



Department of Corrections and Rehabilitation

**NOTICE OF CHANGE TO  
REGULATIONS**

Section: 3177 and 3315

**Number:**

**17-08**

**Publication Date:**

**December 29, 2017**

**Effective Date:**

**To be Announced**

**INSTITUTION POSTING REQUIRED**

This Notice announces the amendment of Section 3177 and 3315 of the California Code of Regulations (CCR), Title 15, Crime Prevention and Corrections, to incorporate into the CCR provisions concerning Family Visiting (Overnight) and Inmate Discipline.

**IMPLEMENTATION:** To be announced.

**PUBLIC COMMENT PERIOD**

Any person may submit written comments about the proposed regulations to the California Department of Corrections and Rehabilitation, Regulation and Policy Management Branch (RPMB), P.O. Box 942883, Sacramento, CA 94283-0001, or by e-mail to [RPMB@cdcr.ca.gov](mailto:RPMB@cdcr.ca.gov). All written comments must be received by the **close of the public comment period February 19, 2018 at 5:00 p.m.**

**PUBLIC HEARING INFORMATION**

A public hearing regarding these proposed regulations will be held **February 19, 2018 from 10:00 a.m. to 11:00 a.m. in the Kern/Colorado Room, located at 1515 S Street, North Building, Sacramento CA 95811.** The purpose of the hearing is to receive oral comments about this action. It is not a forum to debate the proposed regulations. No decision regarding the permanent adoption of these regulations will be rendered at this hearing. Written or e-mail comments submitted during the prescribed comment period are given the same significance and weight as oral comments presented at the hearing. This hearing site is accessible to the mobility impaired.

**POSTING**

This notice shall be posted immediately upon receipt at locations accessible to inmates, parolees, and employees in each Department facility and field office, not later than five calendar days after receipt. Also, facilities shall make this Notice available for review by inmates in segregated housing who do not have access to the posted copies, and shall distribute it to inmate law libraries and advisory councils. Certification of Posting, CDCR Form 621-A, shall be returned to the RPMB electronically, by fax, or by mail. See Department Operations Manual sections 12010.5.7 and 12010.5.8 for posting and certification of posting procedures.

**CONTACT PERSON**

Inquiries regarding this notice should be directed to Timothy M. Lockwood, Associate Director, RPMB, California Department of Corrections and Rehabilitation, P.O. Box 942883, Sacramento, CA 94283-0001, by telephone at (916) 445-2269 or e-mail at [RPMB@cdcr.ca.gov](mailto:RPMB@cdcr.ca.gov). Inquiries regarding the subject matter of these regulations may be directed to Mark Tillotson, Division of Adult Institutions, at (916) 323-2877.

*/ Original signed by /*

SCOTT KERNAN  
Secretary

Attachments

## NOTICE OF PROPOSED REGULATORY ACTION

### California Code of Regulations Title 15, Crime Prevention and Corrections Department of Corrections and Rehabilitation

**NOTICE IS HEREBY GIVEN** that the Secretary of the California Department of Corrections and Rehabilitation (CDCR), pursuant to the authority granted by Government Code Section 12838.5 and Penal Code (PC) Section 5055, and the rulemaking authority granted by PC Section 5058, proposes to amend sections 3177 and 3315 of the California Code of Regulations (CCR), Title 15, Division 3, concerning Family Visiting (Overnight) and Inmate Discipline.

#### **PUBLIC HEARING:**

Date and Time: **February 19, 2018 – 10:00 a.m. to 11:00 a.m.**  
Place: **a.m. Department of Corrections and Rehabilitation Colorado Room  
1515 S Street – North Building  
Sacramento, CA 95811**  
Purpose: **To receive comments about this action.**

#### **PUBLIC COMMENT PERIOD:**

The public comment period will close **February 19, 2018 at 5:00 p.m.** Any person may submit public comments in writing (by mail or by e-mail) regarding the proposed changes. To be considered by the Department, comments must be submitted to the CDCR, Regulation and Policy Management Branch, P.O. Box 942883, Sacramento, CA 94283-0001; or by e-mail at [RPMB@cdcr.ca.gov](mailto:RPMB@cdcr.ca.gov) before the close of the comment period.

#### **CONTACT PERSON:**

Please direct any inquiries regarding this action to:

**Timothy M. Lockwood, Associate Director  
Regulation and Policy Management Branch  
Department of Corrections and Rehabilitation  
P.O. Box 942883, Sacramento, CA 94283-0001  
Telephone (916) 445-2269**

In the event the contact person is unavailable, inquiries should be directed to the following back-up person:

**Anthony Carter  
Regulation and Policy Management Branch  
Telephone (916) 445-2266**

Questions regarding the substance of the proposed regulatory action should be directed to:

**Mark Tillotson  
Division of Adult Institutions  
Department of Corrections and Rehabilitation  
(916) 323-2877**

#### **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW:**

PC Section 5000 provides that commencing July 1, 2005, any reference to the Department of Corrections in this or any code, refers to the CDCR, Division of Adult Operations.

PC Section 5050 provides that commencing July 1, 2005, any reference to the Director of Corrections, in this or any other code, refers to the Secretary of the CDCR. As of that date, the office of the Director of Corrections is abolished.

PC Section 5054 provides that commencing July 1, 2005, the supervision, management, and control of the state prisons, and the responsibility for the care, custody, treatment, training, discipline, and employment of persons confined therein are vested in the Secretary of the CDCR.

PC Section 5058 authorizes the Director to prescribe and amend regulations for the administration of prisons.

This action amends Section 3177 and 3315 of the CCR, Title 15, Division 3 concerning Family Visiting (Overnight) and Inmate Discipline. Current regulations govern Inmate's Family Visiting (Overnight) privileges and Inmate Discipline, including eligibility, restrictions, and other circumstances that qualify or disqualify inmates and their families for such visitations.

New state law PC 6404 grants family visits to inmates who are sentenced to life without the possibility of parole or sentenced to life without parole date established by the Board of Parole Hearings. The proposed regulations will make current regulations compliant with this statute. The proposed regulations also categorize loss of family overnight visiting privileges and also provide new eligibility of family visits for inmates convicted of a violent offense.

**SPECIFIC BENEFITS ANTICIPATED BY THE PROPOSED REGULATIONS:**

The proposed regulatory action will benefit CDCR staff, inmates, and the public by ensuring that CDCR is in compliance with the new state law, PC 6404; but also promotes positive behavior by providing the opportunity to gain eligibility for family visits that current regulations do not provide. The revisions to the eligibility criteria for family visits is anticipated to reduce violence, decrease the level of contraband, and promote an atmosphere of positive behavior and self-improvement to better prepare an inmate for successful release and/or rehabilitation.

**EVALUATION OF CONSISTENCY / COMPATIBILITY WITH EXISTING REGULATIONS:**

The Department has determined that these proposed regulations are consistent and compatible with existing state laws and regulations. The Department reached this conclusion because these proposed regulations supplement existing regulations by expanding search options /tools to search inmates, and inmate property, which is authorized by law.

**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.

**FISCAL IMPACT STATEMENT:**

- Cost to any local agency or school district that is required to be reimbursed: *None*
- Cost or savings to any state agency: *None*
- Other nondiscretionary cost or savings imposed on local agencies: *None*
- Cost or savings in federal funding to the state: *None*

**EFFECT ON HOUSING COSTS:**

The Department has made an initial determination that the proposed action will have no significant effect on housing costs.

**SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT ON BUSINESS:**

The Department has initially determined that the proposed regulations will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

**RESULTS OF ECONOMIC IMPACT ASSESSMENT:**

The Department has determined that the proposed regulations will have no impact on the creation of new or the elimination of existing jobs or businesses within California or affect the expansion of businesses currently doing business in California. The Department has determined that the proposed regulations will have no effect on the health of California residents or the state's environment, because the proposed regulations relate strictly to the management of CDCR institutions.

**COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES:**

The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

**EFFECT ON SMALL BUSINESSES:**

The Department has determined that the proposed regulations may not affect small businesses. It is determined that this action has no significant adverse economic impact on small business because they are not affected by the internal management of state prisons.

**CONSIDERATION OF ALTERNATIVES:**

The Department must determine that no reasonable alternative considered by the Department, or that has otherwise been identified and brought to the attention of the Department, 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 proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. Interested persons are accordingly invited to present statements or arguments with respect to any alternatives to the changes proposed at the scheduled hearing or during the written comment period.

**AVAILABILITY OF PROPOSED TEXT AND INITIAL STATEMENT OF REASONS:**

The Department has prepared, and will make available, the proposed text and the Initial Statement of Reasons (ISOR) of the proposed regulations. The rulemaking file for this regulatory action, which contains those items and all information on which the proposal is based (i.e., rulemaking file) is available to the public upon request directed to the Department's contact person. The proposed text, ISOR, and Notice of Proposed Action will also be made available on the Department's website <http://www.cdcr.ca.gov>.

**AVAILABILITY OF THE FINAL STATEMENT OF REASONS:**

Following its preparation, a copy of the Final Statement of Reasons may be obtained from the Department's contact person.

**AVAILABILITY OF CHANGES TO PROPOSED TEXT:**

After considering all timely and relevant comments received, the Department may adopt the proposed regulations substantially as described in this Notice. If the Department makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department adopts the regulations as revised. Requests for copies of any modified regulation text should be directed to the contact person indicated in this Notice. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

## TEXT OF PROPOSED REGULATIONS

In the following text, ~~strikethrough~~ indicates deleted text; underline indicates added or amended text.

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

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

#### Subchapter 2. Inmate Resources.

### Article 7. Visiting

#### 3177. Family Visiting (Overnight).

**Section 3177 initial paragraph through (b) remains unchanged, but is shown for reference.**

Institution heads shall maintain family visiting policies and procedures. Family visits are extended overnight visits, provided for eligible inmates and their immediate family members as defined in Section 3000, commensurate with institution security, space availability, and pursuant to these regulations. Each institution shall provide all necessary accommodations, except for food, at no cost to the inmates and their visitors. Institutions shall require eligible inmates to purchase all food for the family visit through the institution family visiting coordinator. Each institution family visiting menu shall provide a balanced variety of nutritional selections. At all CDCR conservation camps, the visitors shall be required to bring all food for the visit.

Only those immediate family members as defined in Section 3000, including registered domestic partners, are authorized for family visits.

(a) When a bonafide and verified foster relationship exists between an inmate and another person, by virtue of being raised in the same foster family, the person may be approved for family visiting with the prior approval of the institution head or designee.

(b) Family visiting is a privilege. Eligibility for family visiting shall be limited by the assignment of the inmate to a qualifying work/training incentive group as outlined in section 3044.

#### **Subsection 3177(b)(1) is amended to read:**

(1) Family visits shall not be permitted for inmates convicted of a violent offense where the victim is involving a minor or family member or any sex offense, which includes but is not limited to the following Penal Code sections: 187 (when the victim is a family member as defined in Section 3000 or minor); 192 (when the victim is a family member or minor); 243.4; 261; 261.5, 262; 264.1; 266c; 266j; 273a; 273d; 273.5; 273.6; 285; 286; 288; 288a; 288.2; 288.5; 289; 289.5; 311.1; 311.2; 311.3; 311.4; 313.1; 314; or 647.6, unless otherwise eligible pursuant to subsection (B) or (C) of this section.

#### **Subsection 3177(b)(1)(A) remains unchanged but is shown for reference:**

(A) Inmates may be prohibited from family visiting where substantial documented evidence or information of the misconduct described in section 3177(b)(1) exists, without a criminal conviction. The evidence or information appropriate for the purpose of this regulation shall include rule violation reports as well as the standard described in section 3173.1.

**Existing Subsection 3177(b)(1)(B) is renumbered and relocated to new Subsection 3177(b)(1)(D) and text remains unchanged.**

**New Subsection 3177(b)(1)(B) is adopted to read:**

(B) Inmates convicted as a minor of a violent offense where the victim was a minor or family member, excluding any sex offense, shall have eligibility for family visiting determined by a classification committee provided the inmate has demonstrated sustained, positive behavior to include: no serious rules violation reports in the last five years and documented participation in self-help groups, e.g. Anger Management, Narcotics Anonymous, Alcoholics Anonymous. The classification committee shall consider the circumstances of the offense involving a minor or family victim in determining whether the inmate poses a threat of harm to visitors during a family visit. In making its determination, the classification committee shall consider, but is not limited to, arrest reports, probation officer reports, court transcripts, parole revocation transcripts.

**New Subsection 3177(b)(1)(C) is adopted to read:**

(C) Inmates convicted of a violent offense where the victim was a minor or a family member, excluding any sex offense, may be eligible for family visiting as determined by a classification committee providing the inmate has demonstrated sustained, positive behavior to include: no serious rules violation reports in the last ten years and documented participation in self-help groups, e.g. Anger Management, Narcotics Anonymous, Alcoholics Anonymous. The classification committee shall consider the circumstances of the offense in determining whether the inmate poses a threat of harm to visitors during a family visit. In making its determination, the classification committee shall consider, but is not limited to, arrest reports, probation officer reports, court transcripts, parole revocation transcripts.

**New Subsection 3177(b)(1)(D) is relocated and renumbered from existing Subsection 3177(b)(1)(B) and text remains unchanged.**

(BD) Family visiting shall be restricted as necessary to maintain order, the safety of persons, the security of the institution/facility, and required prison activities and operations, pursuant to section 3170.

**Subsection 3177(b)(2) is amended and reorganized to read:**

(2) Family visits shall not be permitted for inmates who are in any of the following categories: ~~sentenced to life without the possibility of parole; sentenced to life, without a parole date established by the Board of Parole Hearings;~~

(A) dDesignated Close Custody;

(B) dDesignated a condemned inmate;

(C) aAssigned to a reception center;

(D) aAssigned to an aAdministrative sSegregation uUnit;

(E) aAssigned to a sSecurity hHousing uUnit;

(F) dDesignated "C" status;

(G) gGuilty of one or more Division A or Division B offense(s) within the last 12 months;

(H) Guilty of ~~narcotics~~ distribution of a controlled substance while incarcerated in a state prison, under subsection 3016(c). Loss of family visiting (overnight) in accordance with Subsection 3315(f)(5)(H).

**Sections 3177(b)(3) through 3177(g) remain unchanged.**

Note: Authority cited: Section 5058 and 6404, Penal Code. Reference: Section 297.5, Family Code; and Section 5054, Penal Code.

## **Subchapter 4 General Institution regulations**

### **Article 5.**

#### **3315 Serious Rule Violations**

##### **Subsections 3315(a) through 3315(f)(5)(G) remain unchanged.**

(f) Disposition. Upon completion of the fact-finding portion of the disciplinary hearing, the inmate may be found:

\*

\*

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

\*

\*

##### **Subsection 3315(f)(5)(H) is amended is amended to read:**

(H) For a violation of subsection 3016(c), there shall be a loss of visits for one year to be followed by non-contact visits for two years. In addition, the following loss of family visiting (overnight) shall apply upon conclusion of the non-contact visiting restriction:

1. Loss of family visiting (overnight) program for three years for first offense.
2. Loss of family visiting (overnight) program for seven years for second offense.
3. Permanent exclusion from family visiting (overnight) program for third offense.

##### **Subsection 3315(f)(5)(I) remains unchanged.**

(I) Loss of visits to be followed by non-contact visits for violations of subsection 3016(a) (with the exception of alcohol violations), or 3290(d) shall be as follows:

##### **Subsections 3315(f)(5)(I)1. through 3315(f)(5)(I)3. are amended to read:**

1. Loss of visits for 90 days, to be followed by non-contact visits for 90 days and loss of family visiting (overnight) program for one year upon conclusion of the non-contact restriction for the first offense.
2. Loss of visits for 90 days, to be followed by non-contact visits for 180 days and loss of family visiting (overnight) program for three years upon conclusion of the non-contact restriction for the second offense.
3. Loss of visits for 180 days, to be followed by non-contact visits for 180 days and loss of family visiting (overnight) program for five years upon conclusion of the non-contact restriction for the third offense.

##### **Subsections 3315(f)(5)(J) through 3315(f)(5)(P)3. remain unchanged.**

##### **New Subsection 3315(f)(5)(Q) is adopted to read:**

(Q) Violation of Subsection 3006(a) or 3006(c)(20) shall result in:

1. Loss of family visiting (overnight) program for one year for first offense.
2. Loss of family visiting (overnight) program for three years for second offense.
3. Loss of family visiting (overnight) program for five years for third offense.

##### **Subsections 3315(g) through 3315(h) remain unchanged.**

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 295-300.3, 314, 530, 532, 646.9, 647, 653m, 2931, 2932, 2933, 4501.1, 4573.6, 4576, 5054, 5068 and 12020, Penal Code.

## **INITIAL STATEMENT OF REASONS:**

The California Department of Corrections and Rehabilitation (CDCR) proposes to amend the California Code of Regulations (CCR), Title 15, Division 3, Section 3177 governing Family Visiting (Overnight) and Section 3315 governing Serious Rule Violations. These proposed regulations do not revise current (regular) visiting regulations. The proposed regulations are specific to what CDCR identifies as “family visits,” (also known as “extended visits”, “overnight visits,” or “conjugal visits”).

California is one of only four states that grants family visits. CDCR recognizes the value of visitation as a means to improve the safety of prisons, as well as to establish and maintain meaningful connections with family and the community; however, family visits are a privilege granted to inmates, and not a right. CDCR’s mission is to protect the public by safely and securely supervising adult and juvenile offenders, to provide effective rehabilitation and treatment, and to successfully reintegrate offenders into the community. Family visits are a creation of CDCR regulations, not of any statute, and may be restricted or eliminated by amendment or repeal of those regulations. CDCR has chosen to allow these and many other privileges under the general authority and reference of California Penal Code (PC) Sections 5058 and 5054, respectively, with regard to such privileges.

Family visits occur in designated private units within or on prison grounds. As such, inmates and their overnight visitors are not subject to constant and direct supervision by custody staff. Inmates with family visitors must check in periodically with custody staff by answering a call or participating in an institutional count. Because family visits are not directly supervised by staff, their availability to inmates with violent and serious offenses, prior arrests or convictions, or documented in-custody misconduct can be problematic and poses a risk to the safety and security of the institutions. In general, such inmates require a higher degree of direct supervision while incarcerated than do inmates with less serious histories of criminal offenses and in-custody misconduct.

Inmates who are denied family visits under the current regulations have demonstrated, either by their commitment offense, prior misdemeanor or felony arrests, prior convictions, or in-custody misconduct, that they pose a danger to others and have an inability to conform their behavior to social expectations. Such behavioral history creates a higher security risk for prison staff and family visitors and must be taken into account by administrators with responsibility for the safe operation of prisons and the safety of all who enter them. Additionally, the department has established a priority in its regulations for those inmates who, based on their commitment offense, parole date and prospects, and behavior while in custody, will benefit the most from family visits.

In 1996, CDCR promulgated regulations limiting family visits partially based upon the extremely large inmate population and lack of available visiting staff and housing resources. CDCR determined that the privilege of family visits should go only to those inmates who can obtain the most rapid and tangible benefits, i.e., those inmates who (1) will be returning to their families within a known period of time; (2) have not violated their family's trust by violent acts against them; (3) have not demonstrated a threat to society by acts of sexual predation; and, (4) have not engaged in serious in-custody misconduct.

Current regulations exclude inmates in certain categories from participating in family visits. Two of these categories are: (1) sentenced to life without the possibility of parole; and (2) sentenced to life without a parole date established by the Board of Parole Hearings.



On June 27, 2016, Senate Bill (SB) 843 was signed into law adopting PC Section 6404, which prohibits exclusion from participating in family visits based solely on the fact that the inmate was sentenced to life without the possibility of parole or was sentenced to life and is without a parole date established by the Board of Parole Hearings. The Senate Floor analysis noted that the bill “expands extended family visits to include inmates serving life terms, who would otherwise be eligible for extended visits”.

CDCR proposes to amend regulations to comply with PC 6404. The decrease in the inmate population over the last 5 years somewhat alleviates the need for additional family visiting resources. As CDCR is committed to providing inmates with as many rehabilitative options as possible, it was determined that further revisions to family visits are necessary. With this said, CDCR has established additional criteria determining eligibility for inmates requesting family visits that takes into consideration security risks and other important factors which are necessary to maintain safety and security of the institutions, staff, visitors and inmates alike.

These proposed changes include:

- Removing the exclusionary categories of being sentenced to life without the possibility of parole; and, sentenced to life without a parole date established by the Board of Parole Hearings.

The inclusion of life term inmates in the Family Visiting (Overnight) program is an additional privilege to incentivize positive programming, encourage self-improvement, and allows the inmate to build a stronger bond with family in preparation for their successful release and/or rehabilitation, as stated in PC Section 6400.

- Allowing for a classification committee case by case review of eligibility for family visits for inmates convicted as a minor of a violent offense where the victim was a minor or family member, excluding any sex offense, providing that the inmate can and has demonstrated sustained and positive behavior.

CDCR recognizes that, unlike their adult counterparts, minors who have committed a violent offense where the victim was a minor or family member may have done so because their maturity level was low and they were unable to comprehend the potential consequences of their crime, they were susceptible to peer and/or gang pressure, or they lacked a sense of personal identity at the time. CDCR also recognizes that as a minor ages, development of the brain progresses with the likelihood of maturation into adulthood, at which time, a young adult may come to realize the wrong in their actions that resulted in a prison term and the consequences of their actions in the future. This realization by itself is deserving of the opportunity to visit with family overnight. Family reunification and support is a vital component to any inmate’s successful reintegration into society. Because an inmate who committed a crime as a minor is likely to return to family upon release, it is important to promote family reunification through various methods, to include family visits. The support offered by family is an essential part of an inmate’s rehabilitation. Allowing the potential for greater contact and time spent with family serves as a deterrent from negative behavior, promotes positive programming, self-improvement and rehabilitation. The five year disciplinary free period from serious rule violations is thought to be a reasonable time frame to show progression towards rehabilitation and self-improvement. Recognition of the inmate’s immaturity and early

developmental stage was taken into account in setting the sustained disciplinary-free period at five years in relation to the ten year period put in place for an inmate who committed a violent crime where the victim was a minor or family member as an adult.

- Allowing for a classification committee case by case review of eligibility for family visits for inmates convicted of a violent offense who have committed a violent crime where the victim was a minor or family member, excluding any sex offense, providing that the inmate can and has demonstrated sustained and positive behavior.

This includes a sustained disciplinary-free period from serious rule violations, and documented participation in self-help groups. A reasonable progression of in-custody positive programming is necessary during review as an adult inmate is likely to understand the potential consequences of their actions. An adult inmate has reached a much higher maturity level and has refined a greater thought process which dictates their behavior, and has a better understanding of self, more so than an adolescent. The ten year disciplinary free period is thought to be a reasonable time frame to show progression towards rehabilitation and self-improvement. In addition, allowing the ability to earn a family visit by demonstrating sustained positive programming serves as a deterrent from negative behavior, promotes positive programming and self-improvement, which in turn can increase the likelihood of successful reintegration into society and reduce recidivism.

- Removes “narcotics distribution,” and replaces it with “distribution of a controlled substance” to remain consistent with the definition currently existing in Section 3000; and adds additional opportunities for inmates to be determined eligible for a family visit when previously found guilty of in-prison distribution of a controlled substance.

Current regulations permanently exclude an inmate from family visits for a first offense if found guilty of distribution of a controlled substance. These proposed revisions provide opportunities for an inmate to re-apply for eligibility for family visiting. In addition to existing loss of visiting privileges, the loss of family visits will now carry a suspension of 3 years for the first offense, 7 years for the second offense, and a permanent exclusion for the third offense. The department understands people can change for the better when given the opportunity and resources to do so. This progressive restriction provides inmates with further incentives to illustrate positive behavior and to participate in their rehabilitation.

- Adds temporary suspension of family visiting privileges in addition to existing regular visiting dispositions if found guilty of violating subsections 3006(a) [possession of dangerous property] or 3006(c)(20) [possession, control of a cell phone et. Seq.].

The introduction of contraband into an institution presents a serious threat to the safety and security of inmates, the public, and staff. The inclusion of loss of family visits for being found guilty of possession of dangerous contraband and/or any component or accessory of any cellular telephone or wireless communication device is to encourage an inmate to refrain from participating in the introduction of contraband. The consequences will be: loss of family visits for 1 year for the first offense; 3 years for second offense; and 5 years for a third offense.

- Adds temporary suspension of family visiting privileges if found guilty of violating subsection 3290(d) [not providing a urine sample] or 3016(a) [possession of a controlled substance or positive urinalysis test for controlled substance in accordance with subsection (other than alcohol)].

Inmates' possession and use of controlled substances poses a public health and safety risk, and is antithetical to CDCR's goals of providing public safety and inmate rehabilitation. By creating additional sanctions for inmates who possess or use controlled substances, CDCR seeks to incentivize inmates to participate in rehabilitative programming, while ensuring the safe operation of the institutions/facilities, the safety of staff, inmates, and the visiting public.

CDCR reiterates that family visits are a privilege, and not a right afforded to inmates. The Secretary of the CDCR has the overall responsibility to follow the law, and to develop and implement regulations regarding family visits to ensure the safety and security of the institutions, staff, visitors, and inmates alike as stated in PC Section 5054. CDCR wants to stress the important opportunity family reunification represented in an inmate's successful reintegration into society.

CDCR has determined these proposed revisions are a representation of providing incentives for positive programming and inclusiveness in the fairest method possible, based upon existing regulations, statutes, available resources, and operational capability.

#### **Consideration of Alternatives:**

CDCR must determine that no reasonable alternatives considered, or that have otherwise been identified and brought to the attention of CDCR, would be more effective in carrying out the purpose for which this 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.

CDCR has made an initial determination that no reasonable alternatives to the regulations have been identified or brought to the attention of CDCR that would lessen any adverse impact on small business.

Currently, no reasonable alternatives have been brought to the attention of CDCR that would alter CDCR's initial determination.

#### **Economic Impact Assessment**

In accordance with Government Code Section 11346.3(b), CDCR has made the following assessments regarding the proposed regulations:

CDCR has determined the proposed regulation will not have an impact on the creation or elimination of existing jobs within California as the CDCR proposes to review and approve eligible inmates for family visits and for general program oversight.

CDCR has determined the proposed regulations will have no impact on the creation, expansion or elimination of new or existing businesses within California. The proposed regulations affect the internal management of CDCR only, and place no requirements or restrictions on businesses.

CDCR has determined the proposed regulations will have no impact on the expansion of businesses currently doing business in California. The proposed regulations affect the internal management of CDCR only, and place no requirements or restrictions on businesses.

#### **Creation or Elimination of Jobs within the State of California**

CDCR has determined that the proposed regulations will not have an impact on the creation of new or elimination of existing non-state jobs within California as the proposed regulations affects the internal management of prisons only.

#### **Creation of New, Expansion or the Elimination of Existing Businesses Currently Doing Business within the State of California**

CDCR has determined the proposed regulations will not have an impact on the creation of new or the elimination of existing businesses within California, or affect the expansion of businesses currently doing business in California as the proposed regulations affect the internal management of prisons only.

#### **Significant Adverse Economic Impact on Business**

CDCR has made an initial determination the proposed regulation will not have a significant adverse economic impact on business. Additionally, there has been no testimony or other evidence provided that would alter CDCR's initial determination. The proposed regulations affect the internal management of CDCR only, and place no requirements or restrictions on businesses.

#### **Local Mandates**

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

#### **Benefits of the Regulations**

The proposed regulatory action will benefit CDCR staff, inmates, and the public by ensuring that CDCR is in compliance with the new state law, PC 6404; but also promotes positive behavior by providing the opportunity to gain eligibility for family visits that current regulations do not provide. The revisions to the eligibility criteria for family visits is anticipated to reduce violence, decrease the level of contraband, and promote an atmosphere of positive behavior and self-improvement to better prepare an inmate for successful release and/or rehabilitation.

#### **Documents Relied Upon**

CDCR, in proposing amendments to these regulations, has not identified nor has it relied upon any technical, theoretical, or empirical study, report, or similar document.

#### **Specific Purpose and Rationale for Each Section, Per Government Code section 11346.2(b)(1):**

##### **3177. Family Visiting (Overnight)**

##### **Section 3177 Opening paragraphs remain unchanged but are included for reference:**

Institution heads shall maintain family visiting policies and procedures. Family visits are extended overnight visits, provided for eligible inmates and their immediate family members as defined in Section 3000, commensurate with institution security, space availability, and pursuant to these regulations. Each institution shall provide all necessary accommodations, except for

food, at no cost to the inmates and their visitors. Institutions shall require eligible inmates to purchase all food for the family visit through the institution family visiting coordinator. Each institution family visiting menu shall provide a balanced variety of nutritional selections. At all CDCR conservation camps, the visitors shall be required to bring all food for the visit.

Only those immediate family members as defined in Section 3000, including registered domestic partners, are authorized for family visits.

**Subsection 3177(a) remains unchanged.**

**Subsection 3177(b)(1) is amended** to reference the existence of newly adopted factors in 3177(b)(1)(B) and (C).

**Existing subsection 3177(b)(1)(B) remains unchanged** but was renumbered/relocated to 3177(b)(1)(D) to provide better format and clarity of the text.

**Subsection 3177(b)(1)(B) is newly adopted** to identify inmates convicted as a minor of a violent offense where the victim was a minor or family member, excluding any sex offense, may be eligible for family visiting upon determination of a classification committee, and upon a sustained period of five years with no serious rules violations in conjunction with their documented participation in self-help groups. The five year period is affixed at five years in recognition of the significant influence the brain development of an adolescent and outside pressure (i.e., peer and or gang pressure) has upon a minor's behavioral choices in comparison to those of an adult, along with the importance of family reunification in an inmate's successful reintegration into society.

**Subsection 3177(b)(1)(C) is newly adopted** to identify inmates convicted of a violent offense where the victim was a minor or family member, excluding any sex offense, may be eligible for family visiting, upon determination of a classification committee, with a sustained disciplinary-free period of serious rules violation for ten years, and documented participation in self-help groups such as Anger Management, Narcotics and/or Alcoholics Anonymous programs. This is necessary to apply a method of fairness in considering eligibility for those inmates who were convicted as adults in comparison to those convicted as minors. Taking into account the maturity level and thought processes of an adult are significantly more developed in dictating an individual's behavior, and are less susceptible to peer pressure, an adult inmate must show a reasonable progression of self-improvement and positive in-custody behavior as listed above to be considered eligible for family visits.

**Existing subsection 3177(b)(2) is restructured and amended** to subcategorize existing family visit exclusionary criteria within this subsection. The existing exclusionary criteria is listed into new subsections 3177(b)(2)(A) through 3177(b)(2)(H). Two exclusionary criteria; "sentenced to life without the possibility of parole" and "sentenced to life, without a parole date established by the Board of Parole Hearings" are deleted in order to be in compliance with Penal Code Section 6404. CDCR intends to make clear the identifying Family Visiting (Overnight) exclusionary criteria by listing them individually versus altogether in one paragraph.

**Subsection 3177(b)(2)(H) was amended** to remove "narcotics distribution", and replace with "distribution of a controlled substance". This is necessary to remain consistent with the definition currently existing in Section 3000, and proposed revisions to subsection 3315(f)(5)(H), Inmate Discipline. The existing and added criteria is necessary to serve as an incentive to promote positive behavior and programming by the inmate as family visits are a privilege

granted to inmates, and not a right. CDCR recognizes the need for family visits as a means of providing family reunification and community connections to help prepare inmates for their successful reintegration into society.

### **3315. Serious Rule Violations.**

#### **Subsection 3315(f) and 3315 (f)(5) remain unchanged but are included for reference:**

(f) Disposition. Upon completion of the fact-finding portion of the disciplinary hearing, the inmate may be found:

...

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

**Subsection 3315(f)(5)(H) is amended** to include language clarifying disciplinary consequences specifically to family visits. This language is necessary as new subsections (3315(f)(5)(H)(1) through 3315(f)(5)(H)(3) are proposed to remove “narcotics distribution,” and replace it with “distribution of a controlled substance” to remain consistent with the definition currently existing in Section 3000; and to provide clarification of consequences when an inmate is found guilty of one or more Rule Violations Reports (RVR) for in prison distribution of a controlled substance. Current existing language for Family Visiting (Overnight) permanently excludes an inmate when they are found guilty of one RVR for in-custody narcotics distribution. The proposed changes are not as stringent as existing regulations regarding exclusion from participation in family visits; and represent a more balanced approach towards incentivizing inmates to realize opportunities are available if they focus on positive programming. These changes serve to maintain consequences and accountability for inmate misconduct, while promoting the health, safety, and security of the public, inmates, and staff alike.

CDCR believes inmates have the ability to rehabilitate through in prison programs offered, e.g., Substance Abuse, Criminal Thinking, Anger Management, and Family Relationships, among others. With that said, CDCR has determined a first time guilty finding of an in prison distribution of a controlled substance shall not permanently exclude an inmate from family visits, but shall allow for a three year exclusion. For a second offense, this exclusion is increased to seven years. For a third offense, the exclusion is permanent.

CDCR believes it is reasonable to provide inmates with incentives to positively program, knowing the opportunity to spend family visits with their loved ones may be available again. CDCR wants to stress the importance of family reunification in the inmate’s ability to successfully reintegrate into society upon release.

**Subsections 3315(f)(5)(I)(1) through 3315(f)(5)(I)(3) are amended to** include an additional consequence of loss of family visits as well as regular visiting for inmates who refuse to provide a urine sample for purposes of testing for controlled substances as well as possession of a controlled substance or positive urinalysis test for a controlled substance.

Inmates who are found guilty of a Rules Violation Report (RVR) for refusing to provide a urine sample for the purpose of testing for controlled substances in accordance with Title 15, Subsection 3290(d) or Possession of a Controlled Substance or positive urinalysis test for controlled substance in accordance with Title 15, Subsection 3016(a) (other than alcohol), shall be subject to loss of family visits for one year for the first offense, loss of family visits for three

years for the second offense, and loss of family visits for five years for a third and any subsequent offense.

CDCR is charged with maintaining order, the safety of persons, and the security of the institutions/facilities; while supporting inmate family and community connections. CDCR is also responsible to prepare inmates for their successful rehabilitation and release. Substance abuse poses a public health risk and negatively impacts inmate rehabilitation; as inmates who are under the influence of controlled substances have a diminished capacity to make sound decisions. To incentivize positive inmate behavior and reduce the public health and safety risk presented by inmates who may be under the influence of controlled substances; this regulatory language provides progressive suspensions to family visiting for those inmates who test positive or refuse to participate in substance abuse testing.

CDCR is focusing various regulatory changes on a behavioral-model approach to incentivize positive behavior and personal growth. CDCR chose the one year, three year, and five year denials as a deterrent for inmates to remain disciplinary free and to sustain positive programming. The goal is to simultaneously expand incentives for positive programming, while improving access to rehabilitative services that facilitate societal reintegration. This also gives inmates a chance to change their behavior over a reasonable amount of time, and to reconnect with their family and loved ones.

**New Subsection 3315(f)(5)(Q) is adopted to** introduce the loss of family visits as a consequence for a violation of Title 15, Subsection 3006(a), possession or constructive possession of dangerous property or Subsection 3006(c)(20) possession of cellular telephone, subscriber identity module (SIM card), or other component.

Inmates who are found guilty of a Rules Violation Report (RVR) of either Title 15, Subsection 3006(a) or 3006(c)(20), shall be subject to loss of family visits of one year for the first offense, loss of family visits for three years for the second offense, and loss of family visits for five years for a third and any subsequent offense.

It is known that inmates who are in possession of cellular telephones have used them for various criminal activities. These criminal activities include, but are not limited to: conspiracy to introduced controlled substances, organized crime, willfully participating/assisting with street gang activities, escape attempts, and criminal activity within the facility/institution. Inmates have in the past taken pictures and video of the institution and sent this media via text messages and electronic mail messages to other people, or uploaded them to websites such as Facebook. The photos and videos depict the physical layout of the institution which can assist an inmate in attempting to escape with the assistance of friends, family and gang members/ties.

From July 2014 through March 2017, 22,306 cell phones were discovered at institutions overall. CDCR believes the loss of family visits for the applicable cell phone violations will serve as a deterrent to inmates' possession of cellular telephones.