.2 insofar as they are inconsistent with Penal Code 2606(c)(3). Penal Code 2606(c)(3) forbids CDCR to deny a TNI inmate's housing request "based on any discriminatory reason, including ... a factor present among other people incarcerated at the preferred type of facility." The text of the prohibition is unequivocal. All "factors present among other people incarcerated at the preferred type of facility" are forbidden "discriminatory reasons." This is necessarily so because discrimination occurs when "similarly situated" individuals are treated differently and TNI's are necessarily "similarly situated" to "other people incarcerated at the preferred type of facility" with respect to any "factor present among [those] other people." Section 3085.2(e)(3)(A), on the other hand, states that factors present among other people incarcerated at the preferred type of facility shall be "considered a prohibited discriminatory reason only if that factor is relied upon as a categorical basis to deny the placement request." This limitation is inconsistent with the statute's unequivocal inclusion of all such factors as unlawful discriminatory factors. The department claims that this limitation was "adopted to provide specificity regarding ... factors present among other incarcerated individuals at the preferred type of facility." The Office of the Inspector General (OIG) and the Moss Group agree that a lack of specificity has led to inconsistent decision making. See Special Review: California Department of Corrections and Rehabilitation's Implementation of the Transgender Respect, Agency, and Dignity Act, Office of the Inspector General, August 2023 (OIG Report), p. 19 and California Department of Corrections and Rehabilitation: SB 132, The Transgender Respect, Agency, and Dignity Act Implementation Review Report, The Moss Group, November 2022 (Moss Report), p. 4. However, unlawfully defining these factors more narrowly than the enabling statute is not an appropriate method to provide specificity. Rather the OIG and Moss Group recommended, the department could have, but did not, "develop specific criteria for counselors to evaluate transfer requests." OIG Report, p. 39. See also, Moss Report, p. 17. The department further insists that they "must have the

flexibility to take individualized factors into account while determining housing placement, while not placing blanket prohibitions on housing placements based on generalized factors that are not specific to the incarcerated person's individual case factors." This is true, however Penal code 2606(b)'s mandate that denials be based on a "specific and articulable basis" already ensures that individualized factors be taken into account. Unlawfully defining the statutorily excluded discriminatory factors more narrowly than the enabling statute does nothing to further this aim and would not comply with Penal Code section 2606(c)(3). The solution lies in defining the individualize factor relied upon to deny a TNI's housing request narrowly enough that is not "present among other people incarcerated at the preferred type of facility." As such, section 3085.2(e)(3)(A) and (B) are inconsistent with the enabling statute and should be amended to ensure that TNI inmates are not denied housing at their preferred type of institution for discriminatory reasons.

Response 8A: See Response to Comment 7D.

Commenter #9

Comment 9A: Section 3085.2(f)(1)(B) is inconsistent with Penal Code section 2606(b) and (c) insofar as it fails to impose the mandates contained in those sections with respect to decisions to return [an incarcerated individual] to the previous institution gender designation "from their preferred housing placement." Penal Code section 2606(b) requires that when the department "has a management or security concern with an incarcerated person's ... preferred housing placement" they must, "before ... housing the incarcerated individual in a manner contrary to the person's preferred housing preference," "certify in writing a specific and articulable basis why the department is unable to accommodate that ... housing preference." This mandate necessarily applies with equal force whether the department's management or security concerns arise before or after the incarcerated individual is housed in their preferred housing placement. Rather, in these instances, proposed Title 15, section 3085.2(f)(1)(B) merely requires that the Warden "believes that the safest housing for the incarcerated person is in a facility of a previous institution gender designation." As proposed, this regulation is inconsistent with Penal Code section 2606(b)'s mandate that they certify in writing a specific and articulable basis why the department is unable to accommodate the incarcerated individual's housing preference and is without regard to whether the Warden's reason is discriminatory. Section 3085.2(f)(1)(B) is inconsistent with the enabling statute and should be amended to ensure that the department is required to "certify in writing a specific and articulable basis why the department is unable to accommodate that ... housing preference" any time they seek to house an incarcerated individual in a manner contrary to the person's preferred housing preference by returning the incarcerated individual to the previous institution gender designation from their preferred housing placement. This section should be amended to ensure that TNI inmates are not involuntarily transferred from their preferred type of institution for discriminatory reasons.

Response 9A: See Response to Comment 7E.

Commenter #10

Comment 10A: Commenter is a 74 yr. old Native American who states they are a gender change inmate and is a two-spirit Native that is “internal spiritual” (that is internal expression, not external). Commenter supports the language of SB 132 and asks the following of the department: don’t change the Gender Dysphoria definition change.

Response 10A: As stated in the Initial Statement of Reasons, the term “Gender Dysphoria” is removed as incarcerated persons are now allowed to self-identify. The term “Gender Dysphoria” previously required the involvement of health care staff to determine. Now that incarcerated persons are allowed to self-identify, this term definition is no longer necessary.

Comment 10B: Commenter asks to not change the search preference. The Commenter wants to be able to choose no matter what their housing, and whenever they want.

Response 10B: Subsection 3085.3(a) implements Penal Code section 2606 regarding searches of a transgender, non-binary, or intersex incarcerated person. Language regarding searches based on gender identity complies with Penal Code section 2606 and is necessary to prevent discrimination of these individuals based on specific factors. Additionally, language in section 3085.3(a) will provide clarity to staff and incarcerated persons regarding the law.

Comment 10C: Commenter asks that they not be forced to resolve enemy concerns as a condition to their housing choice.

Response 10C: The department takes into consideration the safety, and all enemy concerns of incarcerated persons when evaluating appropriate housing, in accordance with section 3269(b)(7). Housing assignments shall be determined in a manner that ensures the safety, security, treatment, and rehabilitative needs of the incarcerated person, as well as the safety and security of the public, staff, and institutions.

Comment 10D: Commenter asks that BPH not be able to use housing and transgender issues against them at board, because they constantly lie in their reports or documentations, historically throughout CDCR.

Response 10D: BPH’s processes are controlled by statutes other than PC sections 2605 and 2606. The purpose of this regulatory package is to implement PC sections 2605 and 2606.

Commenter #11

Comment 11A: Commenter represents Legal Services for Prisoners with Children, a nonprofit organization championing the civil and human rights of incarcerated persons, formerly incarcerated persons, and their families and communities. The department should address the following comments, as the Transgender Respect, Agency, and Dignity Act, was in many ways, a historic piece of legislation, and its implementation by the agency should be up to the tasks of dignity and respect. The definition for Gender

Dysphoria is deleted as incarcerated persons are now allowed to self-identify. Per PC 2606, Gender Dysphoria is not a factor in determining a housing assignment. These amendments are necessary to update the terminology used in today's culture, and provide appropriate definitions associated with the LGBTI+ community. (ISOR, p. 7). This explanation is logical. However, it would improve guidance for all – both staff and incarcerated persons – if the Final Statement of Reasons would explicitly confirm that the deletion of the term from the code is merely done for economy of terminology and does not indicate any position taken by the department as to the (non)recognition of the condition described by the term. Otherwise, one could easily foresee someone in the future taking the erroneous position that gender dysphoria is not a valid diagnostic category or basis for accommodation (etc.) merely based on the deletion from the code. Such an inference would not be logically supported, but it is nonetheless predictable as a rhetorical maneuver. The department can forestall such confusion by clarifying now.

Response 11A: Although the Gender Dysphoria term is not referenced in the CCR as a factor for determining whether an individual is transgender, the term is still being used within California Correctional Health Care settings for the purposes of providing gender-affirming care. As stated in the ISOR, the Gender Dysphoria term is deleted from section 3000, Definitions, as incarcerated persons are now allowed to self-identify, and per PC section 2606, Gender Dysphoria is not a factor in determining a housing assignment.

Comment 11B: Penal Code section 2605, subdivision (a) mandates that the initial intake process includes asking a person entering custody about their gender identity “in a private setting” and subdivision (b) prohibits discipline for declining to answer. Subdivision (c) gives the incarcerated person the right to amend their identity “[a]t any time,” such that the department must “promptly repeat the process [...] in accordance with subdivision (a).” The last clause means that the repeated process must also be offered privately. Proposed 15 C.C.R §3075(i)(1) appropriately specifies that the initial intake occur in “a private setting.” However, §3085(b), governing subsequent amended responses, simply says that the questionnaire process is to be repeated – without stating that it, too, must be offered in a private setting. The intended legislative purpose of PC §2605(c)'s “in accordance with subdivision (a)” clause would be better met by specifying the need for privacy in the context of §3085(b) as well.

Response 11B: The department revised language in section 3085(b) in the 1st 15-Day Re-Notice Text of Proposed Regulations, for clarification purposes, to include additional language stating that the GIQ shall be completed in a private setting.

Comment 11C: The proposed 15 C.C.R. §3085.1(b) states, “The GIQ is located within the department’s electronic databases.” The regulations give no clarity as to what protocols will govern the privacy or accessibility of the information, including the history of multiple questionnaires, when applicable.

Response 11C: SOMS is a secured network, which ensures the stored privacy information is protected.

Comment 11D: There is a marked asymmetry between, on the one hand, the complexity of the approval process for a housing transfer request based on gender identity-based preference and, on the other hand, a return transfer effected by an institution of the preferred type back to the original kind of institution. The statute is unambiguous: the incarcerated person has the right to “[b]e housed at a correctional facility designated for men or women *based on the individual’s preference*” PC §2606 (emphasis added). The only allowable exceptions are where the Secretary, or designee, certifies in writing based on specific, articulated grounds that the department is “unable” to accommodate the request. In other words, the department bears a burden of showing the impossibility of honoring the preference. Instead, the proposed regulations essentially turn this statutory structure on its head by making the approval process rather onerous and the process of rejection excessively easy.

Response 11D: See Response to Comment 7E.

Comment 11E: Proposed §3085.2, subdivision (c) covers requests for transfer due to requesting a different gender-based institutional designation at intake. Subdivision (d) governs requests made at any time after intake. In both instances, once initiated, the process sets an army of officials in motion to investigate and determine whether or not to transfer. Both tracks are justified as necessary to “provide clear instructions” and to “establish the process” (ISOR, p. 10), but why these particular steps and why so many different officials are required to weigh in remains unexplained. Accordingly, cutting out some steps and streamlining the transfer request process would seem more efficient and cost-effective in achieving the statutory aims.

After either an intake or a subsequently revised questionnaire is done, a PREA Compliance Manager and a Counselor Supervisor are involved. After reviewing the files and interrogating the person, the Counselor Supervisor prepares a comprehensive report. In the intake context, the PREA manager also interviews the person and documents that. The Counselor Supervisor notifies “medical and mental health staff of the incarcerated person’s request for housing” and the latter are expected to “present related issues or concerns” at the classification hearing (proposed §3085.2(c)(3); (d)(3)[same]). The person’s informed consent to the involvement of the health professionals is not sought. The ISOR (p. 10) explains their role as being to “only provide input to provide a complete picture and make recommendations to the ICC, no diagnosis is required.” Most troubling, the Counselor Supervisor’s report involves conducting a social inquiry described as follows: “The CC II (Supervisor) or designee shall contact housing unit custody staff and the incarcerated person’s work or program supervisor, if applicable, to gather information” (proposed §3085.2(c)(4); (d)(4)[same]). This risks “outing” someone who may not want, at the preliminary, pre-approval stage, their transfer request and/or their identity status revealed in that manner. It could lead to unintended consequences, such as retaliation from, or discrimination by, a work supervisor or custodial staff. Such acts of discrimination or retaliation could occur before a request is successful, after it is unsuccessful, or after a return. Also, it should be kept in mind that the statute makes the preference of the incarcerated person the principal consideration; the opinions of custodial and work supervisory staff have no role whatsoever. Therefore, eliminating paragraphs (c)(4) and (d)(4) entirely, or making the participation of testimony from custodial or work supervisory

staff contingent on the requesting individual's consent, seems more consonant with the statutory design.

But the request process is still not over. In a sense, it is just getting underway, as the foregoing was preliminary. After the onerous investigation and comprehensive report, there's the Institution Classification Committee hearing. The committee consists of at least: "the Warden and CC II (Supervisor) or designee, the PREA Compliance Manager (PCM), and a mental health representative." Section 3085.2(c)(5); (d)(5)[same]. Half a dozen more officials, including the warden of a receiving institution and a few officials from headquarters, are optional committee members. At any time, such an assemblage is apt to be intimidating; in the case of the intake track, it amounts to the person's first interaction with the warden of the first institution being that of a request to leave. If denied, one imagines, a hard road just got a lot harder. Even if successful, there may be the danger that the new warden, if participating, might get the impression that the person is causing trouble. The fear that something in the counselor's report – or from other witnesses – is negative could translate into a fear of retaliation or intimidation of the requesting person, possibly deterring them from applying.

Response 11E: Evaluating gender-based housing requests is part of CDCR's existing case-by-case classification process used for all incarcerated people. Determining whether an incarcerated individual should be transferred to an institution of a different gender designation must be taken seriously, considering all relevant factors, and with the safety and security of all involved being the foremost concern. All Institutional Classification Committees (ICC) are held in accordance with CCR section 3376. The department acknowledges the Commenter's opposition to the proposed regulations; however, the department will continue with this rulemaking action for the reasons provided in the Notice of Proposed Regulations and the Initial Statement of Reasons.

Comment 11F: In contrast to the complicated process for transfer requests, subdivision (f) of §3085.2 is strangely unconstrained in the powers it gives to wardens at new institutions to reject or return persons transferred to them. Whereas, in the subdivisions previously discussed, it was a complicated process to get approved, the send-back process is arbitrary and nearly unfettered. The new warden can simply make the determination based on almost any management or security concerns, including blaming the victim. (See proposed §3085.2(f)(2)(A) and (2)(F).) Subparagraph (1)(B) mentions an ICC hearing; however, it is not the committee as a body but the new warden alone who makes the decision. Moreover, whereas the statute makes the standard for rejection an objective unworkableness of the request (PC §2606(b) ("unable to accommodate")), the regulation would downgrade that criterion to a subjective "belief" of the warden (proposed §3085.2(f)(1)(B)). On the whole, subdivision (f)'s return policy simply does not comport with PC §2606.

Response 11F: See Response to Comment 7E.

Comment 11G: Most concerning are the new search rules that NCR 25-04 would institute. These regulations implement PC §2606(a):

An individual incarcerated by the Department of Corrections and Rehabilitation who is transgender, nonbinary, or intersex, regardless of anatomy, shall: [...] (2) If *lawfully*

searched, be searched according to the search policy for their gender identity or according to the gender designation of the facility where they are housed, based on the individual's search preference. (emphasis added)

To be "lawful," any search must comply with the federal requirements of PREA. According to the federal DOJ regulations specifying those requirements, searches of transgender and intersex 1 [1 The PREA Standard doesn't say "nonbinary" but it is certain from the spirit and letter of PC §§2605-2606 that California protects nonbinary as well as transgender and intersex persons.] incarcerated persons must only occur "in a professional and respectful manner, and in the least intrusive manner possible, consistent with security needs" (28 C.F.R. 115.15(f)). This standard tightly circumscribes the permissible searches, essentially demanding a sort of strict scrutiny. Only "security" needs can justify a search, which must be conducted by the least intrusive means.

The proposed regulations do not come close to meeting this requirement. Instead, they misapply components of the PREA Standards, which components, while applicable in other contexts, are not applicable here. The general definition of *exigent circumstances* is "any set of temporary and unforeseen circumstances that require immediate action in order to combat a threat to the security or institutional order of a facility" (28 C.F.R. §115.5). Though the PREA Standard in general allows "cross-gender" visual body cavity searches in "exigent circumstances," 2 [2 "The facility shall not conduct cross-gender strip searches or cross-gender visual body cavity searches (meaning a search of the anal or genital opening) except in exigent circumstances or when performed by medical practitioners." 28 C.F.R §115.15(a).] this is further restricted in the case of transgender persons as described above, by the requirement of "least intrusive manner" of obtaining security. In other words, subdivision (f) adds another layer of protection on top of subdivision (a). The federal DOJ's interpretive guidance FAQ, issued on October 24, 2023, confirms this reading. 3 [3 "Security staff must conduct these searches in a professional and respectful manner; in the least intrusive manner possible, and consistent with security needs." <https://www.prearesourcecenter.org/frequently-asked-questions>]

The proposed 15 C.C.R. §3287 in NCR 25-04 does not comply with the Standards:

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

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

The grammar of the provision would seem to allow exigent circumstances to be an exception independent of the preferences of the person being searched and independent of other "[less] intrusive" means (See 28 C.F.R. 115.15(f)). Further, the definition of exigent circumstances that the department has incorporated is the broader definition that includes "institutional order" and security. But the broad definition in the Code of Federal Regulations is narrowed to the "security" interest in the context of §115.15(f). Accordingly, if California wants to incorporate the PREA Standard applicable here, it should limit the interest within the "exigenc[y]" to the security prong rather than the

amorphous interest in “order.” It will not be enough to assert that “immediate action” is “require[d]”; the action will have to be not unduly intrusive.

Response 11G: CDCR’s proposed regulatory definition of “exigent circumstances” is the same as the federal PREA definition (28 CFR § 115.5.) The Federal PREA standard states, “(a) The facility shall not conduct cross-gender strip searches or cross-gender visual body cavity searches (meaning a search of the anal or genital opening) except in exigent circumstances or when performed by medical practitioners.” (28 CFR §115.15(f).) The October 24, 2023 DOJ PREA FAQ states four possible options to comply with this standard: “Operationally, four options are in current practice for searches of transgender or intersex inmates/residents/detainees: 1) searches conducted only by medical staff; 2) pat searches of adult inmates conducted by female staff only, especially given there is no prohibition on the pat searches female staff can perform (except in juvenile facilities); 3) asking inmates/residents/detainees to identify the gender of staff with whom they would feel most comfortable conducting the search, and 4) searches conducted in accordance with the inmate’s gender identity.”

This FAQ does not state that the federal standard requires adoption of all options by the agency. The FAQ does not state that the federal standard requires that any option adopted by an agency be given preference over any other option.

CDCR’s current regulation contains only one circumstance – “emergency conditions with life or death consequences.” This proposed rulemaking would add “exigent circumstances” which is consistent with the federal standard. This proposed rulemaking would add a third circumstance, “when an incarcerated person has an approved search preference.” This third circumstance would be consistent with the October 24, 2023 DOJ PREA FAQ option of “3) asking inmates/residents/detainees to identify the gender of staff with whom they would feel most comfortable conducting the search.”

Commenter cites to 28 CFR section 115.15(f)’s use of the word “least intrusive manner possible.” This phrase is part of mandatory staff training and provides, “The agency shall train security staff in how to conduct cross-gender pat-down searches, and searches of transgender and intersex inmates, in a professional and respectful manner, and in the least intrusive manner possible, consistent with security needs.” (28 CFR 115.15(f).) CDCR’s search training is not covered by this regulation.

Commenter #12

Comment 12A: Commenter writes on behalf of Women are Real, a San Francisco-based nonpartisan coalition. We appreciate CDCR’s efforts to implement the Transgender Respect, Agency, and Dignity Act (TRADA) through the proposed regulations in Notice NCR-25-04. We believe these regulations correctly preserve necessary discretion for prison officials to ensure safety and security for all incarcerated persons.

While some groups have criticized these proposed regulations for giving CDCR too much discretion in housing and search decisions, we believe this discretion is essential for protecting all incarcerated persons, particularly women in female facilities. The “management or security concerns” provisions are not loopholes for discrimination—they

are necessary safeguards that reflect the complex realities of prison management and the documented safety incidents that have occurred since SB 132's implementation. The Office of Inspector General's 2023 special review has documented several concerning outcomes that demonstrate why these regulations need to be strengthened, not weakened. We believe these regulations can and should go further to ensure proper balancing of the rights and safety needs of all affected populations. These proposed regulations are a good first step, but we need even more robust protections for incarcerated women.

We offer the following assessment of areas where the regulations could be strengthened, along with constructive suggestions for improvement:

Response 12A: The department acknowledges the Commenter's support for the proposed regulations.

Comment 12B: *Inadequate Safety Protections for Incarcerated Women.*

The proposed regulations fail to fully address the documented safety concerns that have emerged since SB 132's implementation. The Office of Inspector General's 2023 special review confirmed that:

- Many incarcerated women at CCWF and CIW "still fear for their safety and privacy when living with transferees" (OIG Report, p. 3)
- "Of the women living at CCWF and CIW... nearly two-thirds said they now fear for their safety around some or all of the transferee inmates" (OIG Report, p. 25)
- "The concerns of incarcerated women [were so severe that many formed] 'protection pacts'" (OIG Report, p. 25)

The OIG also documented numerous allegations of "consensual sexual misconduct" despite the fact that such activity is prohibited and inherently non-consensual in a prison context.

These regulations could contain more provisions for addressing the safety concerns of the female population.

Response 12B: The safety of both the individual requesting transfer, as well as the individuals housed at the preferred facility, are taken into consideration when evaluating a transfer request. An individual can report safety concerns or violations of incarcerated person misconduct at any time. If an individual who transfers under SB 132 presents with management or security concerns post transfer, their housing will be evaluated pursuant to subsection 3085.2(f). See also, Response to Comment 2A.

Comment 12C: *Failure to Outright Exclude High-Risk Transfers.*

The proposed regulations fail to outright prohibit transfers of inmates with histories of violent sexual offenses against women into women's prisons. The OIG review highlighted this critical flaw, noting that the department could potentially be required to approve "a transfer request from an inmate with a history of raping women" (OIG Report, p. 20). This deficiency creates significant risk for the female inmate population.

The implementation of the current policy has already shown troubling inconsistencies in how transfer decisions are made. The OIG found cases where "the department granted a prospective transferee's request to transfer despite their history of sexual abuse involving a minor," while in another nearly identical situation "the department denied a

different incarcerated person's transfer request because of a history of sexual abuse involving a minor" (OIG Report, p. 20).

These concerns are not merely theoretical. In the alarming case of *People v. Tremaine Carroll*, Madera County prosecutors charged a transferee with two counts of forcible rape committed against female inmates at the Central California Women's Facility. According to reports from the preliminary hearing, a judge found sufficient evidence that Carroll had committed these serious offenses to hold the case for trial. This disturbing case demonstrates exactly what critics of SB 132 warned about: the potential for convicted male offenders to exploit transfers into women's facilities to gain access to and victimize female inmates.

Nor is this an isolated incident. The OIG report documented "numerous allegations of consensual sexual misconduct between transferees and other incarcerated people at CCWF and CIW" as well as cases where such encounters escalated to physical violence. Furthermore, many incarcerated women reported witnessing transferees engaging in abusive behaviors toward their partners, including both physical violence and psychologically demeaning conduct. These documented patterns of misconduct further highlight the need for stronger protections in the proposed regulations.

We offer the following solutions to Exclude High-Risk Transfers by amending section 3085.2 to explicitly prohibit transfers to women's facilities for:

- Individuals convicted of sex offenses against women or children
- Individuals with a documented history of sexual misconduct in custody
- Individuals who have a history of violent crimes against women or children

This is consistent with the approach taken by other jurisdictions and would enhance safety.

Response 12C: Section 3085.2(e) was created to take into consideration the management or security reasons for denying a housing placement. The department takes into consideration the safety of all incarcerated persons when making a housing assignment. Housing assignments shall be determined in a manner that ensures the safety, security, treatment, and rehabilitative needs of the incarcerated person, as well as the safety and security of the public, staff, and institutions.

Comment 12D: *Privacy Concerns in Intimate Settings.*

The proposed regulations disregard women's privacy needs in intimate settings like showers and bathrooms. The OIG report states:

"Especially concerning to the incarcerated people we interviewed was showering around transferees, particularly those who have not had gender-affirming surgery." (OIG Report, p. 3)

"Living in close spaces with individuals designated male at birth was particularly triggering for the 20 percent of incarcerated people we interviewed who reported a history of abuse." (OIG Report, p. 29)

The proposed regulations provide inadequate provisions to address these legitimate privacy concerns of the female prison population.

To *Enhance Privacy Protections*, we suggest adding language to section 3085 that acknowledges and addresses the privacy concerns:

"The department shall implement reasonable accommodations to protect the privacy of all incarcerated persons in showers, restrooms, and dressing areas, with particular attention to the dignity and safety of incarcerated females."

Response 12D: Separately from these regulations, CDCR meets full compliance with the National Standards to Prevent, Detect, and Respond to Prison Rape Under the Prison Rape Elimination Act (PREA) 28 Code of Federal Regulation part 115.

115.15 Limits to cross-gender viewing and searches.

(d) The facility shall implement policies and procedures that enable inmates to shower, perform bodily functions, and change clothing without nonmedical staff of the opposite gender viewing their breasts, buttocks, or genitalia, except in exigent circumstances or when such viewing is incidental to routine cell checks. Such policies and procedures shall require staff of the opposite gender to announce their presence when entering an inmate housing unit.

115.42 Use of screening information.

(f) Transgender and intersex inmates shall be given the opportunity to shower separately from other inmates.

Department of Justice Certified PREA Auditors final reports showing CDCR meets compliance are posted on CDCR's public website.

This regulatory action is designed to implement Penal Code sections 2605 and 2606, including intake/classification; addressing incarcerated persons by their preferred pronoun and honorific; giving incarcerated persons' perceptions of health and safety serious consideration in bed assignment, placement and programming decisions; searches; and housing. Note that the OIG's 2023 report also states on page 3, "We did not observe specific aspects of CCWF's or CIW's living or bathroom spaces that could be modified to provide better protection or modesty to the incarcerated population without compromising security." (OIG Report № 22-01 SR, Transgender Special Review, August 2023.)

Comment 12E: Implement More Robust Screening.

Modify section 3085.2 to require more robust screening and evaluation of transfer requests:

"Prior to approving a transfer, the department shall conduct a comprehensive risk assessment, including evaluation of the transferee's complete criminal history, behavioral record in custody, and potential impact on the safety and emotional well-being of the existing population at the receiving facility."

Response 12E: The department's review process for incarcerated person requests to be housed at an institution of a different gender designation is robust. Subsections 3085.2(c) and (d) outline the extensive review process that is to be followed for these requests, which is then followed by an Institution Classification Committee (ICC) hearing.

Comment 12F: Regular Review and Data Collection.

Add a new section requiring:

"The department shall collect and publish data on incidents of sexual misconduct, assault, or harassment in facilities where transfers have occurred under this policy and shall

conduct an annual review of the policy's implementation and effects on all incarcerated populations."

Response 12F: The department does collect data regarding incidents of sexual misconduct, assault, or harassment in all facilities. This information is posted annually on the department's website.

Commenter #13

Comment 13A: Commenter represents Women's Liberation Front ("WoLF"), a 501(c)(3) public charity dedicated to restoring, protecting, and advancing the rights of women and girls, and recognizes the importance of keeping incarcerated women safe from male violence while in state custody.

In 2020, California enacted the Transgender Respect, Agency and Dignity Act ("SB 132") to, primarily, protect transgender-identified males from the risk of sexual assault perpetrated against them by men in men's facilities, by maximizing their access to women's facilities. Previously, transfers had been on a clear case-by-case basis and took into effect important factors such as whether they were capable of committing rape, likely to commit rape, capable of impregnating women, and had histories of violence against women. SB 132 made it extremely difficult for CDCR to make efforts to appropriately gatekeep women's facilities.

Since the statute took effect in January 2021, incarcerated women have reported many problems and human rights violations with respect to its implementation. Since then, some community advocates have called for CDCR to go even beyond the mandate of SB 132 in allowing access to women's facilities by men, and in doing so harming incarcerated women. We deeply appreciate that CDCR is taking efforts to mitigate these problems and has in some cases resisted these calls, and we hope that CDCR is not swayed by the feedback from these same advocates. The discretion to deny requests and provide for involuntary transfers back to men's facilities that is permitted under the proposed regulations is entirely in line with SB 132 and with other relevant statutes and case law.

To be clear, WoLF does not support men being housed in women's facilities at all, but we recognize that existing law requires this outcome at times. Our comments should not be read as an endorsement of SB 132, but merely comments on the ways in which the proposed regulations interact with the statute to either exacerbate or mitigate the negative effects on incarcerated women.

It is critical to remember that SB 132 did affirm the wisdom and necessity of keeping men and women housed separately in jails and prisons, and that there is no real objection to this practice. The questions that remain, regarding housing specifically, are largely about which males should be and can safely be housed in women's facilities. CDCR should resist propositions to go beyond the requirements of SB 132 and make it even more difficult for CDCR to keep women in its custody in a safe and rehabilitative environment. SB 132 must be overturned or at least amended. It was a failure for the legislature to have passed this statute, and for implementation of it to have begun, without meaningful engagement with incarcerated women and their representatives. CDCR should meaningfully engage women, including incarcerated females who identify as transgender

men or as non-binary (and who almost universally are choosing to remain housed with other females, where they are safe from male violence), in implementing SB 132.

Response 13A: The department acknowledges Commenter’s suggestion and concerns. The department is committed to providing a safe, humane, respectful and rehabilitative environment for all incarcerated people, and is working to implement and comply with the law.

Comment 13B: *Omission of Important Documents To Rely Upon.*

In the last four years, evidence has continued to build that SB 132 has serious problems both facially and in its implementation, yet CDCR does not list the 2023 OIG report specifically on implementation of SB 132 in documents relied upon in the proposed regulations, even though it relied upon the 2020 OIG report.¹ [1 <https://www.oig.ca.gov/wp-content/uploads/2023/08/Special-Review-No.-22-01.pdf>] This is either a major oversight, and this report gives invaluable insight and guidance on the ways in which SB 132 has harmed incarcerated women.

Response 13B: Due to an oversight, the department did not initially list the 2023 OIG Report in the Documents Relied Upon section of the Initial Statement of Reasons. In the 1st 15-Day Re-Notice Text of Proposed Regulations, the department included a link to the OIG’s August 2023 Special Review, titled “The California Department of Corrections and Rehabilitation’s Implementation of the Transgender Respect, Agency, and Dignity Act,” as a document relied upon.

Comment 13C: *Definitions.*

We recognize that SB 132 calls for CDCR to make changes to its terminology. However, we want to ensure that this does not go beyond the requirements of the law itself, which are already at odds with the reality of how men’s and women’s prisons operate and intentionally obfuscate the sex of the individuals affected by the statute, even when their sex is highly relevant.

Some comments called for definitions of “transgender man” and “transgender woman” to be a person who “is a man” or “is a woman”, respectively, and was “assigned” the opposite sex at birth. Far from being a clarification, such definitions are intentionally confusing, making it seem as if the sex of the person is irrelevant or, in the words of at least one commenter, “erroneously” assigned.

Response 13C: The department established the Transgender and related definitions based on a multi-faceted cross-divisional workgroup of subject matter experts who conducted research utilizing multiple resources to determine the most appropriate definitions that were also the most clear and able to be understood by the incarcerated population and department staff.

Comment 13D: *Housing.*
Safety of Housing Men with Women.

According to a high-quality longitudinal study, even men who have self-identified as women for decades and who have taken hormones and removed their genitals, statistically offend at a rate no different from the other males and significantly higher than

the female population.² [2 Cecilia Dhejne et. al. Long-Term Follow-Up of Transsexual Persons Undergoing Sex Reassignment Surgery: Cohort Study in Sweden, PLoS One. 2011 Feb 22.] The vast majority of males who identify as women retain their penises, which means rape and pregnancy are still possible threats.³ [3 Herman JL, Wilson BD, Becker T. Demographic and Health Characteristics of Transgender Adults in California: Findings from the 2015-2016 California Health Interview Survey. Policy Brief UCLA Cent Health Policy Res. 2017 Oct, found at <https://pubmed.ncbi.nlm.nih.gov/29091375/>. See also Canner JK, Harfouch O, Kodadek LM, Pelaez D, Coon D, Offodile AC 2nd, Haider AH, Lau BD. Temporal Trends in Gender-Affirming Surgery Among Transgender Patients in the United States. JAMA Surg. 2018 Jul, found at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5875299/>.] In fact, there have been confirmed pregnancies in which trans-identified male inmates have fathered children since the implementation of SB 132.⁴ [4 <https://4w.pub/male-inmate-charged-with-raping-woman-inside-california-womens-prison-cdcr-confirms-pregnancy/>]. Furthermore, the population that is made eligible for transfer under SB 132 *that was not previously eligible for housing in women's facilities* are disproportionately sex offenders. Fully one-third of biologically male inmates seeking housing in women's facilities in California are registered sex offenders.⁵ [5 Number of Offenders Who Identify as Transgender, Intersex, or Non-Binary Housed in Male Facilities Seeking Transfer to Female Facilities And Percentage Who are Registered Sex Offenders or Convicted of a Sex Offense, California Dep't of Corrections and Rehabilitation, Public Records Act request, dated Feb. 9, 2022, found at <https://usa.kpssinfo.org/data-from-california-shows-that-1-3-of-the-men-seeking-to-transfer-to-womens-prison-are-registered-sex-offenders/>.] These numbers are not aberrations; they are consistent with federal data, data from other states, as well as data from Canada and the UK.⁶ [6 "Transgender Inmate Report", Federal Bureau of Prisons, dated August 19, 2023. Posted on August 25, 2023 by "Keep Prisons Single Sex USA" on X (formerly Twitter) at https://x.com/NoXY_USA/status/1695205078376845782?t=XFcek3rcOxlf750Q8n30w&s=19; "Inmate Statistics: Offenses", Federal Bureau of Prisons, found at https://www.bop.gov/about/statistics/statistics_inmate_offenses.jsp; Canada's 2022 Correctional Service Research Report, Examination of Gender Diverse Offenders, examining data from 2017 to 2020; Evidence and Data on Trans Women's Offending Rates, Evidence submitted to WEC by Professors Rosa Freedman, Kathleen Stock, and Alice Sullivan on Gender Recognition Act in the UK, found at <https://committees.parliament.uk/writtenevidence/18973/pdf/>.]

Response 13D: See Response to Comment 12B.

Comment 13E: The proposed rules state that SB 132 won't result in new jobs, but shortly after SB 132 went into effect, the CDCR Division of Adult Institutions and California Correctional Health Care Services requested additional funds for fiscal years 2022, 2023, and 2024 because it "expect[ed] the PREA sexual assault allegations [to] increase" because "the department has identified the number of inmates who identify as transgender is increasing" due to SB 132 because it would leave to "the integration of different populations that have not previously been housed together" (i.e. male and female inmates being housed together). CDCR in its proposed rules do not reconcile this discrepancy.

The Moss Report, a document which was listed by CDCR as being relied upon, corroborated this, finding an increase in PREA allegations and in serious crimes committed related to weapons and drug offenses.

Response 13E: The 2021-22 budget appropriated 2.8 million one-time and 1.2 million ongoing to develop and implement policies and procedures in response to SB 132 (TRADA). Currently the department does not anticipate the need to create additional new positions related to SB 132. The department is unsure where the Commenter is getting their information or what Commenter is quoting.

Comment 13F: *Proposed Section 3085.2(a): Housing Based on Gender Identity.*

The proposed regulations state that trans-identified individuals “may” be housed according to the individual’s preference, which is an accurate reading of SB 132, despite some comments calling for the proposed regulations to say “shall” instead. If SB 132 provided an entitlement to opposite-sex housing, then there would be no process for even considering requests, let alone for and denying requests, but the statute calls for this precisely because there is no mandate.

Response 13F: While the proposed regulations and Penal Code 2606 allow for the department to deny a search preference or housing based on management or security concerns, the department revised language in sections 3085.2 and 3085.3 in the 1st 15-Day Re-Notice Text of Proposed Regulations to better align with Penal Code 2606.

Comment 13G: *Proposed Section 3085.2(e): Housing Based on Gender Identity: Denials.*

The proposed rules clarify that using the factors articulated by the statute (such as anatomy) are only “discriminatory” if used as a categorical basis for denial. This is consistent with the statute, it is consistent with common sense, and it is consistent with the Prison Rape Elimination Act (PREA).

The 2023 OIG report regarding implementation of SB 132 found that lack of clarity in the language caused unacceptable problems. For example, that “a person with a history of raping women requests transfer to a women’s prison” that the language, without clarification, may be read to “prohibit the department from denying the person’s transfer request based solely on the prospective transferee’s history of raping women.” (p. 19). Sadly, many of the community advocates critical of the proposed regulation think it is inappropriate to deny such a request, but we welcome regulations that seek to clarify that SB 132 should not be read to fling open the doors of women’s facilities to absolutely anybody regardless of risk.

Response 13G: The department acknowledges the Commenter’s support of the proposed regulations.

Comment 13H: *Proposed Section 3085.2(f): Return Transfer to Previous Institution.*

It is reassuring to see a robust process articulated for return transfers to male institutions that does not unnecessarily hamper CDCR in its efforts to keep incarcerated people safe from violence and threats of violence. The proposed regulations give CDCR appropriate

discretion to return individuals to male facilities when they have proven themselves to be at unacceptable risk to the women with whom they are being housed.

Some comments criticize this as creating a “two-tiered” system where trans-identified persons are being held to some sort of “different” standard from those who do not identify as transgender. This is circular, and false. It is again important to note that SB 132 affirms the general principle that men and women should be housed separately in correctional facilities. It is vital, and consistent with the statute, to treat males who identify as women (or non-binary) separately from women (regardless of how they identify), otherwise it completely negates the reason why men and women are held separately in the first place, which is that women are generally in danger when housed with men. Nobody disputes this.

One comment suggested that the proposed regulation should say that involuntary return transfers should only be allowed in which an individual were “proven to have falsified their gender identity” but the statute clearly defines gender identity as being something that is solely determined by and articulated by the individual. Something that is solely self-defined cannot by definition be “false”.

Response 13H: The department acknowledges the Commenter’s support of the proposed regulations.

Comment 13I: Searches.

Proposed Section 3085.3(a)-(e): Searching Based on Gender Identity.

Some comments criticized denial reasons such as for “decades-old case factors” or for conduct that was alleged but did not result in convictions. This ignores the reality of the criminal justice system, which frequently results in serious crimes being “pled down” to less serious crimes in order to secure a conviction without victim(s) having to suffer through trials. This is the case, for example, with Tremaine Carroll, whose previous crimes included sex offenses, but was ultimately convicted of crimes that did not require sex offender registration. Tremaine went on to commit multiple forcible rapes while housed with women.⁷ [7 <https://4w.pub/male-inmate-charged-with-raping-woman-inside-california-womens-prison-cdcr-confirms-pregnancy/>]

Some comments called for “due process” prior to approved search preferences being rescinded and require an extremely high level of safety and management concerns, above and beyond what is required when considering initial search requests. This ignores the daily reality of the search process. If a person is behaving inappropriately and is observed to be abusing the search preference to sexually harass staff (in practice, this is typically males harassing female staff), it should be able to be handled in a manner that does not expose female staff (or any staff) to sexual harassment.

Response 13I: The department acknowledges the Commenter’s support of the proposed regulations.

Comment 13J: Gender Identity Questionnaire.

Some comments have called for language in subsection 3085.1(d) specifying that people should not be “penalized” for giving different and inconsistent responses to gender identity questionnaires and should not have this used against them in consideration of transfer applications. Suspicious and inconsistent responses should absolutely be considered as

a factor in transfer decisions, as they are one of the few available criteria for search committees to consider the sincerity of a person's transfer request. (As a separate matter, it is worth noting that a person's "sincerity" does not necessarily correspond with their risk of abusiveness. A person might be quite sincere in their stated gender identity while also being a sex offender and/or harm women with whom they are housed. Nonetheless, inconsistent answers is one potential indication that a person may be seeking "transgender status" for the explicit purpose of access to women).

Response 13J: The department considers all case factors, including responses to the GIQ, for all transfers to an institution of a different gender designation.

Commenters #14 through #28 are duplicative of Commenter #7, with some providing slight variations, which are noted as follows:

Commenters #15, #16, #17, #18, #19, #20, #21, #22 and #27:

Comment 15, 16, 17, 18, 19, 20, 21, 22, and 27A: To ensure consistency with the letter and spirit of Penal Code 2602 and for greater clarity, we suggest editing section 3085.3(a) to read as follows:

- (a) If an incarcerated person who is transgender, non-binary, or intersex has an approved search preference, the individual shall be searched according to their preference. In the absence of an approved search preference, an incarcerated person who is transgender, non-binary, or intersex, regardless of anatomy, may be searched according to the search policy for their gender identity or according to the gender designation of the facility where they are housed.

Response 15, 16, 17, 18, 19, 20, 21, 22, and 27A: The department acknowledges the Commenter's comment, however the department will continue with this rulemaking action for the reasons provided in the Notice of Proposed Regulations and the Initial Statement of Reasons. See also, Response to Comment 4B.

Commenter #24

Comment 24A: Commenter represents the American Civil Liberties Union (ACLU). CDCR's regulations should guard TNI individuals against arbitrary and harmful discrimination by emphasizing the presumption that TNI individuals must be treated with respect, agency, and dignity. With regard to *Housing*: section 3085.2(a) should specify that TNI individuals shall, not "may" be housed. This protection, core to SB 132, must be meaningfully implemented to fulfill the statute's intent. Sadly, we have heard from numerous TNI people over the past four years that CDCR's refusal to grant transfers has subjected them to violence, harassment, and intensified gender dysphoria. The regulations must accurately track the language of SB 132 for transfers to be available to the many TNI people in CDCR custody who want and need them. With regard to section 3085.2(e), SB 132 does allow CDCR to deny an individual's preferred housing placement based on documented "specific and articulable" "management or security" concerns; it is unacceptable and legally problematic for the regulations to broaden this into a regime of permitting denials for essentially any combination of reasons.

Response 24A: See Responses to Comments 4B, 7D, and 8A.

Comment 24B: *Proposed Section 3085.2(f): Return Transfer to Previous Institution.*

Although other necessary changes to this section may moot the point, we suggest changing “includes” to “include” in section 3085.2(f)(2) to agree with the plural “criteria” as the subject of the sentence.

Response 24B: The department believes the language as written in section 3085.2(f) is correct and therefore will leave it as is.

Comment 24C: *Proposed Section 3085.2(a)-(d): Housing Requests.*

In regard to housing request timelines: We further ask that the regulations require CDCR to provide the affected individual a copy of the file ICC members will consider regarding their transfer request, at least 30 days in advance of the scheduled meeting, to afford them a meaningful opportunity to review and respond to the information. With regard to CDCR defining “serious consideration”: Clarifying the meaning of this term is necessary to ensure that all relevant personnel have a shared understanding of what it means and honor the intent of Penal Code Section 2606(a)(4) when evaluating requests related to bed assignment, placement, or programming within a CDCR facility.

Response 24C: See Responses to Comments 4A and 7F.

Comment 24D: *Proposed Section 3085.3(a)-(e): Searching Based on Gender Identity.*

Incarcerated TNI people, particularly transgender women and nonbinary individuals, report to us that searches by male officers who do not respect their identities are traumatic and deter them from participating in programming that could improve their chances of successful reentry into the community. They also report that such searches are still common, despite language in SB 132 addressing this issue.

Advocates have observed prison officials denying individuals for decades-old case factors, for merely alleged conduct (e.g., arrests that never resulted in convictions), for minor RVRs common among cisgender people who are routinely searched by people sharing their gender identity without incident, and for other reasons that do not presently constitute a “security and management concern.” We have also received concerning reports of custody staff refusing to honor even formally approved search preferences. As noted above, it is important for this section to specify that TNI individuals *shall*, not “may,” be searched according to the search policy of their preference.

The regulations should also spell out a review procedure that must take place before a previously approved search preference may be rescinded. This procedure should limit rescission of search preference approval to situations involving imminent, ongoing, and intolerable safety and management concerns. In addition, the regulations should specify that an individual whose search preference is either denied or revoked may submit a new request at least six months later and that renewed requests will be fairly evaluated to determine whether previously articulated management and security concerns are still present at a level warranting denial. As discussed above, CDCR should involve staff with relevant expertise in the sensitive process of evaluating whether a particular situation

warrants the extraordinary step of rescinding approval of a safety-based search preference.

Response 24D: See Response to Comments 4B, and 7G. The department acknowledges the Commenter's opposition to the proposed regulations; however the department will continue with this rulemaking action for the reasons provided in the Notice of Proposed Regulations and the Initial Statement of Reasons.

Commenter #25

Comment 25A: Commenter represents Orthwein Law, PC, and states their current and former law firms have represented and advocated alongside dozens of transgender people in the custody of CDCR on discrimination, retaliation, harassment, violence, deliberate indifference and failure to protect claims against CDCR, and its employees. Prior to representing incarcerated transgender people as an attorney, Commenter was employed as a psychologist in a CDCR facility treating incarcerated patients, many of whom were also transgender. Commenter's former law firm, Medina Orthwein LLP, was among a coalition of organizations that helped draft and co-sponsor Senate Bill 132. Commenter feels the proposed regulations to implement SB 132 are disturbingly inconsistent with the letter or spirit of current law. As proposed, these regulations conflict with and violate not only SB 132, but multiple California and federal nondiscrimination laws. Commenter urges CDCR to revise these regulations to ensure they are consistent and compliant with the law.

Response 25A: The department made several revisions to the proposed regulations in the 1st and 2nd Re-Notices for better clarity and consistency with PC sections 2606 and 2605.

Comment 25B: Proposed Section 3085.2(f): Return Transfer to Previous Institution.

I, and our firm, were representing two transgender women when they were transferred to facilities designated for women in 2021. Both, along with other transgender women we had previously represented, were denied access to hygiene items, including razors to shave, as well as their belongings as they had to proceed through reception again after transfer. No accommodations were made to ensure they were given access to the items they needed to mitigate gender dysphoria. They were isolated into single cells despite being on double cell status. Once released, the two clients we were representing were targeted by both staff and other incarcerated people. Both were physically attacked by other people in custody, which resulted in their placements in administrative segregation for indefinite periods of time due to alleged "enemy concerns." Despite my clients' efforts to resolve those enemy concerns, the other individuals, who had already been released back to the general population, refused to resolve their enemy concerns with my clients. As a result, each of my clients spent well over two years in solitary confinement until they were involuntarily transferred back to a men's institution at the end of 2023. The provision proposed that allows for unresolved enemy concerns to be the basis to return a person to a gender incongruent facility provides other incarcerated individuals with the power over transgender people's agency to live in a facility that best promotes their dignity, health and safety.

Response 25B: See Response to Comment 10C. The department acknowledges the Commenter's opposition to the proposed regulations, however the department will continue with this rulemaking action for the reasons provided in the Notice of Proposed Regulations and the Initial Statement of Reasons.

Comment 25C: *Proposed Section 3085.2(a)-(d): Housing Requests.*

Our firm has represented and advocated for numerous transgender women who have had their safety concerns completely ignored by CDCR staff despite the requirements under the Prison Rape Elimination Act and SB 132 that their views of their safety in housing and programming be given serious consideration. Worse yet, many are violently punished when they raise safety concerns and assert their rights under these laws.

By way of example, our firm recently advocated for a transgender woman who had been threatened with violence by her cellmate. she [Sic] is among the many women we have worked with still living in a facility designated for men years after requesting to be transferred to a women's facility under SB 132. Last year, she went to her unit officers, informed them of her legitimate safety concerns, and requested to be moved away from a cellmate who was threatening to physically harm her. The officers refused to give her safety concerns serious consideration as required under SB 132, or any consideration for that matter. They ordered her to return to her cell. When she verbally refused, she was forcibly taken down and cuffed by officers. She suffered multiple visible injuries. She was denied access to materials to file a grievance and requests to have her injuries timely recorded. She was subsequently issued a rules violation based on allegations that she battered an officer during the incident. She was punished with a 6-month SHU term, and the rule violation she received was eventually used to deny her request to transfer to a gender congruent institution. Sadly, examples like these are overwhelmingly common among TNI people who have courageously attempted to assert their legal rights.

The lack of accountability and culture of bias against transgender people that runs deep among CDCR custody staff. [Sic] It has resulted in a violent response to SB 132 that has placed TNI people in custody in even more danger than they were in when SB 132 was passed to specifically address their safety. CDCR's efforts to implement SB 132 should acknowledge this reality and aim to mitigate the harm perpetrated against incarcerated TNI people, rather than propose regulations that further enable staff to skirt liability while demonizing and further stigmatizing incarcerated TNI people.

Response 25C: Proposed section 3085.2.(a) Housing based on Gender Identity, states in part "If an incarcerated person raises concerns for their health and safety at any time, their housing and placement shall be reassessed." CDCR is committed to providing a safe, humane, respectful and rehabilitative environment for all incarcerated people, including the transgender, non-binary and intersex community, and is working to implement the law. See also, Response to Comment 7A.

Comment 25D: To ensure consistency with the letter and spirit of Penal Code 2606 and for greater clarity, we suggest editing Section 3085.3(a) to read as follows:

- (a) If an incarcerated person who is transgender, non-binary, or intersex has an approved search preference, the individual shall be searched according to their preference. In the absence of an approved search preference, an incarcerated

person who is transgender, non-binary, or intersex, regardless of anatomy, may be searched according to the search policy for their gender identity or according to the gender designation of the facility where they are housed.

Response 25D: See Response to Comments 15-27A.

Commenter #26

Comment 26A: Commenter represents the Transgender Advocacy Group (TAG). Commenter states their comments do not reflect the view or opinions of any organizational or individual member of TAG, but instead reflects the insight that trans, gender expansive, and intersex (TGI) people inside prisons have shared with TAG and its members for years. When SB 132 was passed, trans people were hopeful that they might experience the simple dignity of living with other people who shared their gender and of having prison officials seriously consider their experiences with gender-based violence in housing and classification decisions. In the years since SB 132 was passed, many of our friends and loved ones inside report that they have experienced more staff retaliation, received more Rule Violation Reports (RVRs), were placed in more dangerous cells and locations more than before, and were punished more harshly for expressing their gender or stating their statutory protections. Instead of SB 132 offering protection or recognition, as one of our friends inside told us, “SB 132 placed a target on the backs of trans people.” Though SB 132 formally required prison officials to recognize and “respect” TNI people, its misuse resulted in increased violence, discrimination, and retaliation against our community. Trans people reported that wardens, counselors, and other prison staff refused to acknowledge or implement SB 132. When trans people requested that officials follow SB 132, prison officials refused to acknowledge their requests and redirected their grievances. Dozens and dozens of TNI people reported that prison officials told them something to the effect of, “We don’t follow the Penal Code. We follow Title 15,” or “We don’t do ‘SB 132’ at this prison.” Some people reported facing retaliation, including receiving false RVRs, being misgendered and outed, and getting placed in cells with individuals known for anti-trans violence.

Response 26A: The department is committed to providing a safe, humane, respectful and rehabilitative environment for all incarcerated people, including the transgender, non-binary and intersex community, and is working to implement the law. An individual can report safety concerns or violations of incarcerated person or staff misconduct at any time.

Comment 26B: Even when their requests were acknowledged by prison staff, trans people nonetheless faced years-long delays and administrative hurdles throughout the entire process. For instance, TNI people reported that they were placed on a waiting list to take the “Right Person, Right Prison” class, and some reported waiting months and years to take the class. Many reported being unable to complete the course due to scheduling conflicts, including work, medical appointments, transfers, and lockdowns, requiring them to wait months to re-register. Even the several hundred people who were able to complete the course are, as of March 2025, still pending classification reviews.² [2 OFFICE OF RESEARCH, CAL. DEP’T OF CORR. & REHAB., SENATE BILL 132,

TRANSGENDER RESPECT, AGENCY AND DIGNITY ACT AS OF MARCH 5, 2025, [https://www.cdcr.ca.gov/research/office-of-research-sb-132-reports/.](https://www.cdcr.ca.gov/research/office-of-research-sb-132-reports/)]

For those who successfully reached the stage of classification committee review, many trans people reported that staff disrupted the process and encouraged them to withdraw their request. For instance, dozens reported that prison officials told them *prior* to the Institutional Classification Committee’s (ICC) review that they would be denied or that they would experience violence and harm at women’s-designated facilities. Others reported that staff told them about anti-trans bias at Central California Women’s Facility (CCWF) and California Institution for Women (CIW) in order to discourage their transfer.³ [3 The OIG’s report provides ample examples of various types of anti-trans bias. OFFICE OF THE INSPECTOR GENERAL, STATE OF CALIFORNIA, SPECIAL REVIEW: THE CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION’S IMPLEMENTATION OF THE TRANSGENDER RESPECT, AGENCY, AND DIGNITY ACT (Aug. 2023), [https://www.oig.ca.gov/wp-content/uploads/2023/08/Special-Review-No.-22-01.pdf.](https://www.oig.ca.gov/wp-content/uploads/2023/08/Special-Review-No.-22-01.pdf)] Many trans people reported that they voluntarily withdrew their requests due to staff encouragement, coercion, or misinformation.⁴ [4 TAG routinely heard reports from trans people that staff at CCWF and CIW specifically were spreading and sharing false information about transgender women and SB 132 generally. See, e.g., *id.* at 26 (“One staff member also reportedly told an incarcerated person that transferees must be treated like an ‘endangered species’ for the department to avoid lawsuits.”)]. Though TAG does not maintain such data, CDCR itself reports that from 2021–2025, 125 people “changed their minds” during ICC reviews.

Response 26B: See Response to Comments 7F and 26A. The department acknowledges Commenter’s concerns, however the department will continue with the rulemaking action for the reasons noted in the Notice of Proposed Regulations and the Initial Statement of Reasons.

Comment 26C: CDCR’s data proves that prison officials failed to meaningfully implement SB 132 for years. Unfortunately, CDCR’s proposed regulations do not provide any substantive language to correct or prevent its continuing failure to implement SB 132. [OFFICE OF RESEARCH, CAL. DEP’T OF CORR. & REHAB., SENATE BILL 132, TRANSGENDER RESPECT, AGENCY AND DIGNITY ACT AS OF JANUARY 1, 2025, [https://www.cdcr.ca.gov/research/office-of-research-sb-132-reports/.](https://www.cdcr.ca.gov/research/office-of-research-sb-132-reports/)] [*Id.*] [From January 2021 to January 2025, CDCR adjudicated or reviewed 269 requests (approved 45, denied 104, 120 changed mind) out of 849 requests from TNI individuals requesting transfer to women’s-designated facilities. *Id.* Over four years, CDCR averaged 67.25 adjudications annually (269/4=67.25). As of January 1, 2025, there were 580 remaining requests (849-269=580). *Id.* Thus, if CDCR maintained its 2021-2025 rate, it would take over 8 years to complete the pending requests. (580/67.25 (annual average reviews) = 8.6 years.). For 2025, we gathered data from CDCR’s Office of Research SB 132 reports. *Id.* For 2021-2024, we used data from CDCR’s SB 132 webpage. SB 132 FAQs, CAL. DEP’T OF CORR. & REHAB., [https://www.cdcr.ca.gov/prea/sb-132-faqs/.](https://www.cdcr.ca.gov/prea/sb-132-faqs/) To access archived versions of this website, we used the WayBack Machine. WAYBACK MACHINE, https://web.archive.org/web/20250000000000*/https://www.cdcr.ca.gov/prea/sb-132-faqs/ (last rev. Apr. 14, 2025).]

Response 26C: The department is committed to providing a safe, humane, respectful and rehabilitative environment for all incarcerated people, including the transgender, non-binary and intersex community, and is working to implement the law. Evaluating gender-based housing requests is part of the department's existing case-by-case classification process used for all incarcerated people. It includes a review of an incarcerated person's central file, various reports, and a thorough review of their history prior to and during incarceration; their crime, arrest and criminal history; trial and sentencing documentation; medical and mental health needs; custody level; time to serve; safety concerns and other factors including security and program needs. Medical and mental health care staff members are part of this process. Findings are then presented to the Institutional Classification Committee (ICC) to assist them in determining the incarcerated person's housing, security level, custody requirements and program needs. This process varies with each incarcerated person. The department has taken measures to improve processing timelines, and as a result has seen a 186.5% increase in the cases reviewed in the last year between October 2023 and January 2025.

Comment 26D: Even if CDCR increases its administrative efficacy, CDCR has created a process to effectively deny nearly every request. Put simply, CDCR's substantive outcomes are alarming. From 2022–2025, CDCR denied requests at 47.5-times the rate than it approved requests.⁸ [8 In January 2022, CDCR reported that since January 2021, it had approved 43 requests for transfer, denied 9, reviewed but didn't reach a determination for 18 people who changed their minds, and that 225 individuals were pending evaluation. As of January 2025, CDCR reported that since January 2021, it had approved 45 requests, denied 104, that 120 changed their minds, and 197 were pending classification review. This means that from January 2022 to January 2025, CDCR's data show that CDCR approved 2 requests (an increase of 4.4% since 2022) for transfer to a women's-designated institution and denied 95 requests (increase of 1055.6% since 2022) during the same time period. For 2021-2024, we used data from CDCR's SB 132 webpage. SB 132 FAQs, CAL. DEP'T OF CORR. & REHAB., <https://www.cdcr.ca.gov/prea/sb-132-faqs/>. To access archived versions of this website, we used the WayBack Machine. WAYBACK MACHINE, https://web.archive.org/web/20250000000000*/https://www.cdcr.ca.gov/prea/sb-132-faqs/ (last rev. Apr. 14, 2025). We gathered data from CDCR's Office of Research SB 132 reports. *Supra* note 5.] If CDCR continues its rate of approvals and denials to the 580 remaining requests noted above, CDCR is projected to only approve 5 or 6 requests, to deny 276 requests and to report that 300 individuals have changed their mind.⁹ [9 From Jan. 2022 to Jan. 2025, CDCR approved 2 requests, denied 95 requests, and 102 people changed their minds. *Supra* notes 7-8. For approvals, $((2/199)*580)=5.8$. For denials, $((95/199)*580)=276.9$. For changed their minds, $((102/199)*580)=297.3$.] As of March 2025, only a tiny fraction of trans people (20 out of 2,138 ¹⁰ [10 OFFICE OF RESEARCH, CAL. DEP'T OF CORR. & REHAB., SENATE BILL 132, TRANSGENDER RESPECT, AGENCY AND DIGNITY ACT AS OF MARCH 5, 2025, <https://www.cdcr.ca.gov/research/office-of-research-sb-132-reports/>.] or 0.9%) currently experience SB 132's statutory requirement that prison officials house TNI people based on their preference. Our group is aware of 20 transgender women who were approved to transfer under SB 132 who are still housed at CCWF or CIW; we are not aware of any transgender men who were approved to transfer under SB 132 who are still housed at

CIM. Of the approximately 39 transgender women who were approved to transfer to women's-designated prisons pursuant to SB 132 that TAG is aware of, 8 individuals have been released, 9 requested to return to men's-designated prisons, and 2 were involuntarily returned to men's-designated prisons.¹¹ [11 This data mirrors the data provided in the OIG report covering the same time frame. See *supra* note 3, at 17 (Stating that as of August 2023, "five incarcerated people have since been released from the prison system, while eight returned to a men's prison after transferring to CCWF or CIW.")].] We are aware of only one transgender man who was approved to transfer to a men's-designated facility; that individual was released soon after transfer.

To better understand the above data, we encourage state officials to consider this data in context. CDCR reports that there are 3,627 females in California prisons, and of those, 879 are females at men's-designated institutions.¹² [12 OFFICE OF RESEARCH, CAL. DEP'T OF CORR. & REHAB., WEEKLY REPORT OF POPULATION AS OF MIDNIGHT APRIL 9, 2025, <https://www.cdcr.ca.gov/research/population-reports-2/>.] This means that 24.2% of females in CDCR custody are transgender women housed at men's-designated facilities. Of the 89,455 people in CDCR institutions as of April 9, 2025, approximately 2,138, or 2.4%, are transgender, non-binary or intersex.¹³ [13 *Supra* note 10.] Of the 3,226 people at CCWF or CIW, 362, or 11.2%, are transgender men and 116, or 3.6%, are non-binary.¹⁴ [14 *Id.*] Based on our information, we believe that approximately 20, or 0.6%, of those at CIW and CCWF are transgender women transferred under SB 132. We are aware of a handful of transgender women at CCWF and CIW were housed at CCWF and CIW under different auspices, and we do not include them in these numbers.

We highlight these data points to emphasize our main arguments. First, CDCR's approach to implementing SB 132 has been to ignore, or even undermine, the protections required by the law. Unfortunately, CDCR's proposed regulations fail to address the administrative and substantive issues identified below and demonstrated by the data above, and fail to propose meaningful accountability measures to correct and address the substantial issues with SB 132 implementation. Thus, CDCR, at a baseline, should implement the recommendations below and should develop adequate protections and accountability measures for trans people protected by the law. Second, CDCR's proposed regulations give CDCR nearly unlimited discretion to deny trans people's requests and effectively eliminate SB 132's prohibition on discrimination in housing decisions. We suggest changes (Commenter's changes are outlined in Comment #7) that we hope will guard trans people from retaliation and ensure that our community's basic statutory protections, as enacted by the California legislature, are provided.

Response 26D: See Response to Comments 7A and 25C. The department acknowledges Commenter's opposition, however the department will continue with the rulemaking action for the reasons noted in the Notice of Proposed Regulations and the Initial Statement of Reasons.

Comment 26E: TAG is particularly concerned about the proposed regulations' approach to categorical vs. non-categorical denials because of how arbitrary such a definition can be. The following example is instructive, though not exhaustive. We have received numerous reports from transgender women who were denied transfer to a women's-designated facility due to their lack of experience with "dormitory-style" living or

due to their experience with secure housing options. In addition to being a discriminatory rationale for denial under SB 132's own language because there are non-transgender women and transgender men who lack experience with dormitory-style living and are nonetheless housed in women's-designated prisons, this logic exposes the double bind that prison officials place transgender women in. Because transgender women often seek, or are coercively placed in, more secure housing options, including celled living, due to safety concerns that others pose to them, they lack "experience" with the type of built environments normal at women's-designated prisons. (In men's-designated prisons, many TNI people avoid dormitory-style housing, as it can increase the possibility of sexual violence, harassment, abuse, and retaliation for transgender women and non-binary people.) Then, when considering TNI people's requests to transfer, prison officials weigh their lack of experience as a safety and management concern *against* them. Seen in this light, prison officials fail to protect trans women from violence, thus requiring transgender women to seek relatively safer housing in more secure locations, yet consequently, officials use the predictable outcome of their failure to protect TNI people as the basis to deny TNI people from benefitting from their statutory protections. Such proposed regulations will only continue to normalize and give bureaucratic cover to continue punishing TNI people from all sides when they seek safer housing.

Response 26E: See Response to Comment 7D.

Comment 26F: TAG is concerned that prison officials will continue to use information gathered throughout the SB 132-related housing requests process to justify denials and to provide extremely detailed information during the parole review process. Because SB 132-related ICC summaries appear to be considerably more detailed and focused on the incarcerated person's history than other types of ICC reviews, we are concerned that the SB 132 review process will unintentionally result in harsher and worse parole decision outcomes because only those who have case workups pursuant to SB 132 transfers will have the level of detail contained in the ICC documents. For example, some TAG members have reviewed ICC denials and observed that ICC documents for SB 132 requests undoubtedly required extensive labor to identify, log, and summarize novel case factor information, including detailed information about gender dynamics. Some TNI people reported (and some TAG members have observed) that ICC denials included information about the gender of a correctional officer for RVRs, and others reported that summaries of police reports and arrests from the 1980s and 1990s included information about the genders of the people involved, even though these details were unrelated to *any* conviction, including their current sentence. TAG members who have reviewed ICC denials cannot recall any ICC denial persuasively describing how historical examples substantiated claims that such events presented ongoing, current safety and security issues that could not be mitigated by staff at CCWF or CIW. On the whole, because TNI people who request SB 132-related transfers now have classification files that contain very detailed information about prior arrests, police reports, and RVRs, TAG members are concerned that the Board of Parole Hearings (BPH) will use this information to deny parole requests.

Response 26F: CDCR is committed to providing a safe, humane, respectful and rehabilitative environment for all incarcerated people, including the transgender,

non-binary and intersex community, and is working to implement the law. Evaluating gender-based housing requests is part of CDCR's existing case-by-case classification process used for all incarcerated people. It includes a review of an incarcerated person's central file, various reports, and a thorough review of their history prior to and during incarceration; their crime, arrest and criminal history; trial and sentencing documentation; medical and mental health needs; custody level; time to serve; safety concerns and other factors including security and program needs. Medical and mental health care staff members are part of this process. Findings are then presented to the Institutional Classification Committee (ICC) to assist them in determining the incarcerated person's housing, security level, custody requirements and program needs. This process varies with each incarcerated person. The department's process for reviewing requests for gender-based housing is separate from BPH's process for reviewing for parole. BPH's processes are controlled by statutes other than PC sections 2605 and 2606. Therefore, the department's decision to approve or deny gender-based housing has no bearing on the BPH process.

Comment 26G: TAG is also concerned that the provisions regarding transfers back unjustifiably encourage staff and officials alike to surveil transgender people and to document even minor issues to substantiate a coercive transfer to a previous institution. TAG is particularly worried about how these types of disciplinary write-ups could negatively impact parole applications and thus potentially increase TNI people's total time in prison.

Response 26G: Proposed section 3085.2(f) Return Transfer to Previous Institution Gender Designation provides the department criteria that may be considered and a process that shall be followed if an incarcerated person exhibits management or security concerns. This is to ensure the department is taking careful consideration in each case-by-case evaluation and decision as CDCR is committed to providing a safe, humane, respectful and rehabilitative environment for all incarcerated people, including the transgender, non-binary and intersex community.

Comment 26H: TAG is also concerned that the regulations seem to punish transgender people who fail to address documented enemy concerns. Transgender women, like any person at CCWF and CIW, may encounter enemy concerns through no fault of their own but this is even more so the case in the context of "protection pacts" and the atmosphere of transmisogynistic bias they indicate.²⁰ [20 OFFICE OF THE INSPECTOR GENERAL, STATE OF CALIFORNIA, SPECIAL REVIEW: THE CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION'S IMPLEMENTATION OF THE TRANSGENDER RESPECT, AGENCY, AND DIGNITY ACT (Aug. 2023) [hereinafter OIG Report], <https://www.oig.ca.gov/wp-content/uploads/2023/08/Special-Review-No.-22-01.pdf> (stating that individuals at "CCWF and CIW . . . form[ed] protection pacts and agree[d] to join in any fight between a transferee and a nontransferee in their pod.").] In essence, we are concerned that the provision re: enemy concerns will give residents at CCWF and CIW the ability to use the enemy concerns process to remove transgender women they do not like. Other non-transgender women at CCWF and CIW who cannot resolve enemy concerns would never be transferred to men's prisons, and transgender women should not be discriminated against simply because they are transgender.

Response 26H: See Responses to Comments 10C and 25B.

Comment 26I: TAG also recommends that CDCR develop accurate reporting mechanisms with input and support from TNI people in custody. CDCR's inconsistent and incomplete reporting over time has made it challenging for our community members to understand the process (e.g., what steps are required, approximate timelines for each step) and to interpret approval and denial rates.

Response 26I: See Response to Comment 7F. The department is unsure what specifically the Commenter is referring to regarding "accurate reporting mechanisms." The department has many reporting mechanisms in place for various processes.

Comment 26J: Regarding Searches, TAG wants to add additional context to this provision. People in prison are routinely strip-searched—dozens, if not hundreds, of times per year. For example, TNI people report having to strip out before and after every work shift, before and after every medical appointment, before and after every visit (even no-contact visits), before and after visiting another yard/facility at the prison, and during routine searches. Sometimes, prison staff allow people to remove all clothing but their underwear and then change clothes with slightly more privacy. But often these searches require completely undressing in a small, confined setting like a hallway, holding cells, dormitory, etc., handing their clothes to a correctional officer, and dressing in new clothes. Imagine being a transgender woman who has developed breasts due to gender-affirming hormones, a transgender man who wears a chest binder, or a transgender person who has had gender-affirming surgery. Each search often involves new deputies. TNI individuals report that staff gawk, comment, touch, harass, and harm them during these searches. Even when TNI individuals have been approved to be searched based on their gender identity in men's-designated facilities, female officers are rarely, if ever, available to search them. Dozens of TNI people have shared that they have missed outside medical appointments, work shifts, programming, and other opportunities simply because they requested that prison officials follow SB 132, and some have been written up or have been unable to access medically necessary care in retaliation for consistently requesting that their gender-based search is honored.

Response 26J: Title 15 section 3287(b) states in part... "All such inspections shall be conducted in a professional manner which avoids embarrassment or indignity to the incarcerated person. Whenever possible, unclothed body inspections of incarcerated persons shall be conducted outside the view of others." All incarcerated persons are subject to clothed and unclothed searches and shall be conducted in accordance with policy, procedure, and training in accordance with section 3287; an individual's gender identity has nothing to do with the search requirements. Searches are conducted in a professional, respectful manner, and in the least intrusive manner possible consistent with security needs. The department does not tolerate retaliation and will investigate all allegations of retaliation and misconduct.

Commenters #29 through #144 were duplicative comments received from the advocacy group JusticeLA.

Comments 29 through 144A: Although the adoption of implementing regulations represents an opportunity for CDCR to improve its compliance with SB 132, changes are necessary to address numerous legal and practical problems with the initially proposed language. Most notably, it is unacceptable and likely unconstitutional for CDCR to make an end run around SB 132 by purporting to allow by regulation the denial of transfer requests based on discriminatory factors specifically disallowed by Penal Code Section 2606(c). I encourage CDCR to meaningfully engage transgender, non-binary, and intersex people, including but not limited to those who are currently or formerly incarcerated, both in revising and finalizing these regulations and in developing, evaluating, and maintaining other protocols and procedures for implementing SB 132. The involvement of TNI people, both in the regulatory process and in evaluating individual requests, would be invaluable in fulfilling the Legislature’s intent.

Response 29 through 144A: See Response to Comment 7D.

Commenter #145

Comment 145A: Commenter supports the proposed regulations outlined in NCR #25-04. As a formerly incarcerated woman, survivor of institutional trauma, and Executive Director of Woman II Woman, I support the department’s commitment to ensuring the dignity of transgender individuals—while simultaneously restoring essential administrative oversight needed to protect all incarcerated people. When SB 132 was enacted, it sought to extend basic human dignity and protections to incarcerated people who identify as transgender, non-binary, or intersex. I supported that spirit. No one—regardless of identity—should be subjected to abuse, humiliation, or fear for their safety behind bars. However, in practice, the implementation of SB 132 unintentionally stripped CDCR’s staff of the ability to make sound security-based decisions regarding housing and placement. I witnessed firsthand how confusion, inconsistent guidance, and lack of procedural safeguards created dangerous conditions—not only for the women in custody, but also for transgender individuals who were setup to fail in poorly matched placement. These proposed regulations are a critical and welcome correction. The Gender Identity Questionnaire (GIQ) creates clear housing review protocols and explicitly allows the Institution Classification Committee (ICC) to evaluate safety risks based on the totality of circumstances, CDCR is moving toward a more balanced and responsible framework. I am especially encouraged by the restoration of administrative discretion to document and deny transfer requests when there are legitimate security concerns—not based on bias but grounded in safety and sound correctional judgment. Most importantly, the new framework includes reassessment opportunities for those who express health or safety concerns post-placement. This flexibility ensures no person is forced to remain in a setting that endangers them. That’s real dignity. I believe we can protect the rights of transgender people without compromising the safety of women in custody. The proposed regulations move us toward that goal. I urge the department to adopt these revisions in full.

Response 145A: The department acknowledges the Commenter’s support for the proposed regulations.

Commenter #146

Comment 146A: Commenter states they are a non-binary identifying incarcerated person who has been subjected to the arbitrary and homophobic driven criminalization of their person through the misuse and abuse of CDCR confidential files/records and policies based on their sexuality, sexual orientation, and/or gender identity perceived by CDCR employees as being gay. Commenter states CDCR officials devised a scheme, practice, custom, or policy to label LGBTQ+ incarcerated persons as sex offenders in order to illegally trigger and unlawfully justify blatant voyeurism, sexually harassing and threatening intrusion of subjects perceived or genuine sexual orientation or their gender identity, for the unlawful purpose of force disseminating private confidential and/or misleading sexualized information and related confidential records/non-confidential/captured images to known violent hate groups and convicted sex traffickers/drug traffickers and sexually violent offenders and convicted serial killers to induce the natural foreseeable consequences of such labels. Commenter's concerns about the proposed changes are that the receiving ICC members are required to conduct an extensive evaluation to adequately process, classify, and safely house LGBTQ+ incarcerated persons. ICC members rely on confidential records. In Commenter's case, every harmful label was fabricated by the groups of bias motivated guards, designed to deceive all others. ICC, BPH, and court officials will not conduct a thorough review to determine the accuracy or falsehood of confidential records, to the detriment of LGBTQ+ incarcerated population. Commenter continues that the misinformation is used to deprive the LGBTQ+ incarcerated persons of due process, fairness, and equal protection of governing authority (i.e., Penal Code 2635 – 2638 (et. Seq.), 18 U.S.C, PREA, and SB 132. Commenter continues at length regarding their personal accounts of harassment, mistreatment, and false, uncorroborated actions taken against them. Commenter included a separate document titled "S.S.A.D 2006-2025 Campaign [Stop Sexual Abuse in Detention], an inmate-based watch-dog group seeking equal justice and protection. RE: Reporting and Irradicating Sexual Abuse by Guards."

Response 146A: The comment is either insufficiently related to the specific action proposed or to the procedures followed by the department in proposing or adopting these regulations or generalized or personalized to the extent that no meaningful response can be formulated by the department in refutation or accommodation of the comment, therefore the comment is irrelevant pursuant to Government Code section 11346.9(a)(3). The department encourages the Commenter to report any instances of abuse, retaliation, or misconduct. If the Commenter believes they have been harassed or suffered misconduct, the Commenter may pursue their administrative remedies as outlined in Title 15, Subchapter 5.1, sections 3480, Et al.

Commenter #147

Comment 147A: I am of the belief that there are only two sexes, male and female, and that an individual's gender identity, i.e. their perception of what sex they are, should not have any bearing on which prison (male or female) they are housed in. Women should not have to share their prison space with men. Men tend to be more sexually violent than

women and they have no business being housed in a women's facility. If a man thinks he is a woman and wants to behave like a woman, he can be housed in an area where he will not be placed in undo harms way, such as a housing block with other like-minded individuals, but he is still a man and belongs in a man's prison.

It is impossible for anyone to change gender, and we shouldn't align public correctional policy to support this false idea.

Regarding - Establishing that transgender, non-binary and intersex incarcerated persons shall have their perception of their health and safety given serious consideration in any bed assignment, placement, or programming decision within the facility in which they are housed. – No, their perception is not reality. Aside from putting them in a facility that groups them with others with similar mental health issues, men should never be placed in female institutions and vice versa.

Regarding establishing that a transgender, non-binary, or intersex incarcerated person may be housed at a facility designated for men or women based on the incarcerated person's preference. Approval for housing at an institution of a different gender designation shall be made by an Institution Classification Committee. Denial of such a housing request must be based upon specific management or security reasons and must be documented. – Absolutely not. Never put men in women's prisons. Their preference on this matter is not relevant.

Response 147A: The department acknowledges the Commenter's opposition to the proposed regulations; however, the department will continue with this rulemaking action for the reasons provided in the Notice of Proposed Regulations and the Initial Statement of Reasons. The proposed regulations are in accordance with SB 132 and PC sections 2605 and 2606.

Comment 147B: Regarding – Adopting new and amending existing terminology related to transgender, non-binary and intersex incarcerated persons. Please do not amend the terminology to include “non-binary and intersex;” transgender was bad enough and itself needs to be removed from policy. A person cannot be “non-binary.” You are either male or female. No one is forcing anyone to live up to sexual stereotypes; that is only personally perceived pressure. Let us not support this false belief by encoding the language in policy.

Intersex is a very rare medical condition and does not need to be included in policy. We do not have special policies for other rare birth defects and there is no need to make an exception with this one. In the rare occasion that it is more difficult for doctors to decide what sex a person is genetically, i.e. examining whether they have large or small gametes, wider consideration of the safety of the individual and the other inmates can be the basis of the decision.

Response 147B: The department acknowledges the Commenter's opposition to the proposed regulations; however, the department will continue with this rulemaking action for the reasons provided in the Notice of Proposed Regulations and the Initial Statement of Reasons. The proposed regulations are in accordance with SB 132 and PC sections 2605 and 2606.

Comment 147C: Regarding – Establishing that each incarcerated person shall, during intake processing upon their arrival to a state prison, or at any time upon their request, be asked to participate in a Gender Identity Questionnaire (GIQ). Incarcerated persons may refuse to answer any or all questions asked of them as part of the GIQ. We should not have a special “Gender Identity Questionnaire.” During intake, such information would come up in the mental health evaluation and the safety concerns portion of the intake process.

Response 147C: The information discussed during the mental health evaluation is confidential between the incarcerated person and the mental health provider and therefore is not shared with custody staff. Any electronic documentation kept of the mental health evaluation is kept in a separate computer database that custody staff do not have access to. The GIQ is the department’s process in response to Penal Code section 2605, to allow the department to capture the necessary information to ensure the safe housing and identification of the incarcerated population.

Comment 147D: Regarding – Establishing that transgender, non-binary, and intersex incarcerated persons shall be addressed in a manner consistent with their gender identity. “Shall be”? No. Dancing around an inmate’s perceived gender gives them the false sense that their perception is reality. This is not good for their mental health. They are not the other sex and there is no need for staff to pretend that they are. And since it is impossible to be “non-binary,” there is no need to use they/them pronouns. If other inmates choose to use alternate pronouns, that is their choice, but staff should not be encouraged or forced to use false pronouns. “Shall be” means that staff that do not alter their speech could be punished or fired and this would be wrong.

Response 147D: PC section 2606 (a)(1) states “An individual incarcerated by the Department of Corrections and Rehabilitation who is transgender, nonbinary, or intersex, regardless of anatomy, shall:(1) Be addressed in a manner consistent with the incarcerated individual's gender identity.” CDCR is committed to providing a safe, humane, respectful and rehabilitative environment for all incarcerated people, including the transgender, non-binary and intersex community, and is working to implement the law.

Comment 147E: Regarding – Establishing that an incarcerated person who is transgender, non-binary, or intersex may be searched according to the search policy for their gender identity or according to the gender designation of the facility where they are housed, unless the individual’s approved search preference dictates otherwise. We don’t need to be dancing around inmates’ search preferences. We have staff that work in prisons, and they need to do their job for the safety and security of the institution. Let them search inmates according to the sex of the institution. Searching inmates differently could compromise safety and security which should be the primary concern.

Response 147E: PC section 2606 (a)(2) states “An individual incarcerated by the Department of Corrections and Rehabilitation who is transgender, nonbinary, or intersex, regardless of anatomy, shall: If lawfully searched, be searched according to the search policy for their gender identity or according to the gender designation of the facility where

they are housed, based on the individual's search preference. If the incarcerated individual's preference or gender identity cannot be determined, the search shall be conducted according to the gender designation of the facility where they are housed.” The department is committed to providing a safe, humane, respectful and rehabilitative environment for all incarcerated persons, including the transgender, non-binary and intersex community, and is working to implement the law.

Comment 147F: Regarding – Amend the Transgender Inmates Authorized Personal Property Schedule, and re-title it as “Transgender, Non-Binary, and Intersex Incarcerated Persons Authorized Personal Property Schedule.” Allowing some inmates to have special access to alternate personal property supports the false claim that they are not their biological sex of the institution they are housed at. Maybe a solution is to increase the choices of clothing and property to give everyone an opportunity to wear the opposite sex clothing.

Response 147F: The department acknowledges the Commenter’s opposition to the proposed regulations; however, the department will continue with this rulemaking action for the reasons provided in the Notice of Proposed Regulations and the Initial Statement of Reasons.

Comment 147G: This NCR does not address the medical treatment for inmates with perceived gender identity issues, but I will add that I am adamantly against the institution providing any medical treatment to support an inmates’ trans identity. As a taxpayer, I do not support the CDCR paying over one million dollars for sex surgeries or \$1,000 for regular doctor’s visits for aesthetic treatments, i.e. hair removal or for prescribing cross-sex hormones. These individuals are in the state’s care and medicalizing their false perceptions is dangerous and irresponsible. They are highly likely to sue the state 5-10 years down the road for medical mistreatment they received when they were in a vulnerable time of their lives and thought they were “transgender.” Once a person starts down the road of medical treatment, they will be medicalized for life. Is California prepared for such a responsibility?

Response 147G: The comment is either insufficiently related to the specific action proposed or to the procedures followed by the department in proposing or adopting these regulations, or generalized or personalized to the extent that no meaningful response can be formulated by the department in refutation or accommodation of the comment, therefore the comment is irrelevant pursuant to Government Code section 11346.9(a)(3).

Commenter #148

Comment 148A: CDCR consistently fails to treat non-binary inmates equally compared to transgender and intersex inmates. Non-binary inmates are denied Bi-Annual Transgender Reassessments despite non-binaries clearly being also transgenders, as per SB 132/PC 2606’s own definitions of what transgender in fact is (anyone whose gender identity differs from their birth sex), and per other authorities’ definitions of the term, like Federal PREA’s and CDCR’s DOM, as well as GIQ/PREA Screening Form definitions. CDCR’s own documents, like SB 132 Updates, and SB 132 Wardens Talking

Points memorandums specifically state that non-binary inmates shall receive the same accommodations as transgender and intersex inmates. This is because being non-binary means, per definition of transgender, one is also simultaneously transgender (CDCR's GIQ/PREA Screening Form definitions for non-binary specifically states that non-binary inmates may also identify as transgender).

Response 148A: The comment is either insufficiently related to the specific action proposed or to the procedures followed by the department in proposing or adopting these regulations or generalized or personalized to the extent that no meaningful response can be formulated by the department in refutation or accommodation of the comment, therefore the comment is irrelevant pursuant to Government Code section 11346.9(a)(3). The proposed regulations are to bring the department into compliance with Penal Code sections 2605 and 2606.

Comment 148B: CDCR also does not provide non-binary inmates with the same level of consideration when it comes to housing requests made under SB 132/PC 2606. I have been told flat out that, dependent upon whether I identify as non-binary or as transgender, ICC/UCCs will be conducted differently. I was not allowed to choose both, though I identify as both. Given I chose "non-binary" when forced to (though wrong to have been made to choose), I was given less consideration (none at all) when it came to my expressed need for single-cell housing (despite documented in-cell/in-dorm victimization instances). Presently CDCR staff, in the majority, care little to nothing about the safety of these populations. Despite my informing CDCR staff routinely and consistently of being victimized, and requesting single-cell housing, staff deliberately indifferent, deemed me "only non-binary" and thus undeserving of safeguarding.

Response 148B: In the 2nd Re-Notice, the department made revisions to the proposed regulations for better clarity and consistency with PC sections 2606 and 2605. Subsection 3085(c) was amended to include language as it relates to procedures for the department to follow when giving serious consideration in any bed assignment, placement, or programming decision within the facility in which a transgender, non-binary, or intersex incarcerated person is housed: including, but not limited to, consideration for single-cell status, housing the individual with another incarcerated person of their choice, or removing the individual or individuals who pose a threat to the transgender, non-binary, or intersex incarcerated person from any location where they may have access to the individual who has expressed a safety concern. The department is committed to providing a safe, humane, respectful and rehabilitative environment for all incarcerated persons, including the transgender, non-binary and intersex community, and is working to implement the law.

Comment 148C: CDCR staff continue to go a step further with such disparity in treatment of non-binary inmates, by forcing inmates into "non-binary" classification even when expressly told by the inmates themselves, and documented, that they also identify as "transgender." CDCR is under the erroneous, wrongful and harmfully impactful belief that non-binary inmates are not deserving of special considerations for housing, etc. under SB 132/PC 2606, and they are not deserving of Bi-Annual Transgender Reassessments. This is because of ignorance of CDCR staff, most are unaware that "transgender" is a

“broad and inclusive term,” and an “umbrella term” inclusive of all gender identities which differ with one’s birth sex, “non-binary” indisputably differs from one’s birth sex. Being non-binary makes one transgender; therefore, CDCR staff actions in these regards are particularly heinous, and allow for much wanton infliction of pain and suffering, and death, because of this denial of the safeguards that they too (non-binaries) are technically required to receive alongside transgenders and intersex inmates. CDCR must make it fully known and unequivocal that non-binary inmates are also transgenders. Non-binary inmates, even if not expressly describing themselves as “transgenders” must be availed the same level of consideration seriousness that transgender and intersex inmates receive at ICC/UCCs addressing housing requests, etc. made under the auspices of SB 132/PC 2606. This must be done so that CDCR staff will cease the wrongful and harmful denial of Transgender Bi-Annual Reassessments that non-binaries currently experience.

Response 148C: See Response to Comment 148A.

Comment 148D: The term “serious consideration” must be defined. Without definition, CDCR staff frequently engage only in “want of consideration,” only nominally considering things such as housing requests, safety issues, etc. These are currently empty phrases devoid of any real meaning and thus effect. Consideration must be defined, otherwise CDCR staff can never be properly held to any type of standard of behavior in application/implementation of this regulation, and they may continue to criminally abuse it.

Response 148D: See Response to Comment 7F.

Comment 148E: The “GIQ 11/8/23” is outdated. An updated GIQ was implemented in approximately August 2024, adding a subsection to allow inmates to further specify exactly how they identified, however the GIQ must again be updated. CDCR presently only allows inmates to identify as one thing/identity, despite, again, the definition of “non-binary” within CDCR’s own definitions for GIQ/PREA Screening Forms specifically stating that inmates identifying so may also identify as “transgender,” that’s two identities, yet CDCR once more, presently does not afford this option, and instead forces such inmates into “non-binary” only classifications, denying them proper consideration in housing, etc. under SB 132/PC 2606, and Transgender Bi-Annual Reassessments.

Response 148E: The GIQ 11/8/23 is the last version of the form. All incarcerated persons including those who identify as non-binary are given serious consideration in any bed assignment, placement, or programming decision within the facility in which they are housed. The department acknowledges the Commenter’s opposition to the proposed regulations; however, the department will continue with this rulemaking action for the reasons provided in the Notice of Proposed Regulations and the Initial Statement of Reasons.

Comment 148F: Allowable Property and Canine Searches – CDCR staff must not be allowed to register their own personal wireless devices for usage on institution premises, because this only promotes the introduction of contraband mobile devices (where else do you think inmates get them?); and it will further distract CDCR staff from properly

conducting themselves in their duties, which then endangers inmates and others' safety. Staff provenly abuse such excessive privileges, and the safety and security of the institutions is detracted from as a result. This is an absurd proposal, clearly contraindicated, regardless of how CDCR staff spin it. Spinning it only out of manipulative motives and unprofessional tendencies, promoting dereliction of duty.

Response 148F: The comment is either insufficiently related to the specific action proposed or to the procedures followed by the department in proposing or adopting these regulations, or generalized or personalized to the extent that no meaningful response can be formulated by the department in refutation or accommodation of the comment, therefore the comment is irrelevant pursuant to Government Code section 11346.9(a)(3).

SUMMARIES AND RESPONSES TO THE VERBAL PUBLIC COMMENTS RECEIVED DURING THE PUBLIC HEARING HELD APRIL 15, 2025

Verbal Commenter #1: I'm co-founder of Freedom Angels. We are working with women to women right now on legislation that addresses SB132. And I've read the agenda, and I just want to say, you know, we all want to respect everyone's rights and rights to exist and to be protected. What the elephant in the room is not discussing is the lack of guardrails right now during SB132 and the assaults that are happening on women. We have a current bill coming out, SB311, that has already been introduced that addresses this issue that asked the state legislature to add a regulation that those who are convicted of serious sex crime are not housed with the woman's facility. So, I'm just here to listen to what you guys are introducing. And again, I do support protection of all people, but we also need to address the elephant in the room of the women who are the collateral damage of SB132. Thank you.

Response Verbal Commenter #1: The department acknowledges the Commenter's concerns. See Responses to Comments 12B and 2A.

SUMMARIES AND RESPONSES TO THE WRITTEN PUBLIC COMMENTS RECEIVED DURING THE 1st 15-DAY RE-NOTICE COMMENT PERIOD:

Re-Notice Commenter #1

Re-Notice Comment 1A: Section 3085.3(a) states "...shall be searched according to the individual's approved search preference, unless the department has management or security concerns with an individual's search preference." This is confusing because how would an inmate have an "approved search preference" if the department also has "management or security concerns with that inmate's search preference? Substituting "policy" for "preference" would add clarity. An inmate's "search preference" should be evaluated and depending on management or security concerns, a "search policy" will be approved, although it may not be the policy preferred by the inmate. It should read "...shall be searched according to the individual's approved search policy. If the approved search policy cannot be determined the search shall be conducted according to the search policy of the gender designation of the facility where the incarcerated person is housed."

Response Re-Notice Comment 1A: An incarcerated person may have an approved search preference but later display management or security concerns, which would be cause for rescinding the individual's approved search preference at the time. The department makes every effort to honor an individual's search preference, but circumstances involving management or security concerns may arise that could prevent the department from doing so. The language as written in section 3085.3(a) allows for incarcerated persons to be searched according to their approved search preference, unless the department has management or security concerns. This language provides these individuals with their rights to be searched according to their preference, while also protecting the institutions and facilities in situations where there are management or security concerns present.

Re-Notice Commenters #2 through #7 are duplicative

Re-Notice Comments 2A – 7A: Advocates have identified numerous practical and legal problems with the proposed regulatory language and have submitted extensive comments to that effect. Unfortunately, it appears from the Notice of Change to Text that only a few of those comments resulted in changes to the proposed regulatory language. Nonetheless, we offer the below comments on the changed language in a further attempt to encourage CDCR to comply with both the letter and spirit of SB 132 and implement the statute in ways that foster respect, agency, and dignity for incarcerated TNI people.

Section 3085.2: Commenter states language is redundant. The repetition of "preference" could also fuel a misperception that a housing placement besides the one aligned with a TNI person's health and safety needs is broadly acceptable. We suggest rephrasing this passage to read: If the incarcerated person is not granted their preferred housing based on their perception of their health and safety, the department shall document the reasons for that denial and share them with the individual. When denying a gender-based housing request, the department shall document and articulate the specific management or security reasons for the denial and provide them to the incarcerated person via an automated Classification Committee Chrono.

Response Re-Notice Comments 2A - 7A: Language regarding "an incarcerated person not being granted an alternative based on their perception of their health and safety" was revised in the 2nd Re-Notice for subsection 3085(c). See also, Response to Comment 4C.

Re-Notice Comments 2B - 7B: At Section 3085.3(a), the revised proposed text says that "An incarcerated person who is transgender, nonbinary, or intersex, regardless of anatomy, shall be searched according to the individual's approved search preference, unless the department has management or security concerns with an individual's search preference." There are two problems with this language. First, it appears to say that an individual shall be searched according to their "approved search preference" unless the department has disapproved the stated search preference, which is confusing and circular. In addition, this section needs to specify department procedure for documenting and disclosing the specific management and security concerns justifying the denial of a

stated search preference. We suggest revising the sentence quoted above to say “An incarcerated person who is transgender, nonbinary, or intersex, regardless of anatomy, shall be searched according to the individual’s stated search preference unless the department has documented denial of the individual’s stated search preference as specified in this section.” We further suggest that at 3085.3(a)(1), the regulations should spell out how CDCR will document and disclose to the impacted individual its basis for denying their search preference, such as by using the Automated Classification Chrono.

Response Re-Notice Comments 2B – 7B: The language of 3085.3 as written is necessary to comply with Penal Code section 2606. The department does include the specific procedure for documenting and disclosing the specific management and security concerns justifying the denial of an individual search preference, as well as defines how the department will document and disclose to the incarcerated individual its basis for denying their search preference. This information is outlined in section 3085.3(a)(1) and 3085.3(b)(3)(A). In addition, subsection 3085.3(b) was revised in the 2nd Re-Notice, to provide consistency with PC section 2606(d). New subsection 3085.3(b)(3)(A)1. was added to state that “within a reasonable time but no later than 15 calendar days following the incarcerated person’s receipt of the OSPR, the PREA Compliance Manager shall provide the incarcerated person with an opportunity to verbally raise any objections to the disapproval and document those objections on the CDC Form 128-B.” Additionally, subsection 3085.3(b)(3)(A)2. was added to clarify that “following an incarcerated person’s receipt of the OSPR, the PREA Compliance Manager shall inform the incarcerated person that they have the right to file a grievance if they do not agree with the Chief Deputy Warden’s decision of disapproval. The incarcerated person may grieve the decision pursuant to subsection 3482(b)(1).” This subsection was added to clarify that the grievance process is a separate process.

Re-Notice Comments 2C – 7C: Similarly, at Section 3085.3(b)(2)(C), the updated language says “The Transgender, Non-Binary, and Intersex Access Card shall only be rescinded if there are management or security concerns present...” This broad language is ripe for abuse by wardens or other facility staff who claim to have management or security concerns without documenting or disclosing them. Here, too, we suggest adding clarification that an Access Card “shall only be rescinded if the department has documented management or security concerns warranting rescission. When a TNI Access Card is rescinded, the department shall document and articulate the specific management or security reasons for this and notify the incarcerated person via an automated Classification Committee Chrono.”

Also, at Section 3085.3(b)(2)(D), the revised regulatory proposal states that “The Transgender, Non-Binary, and Intersex Access Card shall be kept on the incarcerated person at all times.” We suggest adding clarification that incarcerated individuals will not be subject to discipline for not having the card on their person. This language could track similar GIQ-related language and state, “No one will be punished for not carrying their TNI Access Card.” This is important because of recent reports that custody staff were harassing some incarcerated TNI individuals and setting up situations where they would be “caught” without their Access Cards and penalized.

Response Re-Notice Comments 2C – 7C: In the 2nd Re-Notice, subsection 3085.3(b)(2)(C) regarding rescission of the Transgender, Non-Binary, and Intersex Access Card was deleted, and new subsection 3085.3(d) was created to better clarify the process for reevaluation of a previously approved search preference. Language in newly renumbered subsection 3085.3(b)(2)(C) ensures that transgender, non-binary and intersex incarcerated persons will have access to allowable property items under the Transgender, Non-Binary, and Intersex Incarcerated Persons Authorized Personal Property Schedule (TNIAPPS). Newly renumbered subsection 3085.3(b)(2)(D) outlines “In the event an incarcerated person does not have their Transgender, Non-Binary, and Intersex Access Card on their person and a search is required, staff shall make reasonable efforts such as checking SOMS, to determine the incarcerated person’s approved search preference.” Any allegations of staff misconduct may be pursued through the grievance process outlined in sections 3483 and 3485.

Re-Notice Comments 2D – 7D: Section 3401.6(f) of the revised regulatory proposal states that “Staff, contractors, and volunteers of the department shall not consistently fail to use the gender pronoun and honorific specified by the incarcerated person in all verbal and written communications.” While this tracks the literal language of SB 132, it is a vague standard. More direction is needed to ensure that staff, contractors, and volunteers understand what is expected of them and hiring authorities are able to assess whether compliance is present. We urge CDCR to provide greater specificity in implementing these regulations so as to ensure that the guarantee at Penal Code 2605(d) is meaningful in practice. Prescribing that staff, contractors, and volunteers shall not “repeatedly” fail to use the specified pronoun and honorific would honor the spirit of the statutory provision while making clearer that occasional use of correct nomenclature does not excuse deliberate, repeated misgendering.

Additional comment from Re-Notice Commenter #7: In addition, this change would ensure that CDCR’s definition of staff sexual harassment aligns with the definition in the national Prison Rape Elimination Act Standards (28 CFR Part 115).

Response Re-Notice Comments 2D – 7D: Section 3085(a)(d) and section 3401.6(f) were written to align with the language of Penal Code section 2606.

Re-Notice Commenter #8

Re-Notice Comment 8A: Commenter applauds the revision to 15 C.C.R. §3085(b), clarifying that repeated or subsequent Gender Identity Questionnaire completions will be conducted in a private setting. This accords with the statute’s express language and intent (PC §2605).

Response Re-Notice Comment 8A: The department acknowledges Commenter’s support of the proposed Re-Notice changes.

Re-Notice Comment 8B: Section 3085.2 of the Code of Regulations, Title 15, implements the housing provisions of PC §2606. The proposed regulations do not do justice to the statute. The Re-Notice’s terse explanation (“to better align with the language” of that statute; p. 2) does not suffice to rectify the apparent discrepancy

between the statutory requirement and the regulatory construction. The structure of PC §2606, in pertinent part, is the following. Subdivision (a), paragraph (3) creates a right to be housed in accordance with the incarcerated person's preference. The right is limited, however, by the department's "management or security concerns" rising to a level of severity such that the Secretary or designee must "certify" as to being "unable to accommodate" the housing preference (PC §2606(b)). The department must provide in writing a specific and articulable basis for that inability to accommodate. The design of the law is not that mere "concerns" justify the non-accommodation; rather, the department must be "unable" to accommodate. What exactly the standard governing this inability is isn't specified by the statute, but what is clear from the statute is that it is an element going beyond the mere "concern." Once concerns are raised, there must be some determination that the concerns cannot be mitigated or avoided through an accommodation. At a minimum, we can say, borrowing the standard used in disability contexts, that an accommodation would have to be unreasonable to justify its rejection. It is also plausible to assert that the "inability" to accommodate is a stronger standard than ordinary reasonableness. Instead the regulations as proposed in the Re-notice say that "An incarcerated person who is transgender, non-binary, or intersex [...] shall be housed at a correctional facility designated for men or women based on the individual's preference [...] unless the department has management or security concerns with an individual's placement" (proposed 15 C.C.R. §3085.2(a)). This regulation appears to produce an exemption from the housing requirement merely based on "concerns." That is not what the statute requires. The regulation's re-organization of the logic and grammar of the statute makes it seem as though the inability to accommodate is an automatic conclusion based on "concerns" and the only obligation on the department is to document the reasons. However, the statute is properly read as making the certification of an articulable inability to accommodate a prerequisite for denial ("the Secretary [. . .] shall, before [. . .] housing the incarcerated individual in a manner contrary to the person's preferred housing placement, certify in writing a specific and articulable basis [...] [emphasis added].) Only where the "concerns" rise to the level of a certifiable inability to accommodate is it proper to deny the housing preference.

Response Re-Notice Comment 8B: Section 3085.2(c) and (d) highlight the extensive review process that is required to be completed for every individual request to be housed at an institution of a different gender designation. The extensive review process allows the Institutional Classification Committee to make an informed decision on whether there is a specific and articulable basis for why the department is unable to grant the request and house the individual at an institution of a different gender designation. This language is necessary to comply with Penal Code section 2606. In addition, language in subsection 3085.2(a) was revised in the 2nd Re-Notice for better consistency with PC section 2606(b).

Re-Notice Comment 8C: The casual reference to "concerns" recurs in the context of §3085.3(a) apropos of search preferences. The statutory language (PC §2606(a)(2) & (b)) mirrors that of housing, as described in the preceding paragraphs, supra. For searches, too, the individual's preference is to be respected and followed, except where the Secretary or designee certifies the inability to accommodate. Ibid. The proposed regulations, however, ignore the certification requirement and instead suggest that mere

“concerns” are enough to yield an exception to the rule of preferred search method. That is inconsistent with the statute’s meaning.

Response Re-Notice Comment 8C: The department recognizes the Commenter’s concern with the regulations’ use of the word “concern” as it relates to a decision to deny an incarcerated individual’s search preference due to management or security concerns. Section 3085.3(a)(1) provides direction to staff. When denying a search preference, the department shall document and articulate the specific management or security reasons and why the department is unable to accommodate that search preference. Additionally, the subsections that follow 3085.3(a)(1) outline the reasons an incarcerated person’s search preference cannot be denied. This is to ensure the department, when making a decision, is within policy, and denial reasons are not due to discriminatory reasons. This language is necessary to comply with Penal Code section 2606.

Re-Notice Comment 8D: Accordingly, the new regulation that would authorize rescinding an Access Card based solely on “management or security concerns” (§3085.3(b)(2)(C)) also does not comport with the intent of the statute. The statute makes “inability to accommodate” the relevant and dispositive consideration for housing assignments and for search methods, not mere concerns about the accommodation.

Response Re-Notice Comment 8D: The department recognizes the Commenter’s specific concern with the use of the word “concern” as it relates to rescinding an incarcerated individual’s Transgender, Non-Binary, and Intersex Access Card due to management or security concerns. In the 2nd Re-Notice the department removed language that was added in the 1st Re-Notice (subsection 3085.3(b)(2)(C)) and added new subsection 3085.3(d) to better clarify and outline the process for reevaluation of a previously approved search preference.

Re-Notice Comment 8E: Section 3085.2(f) is improved in terms of transparency and accountability by requiring documentation and written notification to the incarcerated person of the decision to return the person to a prior institution after a transfer. However, the revision does not go far enough. First, the documentation should specify the reasons for the decision, not merely record the decision. Second, the standards governing that decision itself and its review should be clarified in the regulations. As it stands, the proposal would still allow the Warden at the new institution a rather broad discretion premised on mere “belie[f]” (§3085.2(f)(1)(B)). Though the incarcerated person may grieve that decision, and though the regulations would spell out several factors on which the return decision may be based (§3085.2(f)(2)), what the standard of review will be is unclear. Is the grievance officer simply confirming whether the new Warden held that “belie[f]” or whether the belief was reasonable? Or is the review *de novo*? The regulations do not say.

Response Re-Notice Comment 8E: In the 2nd Re-Notice, language in subsection 3085.2(f)(1)(B) was revised for better consistency with PC section 2606(b).

Re-Notice Comment 8F: The Access Card rescission as described in §3085.3(b)(2)(C) was mentioned above, however, there is a reverse side of the Access Card problem that

is also troubling: the obligation to bear it. Section 3085.3(b)(2)(D) of the proposed regulations states that “The Transgender, Non-binary, and Intersex Access Card shall be kept on the incarcerated person at all times.” Penal Code §§2605-2606 were passed in order to recognize and confer civil rights relating to gender identity on incarcerated persons. This rule would impose a burden on them. On its face §3085.3(b)(2)(D) would create a duty the failure to comply with could constitute a rule violation. See 15 C.C.R. §3314 (a)(3): “Administrative rule violations include but are not limited to” [the violations specified in that section] (emphasis added). That would, on the other hand, conflict with the spirit, if not the letter, of PC §2605 (b): “A person incarcerated by the department may not be disciplined for refusing to answer, or for not disclosing complete information in response to, the questions pursuant to this section.” The obligation to carry the card at all times may, it is true, serve some useful purposes, such as providing evidence of a designated search method. However, it also imposes burdens. First, there might be a stigmatization; if only transgender, intersex, or non-binary individuals are subject to this requirement, the possession of the card could be turned into a badge of inferiority, enabling staff to discriminate against those persons. Second, it could result in forced disclosure of one’s gender identity or history of transitions in irrelevant contexts where that information is unnecessary. It takes little imagination to see how bullying by others could be leveraged out of the duty to carry the card. That the card may not be needed in order for staff to garner necessary information is hinted at in §3085.3(b)(2)(E) where the new regulation says “In the event an incarcerated person does not have their Transgender, Non-binary, and Intersex Access Card on their person and a search is required, staff shall make reasonable efforts, such as checking SOMS, to determine the incarcerated person’s approved search preference.” Notable, however, is that simply asking the person is not expressly listed as a reasonable way to obtain the information, though in most instances, surely, that would be reasonable. That omission appears symptomatic of a background of suspicion that surrounds the Access Card requirement. Transgender, non-binary, and intersex persons have to prove themselves. There is no “cisgender” access card. That seems discriminatory. A preferable means of ensuring reasonable information is available, while avoiding overtly stigmatizing individuals, would be to make the possession of the Access Card advisory rather than binding. Switching the language of subparagraph (D) to “should” rather than “shall” is thus advisable.

Response Re-Notice Comment 8F: The revised language in section 3085.3(b)(2)(C) (renumbered in the 2nd Re-Notice due to the removal of 3085.3(C)), is a protective measure for staff and the incarcerated person. The need for the transgender, nonbinary, or intersex incarcerated person to carry the Transgender, Non-Binary, and Intersex Access Card on them at all times arises from the perspective that an incarcerated person is subject to a clothed and/or unclothed body search at any time. The individual presenting the card to staff when warranted will tactfully, subtly, and efficiently allow the search process to take place without any unnecessary notifications and/or alerting any other person in the general vicinity. Without the presentation of the card, a delay will be incurred while staff attempt to identify the proper approved search policy for the individual. This can result in an unnecessary delay in the incarcerated person receiving the proper search per policy and continuing on with the movement.

Re-Notice Comment 8G: Speaking of discriminatory treatment, the change to subsection (f) of §3401.6 reduces protections against harassment and expressions of disrespect. The prior version of the rule in NCR 25-04 would have read, in relevant part: (f) Staff, contractors, and volunteers [...] shall use the gender pronouns and honorific specified by the incarcerated person in all verbal and written communications once notified [...]. The latest version changes this to: (f) Staff, contractors, and volunteers [...] shall not consistently fail to use the gender pronoun and honorific specified [...] (emphasis added). The main rationale given in the Re-noticed statement of reasons is that the prior version was not consistent with PC §2605(d). A secondary rationale is that it was inconsistent with the proposed regulation §3085(d). The latter is a flimsy reason, since to resolve an alleged inconsistency between the two proposed regulations, it would suffice to make both stronger in protection, rather than weaker; that is, change §3085(d) to render it compatible with the originally noticed version of §3401.6(f). No examination of that alternative was provided. We assume, therefore, that the real reason is the supposed conflict with the statute. It is true that the new version is compatible with the statute since it repeats its language essentially verbatim. However, often, regulations are adopted so as to give greater clarity, through more specific content, to otherwise general statutes. It is not true that the prior version of §3401.6(f) was inconsistent with the statute, though it did more than merely parrot its text. For, it could well be the case that regulatory language, in departing from the statute, is designed to give practical effect to the intent of the statute. That seems to have been the case with the original version of §3401.6(f). The way that the statutory goal -- no consistent failure to use correct gender pronouns and honorifics -- is achieved is by means of a rule that, once notified of the preferred words, compliance is mandatory. That is a perfectly rational and consistent regulatory implementation of the statute. Moreover, the originally proposed implementing rule is more likely to effectively achieve the statute's purpose. The Re-noticed rule gives a ready-made excuse for breaches of the gender pronoun protocol, as even a bad faith or careless actor can lodge the defense that their misuse of words was not part of a consistent pattern but rather a one-off incident. The previous version prevented that loophole by a stricter duty. That duty was not excessively onerous, though, since it was premised on notice. The previous proposal was both fairer and more likely to be effective.

Response Re-Notice Comment 8G: The department acknowledges Commenter's opposition to the proposed regulations; however, the department will continue with the rulemaking action for the reasons noted in the 1st 15-Day Re-Notice.

Re-Notice Comment 8H: Around mid-summer of 2024, the Office of Administrative Law approved this department's submission of over four hundred changes (deemed "nonsubstantive") to regulatory provisions, changing terminology from "inmate" to "incarcerated person" and "parolee" to "supervised person" throughout the Code of Regulations, Title 15. This was in response to sustained community advocacy over several years, calling for more humanizing language. The change in terminology is duly reflected in the Authorized Personal Property Schedule (rev. 7/24). It is not, however, followed in the Search Preference Request form (styled "Transgender, Non-Binary or Intersex Inmate Search Preference Request" (8/27/2024)) which features such queries as "The inmate's Gender Identity is recorded as [...]" and so forth. Nor is the terminological consistency followed in the Gender Identity Questionnaire [GIQ]

(11/8/2023), which contains language stating “In general, inmates at male prisons are searched consistent with the male inmate search policy [...]” etc. It is understandable why the GIQ uses the older terminology in that version, having been drafted on the far side of the aforementioned terminological watershed. However, given the prominence of the GIQ for the regulations at stake here, the present rulemaking would seem to be the opportune time to make the adaptations on those forms. Clarity and consistency is furthered thereby, giving staff and incarcerated persons alike a clearer understanding of terminology. More importantly, it conveys respect for the dignity of the incarcerated persons, which was, after all, the express purpose of the Transgender Respect, Agency, and Dignity Act.

Response Re-Notice Comment 8H: As stated in the Initial Statement of Reasons, due to the GIQ and OSPR being located within the department’s Strategic Offender Management System (SOMS) (now named Strategic Oversight Management System), language on these forms which refer to the terms “inmate(s)” and “offender” are not yet updated for consistency with OAL matter 2024-0521-02N, effective 7/1/24, which replaced terms which had derogatory or outdated connotations. The department intends to update SOMS in the near future, to replace these terms to align with these amendments.

Re-Notice Commenter #9

Re-Notice Comment 9A: Within sections 3085(c) and 3085.2(a) the ambiguous, non-specific term “Serious Consideration” needs to be defined, and allows CDCR staff to only feign consideration, making the entire thing - the very purpose, the intention of this regulation (and SB 132/PC 2606) - into a sham, a farce, a hollow and empty, devoid of any real meaning, that does nothing for incarcerated persons at risk of victimization. CDCR staff regularly manipulate such hollow terms that are undefined, and they will continue to manipulate until it is defined, mandating and requiring staff to actually fairly consider (as the legal term, where one actually considers seriously something - the opposite of “want of consideration” which is all that exists within CDCR, unless the phrase/term is defined, safeguarding vulnerable incarcerated persons against victimization, in no small part occurring due to the apathy and indifference, and often purposeful maliciousness of unethical/immoral monstrous staff) the needs of needful incarcerated persons.

Response Re-Notice Comment 9A: See Response to Comment 7F.

Re-Notice Comment 9B: Within section 3000, Definitions, it must be made clear that non-binary is also technically transgender, given to be non-binary is to differ from one’s assigned sex at birth, thus one is also transgender. CDCR staff consistently ignore their own PREA/GIQ definitions sections which states that “non-binary incarcerated persons may also identify as transgender.” CDCR staff frequently treat non-binaries as if less somehow vulnerable to victimization than transgenders, as if they are somehow far removed and in less need of safety. This blatantly causes preferred treatment and opens up the former to increased rates/risks of victimization, even though again, non-binary is also transgender by the very definition and rules of plain English.

Response Re-Notice Comment 9B: The department acknowledges the Commenter's opposition to the proposed regulations; however, the department will continue with this rulemaking action for the reasons provided in the Notice of Proposed Regulations and the Initial Statement of Reasons. The department is committed to providing a safe, humane, respectful and rehabilitative environment for all incarcerated people, including the transgender, non-binary, and intersex community, and is working to implement the law. The department recognizes that transgender, non-binary, and intersex people may be singled out for violent attacks by other incarcerated people and are at a higher risk for victimization, therefore, the department makes every effort to protect this vulnerable population. Housing transgender, non-binary, and intersex people according to their gender identity, when safe to do so, increases safety in prisons, upholds CDCR's duty to protect all incarcerated people and promotes successful rehabilitation. These regulations will support the health and safety of transgender, non-binary, and intersex incarcerated persons by lessening the likelihood of sexual harassment and abuse of these incarcerated persons.

Re-Notice Comment 9C: CDCR staff frequently fail to accurately document on the Transgender, Non-Binary, and Intersex Access Cards the specific identity of the incarcerated person. Staff erroneously insist in ignorance and obstinance in drawing one's gender identity from question #1 within the GIQ when clearly question #2a is where this should be drawn from. This must be defined within regulation, otherwise staff will continue to abuse incarcerated persons by inaccurately and in a discriminatory manner, labeling them upon their Access Cards.

Response Re-Notice Comment 9C: In completing a Transgender, Non-Binary, and Intersex Access Card, staff review the GIQ in its entirety and use the information provided by the incarcerated person during their interview to create the Transgender, Non-Binary, and Intersex Access Card.

Re-Notice Comment 9D: Despite PREA/GIQ forms definitions clearly stating that non-binaries may also identify as transgenders, incarcerated persons are restricted to only one answer within question 2a of the GIQ: they can only answer "transgender," or "non-binary, or "intersex," when they should be able to answer in any combination of these terms if they wish. For example, "transgender/non-binary," or "transgender/intersex," or simply "non-binary," this must be fixed via regulatory instruction.

Response Re-Notice Comment 9D: Regardless of how the incarcerated person identifies, Transgender, Non-Binary, and Intersex individuals are all afforded the same considerations. The department acknowledges the Commenter's opposition to the proposed regulations; however, the department will continue with this rulemaking action for the reasons provided in the Notice of Proposed Regulations and the Initial Statement of Reasons.

Re-Notice Comment 9E: Regulations must clearly instruct CDCR staff to cease discriminating against incarcerated persons who have only "unsubstantiated" incidents of sexual violence within prison in their history/files, as opposed to those with "substantiated"

instances, as the PREA Screening Form speaks of. CDCR staff wrongfully treat with disdain and disregard, even contempt, those incarcerated persons with only unsubstantiated instances of victimization, and this is clearly monstrously wrong. Cis-females within society are not treated so when they've similarly no physical proof (i.e. DNA, etc.) of victimization. Nor are cis-females within CDCR treated so, and yet those within male facilities are, and this must cease via regulatory reflections.

Response Re-Notice Comment 9E: Any discrimination for any reason is not tolerated and a violation of section 3004(c). The responses to the PREA Screening form are used to safely house the incarcerated population and kept to a "need to know basis." See Response to Comment 26A.

Re-Notice Comment 9F: Subsections 3269(b) and (c) must include specific requirements of custody staff to also specifically refer to/consider incarcerated persons' PREA Screening Form results (i.e. at risk as a victim) when making housing determinations. Presently CDCR staff ignore PREA Screening Forms' results in making such decisions, as if these forms are absolutely useless and without relevancy, as if they've no point in even being conducted/documented within incarcerated person files.

Response Re-Notice Comment 9F: A PREA Screening Form is completed on every incarcerated person. The results of the PREA Screening Form are documented in SOMS and specifically used when housing an incarcerated person.

Re-Notice Comment 9G: If there are "management or security concerns" with housing requests based on gender identity, search preferences, etc. staff must be required to truly and factually, convincingly and meaningfully, actually demonstrate "concerns," as in *Turner v. Safely* (CDCR required to prove safety and security concerns, not merely state such in a manipulative and hollow manner). CDCR is infamous for such groundless manipulations, harming incarcerated persons so.

Response Re-Notice Comment 9G: See Response to Comment 7F.

Re-Notice Comment 9H: In regards to gender-based housing requests, time frames within which CDCR staff must be made to adhere in responding to and processing such requests of incarcerated persons must be created and placed within regulation; otherwise incarcerated persons can be freely and cruelly drug along in an arbitrary manner for weeks and months, CDCR staff not held to account.

Response Re-Notice Comment 9H: See Response to Comment 7F.

Re-Notice Comment 9I: The TNIAPPS for those at male facilities remains blatantly sexist, as compared to those at female facilities, and for cis-females themselves and their APPS.

Response Re-Notice Comment 9I: The department acknowledges the Commenter's opposition to the proposed regulations; however, the department will continue with this

rulemaking action for the reasons provided in the Notice of Proposed Regulations and the Initial Statement of Reasons.

SUMMARIES AND RESPONSES TO THE WRITTEN PUBLIC COMMENTS RECEIVED DURING THE 2nd 15-DAY RE-NOTICE COMMENT PERIOD:

2nd Re-Notice Commenters #1 through #8 are duplicative

2nd Re-Notice Commenters #1-8

2ND Re-Notice Comments 1A - 8A: The proposed regulations direct staff to document decisions on the automated Classification Committee Chrono, as explained in current Section 3335(f) of Title 15 and on Form 128-B. Unlike elsewhere in the proposed regulations, there is no direction for staff to provide the Classification Committee Chrono on a specific timeline to individuals. The regulations also do not appear to require staff to provide a copy of completed Form 128-Bs to the affected individuals. We ask the Department to add language requiring staff to provide the Classification Committee Chrono and Form 128-B on a specific timeline, such as within 3 business days after the actions documented. This applies to sections 3085(c), 3085.2(a)(1) [Sic], and 3085.2(f)(1)(C) (automated CC chrono), and sections 3085.2(c)(2), 3085.2(d)(5)(b)(1), 3085.2(f)(1)(A), 3085.2(f)(1)(C)(1), 3085.3(b)(3)(A)(1), and 3085.3(d)(1)(D)(3) (Form 128-B).

Response 2nd Re-Notice Comments 1A – 8A: In the 2nd Re-Notice, language in subsections 3085(c), 3085.2(f)(1)(C), 3085.2(f)(1)(C)(1), 3085.3(b)(3)(A)(1), and 3085.3(d)(1)(D)(3) was revised for better consistency with PC sections 2606(b) and 2606(d). Incarcerated persons receive copies of the automated Classification Committee Chrono and the Form 128-B as part of the Classification process outlined in section 3375, et seq. The proposed regulations are consistent with and provide compliance with Penal Code sections 2606 and 2605. The department will continue with the proposed regulations for the reasons stated in the Initial Statement of Reasons and the 1st and 2nd Re-Notices.

2nd Re-Notice Comments 1B – 8B: At Section 3085(c)(5)(B)(1) and 3085(d)(5)(B)(1), [Sic] (the department believes the commenter means 3085.2(c)(5)(B)1. and 3085.2(d)(5)(B)1.) the amended text says: Within a reasonable time but no later than 15 calendar days following the incarcerated person’s receipt of the automated Classification Committee Chrono, the CC II (Supervisor) shall provide the incarcerated person with an opportunity to verbally raise any objections to the disapproval and shall document those objections on the CDC Form 128-B (Rev. 4/74), incorporated by reference. We request that the Department revise “verbally” to “verbally raise or otherwise communicate any objections.” We believe this language would convey the same meaning while also acknowledging that some people with disabilities require additional accessible communication options beyond the spoken word, such as sign language or Augmentative and Alternative Communication.

Response 2nd Re-Notice Comments 1B – 8B: The department is required to provide incarcerated persons with effective communication, as defined in section 3000, to the extent possible, as required by federal law. Effective communication provides incarcerated persons assistance to allow them to understand and participate in programs, services, and activities. When needed, staff provide accommodation, including sign language interpreters and written notes, when an incarcerated person does not have the ability to communicate effectively. The proposed language is consistent with, and in compliance with Penal Code section 2606(d). The department will continue with the proposed regulations for the reasons stated in the Initial Statement of Reasons and the 1st and 2nd Re-Notices.

2nd Re-Notice Comments 1C – 8C: At Section 3085.2(e), previously proposed language has been revised in an attempt to align with the Penal Code Section 2606(c)(3)'s specification that the Department may not deny an individual's housing preference based on a factor present among other people incarcerated at the facility to which the individual seeks to transfer. While we appreciate these efforts, the currently proposed language still lacks clarity on this important point. To ensure clarity and congruence with the statute, we suggest adding to the end of section 3085.2(e)(3)(B) that "for any factor considered, the Department's documentation of its reasoning must address the presence or absence of that factor among other people incarcerated at the preferred type of facility."

Response 2nd Re-Notice Comments 1C – 8C: In the 2nd Re-Notice, language in previous subsection 3085.2(e)(3)(B) was revised for better consistency with PC section 2606(c). Additionally, subsection 3085.2(a) specifies that the department shall document and articulate the specific management or security concerns why the department is unable to accommodate the housing preference, thus the department will address any factor that may be present, and the underlying facts and information that support the management or security concerns as to why the department is unable to accommodate the housing preference. The department will continue with the proposed regulations for the reasons stated in the Initial Statement of Reasons and the 1st and 2nd Re-Notices.

2nd Re-Notice Comments 1D – 8D At Section 3085.3(d)(1), the revised proposed text says: "The institution PREA Compliance Manager shall refer a previously approved OSPR to the Chief Deputy Warden if a transgender, non-binary, or intersex incarcerated person exhibits management or security concerns related to their previously approved search preference. The process shall be as follows." This language is confusing and invites unhelpful debate about what it means to "exhibit management or security concerns." We suggest revising the sentence quoted above to say: "The institution PREA Compliance Manager shall refer a previously approved OSPR to the Chief Deputy Warden if staff raise new individualized management or security concerns related to the previously approved search preference. The process shall be as follows:"

Response 2nd Re-Notice Comments 1D – 8D: The department believes the text is clear, as the reevaluation process clearly indicates it is when an incarcerated person exhibits management or security concerns related to their previously approved search preference. The department will continue with the proposed regulations for the reasons stated in the Initial Statement of Reasons and the 1st and 2nd Re-Notices.