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**Your Responsibility When Using the Information Provided Below:**

*When we wrote this handout, we did our best to give you useful and accurate information because we know that people often have difficulty obtaining legal information in prison, and we cannot provide specific advice to all the people who request it. Laws change frequently and are subject to differing interpretations, especially in this area of law. We do not always have the resources to make changes to this handout every time the law changes. If you use this handout it is your responsibility to make sure that the law has not changed and is applicable to your situation. Most of the materials you need should be available in your institution law library.*

**COMMON ISSUES FACING TRANSGENDER PEOPLE  
 IN CALIFORNIA PRISON: THE LAW AND SELF-ADVOCACY  
 (Updated January 2018)**

We are sending this packet to you because we received a letter from you that raised concerns specific to being transgender in CDCR custody. Thank you for writing to us. We are sorry that we currently do not have the staff to respond individually to your letter. Our form response is not a reflection on the merit or seriousness of your concerns.

We put together this packet to address some of the most common issues that we see in letters from transgender people in CDCR prisons. This packet has information on the status of the law and CDCR policy related to those common issues. It also has information on what to do if you believe your rights have been violated.

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In most cases we recommend that you file an administrative appeal (602) on the issue you are facing. If you are unhappy with the response you get, we recommend that you appeal it through the Third Level. In each section of this handout, we have included information that we suggest you include when filing your 602.

We understand that the appeals process often is imperfect and frustrating to navigate. However, in most cases filing and exhausting an appeal is the only way to gain access to the courts. The appeals process is also an important way to document the issues you are facing.

You can send our office a copy of any Third Level Response you receive to an appeal on transgender-specific issues:

**Prison Law Office**  
General Delivery  
San Quentin, CA 94964

We cannot promise that we will be able to help, but we will review and consider any Third Level Response you send us.

We hope you find that the following information addresses your concerns. If you have concerns or problems beyond what is covered in this handout, you can write to us and explain your situation. Please note again that, in most cases, we recommend that you file an administrative appeal on those concerns or problems, and file it through the Third Level.

We also include addresses to transgender and legal advocacy organizations at the end of this handout. You may want to write to them and see if they can help you.

## **I. CLOTHING AND PERSONAL PROPERTY**

### **A. Bras, Boxers, Binders, and Compression Tops**

According to CDCR policy, “inmates identified as transgendered on the CDCR Form 128-C3 shall, upon request, be provided with state issued brassieres or boxer shorts via the institution clothing room and permitted to purchase such items as needed” (DOM 62080.14). In addition, a federal judge ordered CDCR to provide transgender men in female institutions with binders and compression tops.

If you do not have a bra, boxers, binder, or compression top, you should submit a Form 22 request asking for the item. If you are unhappy with the response to the Form 22, you should re-submit the form to the supervisor’s level of review.

If, after receiving the supervisor’s level response to the Form 22, you still do not have the item, you should file a 602 specifying (1) the date that you asked for the bra or boxers, (2) who you asked, and (3) the reason that they were not given to you. You should also attach the Form 22 and a copy of your Form 128-C3 to your appeal.

### **B. Other Personal Property**

A court order in a lawsuit brought by the Transgender Law Center against CDCR has expanded access to clothing and commissary items for transgender people consistent with their gender identity (*Quine v. Beard*, Docket No. 3:14-cv-02726 (N.D. Cal. Jun 12, 2014)).

On April 28, 2017, as a result of the court order in *Quine*, CDCR issued Notice of Change to Regulations 17-03 (NCR 17-03), which created temporary regulation changes regarding property that transgender people can have in prison. A copy of NCR 17-03 is included at the end of this handout. These temporary regulations will eventually be replaced by permanent regulations on the topic, and it is possible the permanent regulations will be different. Your law library should have access to the current version of the regulations.

The regulations say that “[t]ransgender inmates and inmates having symptoms of gender dysphoria as identified and documented in SOMS by medical or mental health personnel” may possess certain authorized personal property depending on whether they are housed at male-designated or female-designated institution.

If you want to access any of the items listed in NCR 17-03 that you believe you are entitled to have, you should submit a Form 22 request. If you are unhappy with the response to the Form 22, you should re-submit the form to the supervisor’s level of

review. If, after receiving the supervisor's level response to the Form 22, you still do not have the allowed item, you should file a 602 specifying (1) the date you asked for the items, (2) who you asked, (3) what items you would like, and (4) the reason they were not given to you. You should also attach the Form 22 to your appeal.

## **II. MEDICAL CARE**

We represent all people housed in CDCR prisons with serious medical concerns in the ongoing federal class action lawsuit known as *Plata*. Under *Plata* we may be able to assist you if you are experiencing problems with your medical care. In most cases, however, for us to consider assisting you, we need to review a copy of a recent Third Level Health Care Response. You can send us a copy of any recent Third Level Health Care Response you have received, along with a brief description of the problems you are experiencing with your care. We will review that information to see if we can help.

### **A. Gender-Affirming or Sexual Reassignment Surgery**

On May 24, 2016, CDCR updated its care guidelines regarding gender-affirming surgery, also known as Sexual Reassignment Surgery (SRS), for patients with Gender Dysphoria. We call it SRS in this handout because that is the term CDCR and California Correctional Health Care Services (CCHCS) uses for the surgery. The policy on Sexual Reassignment Surgery has changed a lot in the last year, and it may continue to change as CCHCS finalizes and modifies its policies and procedures.

If you want to undergo gender-affirming surgery, we recommend that you to submit a 7362, so you can discuss it with your primary care provider.

Under the new guidelines, after a person requests SRS as treatment for GD, the institution provider must complete a Request for Services (RFS). The RFS should say something like: "The patient is requesting evaluation for sex reassignment surgery." The provider will then refer the RFS to the prison's Institution Utilization Management Committee (IUMC), along with medical, mental health, and custody assessments. The provider will also discuss SRS with the patient, including the risks associated with it. If the provider refuses to complete the RFS for you, you should submit a 602-HC asking to be considered and evaluated for Sexual Reassignment Surgery.

Once the RFS is submitted, IUMC forwards that and other information to the Headquarters Utilization Management Committee (HQUMC) in Sacramento. This generally must be done within 90 days following a documented request for SRS.

HQUMC then assigns it to their subcommittee for review. The subcommittee is called the Sex Reassignment Surgery Review Committee (SRSRC). It meets weekly and

is made up of six voting members and several non-voting members. The voting members are two CDCR physicians from Medical Services, two CDCR physicians from the Mental Health Program, and two CDCR psychologists from the Mental Health Program. The SRSRC reviews, evaluates, and discusses the provided information to determine whether or not to recommend SRS from a medical and mental health standpoint.

HQUMC reviews the SRSRC recommendation and determines whether SRS is approved or denied. If the SRSRC recommends SRS, and the HQUMC approves it, then the HCUMC will refer the patient to an SRS surgeon for further treatment.

If HQUMC disagrees with an approved recommendation from SRSRC, the Statewide Chief Medical Executive or designee will decide whether SRS will be approved. The guidelines do not put deadlines on HQUMC and Statewide Chief Medical Executive review. The guidelines do state that the patient will receive notice of the final decision in writing within five business days.

If SRS is denied, you may proceed directly to court. The decision is not subject to review in the 602-HC process. The guidelines allow patients to submit a new request for SRS one year after issuance of a letter disapproving the request.

## **B. Hormone Treatment**

If you want to undergo hormone treatment, we recommend that you file a 7362 requesting to begin hormone treatment. If you are already on hormones and having problems with your hormone treatment, we recommend you file a 7362 explaining any symptoms you are experiencing.

Under the care guide for Gender Dysphoria, after a patient asks for hormone treatment, medical and mental health staff must hold a treatment team case conference to determine whether to confirm a diagnosis of GD.

If a GD diagnosis is confirmed, the patient will be referred to a medical provider for assessment and for a recommended treatment plan. Medical staff will then evaluate a patient's eligibility for hormone treatment. In doing so, medical staff will whether consider other mental health or medical diagnoses would interfere with or make it unhealthy to take hormones. After going on hormone therapy, patients should be regularly monitored and the treatment modified as necessary.

After filing a 7362, if your concerns remain unresolved, we recommend you file a 602-HC requesting to begin hormone treatment or to have your treatment adjusted.

### III. HOUSING

#### A. Housing Screening and Assignments

The Prison Rape Elimination Act (PREA) is a federal law that requires prisons to screen all persons within 72 hours of their arrival at a facility for their risk of being victimized or abused, and to take that information into account when making decisions about housing (28 C.F.R. §§ 115.41; see also DOM 54040.6). The U.S. Department of Justice issued a memorandum regarding PREA on March 24, 2016:

*Being transgender is a known risk factor for being sexually victimized in confinement settings. The standard, therefore, requires that facility, housing, and programming assignments be made “on a case-by-case basis.” Any written policy or actual practice that assigns transgender or intersex inmates to gender-specific facilities, housing units, or programs based solely on their external genital anatomy violates the standard. A PREA-compliant policy must require an individualized assessment. A policy must give “serious consideration” to transgender or intersex inmates’ own views with respect to safety. The assessment, therefore, must consider the transgender or intersex inmate’s gender identity – that is, if the inmate self-identifies as either male or female. A policy may also consider an inmate’s security threat level, criminal and disciplinary history, current gender expression, medical and mental health information, vulnerability to sexual victimization, and likelihood of perpetrating abuse. The policy will likely consider facility-specific factors as well, including inmate populations, staffing patterns, and physical layouts. The policy must allow for housing by gender identity when appropriate.*

According to CDCR policy, people “who have been diagnosed as transgendered, as documented on their CDCR Form 128-C3, shall be referred to a classification committee for review of all case factors and determination of appropriate institutional placement and housing assignment” (DOM 62080.14). The DOM further states that “to the maximum extent practical,” transgender people shall be housed at the following institutions (DOM 62080.14):

#### Male-to-Female Transgender People

- California Medical Facility (CMF)
- Richard J. Donovan (RJD)
- San Quentin State Prison (SQ)
- Mule Creek State Prison (MCSP)
- California Substance Abuse Treatment Facility (SATF)
- California State Prison – Sacramento (SAC)

- Salinas Valley State Prison (SVSP)
- Kern Valley State Prison (KVSP)
- California Institution for Men (CIM)

### Female-to-Male Transgender People

- Central California Women's Facility (CCWF)
- California Institution for Women (CIW)

If a transgender person has multiple case factors that make it hard for CDCR to house them in one of the recommended institutions, staff from the Health Care Placement Oversight Program, Classification Services Unit, California Correctional Health Care Services, and Population Management Unit will meet to determine "most appropriate level of care/institution suitable for housing consistent with the inmate-patient's case factors" (DOM 62080.14).

If you would like to change your cell, yard, or institution, we recommend you first file a Form 22 to your CCI to discuss a housing change. If that does not resolve your concerns, we recommend you file a 602 explaining why you need to change housing. You should attach the Form 22 with your 602.

We hear from many people who wish to be housed in accordance with their gender. If you would feel safer housed in a prison that is consistent with your gender identity, we encourage you to include that information on any 602 that you file explaining why you need to change housing.

#### **B. Single-Cell Status**

Some transgender people report that they would feel safer if they were housed in a single cell. On January 19, 2016, CDCR issued a memorandum entitled, "Inmate Housing Assignment Considerations During the Screening and Housing Process." A copy of the memorandum should be in your prison library.

According to the memorandum, staff must weigh "all available factors" when determining someone's housing assignment, including:

- Length of sentence
- Enemies and victimization history
- Criminal influence demonstrated over other inmates
- Vulnerability of the inmate due to medical, mental health, and disabilities
- Reason(s) for segregation
- History of "S" suffix determination

- History of in-cell assaults and/or violence
- Security Threat Group affiliation and/or association
- Nature of commitment offense
- Adaptive support needs listed on the CDCR Form 128 C-2

The memorandum also states:

*Examples of inmates who should be considered for single-cell status, or other appropriate housing, on the basis of vulnerability are: . . . . An inmate with gender dysphoria (studies show this can increase the risk of sexual victimization).*

If you feel that you should be in single-cell housing, you should file a Form 22 requesting to be placed in a single-cell. (If you have an immediate safety concern, you should verbally tell staff as well.)

If you are unhappy with the response to your 22, you should file a 602 specifying (1) why you believe that single-cell status is necessary for you, and (2) which of the factors listed above apply to you. You should attach the Form 22 response to your appeal.

#### **IV. PRIVACY**

We often receive letters from people reporting intrusions into their privacy or asking about the policies regarding privacy in CDCR. Those topics include privacy in showers and during custody searches. This area of the law remains somewhat open. At the end of this section, we have included general information on federal privacy claims that may provide a starting point for you if you decide to pursue legal action.

##### **A. Sexual Orientation and Gender Identity**

CDCR policy provides (DOM 52050.16):

*Many inmates consider their sexual orientation and gender identity to be private information, and the widespread knowledge of this information could impact the safety and well-being of sexual minorities such as lesbian, gay, bisexual, transgender and intersex (LGBTI) inmates. This information is considered sensitive and should be handled in a confidential manner.*

*The information should only be communicated to staff when there is a justified "Need to Know."*



*This information should never be communicated to other offenders. This will protect the rights and safety of the involved inmate.*

## **B. Showers**

Transgender people in prison frequently state that they do not have privacy during showers, and that staff and/or people in prison of another gender can view them while they are showering.

Under PREA, prisons are supposed to minimize situations where custody staff of the “opposite gender” can view a person’s breasts, buttocks, and genitalia. This includes while someone is showering, changing clothes, and using the toilet (28 C.F.R. §§ 115.15(d)).

CDCR policy is that modesty screens are to be “placed strategically in areas that prevent incidental viewing” of breasts, buttocks, and genitalia, when placing screens does not impact safety and security (DOM 54040.4). The screen is supposed to be sufficiently large to prevent viewing breasts, buttocks, and genitalia.

PREA also dictates that intersex and transgender persons be allowed the opportunity to shower separately from others (28 C.F.R. §§ 115.42(f)). You can request to shower separately and/or at a different time if a privacy screen is not available, not feasible, or is not working to keep other people from viewing your breasts, buttocks, or genitalia.

If you are being denied a privacy screen in a shower, changing area, and/or toilet area, we advise you to file a 602 specifying (1) how your current situation does not afford you privacy, and (2) the impact it has on you.

## **C. Custody Searches**

### **1. Searches to Determine Genital Status**

Under PREA, custody staff may not search or physically examine people in prison to determine genital status. Staff can ask the individual, review medical records, or request a private evaluation by medical staff (28 C.F.R. § 115.15(e)).

CDCR policy provides:

*In the event that an individual’s genital status is ambiguous, the search shall be conducted by a staff member that is the same biological sex as indicated*

*in the inmate's records (i.e., paperwork indicates male, inmate will be searched by a male staff member). If staff are unable to determine the genital status through medical records or an interview with the inmate, the inmate shall be placed on single-cell status or in administrative segregation for his/her safety, until the standard intake medical evaluation is completed. The standard medical examination will establish the genital status of the inmate.*

DOM 52050.16.7.

## **2. Security Searches**

Prisons are required by PREA to provide training to custody staff on conducting searches of transgender people, and searches are to be conducted in the least intrusive manner possible consistent with security needs (28 C.F.R §§ 115.15, 115.115, 115.215, 115.315).

### ***What if I want to be searched by female (or male) staff?***

CDCR policy is that an individual who identifies as transgender will be searched by a staff member of the same biological sex (DOM 52050.16.7).

You can request to be searched by staff of a specific gender. If you are currently searched by male officers and would like to be searched by female officers (or vice versa), we advise you to file a 602 requesting to be searched by female officers (or male officers). While the DOM does not require this, it is standard procedure under PREA:

*Operationally, three options are in current practice for searches of transgender or intersex inmates/residents/detainees:*

- 1) searches conducted only by medical staff;*
- 2) searches conducted by female staff only, especially given there is no prohibition on the pat-searches female staff can perform (except in juvenile facilities); and*
- 3) asking inmates/residents/detainees to identify the gender of staff with whom they would feel most comfortable conducting the search.*

National PREA Resource Center, *Can You Please Clarify the Parameters of Conducting a Search of a Transgender or Intersex Inmate/Resident?* (Feb. 7, 2013), <https://www.prearesourcecenter.org/node/3257>.

The Prison Law Office has informed CDCR of its concerns about the apparent rule that all transgender women be searched by male officers. In addition, the law office Medina Orthwein LLP has been looking into this issue. You can find contact information for Medina Orthwein LLP at the end of this handout.

***May I be searched in a private area?***

If you are searched in front of other prisoners, you can ask to be searched in a private area, although CDCR policy does not currently appear to require it.

CDCR policy does require that routine unclothed body searches “be conducted in a safe manner and in an area that allows the inmate to preserve some measure of dignity and self-respect” (DOM 52050.16.5).

***What if staff searched me inappropriately?***

Staff are supposed to receive training on conducting pat-down searches and body cavity searches of transgender people and are supposed to conduct such searches “in a professional, respectful manner, and in the least intrusive manner possible consistent with security needs” (DOM 54040.4). Furthermore, staff are supposed to receive training on how to communicate professionally with transgender prisoners (DOM 54040.4).

If you believe you have been subjected to an inappropriate search, we advise you to file a 602 explaining (1) when the search took place, (2) who conducted the search, and (3) what happened during the search. Please note that this 602 will be treated as a staff complaint.

**D. Federal Claims**

Under federal law, transgender people in prison may be able to raise claims about privacy under the Fourth Amendment, Fourteenth Amendment, and Eighth Amendment of the United States Constitution.

Below we list a few case citations from the Supreme Court and courts in the Ninth Circuit. They may provide a starting point for you if you decide to file a lawsuit. The Project on Addressing Prison Rape also maintains a list of case law on cross-gender searches, organized by circuit. See <https://www.wcl.american.edu/endsilence/> (click on “Civil Case Law”).

Please note that this area of the law is unsettled. The list below is not a comprehensive list of the case law in the area. You should consult with an attorney and/or conduct additional legal research before filing a lawsuit.

The Fourth Amendment protects “against unreasonable searches and seizures.” U.S. Const. amend. IV.

- The Ninth Circuit has held that “the Fourth Amendment does apply to the invasion of bodily privacy in prisons.” *Bull v. City and County of San Francisco*, 595 F.3d 964, 974-75 (9th Cir. 2010) (en banc).
- “The test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application. In each case it requires a balancing of the need for the particular search against the invasion of personal rights that the search entails. Courts must consider the scope of the particular intrusion, the manner in which it is conducted, the justification for initiating it, and the place in which it is conducted.” *Bell v. Wolfish*, 441 U.S. 520, 559 (1979).
- “[W]e conclude that the cross-gender strip search of Byrd was unreasonable as a matter of law. O’Connell touched Byrd’s inner and outer thighs, buttocks, and genital area with her latex-gloved hand through very thin boxer shorts. She moved his penis and scrotum in the process of conducting the search. The scope of this intrusion totally thwarted any desire on Byrd’s part to shield his unclothed figure from the view of strangers of the opposite sex.” *Byrd v. Maricopa County Sheriff’s Dep’t*, 629 F.3d 1135, 1142 (9th Cir. 2011) (internal quotation marks, ellipses, and citation omitted). “Ten to fifteen non-participating officers watched the strip search, and at least one person videotaped the search.” *Id.* at 1143.
- “[N]ot all strip search procedures will be reasonable; some could be excessive, vindictive, harassing, or unrelated to any legitimate penological interest.” *Michenfelder v. Sumner*, 860 F.2d 328, 332 (9th Cir.1988).

The Fourteenth Amendment prohibits state actors from “depriv[ing] any person of life, liberty, or property, without due process of law” and “deny[ing] to any person . . . the equal protection of the laws.” U.S. Const. amend. XIV, § 1

- *Grummet v. Rushen*, 779 F.2d 491, 493 n.1 (9th Cir. 1985) (observing that a prisoner might raise a privacy claim “under the liberty component of the fourteenth amendment”).
- “[T]he Court concludes that discrimination based on transgender status independently qualifies as a suspect classification under the Equal Protection Clause because transgender persons meet the indicia of a ‘suspect’ or ‘quasi-

suspect classification' identified by the Supreme Court. . . . The application of intermediate scrutiny requires the government to show that its gender classification is substantially related to an important governmental interest, requiring an exceedingly persuasive justification." *Norsworthy v. Beard*, 87 F. Supp. 3d 1104, 1119, 1120 (N.D. Cal. 2015).

The Eighth Amendment prohibits "cruel and unusual punishments." U.S. Const. amend. VIII.

- "We uphold the district court's conclusion that the cross-gender clothed body search policy at the women's prison constituted cruel and unusual punishment in violation of the Eighth Amendment." *Jordan v. Gardner*, 986 F.2d 1521, 1531 (9th Cir. 1993) (en banc).

## **V. NAMES, PRONOUNS, AND MISGENDERING**

Transgender people may want to be called by a name other than their legal name or the name they were given at birth and one that feels more in line with their gender identity. Transgender people may also want to be called the pronouns (for example, he/him, she/her, they/their) that aligns with their gender identity. In corresponding with our office, you can let us know your preferred name, pronouns, and/or title (for example, Mr., Ms., Mx.). We will respect your choice.

Some transgender people want to change their legal name while incarcerated. California passed a bill—SB 310: Name and Dignity Act for Incarcerated People—that creates a right for people in California prison to petition the court to obtain a name or gender change. If you have any questions about the bill, or would like help with a name change, we recommend that you contact the Transgender Gender Variant and Intersex (TGI) Justice Project. Their address is listed at the end of this handout.

Transgender people may want to be referred to by pronouns that match their gender. "Misgendering" is when someone refers to a person by pronouns that do not match the person's gender identity, for example, by referring to a transgender woman as "he" or "him." CDCR's policy provides the following general statement (DOM 54040.4):

*Institutions shall train all staff on how to communicate professionally with inmates, including inmates who identify themselves as Lesbian, Gay, Bisexual, Transgender, Intersex, and Gender Non-Conforming in accordance with Inmate/Staff Relations Training...*

If you are being misgendered by staff, you may want to let them know, if you feel comfortable doing so. You can also file a 602.

## **VI. VIOLENCE, SEXUAL ASSAULT, AND SAFETY**

Unfortunately, transgender people can be at a higher risk of physical and sexual violence in CDCR compared to the general prison population. Transgender people often write to us about current safety concerns and/or about past assaults.

### **A. Safety and Threats of Violence**

Prisons are required by the Eighth Amendment of the United States Constitution to protect everybody in their custody from violence by other people in prison and staff, including from sexual violence and abuse. See *Farmer v. Brennan*, 511 U.S. 825 (1994).

#### ***What should I do if I am threatened or feel unsafe?***

It is important to report to staff if you receive threats or feel unsafe. It is best to report in writing so that you can demonstrate later that you have raised your concerns to staff. To create documentation, it is important for staff to be aware of any risk of harm you are facing.

We know that some people have safety concerns with putting this information in writing through the appeals process (especially listing who threatened them). We encourage you to continue to use your judgment about how best to stay safe. This information is intended to give you information about how to protect legal claims and CDCR's own process for addressing safety claims.

If prison officials do not properly respond to your concerns about harassment or the threat of a physical or sexual assault, then you should file a 602 specifying (1) who threatened you, (2) when you were threatened, (3) how you were threatened, (4) the date that you told staff and which staff you told, (5) what staff's response to your concern was, and (6) any harm you faced as a result of staff's inaction.

#### ***What if I am moved to Ad-Seg?***

Unfortunately, raising safety concerns sometimes results in people being moved into Administrative Segregation (Ad-Seg). If you report safety concerns, you are only supposed to be placed in Ad-Seg if staff have determined that there are no other ways to keep you safe. If you are placed in Ad-Seg, you are supposed to receive a housing assessment within 24 hours of placement (DOM 54040.6). The Prison Rape Elimination Act (PREA) Prison and Jail Standards also state that you may be in segregation only while officials determine where to safely house you, unless CDCR determines that there is no available alternative means of separation from likely abusers.

If you think you have been wrongly placed in Ad-Seg for raising safety concerns or that you have not been appropriately assessed, you should file a 602 specifying (1) the safety concern that you raised, (2) when you were placed in Ad-Seg, (3) how long you have been in Ad-Seg, and (4) whether a housing assessment has been completed.

## **B. Sexual Assault**

Rape and other types of forced or coerced sexual assault are crimes under California law (Penal Code Section 261). The criminal laws apply regardless of whether the person who commits the assault is a prisoner or prison employee. California law and CDCR policy also prohibit “any sexual behavior” between staff and prisoners, regardless of whether it was consensual or not (DOM 54040.2; Penal Code Section 289.6).

### ***What should I do if I am sexually assaulted?***

We recognize that deciding whether to report a sexual assault can be a very difficult decision involving many considerations. From a legal standpoint, if you have been sexually assaulted, we recommend that you let staff know so that they can respond to medical and safety concerns.

You can report sexual assault in several ways (DOM 54040.7):

- 1) in writing to any CDCR staff member;
- 2) by speaking with any CDCR staff member;
- 3) through the CDCR appeals process;
- 4) through a third party;
- 5) by calling the sexual assault hotline (the phone number should be listed on PREA posters posted throughout your facility); and
- 6) by writing to the Ombudsman for Sexual Abuse in Detention Elimination in the Office of the Inspector General at 1011 Old Placerville Road, Suite 110, Sacramento, CA 95827.

We also recommend that you seek immediate medical attention for any injuries, to prevent or detect the transmission of sexually transmitted infections, and for collection of evidence to prove the rape or assault allegations. A person who has been sexually assaulted and who wants emotional support is also entitled to—and should—seek counseling from mental health staff, a religious advisor, or a volunteer or peer counselor.

### ***What happens next?***

CDCR's Prison Rape Elimination Policy (Article 44) was revised on July 1, 2015, and outlines in detail what happens after someone reports sexual violence. We also have a handout on Sexual Assault and Harassment in Prison. Let us know if you want a copy.

Staff are required to report to the appropriate supervisor/staff member any information indicating that a person in prison has experienced sexual violence. If you choose to report, you have the right to a victim advocate and a victim support person of your choosing to be present at (1) any interview by law enforcement, the district attorney, or defense attorneys, and (2) medical examinations, if you are the victim of certain crimes, including rape, sodomy, oral copulation, and forcible acts of sexual penetration (DOM 54040.8.2). The victim advocate typically is a person employed by a local rape crisis center. If an outside victim advocate is not available, a designated employee will fill that role (DOM 54040.3).

If you report a sexual assault and believe the prison's response is inadequate, or that the prison did not adequately act to prevent a sexual assault, you should file a 602 specifying (1) when the sexual assault occurred, (2) what happened, (3) who was involved or witnessed the sexual assault, (4) the date that you told staff and who you told, and (5) how staff responded. **There are no time limits on filing a 602 about a sexual assault.**

### ***Is there anyone else I can contact?***

Just Detention International (JDI) is a health and human rights organization that seeks to end sexual abuse in all forms of detention. JDI provides advice, support and information for incarcerated people who are facing, or who are survivors of, sexual abuse.

Just Detention International  
3325 Wilshire Blvd., Suite 340  
Los Angeles, CA 90010

Many resources are available on JDI's website at [www.justdetention.org](http://www.justdetention.org). JDI also maintains a list of rape crisis centers that can provide legal and psychological counseling for people in California prisons: <http://justdetention.org/service/state/california/>.



## VII. OTHER RESOURCES

These organizations also provide support and advocacy for transgender people:

Transgender Law Center  
P.O. Box 70976  
Oakland, CA 94612  
(510) 380-8229 (collect)

ACLU of Northern California  
39 Drumm St.  
San Francisco, CA 94111

Transgender Gender Variant and  
Intersex (TGI) Justice Project  
370 Turk St. #370  
San Francisco, CA 94102  
(415) 829-7285

ACLU of San Diego & Imperial  
Counties  
P.O. Box 87131  
San Diego, CA 92138

Jennifer Orthwein  
Medina Orthwein LLP  
1322 Webster St. Ste. 200  
Oakland, CA 94612

ACLU of Southern California  
1313 West 8th St.  
Los Angeles, CA 90017

Finally, please remember that in most cases, if you feel comfortable doing so, we recommend that you file a 602 on the issue you are facing. If you are unhappy with the response you get, we recommend that you appeal it through the Third Level. You can send our office a copy of any Third Level Response you receive to an appeal on transgender-specific issues. We cannot promise that we will be able to help, but we will review and consider any Third Level Response you send us.

We wish you the best.



Department of Corrections and  
Rehabilitation

## NOTICE OF CHANGE TO REGULATIONS

Sections: 3000, 3030, 3190, and 3269

**Number:**

**17-03**

**Publication Date:**

**April 28, 2017**

**Effective Date:**

**April 28, 2017**

### INSTITUTION POSTING AND CERTIFICATION REQUIRED

This Notice announces amendments to Sections 3000, 3030, 3190, and 3269 of the California Code of Regulations (CCR), Title 15, Crime Prevention and Corrections, to incorporate into the CCR, provisions concerning authorized property for transgender inmates.

#### **IMPLEMENTATION: TO BE ANNOUNCED.**

These regulations are in temporary emergency effect pending completion of the public comment period and final certification of adoption per Penal Code Section 5058.3.

#### **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, by fax to (916) 324-6075, or by email to [RPMB@cdcr.ca.gov](mailto:RPMB@cdcr.ca.gov). All written comments must be received by the close of the public comment period on **June 19, 2017, at 5:00 p.m.**

#### **PUBLIC HEARING INFORMATION**

A public hearing regarding these proposed regulations will be held on **June 19, 2017, from 2:00 p.m. to 3:00 p.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 facsimile comments submitted during the prescribed comment period have the same significance and influence 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. 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 should be provided by the institution's Rules Coordinator and returned to RPMB on a CDCR Form 621-A, Certificate of Posting, by e-mail or by FAX. See Department Operations Manual 12010.12.1 and 12010.12.2 for posting and certification of posting procedures.

#### **CONTACT PERSON**

Inquiries regarding this notice should be directed to Timothy M. Lockwood, Chief, RPMB, California Department of Corrections and Rehabilitation, P.O. Box 942883, Sacramento, CA 94283-0001, by telephone at (916) 445-2269 or e-mail to [RPMB@cdcr.ca.gov](mailto:RPMB@cdcr.ca.gov). Inquiries regarding the subject matter of these regulations may be directed to Daniel Ross, Correctional Captain, Division of Adult Institutions, at (916) 324-6808.

*Original signed by:*

KENNETH J. POGUE

Undersecretary, Administration and Offender Services  
California Department of Corrections and Rehabilitation

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 and 5058.3, proposes to amend California Code of Regulations (CCR), Title 15, Division 3, Sections 3000, 3030, 3190, and 3269 regarding state-issued property, authorized personal property, and housing assignments for transgender inmates and inmates having symptoms of gender dysphoria.

#### **PUBLIC HEARING:**

Date and Time: **June 19, 2017 – 2:00 p.m. to 3:00 p.m.**

Place: Department of Corrections and Rehabilitation  
Kern/Colorado Conference 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 **June 19, 2017, at 5:00 p.m.** Any person may submit public comments in writing (by mail, by fax, 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; by fax at (916) 324-6075; 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, Chief**  
**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:

**R. Orr**  
**Regulation and Policy Management Branch**  
**Telephone (916) 445-2314**

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

**Daniel Ross**  
**Division of Adult Institutions**  
**Telephone (916) 324-6808**

## **AUTHORITY AND REFERENCE:**

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 5058.3 authorizes the Director to adopt, amend, or repeal emergency regulations conducted pursuant to GC Section 11340.

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

Current regulations designate state-issued property and authorized personal property as being available based upon inmates' anatomical sexes. However, current regulations do not meet the needs of transgender inmates or inmates having symptoms of gender dysphoria, whose gender identities do not correspond with their anatomical sexes.

In August 2015, the settlement agreement for *Quine v. Beard* required the Department to review and revise its policies to allow "inmates identified by medical or CDCR personnel as transgender or having symptoms of gender dysphoria access to property items available to CDCR inmates consistent with those inmates' custody and classification factors, including property items that are designated as available to a specific gender only." In June 2016, the court made recommendations pertaining to the implementation of the settlement agreement regarding the provision of specific property items.

In consideration of the settlement and subsequent court recommendations, the regulations allow transgender inmates and inmates having symptoms of gender dysphoria as identified and documented in the Strategic Offender Management System (SOMS), as defined in Section 3000, by medical or mental health personnel within a CDCR institution to have access to state-issued and authorized personal property items at designated institutions in accordance with their gender identities while maintaining the different safety and security needs of male and female institutions.

This action provides the following:

- Definitions of "gender dysphoria," "gender identity" and "transgender."
- Transgender inmates and inmates having symptoms of gender dysphoria as identified and documented in SOMS by medical or mental health personnel within a CDCR institution shall:
  - Be allowed to possess the state-issued clothing that corresponds to their gender identities in place of the state-issued clothing that corresponds to their anatomical sexes at designated institutions.
  - Be allowed to possess authorized personal property items as listed on the Transgender Inmates Authorized Personal Property Schedule (4/28/17), which is incorporated by reference and organized in terms of designated male and female institutions.
  - Be housed in designated institutions that are specifically selected to accommodate a wide variety of inmate custody levels and educational, vocational, and rehabilitative needs, and that shall provide continuous training to custody, medical, and mental health staff specifically regarding transgender inmates and inmates having symptoms of gender dysphoria and how to address their needs effectively within the overall inmate population.
  - Be referred to a classification committee for a determination of appropriate housing at a designated institution.

## **DOCUMENTS INCORPORATED BY REFERENCE:**

The Transgender Inmates Authorized Personal Property Schedule (4/28/17) is incorporated by reference and made available to the public in this notice package.

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

The Department anticipates that these regulations will bring the Department into compliance with the *Quine v. Beard* settlement agreement and subsequent recommendations by the court. By adopting regulations that authorize transgender inmates and inmates having symptoms of gender dysphoria to have access to state-issued and authorized personal property items at designated institutions in accordance with their gender identities, the Department will ensure that the property privileges of transgender inmates and inmates having symptoms of gender dysphoria are clearly stated and that further litigation against the Department will be minimized, which will save the State legal costs.

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

In developing the proposed regulations, the Department researched existing statutes and regulations regarding state-issued property, authorized personal property, and housing assignments for transgender inmates and inmates having symptoms of gender dysphoria and concluded that the proposed regulations are not inconsistent or incompatible with existing state laws and regulations.

**LOCAL MANDATES:**

The proposed regulatory 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.

**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*

**RESULTS OF ECONOMIC IMPACT ASSESSMENT:**

*Effect on Jobs/Businesses*

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

*Effect on the Health and Welfare of California residents, worker safety, and the State’s environment*

The Department has made an initial determination that the proposed regulations will have no impact on the health and welfare of California residents, worker safety, or the State’s environment as the proposed regulations only affect the internal management of CDCR prisons. As stated under the “Specific Benefits Anticipated by the Proposed Regulations” section of this document, by adopting regulations that authorize transgender inmates and inmates having symptoms of gender dysphoria to have access to state-issued and authorized personal property items at designated institutions in accordance with their gender identities, the Department will ensure that the property privileges of transgender inmates and inmates having symptoms of gender dysphoria are clearly stated and that further litigation against the Department will be minimized, which will save the State legal costs.

**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 AFFECTING BUSINESS:**

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

**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 made an initial determination that this action has no significant adverse economic impact on small business as these regulations pertain to state-issued property, authorized personal property, and housing assignments for transgender inmates and inmates having symptoms of gender dysphoria, and the prison population does not have a significant impact on small businesses.

**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 the 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 are also 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 website.

**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 and underline indicates added or amended text.

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

#### Division 3, Adult Institutions, Programs, and Parole

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

#### Article 1. Behavior

#### Section 3000. Definitions.

Section 3000 is amended to alphabetically merge the definitions below with those already in the regulations.

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 Identity means a person's sense of identification as male, female, neither, or both.

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

Note: Authority cited: Sections 243(f)(4), 2717.3, 3000.03, 5058, 5058.3 and 1170.05, Penal Code; Section 10115.3(b), Public Contract Code; and Sections 4525(a), 4526 and 14837, Government Code. Reference: Sections 186.22, 243, 314, 530, 532, 600, 646.9, 653m, 832.5, 1170.05, 1203.8, 1389, 2080, 2081.5, 2600, 2601, 2700, 2717.1, 2717.6, 2932.5, 3003.5(a), 3020, 3450, 3550, 4570, 4576, 5009, 5050, 5054, 5068, 7000 et seq. 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; and Section 999, Military and Veterans Code; Section 391, Code of Civil Procedure; Section 297.5, Family Code; Sections 8550, 8567, 12838 and 12838.7, Government Code; 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; Section 11007, Health and Safety Code; *Madrid v. Cate* (U.S.D.C. N.D. 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; ~~and~~ *In re Garcia* (2012) 202 Cal.App.4th 892; and *Quine v. Beard*, No. C 14-02726 JST.

#### Article 2. State-Issued Inmate Clothing and Linen

#### Section 3030. Issuance and Possession of State Clothing and Linen.

Subsections 3030(a) and 3030(b) are unchanged but are shown for reference.

(a) Each inmate shall be provided state clothing and linen pursuant to this section. Each item issued shall remain state property for which the inmate shall be accountable. State items shall be recalled and exchanged as directed by the institution head.

(b) Inmates shall possess only those items of state clothing and linen issued to them. Below are the standard inmate issues:

Subsections 3030(b)(1) through 3030(b)(3)(I) are unchanged.

**New Subsection 3030(c) is adopted to read:**

(c) Transgender inmates and inmates having symptoms of gender dysphoria as identified and documented in SOMS by medical or mental health personnel within a CDCR institution shall be allowed to possess the state-issued clothing that corresponds to their gender identities in place of the state-issued clothing that corresponds to their anatomical sexes at designated institutions.

**Existing Subsections 3030(c) through 3030(d) are renumbered to new Subsections 3030(d) through 3030(f) and the text is unchanged.**

**(de)...**

**(ed)...**

**(fe)...**

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

**Subchapter 2. Inmate Resources**

**Article 9. Personal Property and Religious Personal Property**

**Section 3190. General Policy.**

**Subsections 3190(a) through 3190(c) are unchanged.**

**New Subsection 3190(d) is adopted to read:**

(d) The Transgender Inmates Authorized Personal Property Schedule (TIAPPS) (4/28/17) identifies a separate list of allowable personal property afforded to transgender inmates and inmates 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 TIAPPS 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 TIAPPS 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) TIAPPS—Designated Male Institutions (4/28/17). This personal property schedule applies to transgender inmates and inmates having symptoms of gender dysphoria who are housed at male institutions.

(2) TIAPPS—Designated Female Institutions (4/28/17). This personal property schedule applies to transgender inmates and inmates having symptoms of gender dysphoria who are housed at female institutions.

**Existing Subsections 3190(d) through 3190(u) are renumbered to new Subsections 3190(e) through 3190(v) and the text is unchanged.**

**(ed)...**

**(fe)...**

**(gf)...**



**(hg)**...

**(ih)**...

**(ji)**...

**(kj)**...

**(lk)**...

**(ml)**...

**(nm)**...

**(on)**...

**(po)**...

**(qp)**...

**(rq)**...

**(sf)**...

**(ts)**...

**(ut)**...

**(vh)**...

NOTE: Authority cited: Sections 5058 and 5058.3, Penal Code. Reference: Sections 2086, 2601, 5006 and 5054, Penal Code; *In re Alcala*, Marin County Superior Court, No. 117925, December 20, 1984 and *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.

#### **Subchapter 4. General Institution Regulations**

##### **Article 1.6. Inmate Housing**

##### **Section 3269. Inmate Housing Assignments.**

**Sections 3269 through 3269(f) are unchanged.**

**New Subsection 3269(g) is adopted to read:**

(g) Transgender inmates and inmates 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 a classification committee for a determination of appropriate housing at a designated institution, pursuant to Article 10 of Subchapter 4.

**Existing Subsection 3269(g) is renumbered to new Subsection 3269(h) and the text is unchanged.**

**(hg)**...

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

**TRANSGENDER INMATES**

**AUTHORIZED PERSONAL PROPERTY SCHEDULE**

(4/28/17)

DESIGNATED MALE INSTITUTIONS.....PAGE 2

DESIGNATED FEMALE INSTITUTIONS.....PAGE 5

Transgender inmates 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) (Rev. 4/1/14), 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 inmates 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 inmate or an inmate having symptoms of gender dysphoria shall not exceed six cubic feet per Subsection 3190(d).

**DESIGNATED MALE INSTITUTIONS**

**PERSONAL CLOTHING ITEMS FOR TRANSGENDER INMATES/  
INMATES HAVING SYMPTOMS OF GENDER DYSPHORIA**

- INMATES ARE PERMITTED TO WEAR SOLID COLORS ONLY, UNLESS OTHERWISE INDICATED.
- INMATES 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 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.

ITEM DESCRIPTION  With additional requirements and restrictions.	GENERAL POPULATION LEVELS I, II, and III			GENERAL POPULATION LEVEL IV			SHU/PSU	ASU	
	PRIVILEGE GROUP								
	A	B	C	A	B	C	D	D	
<b>BRASSIERES</b> (White or gray only. No metal underwire, lace, strapless, see through, or pushup.)	7	7	7	7	7	7	7	7	
<b>PANTIES</b> (White or gray only. No thong, G-string, lace, see-through or pockets.)	10	10	10	10	10	10	10	10	
<b>SANDALS</b> (Beige, brown, or white only. No hidden compartments, zippers, or laces that are covered or concealed. Purchase value not to exceed \$75.)	1	1	1	1	1	1	0	0	
<b>T-SHIRTS</b> (White or gray only. Any combination of crew neck, v-neck, long sleeve, or sleeveless athletic tank-top. Turtle neck and mock turtle neck not permitted. The number of allowable t-shirts is combined with, and not in addition to, the number of allowable under shirts. Under shirts are as allowed in the APPS.)	5	5	5	5	5	5	3	0	
<b>WALKING SHOES</b> (Beige, brown, or white only.)	1	1	1	1	1	1	0	0	

**PERSONAL CARE/HYGIENE ITEMS FOR TRANSGENDER INMATES/  
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, SECTION 3062, INMATE GROOMING STANDARDS.

ITEM DESCRIPTION  With additional requirements and restrictions.	GENERAL POPULATION LEVELS I, II, and III			GENERAL POPULATION LEVEL IV			SHU/PSU	ASU
	PRIVILEGE GROUP							
	A	B	C	A	B	C	D	D
<b>BODY SPLASH</b> (10 oz. each max. No sprays or pumps.)	2	2	2	2	2	2	0	0
<b>BLUSH</b> (Natural skin tones only.)	2	2	2	2	2	2	0	0
<b>COTTON BALLS</b>	400	400	400	400	400	400	0	0
<b>EMERY BOARD</b> (Non-metal only.)	6	6	6	6	6	6	0	0
<b>EYEBROW PENCIL/EYELINER</b> (Factory sealed. Pencil only, no liquid. Natural skin tones only, i.e., black or brown in color.)	2	2	2	2	2	2	0	0
<b>EYE SHADOW KIT</b> (No mirrors. Kit shall not be altered. Natural skin tones only.)	2	2	2	2	2	2	0	0
<b>FABRIC SOFTENER</b> (Liquid, one bottle only, 36 oz. max.)	1	1	1	1	1	1	0	0
<b>FACE POWDER</b> (10oz. each max.)	2	2	2	2	2	2	0	0
<b>FACIAL ASTRINGENT</b> (10 oz. each max.)	2	2	2	2	2	2	1	0
<b>FACIAL CLEANSER</b> (10 oz. each max.)	2	2	2	2	2	2	1	0
<b>FEMINE HYGIENE WASH</b>	2	2	2	2	2	2	1	0
<b>FOUNDATION</b> (Natural skin tones only.)	2	2	2	2	2	2	0	0
<b>HAIR GEL, SPRAY AND GEL CURL, BRAID SPRAY AND LOCK GEL</b>	2	2	2	2	2	2	1	0
<b>HAIR ROLLERS</b> (Non-electric.)	30	30	30	30	30	30	0	0
<b>LIP GLOSS/LIPSTICK/LIP LINER</b> (Natural skin tone only.)	2	2	2	2	2	2	0	0
<b>MASCARA</b> (Factory sealed. Natural skin tone, i.e., black or brown.)	1	1	1	1	1	1	0	0
<b>PUMICE BAR/PUMICE SPONGE</b> (Combined with shower puffs/loofahs and	3	3	3	3	3	3	0	0

washcloths. Washcloths are as allowed in the APPS.)								
<b>SCRUNCHIES</b> (Black, white, or gray only. Combined total with hair ties. Hair ties are as allowed in the APPS.)	<b>10</b>	<b>10</b>	<b>10</b>	<b>10</b>	<b>10</b>	<b>10</b>	<b>0</b>	<b>0</b>
<b>SHOWER BAG</b> (At Warden's discretion. Mesh construction.)	<b>1</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>0</b>	<b>0</b>
<b>SHOWER CAP</b> (Must be both clear and colorless.)	<b>1</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>0</b>	<b>0</b>
<b>SHOWER PUFFS/LOOFAHS</b> (White only. Combined with pumice bar/pumice sponge and washcloths. Washcloths are as allowed in the APPS.)	<b>3</b>	<b>3</b>	<b>3</b>	<b>3</b>	<b>3</b>	<b>3</b>	<b>0</b>	<b>0</b>
<b>TWEEZERS</b> (Plastic only. Maximum of 3" long.)	<b>1</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>0</b>	<b>0</b>

**REGISTERABLE PROPERTY FOR TRANSGENDER INMATES/  
INMATES HAVING SYMPTOMS OF GENDER DYSPHORIA**

ITEM DESCRIPTION  With additional requirements and restrictions.	GENERAL POPULATION LEVELS I, II, and III			GENERAL POPULATION LEVEL IV			SHU/PSU	ASU
	PRIVILEGE GROUP							
	A	B	C	A	B	C	D	D
<b>CHAIN OR NECKLACE</b> (Yellow or white metal only. Purchase value not to exceed \$25. The chain or necklace shall be no more than 5 millimeters wide and 24" long.)	<b>1</b>	<b>1</b>	<b>0</b>	<b>1</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>0</b>

**DESIGNATED FEMALE INSTITUTIONS**

**PERSONAL CLOTHING ITEMS FOR TRANSGENDER INMATES/  
INMATES HAVING SYMPTOMS OF GENDER DYSPHORIA**

- INMATES ARE PERMITTED TO WEAR SOLID COLORS ONLY, UNLESS OTHERWISE INDICATED.
- INMATES 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 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.

ITEM DESCRIPTION  With additional requirements and restrictions.	GENERAL POPULATION LEVELS I, II, and III			GENERAL POPULATION LEVEL IV			SHU	ASU	
	PRIVILEGE GROUP								
	A	B	C	A	B	C	D	D	
<b>ATHLETIC SUPPORTER</b>	2	2	2	2	2	2	2	0	
<b>BINDERS/COMPRESSION TOPS</b> (White or gray only. The number of allowable binders/compression tops is combined with, and not in addition to, the number of allowable brassieres. Brassieres are as allowed in the APPS.)	7	7	7	7	7	7	7	7	
<b>BRIEFS/BOXERS</b> (White or gray only. For SHU and ASU inmates, boxers shall have no elastic on the leg opening.)	10	10	10	10	10	10	6	0	

**PERSONAL CARE/HYGIENE ITEMS FOR TRANSGENDER INMATES/  
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.

ITEM DESCRIPTION  With additional requirements and restrictions.	GENERAL POPULATION LEVELS I, II, and III			GENERAL POPULATION LEVEL IV			SHU	ASU
	PRIVILEGE GROUP							
	A	B	C	A	B	C	D	D
<b>AFTER SHAVE</b> (Must be clear and in clear container only. 5 oz. each max.)	2	2	2	2	2	2	1	0

## **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, Sections 3000, 3030, 3190, and 3269 regarding state-issued property, authorized personal property, and housing assignments for transgender inmates and inmates having symptoms of gender dysphoria.

In August 2015, the settlement agreement for *Quine v. Beard* required the Department to review and revise its policies to allow “inmates identified by medical or CDCR personnel as transgender or having symptoms of gender dysphoria access to property items available to CDCR inmates consistent with those inmates’ custody and classification factors, including property items that are designated as available to a specific gender only.” In June 2016, the court made recommendations pertaining to the implementation of the settlement agreement regarding the provision of specific property items. In consideration of the settlement and subsequent court recommendations, the Department proposes these regulations, which will allow transgender inmates and inmates having symptoms of gender dysphoria as identified and documented in the Strategic Offender Management System (SOMS), as defined in Section 3000, by medical or mental health personnel within a CDCR institution shall be allowed to have access to state-issued and authorized personal property items at designated institutions in accordance with their gender identities while maintaining the different safety and security needs of male and female institutions.

## **SPECIFIC PURPOSE AND RATIONALE FOR EACH SECTION, PER GOVERNMENT CODE 11346.2(b)(1)**

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

#### **Article 1. Behavior**

##### **Section 3000. Definitions.**

**Section 3000 is amended** to alphabetically merge the definitions of “gender dysphoria,” “gender identity” and “transgender” with those already in the regulations. These definitions are established to provide clarity and context to staff, inmates, and the public regarding the use of the new terms within Title 15, Division 3. The proposed definitions for “gender dysphoria,” “gender identity,” and “transgender” are derived from widely accepted definitions for these terms noted in the Merriam-Webster Dictionary, as well as publications by the American Psychiatric Association, American Psychological Association and the National Center for Transgender Equality (please see the “Documents Relied Upon” section of this document for more information).

#### **Article 2. State-Issued Inmate Clothing and Linen**

##### **Section 3030. Issuance and Possession of State Clothing and Linen.**

**Subsections 3030(a) through 3030(b)(3)(I) are unchanged.**

**New Subsection 3030(c) is adopted** to establish that transgender inmates and inmates having symptoms of gender dysphoria as identified and documented in SOMS by medical or mental health personnel within a CDCR institution shall be allowed to possess the state-issued clothing that corresponds to their gender identities in place of the state-issued clothing that corresponds to their anatomical sexes at designated institutions. This authorization brings the Department into compliance with the stipulation in the *Quine v. Beard* settlement agreement that the Department



shall allow transgender inmates and inmates having symptoms of gender dysphoria to have “access to property items available to CDCR inmates consistent with those inmate’s custody and classification factors, including property items that are designated as available to a specific gender only.” Please see the justification for new Subsection 3269(g) regarding the designated institutions component.

**Existing Subsections 3030(c) and 3030(d) are renumbered to new Subsections 3030(d) and 3030(e) and the text is unchanged.**

## **Subchapter 2. Inmate Resources**

### **Article 9. Personal Property and Religious Personal Property**

**Subsections 3190(a) through 3190(c) are unchanged.**

**New Subsection 3190(d) is adopted** to establish the Transgender Inmates Authorized Personal Property Schedule (TIAPPS) (4/28/17), which is incorporated by reference and made available to the public in this notice package. The TIAPPS is necessary to make specific the authorized personal property items that may be possessed by transgender inmates and inmates having symptoms of gender dysphoria as identified and documented in SOMS by medical or mental health personnel within a CDCR institution, thereby ensuring that staff, inmates, and the public are aware of the specifications. The TIAPPS brings the Department into compliance with the stipulation in the *Quine v. Beard* settlement agreement that the Department shall allow transgender inmates and inmates having symptoms of gender dysphoria to have “access to property items available to CDCR inmates consistent with those inmate’s custody and classification factors, including property items that are designated as available to a specific gender only.”

The TIAPPS is established as a separate property schedule but will effectively serve as an extension of the Authorized Personnel Property Schedule (APPS) (4/1/14), which is incorporated by reference into Subsection 3190(b). The items in the TIAPPS are structured in the same way as in the APPS, and this structure includes item descriptions, specific restrictions and allowances related to the items, and the quantities of the items that are allowed for each custody level and privilege group in accordance with Subsections 3044(c)-(h) and Section 3190. Many of the items that are included in the TIAPPS are also included in the APPS, but where the APPS restricts these select items to inmates of a particular gender, the TIAPPS allows these items to be possessed by transgender inmates and inmates having symptoms of gender dysphoria who are housed at designated institutions when those items do not pose a risk to the safety and security of staff, inmates, and the public. Please see the justification for new Subsection 3269(g) regarding the designated institutions component.

In keeping with the same approach used in adopting the Religious Personal Property Matrix (Rev. 6/27/13) and the Non Disciplinary Segregation Personal Property Matrix (Rev. 12/20/13), which are incorporated by reference into Subsections 3190(b) and 3190(c) respectively, the Department is providing statements regarding the specific purpose and rationale for the necessity of personal property items listed in the TIAPPS when items are being newly established within the TIAPPS or are included in the APPS but are deviating in some measure from the way in which they are listed in the APPS.

The TIAPPS is divided in terms of designated male and female institutions for organizational purposes so that the authorized personal property allowances for transgender inmates and

inmates having symptoms of gender dysphoria may be better understood by staff, inmates, and the public, and to be reflective of the fact that male and female institutions present varying security needs that must be met in order to maintain the safety and security of the institutions. For example, the CDCR COMPSTAT (short for COMPuter STATistics or COMPARative STATistics, COMPSTAT is an organizational management tool based on a concept of statistical analysis of operational performance, continuous review, and direct dialogue between CDCR's executive management and program managers) reports for 2015 show that inmates at male institutions commit weapons offenses at twice the rate of inmates at female institutions (1.25 per capita for males and .66 per capita for females). Weapons offenses are therefore a greater concern at male institutions than female institutions, and property authorizations must be reflective of that concern. Additionally, the National Gang Crime Research Center (NGCRC) determined that "the prison gang problem remains mostly a male problem, with female inmates having a significantly lower gang density rate." Inmates belonging to Security Threat Groups (STGs), a term which is defined in Section 3000, frequently attempt to use colors to show their affiliations. Being that STGs are more prevalent among male inmates and are therefore more prevalent in male institutions, the use of colors to show STG affiliations is a greater concern at male institutions than female institutions and property authorizations must be reflective of that concern.

The TIAPPS includes the items listed in the recommendations pertaining to the settlement agreement for *Quine v. Beard* that are not covered in the state-issued property provided in Section 3030 with the exception of the following, which are excluded from designated male institutions for the reasons provided:

- **Pajamas:** The Department has determined that the slash between "Pajama/Nightgown" in the recommendations allows the Department the option of providing either pajamas or a nightgown. A nightgown will be provided to transgender inmates and inmates having symptoms of gender dysphoria who are housed at designated male institutions as state-issued property pursuant to Section 3030, and therefore this item does not appear on the TIAPPS.
- **Scarves:** The CDCR Division of Adult Institutions, in consultation with the CDCR Office of Legal Affairs, has determined that the proposed regulations are consistent with the Court's recommendations pertaining to the settlement agreement for *Quine v. Beard*, which state that "inmates identified by medical or CDCR personnel as transgender or having symptoms of gender dysphoria housed in male institutions [should have] at least some access to the following items currently only permitted in female institutions: Pajama/Nightgown, Robe, Sandals, Scarf, T-Shirts, and Walking Shoes" (emphasis added). CDCR has provided some access to those items but has found the scarf to be too much of a security risk because it would be uncontrolled and unaccounted for, and made of material that can be too easily fashioned into clothing items for the purpose of escape.
- **Curling Irons:** Transgender inmates and inmates having symptoms of gender dysphoria who are housed at designated male institutions will have access to curling irons in common areas where the usage of the curling irons shall be under direct staff supervision; curling irons shall not be permitted as authorized personal property as they pose a security risk due to their being comprised of large pieces of metal that can be modified into and used as weapons.
- **Bracelets, Earrings, Hair Brushes, Hair Clips:** These items are specifically listed in the recommendations as items that "pose significant safety and security concerns" that would

prevent them from being allowed in male institutions. The Department agrees with the Court and has determined that transgender inmates and inmates having symptoms of gender dysphoria who are housed at designated male institutions shall not be authorized to possess these items.

The introductory language on Page 1 of the TIAPPS is necessary to ensure the understanding that although the TIAPPS authorizes additional personal property items for transgender inmates and inmates having symptoms of gender dysphoria who are housed at designated male and female institutions, they are still subject to the established six cubic feet limitation of combined state-issued and personal property described in Subsection 3190(d).

**DESIGNATED MALE INSTITUTIONS**

**PERSONAL CLOTHING ITEMS FOR TRANSGENDER INMATES/  
INMATES HAVING SYMPTOMS OF GENDER DYSPHORIA**

The three introductory bullet points concerning the color and image restrictions placed on authorized personal property items are included in the APPS, which is incorporated by reference into Section 3190(b). To ensure a clear understanding that these restrictions are applicable to the TIAPPS, this information is also included in this schedule for ease of reference.

<b>TIAPPS ITEM DESCRIPTION</b>	<b>APPS ITEM DESCRIPTION</b>	<b>JUSTIFICATION/ NECESSITY STATEMENT</b>
(Authorized for transgender inmates and inmates having symptoms of gender dysphoria as identified by medical or mental health personnel within a CDCR institution who are housed at designated male institutions.)	(Authorized for female inmates.)	
<b>BRASSIERES</b> (White or gray only. No metal underwire, lace, strapless, see through, or pushup.)	<b>BRASSIERES</b> (No metal underwires, lace, strapless, see through, or push up. Any solid color except as noted above).	“White or gray only” is added because inmates belonging to STGs frequently attempt to use colors to show their affiliations, and white and gray present no apparent security risks. “Any solid color except noted above” is removed because only white and gray are authorized.
<b>PANTIES</b> (White or gray only. No thong, G-string, lace, see-through or pockets.)	<b>PANTIES</b> (No thong, G-string, lace, see-through, or pockets).	“White or gray only” is added because inmates belonging to STGs frequently attempt to use colors to show their affiliations, and white and gray present no apparent security risks.
<b>SANDALS</b> (Beige, brown, or white only. No hidden compartments,	<b>SANDALS</b> (No hidden compartments, zippers, or laces that are covered or	“Beige, brown, or white only” is added because inmates belonging to STGs frequently attempt to use colors to show their affiliations, and beige, brown, and white present no apparent security risks.

zippers, or laces that are covered or concealed. Purchase value not to exceed \$75.)	concealed. Purchase value not to <b>exceed \$75).</b>	
<b>T-SHIRTS</b> (White or gray only. Any combination of crew neck, v-neck, long sleeve, or sleeveless athletic tank-top. Turtle neck and mock turtle neck not permitted. The number of allowable t-shirts is combined with, and not in addition to, the number of allowable under shirts. Under shirts are as allowed in the APPS.)	<b>UNDER SHIRTS/ T-SHIRTS</b> (Solid colors only, exclusive of colors noted above. Any combination of crew neck, v-neck, long sleeve, or sleeveless athletic tank-top. Turtle neck and mock turtle neck not permitted). SHU and ASU white or gray only.	“White or gray only” is added because inmates belonging to STGs frequently attempt to use colors to show their affiliations, and white and gray present no apparent security risks. “The number of allowable t-shirts is combined with, and not in addition to, the number of allowable under shirts” is added because the under shirt and t-shirt allowances are combined for female inmates and will therefore be combined for transgender inmates and inmates having symptoms of gender dysphoria who are housed at male institutions. “SHU and ASU white or gray only” is removed because the “white or gray only” requirement will apply to all security levels, and being that under shirts are disallowed for male inmates housed in ASU, t-shirts will also be disallowed for transgender inmates and inmates having symptoms of gender dysphoria who are housed in male institutions who are housed in ASU.

**PERSONAL CARE/HYGIENE ITEMS FOR TRANSGENDER INMATES/  
INMATES HAVING SYMPTOMS OF GENDER DYSPHORIA**

The four introductory bullet points concerning the restrictions placed on authorized personal property items regarding the content and containers of personal care/hygiene products are included in the APPS, which is incorporated by reference into Section 3190(b). To ensure a clear understanding that these restrictions are applicable to the TIAPPS, this information is also included in this schedule for ease of reference.

<b>TIAPPS ITEM DESCRIPTION</b>	<b>APPS ITEM DESCRIPTION</b>	<b>JUSTIFICATION/ NECESSITY STATEMENT</b>
(Authorized for transgender inmates and inmates having symptoms of gender dysphoria as identified by medical or mental health personnel within a CDCR institution who are housed at designated male institutions.)	(Authorized for female inmates.)	
<b>BODY SPLASH</b> (10 oz. each max. No sprays or pumps.)	<b>BODY SPLASH/ SPRAY</b> (10 oz. each max.).	Body spray is disallowed and “No sprays or pumps” is added as a security measure to reduce instances of inmates attacking staff members by spraying or squirting body fluids or other liquids in an attempt to injure them.
<b>FABRIC SOFTENER</b>	<b>FABRIC SOFTENER</b> (Liquid, 1 bottle)	Fabric softener (sheets) is disallowed because washing and drying machines for clothes are not accessible to inmates at male institutions. Fabric softener (liquid) is allowed to afford inmates

(Liquid, one bottle only, 36 oz. max.)	only-36 oz. max., or 2 boxes of sheet fabric softener).	the opportunity to self-laundry their clothing in their cells.
<b>HAIR ROLLERS</b> (Non-electric.)	PERSONAL CARE/HYGIENE: <b>HAIR ROLLERS</b>  REGISTERABLE: <b>HAIR ROLLERS, ELECTRIC</b> (Purchase value not to exceed \$25).	The APPS lists both electric and non-electric hair rollers, so “Non-electric” is added to clarify that the TIAPPS does not authorize electric hair rollers. Electric hair rollers are disallowed because they contain core metal pieces that can be removed and easily altered to use in inmate manufactured weapons.
<b>PUMICE BAR/PUMICE SPONGE</b> (Combined with shower puffs/loofahs and washcloths. Washcloths are as allowed in the APPS.)	<b>WASHCLOTHS/ SHOWER PUFFS/ LOOFAH, PUMICE STONE</b> (White only).	“PUMICE BAR/PUMICE SPONGE” is being authorized in place of “PUMICE STONE” due to security concerns, as pumice stones are comprised of very sturdy material that could easily be used to sharpen objects into weapons whereas pumice bars/sponges are comprised of comparatively softer martial. “Combined with shower puffs/loofahs and washcloths” is added to reflect the item quantities listed in the APPS for “WASHCLOTHS/ SHOWER PUFFS/LOOFAH, PUMICE STONE” in accordance with each custody level and privilege group.
<b>SCRUNCHIES</b> (Black, white, or gray only. Combined total with hair ties. Hair ties are as allowed in the APPS.)	<b>HAIR CLIPS, TIES, &amp; SCRUNCHESES</b> (Clips are a maximum 3” in size).  <b>HAIR TIES</b> (Colors of black, white and gray only).	“Black, white, or gray only” is added because inmates belonging to STGs frequently attempt to use colors to show their affiliations, and black, white, and gray present no apparent security risks. “Combined with total hair ties” is added to reflect the item quantities listed in the APPS for “HAIR CLIPS, TIES, & SCRUNCHESES” (hair clips are disallowed in male institutions, but hair ties are allowed). Hair clips are disallowed because in the recommendations pertaining to the settlement agreement for <i>Quine v. Beard</i> , “hair clips” is listed as one of the items that are permitted only in female institutions that “pose significant safety and security concerns” that would prevent them from being allowed in male institutions.
<b>SHOWER CAP</b> (Must be both clear and colorless.)	<b>SHOWER CAP</b> (Clear only).	“Must be both clear and colorless” is added in place of “Clear only” because inmates belonging to STGs frequently attempt to use colors to show their affiliations, and the specification of colorlessness is needed for clarity to ensure understanding that shower caps of any color/tint are disallowed regardless of the transparency of the material.
<b>SHOWER PUFFS/LOOFAHS</b> (White only. Combined with pumice bar/pumice sponge and washcloths. Washcloths are as allowed in the APPS.)	<b>WASHCLOTHS/ SHOWER PUFFS/ LOOFAH, PUMICE STONE</b> (White only).	“Combined with pumice bar/pumice sponge and washcloths” is added to reflect the items tallies listed in the APPS for “WASHCLOTHS/ SHOWER PUFFS/LOOFAH, PUMICE STONE.”
<b>TWEEZERS</b> (Plastic only. Maximum of 3” long.)	<b>TWEEZERS</b> (Metal is permitted. Maximum of 3” long).	“Plastic only” is added due to security concerns, as metal tweezers can be easily modified into sturdy weapon stock and sharpened to a point whereas plastic tweezers are not strong enough to be used as effectively as weapons.

**REGISTERABLE PROPERTY FOR TRANSGENDER INMATES/  
INMATES HAVING SYMPTOMS OF GENDER DYSPHORIA**

<b>TIAPPS ITEM DESCRIPTION</b>	<b>APPS ITEM DESCRIPTION</b>	<b>JUSTIFICATION/ NECESSITY STATEMENT</b>
(Authorized for transgender inmates and inmates having symptoms of gender dysphoria as identified by medical or mental health personnel within a CDCR institution who are housed at designated male institutions.)	(Authorized for female inmates.)	
<b>CHAIN OR NECKLACE</b> (Yellow or white metal only. Purchase value not to exceed \$25. The chain or necklace shall be no more than 5 millimeters wide and 24” long.)	<b>CHAIN, NECKLACE OR BRACELET</b> (Yellow or white metal only. Purchase value not to exceed \$25).	“BRACELET” is disallowed because in the recommendation pertaining to the settlement agreement for <i>Quine v. Beard</i> , “bracelet” is listed as one of the items that “pose significant safety and security concerns” that would prevent them from being allowed in male institutions. “The chain or necklace shall be no more than 5 millimeters wide and 24” long” is added to minimize disruptive and predatory behavior between inmates where relatively weaker inmates are pressured into giving away items of personal property.

**DESIGNATED FEMALE INSTITUTIONS**

**PERSONAL CLOTHING ITEMS FOR TRANSGENDER INMATES/  
INMATES HAVING SYMPTOMS OF GENDER DYSPHORIA**

The three introductory bullet points concerning the color and image restrictions placed on authorized personal property items are included in the APPS, which is incorporated by reference into Section 3190(b). To ensure a clear understanding that these restrictions are applicable to the TIAPPS, this information is also included in this schedule for ease of reference.

<b>TIAPPS ITEM DESCRIPTION</b>	<b>APPS ITEM DESCRIPTION</b>	<b>JUSTIFICATION/ NECESSITY STATEMENT</b>
(Authorized for transgender inmates and inmates having symptoms of gender dysphoria as identified by medical or mental health personnel within a CDCR institution who are housed at designated female institutions.)	(Authorized for male inmates.)	
<b>BINDERS/ COMPRESSION</b>	<b>NEW ITEM – NOT</b>	“BINDERS/COMPRESSION TOPS” is established in the TIAPPS to serve as alternates for brassieres, providing necessary

<p><b>TOPS</b> (White or gray only. The number of allowable binders/compression tops is combined with, and not in addition to, the number of allowable brassieres. Brassieres are listed in the APPS.)</p>	<p><b>IN THE APPS</b></p>	<p>support while allowing for an aesthetic that would be in keeping with the gender identity of a transgender inmate or an inmate having symptoms of gender dysphoria. “The number of allowable binders/compression tops is combined with, and not in addition to, the number of allowable brassieres” is added because the binders/compression tops are meant to serve as alternatives to brassieres, and therefore the number of binders/compressions tops allowed per custody level and privilege group as listed on the TIAPPS for transgender inmates and inmates having symptoms of gender dysphoria who are housed at female institutions mirrors the number of brassieres allowed per custody level and privilege group as listed on the APPS for female inmates.</p>
<p><b>BRIEFS/BOXERS</b> (White or gray only. For SHU and ASU inmates, boxers shall have no elastic on the leg opening.)</p>	<p>GENERAL POPULATION: <b>BRIEFS/BOXERS</b> (White or gray only).  SHU, PSU, &amp; ASU: <b>BRIEFS/BOXERS</b> (White or gray only). Boxers shall have no elastic on the leg opening.</p>	<p>“For SHU and ASU inmates, boxers shall have no elastic on the leg opening” is added to combine the requirements and restrictions in the APPS that are based upon custody levels and privilege groups in accordance with female institutions. The APPS does not include a PSU category for female inmates, and therefore the TIAPPS does not include a PSU category for transgender inmates and inmates having symptoms of gender dysphoria who are at female institutions.</p>

**PERSONAL CARE/HYGIENE ITEMS FOR TRANSGENDER INMATES/  
INMATES HAVING SYMPTOMS OF GENDER DYSPHORIA**

The four introductory bullet points concerning the restrictions placed on authorized personal property items regarding the contents and containers of personal care/hygiene products are included in the APPS, which is incorporated by reference into Section 3190(b). To ensure a clear understanding that these restrictions are applicable to the TIAPPS, this information is also included in this schedule for ease of reference.

**Existing Subsections 3190(d) through 3190(u) are renumbered to new Subsections 3190(e) through 3190(v) and the text is unchanged.**

**Subchapter 4. General Institution Regulations**

**Article 1.6. Inmate Housing**

**Sections 3269 through 3269(f) are unchanged.**

**New Subsection 3269(g) is adopted** to establish that transgender inmates and inmates 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 a classification committee for a determination of appropriate housing at a designated institution.

The transgender inmate population, including inmates having symptoms of gender dysphoria, is very small in comparison with the overall inmate population: at present, there are approximately 500 inmates identified as transgender or having symptoms of gender dysphoria in an overall inmate population of approximately 129,000 inmates. CDCR has currently designated 14 institutions to house transgender inmates and inmates having symptoms of gender dysphoria. The designated institutions are specifically selected to accommodate a wide variety of inmate

custody levels and educational, vocational, and rehabilitative needs. The designated institutions shall provide continuous training to custody, medical, and mental health staff specifically regarding transgender inmates and inmates having symptoms of gender dysphoria and how to address their needs effectively within the overall inmate population. For logistical and practical purposes in meeting the needs of the relatively small population, the Department will designate institutions in order to provide training to a large number of staff at a small number of institutions as opposed to a small number of staff at a large number of institutions. And in terms of the logistical training needs relative to the identified population, for example, Department staff at the designated institutions need to be able to distinguish between the property that is authorized for transgender inmates and inmates having symptoms of gender dysphoria by contrast to the property that is authorized for the rest of the inmate population in order to ensure that all inmates are only in possession of the property items that they are authorized to possess.

Institutions that are designated to house transgender inmates and inmates having symptoms of gender dysphoria will not house *only* these identified inmates. A classification committee shall review each inmate's case for appropriate housing, based upon the totality of the inmate's case factors, in accordance with Chapter 1, Subchapter 4, Article 10.

**Existing Subsection 3269(g) is renumbered to new Subsection 3269(h) and the text is unchanged.**

## **CONSIDERATION OF ALTERNATIVES**

The Department must determine that no reasonable alternatives considered, or that have otherwise been identified and brought to the attention of the Department, 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. Currently, no reasonable alternatives have been brought to the attention of the Department that would alter the Department's initial determination.

## **ECONOMIC IMPACT ASSESSMENT**

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

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

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 as the proposed regulations only affects the internal management of CDCR prisons.

### **Creation of New or Elimination of Existing Businesses within the State of California**

The Department has determined that the proposed regulations will have no impact on the creation of new or elimination of existing businesses within the State of California as the proposed regulations only affect the internal management of CDCR prisons.

### **Expansion of Businesses Currently Doing Business within the State of California**

The Department has determined that the proposed regulations will have no impact on the expansion of businesses currently doing business within the State of California as the proposed regulations only affect the internal management of CDCR prisons.



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

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

### **Benefits to the Health and Welfare of California Residents, Worker Safety, and the State's Environment**

The Department has determined that the proposed regulations will have no impact on the health and welfare of California residents, worker safety, or the State's environment as the proposed regulations only affect the internal management of CDCR prisons.

### **DETERMINATIONS**

The Department has determined that no reasonable alternatives to the proposed regulations have been identified or brought to the attention of the Department that would lessen any adverse impact on small business.

The Department has determined that the proposed regulations impose no mandates on local agencies or school districts, or a mandate which requires reimbursement Part 7 (Section 17561) of Division 4.

### **BENEFITS OF THE REGULATIONS**

The proposed regulations will bring the Department into compliance with the *Quine v. Beard* settlement agreement and subsequent recommendations by the court. By authorizing transgender inmates and inmates having symptoms of gender dysphoria to wear the state-issued clothing that corresponds to their gender identities and creating a standardized list of authorized personal property items that may be possessed by identified inmates, the Department will ensure that the property privileges of transgender inmates and inmates having symptoms of gender dysphoria are clearly stated and that further litigation against the Department will be minimized, which will save the State legal costs.

### **DOCUMENTS RELIED UPON**

The Department, in proposing amendments to these regulations, has relied upon the following: the settlement agreement for *Quine v. Beard*, Case Number C 14-02726 JST, entitled "Joint Notice of Settlement Agreement," dated August 7, 2015, and the subsequent court recommendations entitled "Order Regarding Implementation of Settlement," dated June 9, 2016; "Policy Review and Development Guide: Lesbian, Gay, Bisexual, Transgender, and Intersex Persons in Custodial Settings," Second Edition, published by the National Institute of Corrections in 2015; CDCR COMPSTAT reports for 2015 (<http://www.cdcr.ca.gov/COMPSTAT/>); "Where The Margins Meet: A Demographic Assessment of Transgender Inmates in Men's Prisons," published by the University of California, Irvine on June 10, 2009 (<http://ucicorrections.seweb.uci.edu/files/2013/06/A-Demographic-Assessment-of-Transgender-Inmates-in-Mens-Prisons.pdf>); "Transgender Inmates in California's Prisons: An Empirical Study of a Vulnerable Population," a presentation given by the Center for Evidence-Based Corrections of the University of California, Irvine on April 8, 2009

(<http://ucicorrections.seweb.uci.edu/2009/04/14/transgender-inmates-in-californias-prisons-an-empirical-study-of-a-vulnerable-population/>); “The Problem of Gangs and Security Threat Groups (STG’s) in American Prisons and Jails Today: Recent Findings from the 2012 NGCRC National Gang/STG Survey” by George W. Knox, Ph.D, Executive Director of the NGCRC (<http://nicic.gov/library/027017>); Merriam-Webster Dictionary, electronically published in 2017 (<https://www.merriam-webster.com/dictionary/transgender>, <https://www.merriam-webster.com/dictionary/gender%20dysphoria>, and <https://www.merriam-webster.com/dictionary/gender%20identity>); “Transgender People, Gender Identity and Gender Expression” electronically published by the American Psychiatric Association in 2017 (<http://www.apa.org/topics/lgbt/transgender.aspx> and <http://www.apa.org/topics/lgbt/transgender.aspx>); and “Transgender Terminology,” electronically published by the National Center for Transgender Equality on January 15, 2014 (<http://www.transequality.org/issues/resources/transgender-terminology>).