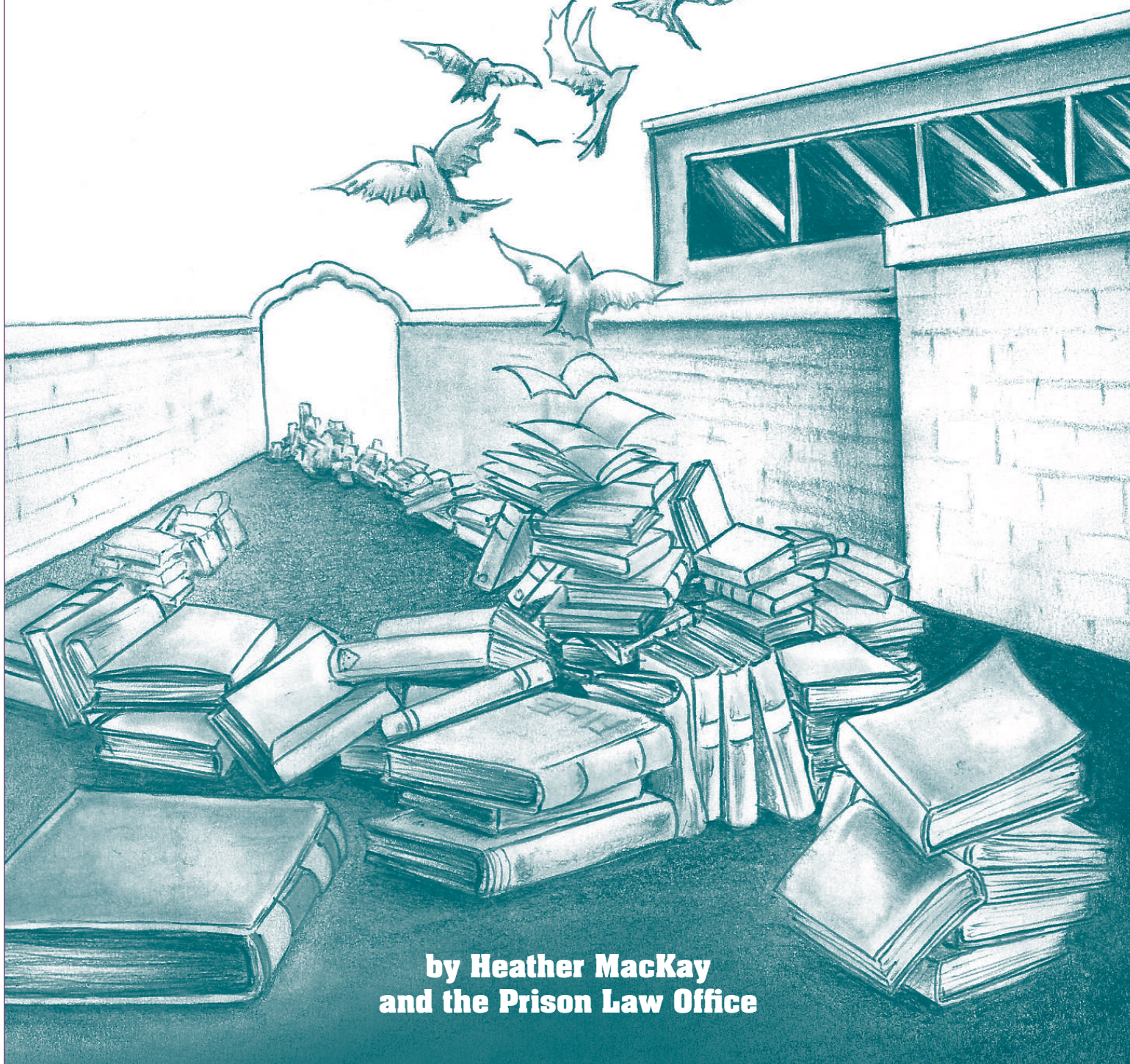


The California Prison and Parole Law Handbook



**by Heather MacKay
and the Prison Law Office**

THE CALIFORNIA PRISON & PAROLE LAW HANDBOOK

**BY HEATHER MACKAY
&
THE PRISON LAW OFFICE**

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The Prison Law Office is a non-profit public interest law firm that strives to protect the rights and improve the living conditions of people in state prisons, juvenile facilities, jails and immigration detention in California and elsewhere. The Prison Law Office represents individuals, engages in class actions and other impact litigation, educates the public about prison conditions, and provides technical assistance to attorneys throughout the country.

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YOUR RESPONSIBILITY WHEN USING THIS HANDBOOK

When we wrote *The California Prison and Parole Law Handbook*, we did our best to provide useful and accurate information because we know that people in prison and on parole often have difficulty obtaining legal information and we cannot provide specific advice to everyone who requests it. However, the laws are complex change frequently, and can be subject to differing interpretations. Although we hope to publish periodic supplements updating the materials in the Handbook, we do not always have the resources to make changes to this material every time the law changes. If you use the Handbook, 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 a prison law library or in a public county law library.

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2.1 Introduction

Although people in prison face loss or restriction of many rights and privileges, they do have some protected legal rights. People in prison have rights that are defined by the federal and state constitutions, federal and state statutes, California Department of Corrections and Rehabilitation (CDCR) regulations and policies, and federal and state court decisions.

This chapter discusses many of the federal and state legal standards and the CDCR regulations that govern the rights of people in prison. Other chapters discuss rights with respect to cruel and unusual prison conditions, use of force, and protection from physical or sexual assault (Chapter 3), prison classification and programming (Chapter 4), disciplinary punishment (Chapter 5), segregation from the general prison population (Chapter 6), medical, dental and mental health care (Chapter 7), credits for good behavior and programming (Chapter 8), parole suitability (Chapter 9), detainees (Chapter 10), parole conditions and revocations (Chapter 11), and access to legal information and assistance (Chapter 19).

In almost every situation, a person's first step in challenging a violation of rights should be to file an administrative appeal, as discussed in Chapter 1. The types of lawsuits that can be brought after a person exhausts any available administrative remedies are described in Chapters 15, 16, 17 and 18. A summary comparing the different legal actions and tips on deciding which action is appropriate can be found in Chapter 19.

2.2 General Federal Constitutional Rights

The U.S. Constitution protects rights of general application that apply to all people, such as the First Amendment right of free speech or the Fourth Amendment right to privacy¹. The United States Supreme Court has allowed prison officials broad authority to restrict general federal constitutional rights. While there is no "iron curtain" between people in prison and the federal

¹ In contrast, the constitutional right to be free from cruel and unusual punishment is not a "right of general application" because it applies only to people convicted of a crime. See § 3.2.

constitution, there must be an “accommodation between institutional needs and objectives and the provisions of the Constitution that are of general application.”²

Officials may lawfully limit or restrict a person’s constitutional rights if the policy, practice or action is “reasonably related to legitimate penological interests.”³ Under this standard, a court must consider: (1) whether the regulation, practice or action has a logical connection to a legitimate state interest in managing the prison system, (2) whether there are other means for the person in prison to exercise the right being restricted, (3) whether the exercise of the person’s right will have a significant negative effect on prison staff, other people in prison, or prison resources, and (4) whether there are other ways for the prison administration to accommodate the person’s right at a minimal cost or burden.⁴

The incarcerated person bears the burden of convincing a court that the policy, practice, or action is not reasonably related to a legitimate penological interest.⁵ If there is an obvious common-sense connection between the rule or action and a legitimate penological interest, the court will uphold the rule unless the person presents evidence refuting that connection; if they succeeds in this, the burden then shifts to the state to present counter-evidence showing that any connection is not so “remote as to render the policy arbitrary or irrational.”⁶ Alternatively, if there is no obvious common sense connection between the rule and a legitimate penological interest, the state has the burden of presenting evidence to support the rule or action.⁷

In addition to rights specified in the U.S. Constitution, state laws may create “liberty interests” (rights to legal procedures or standards) that are protected by the Due Process Clause of the U.S. Constitution’s Fourteenth Amendment.⁸ However, federal due process protection applies only if the effect on the person imposes “an atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life.”⁹ A right that is protected by the federal due process clause cannot be restricted or taken away without notice and a hearing.¹⁰

Finally, the U.S. Congress has enacted statutes that provide broader protections for some types of rights. Two statutes relevant to people in state prison are discussed in the sections on the right to practice a religion (§ 2.22) and the right to freedom from discrimination on the basis of a disability (§ 2.29).

² *Bell v. Wolfish* (1979) 441 U.S. 520, 545-546 [99 S.Ct. 1861; 60 L.Ed.2d 447], quoting *Wolff v. McDonnell* (1974) 418 U.S. 539, 555-556 [94 S.Ct. 2963; 41 L.Ed.2d 935].

³ *Turner v. Safley* (1987) 482 U.S. 78, 89 [107 S.Ct. 2254; 96 L.Ed.2d 64].

⁴ *Turner v. Safley* (1987) 482 U.S. 78, 89-91 [107 S.Ct. 2254; 96 L.Ed.2d 64]; see also *Thornburgh v. Abbott* (1989) 490 U.S. 401, 414-419 [109 S.Ct. 1874; 104 L.Ed.2d 459].

⁵ *Overton v. Bazgetta* (2003) 539 U.S. 126, 132 [123 S.Ct. 2162; 156 L.Ed.2d 162].

⁶ *Frost v. Symington* (9th Cir. 1999) 197 F.3d 348, 357; *Mauro v. Arpaio* (9th Cir. 1999) 188 F.3d 1054, 1060.

⁷ *Crofton v. Roe* (9th Cir. 1999) 170 F.3d 957, 960-961; *Walker v. Sumner* (9th Cir. 1990) 917 F.2d 382, 386.

⁸ *Sandin v. Conner* (1995) 515 U.S. 472, 474 [115 S.Ct. 2293; 132 L.Ed.2d 418].

⁹ *Sandin v. Conner* (1995) 515 U.S. 472, 484 [115 S.Ct. 2293; 132 L.Ed.2d 418].

¹⁰ *Wolff v. McDonnell* (1974) 418 U.S. 539, 556-558 [94 S.Ct. 2963; 41 L.Ed.2d 935].

2.3 General California Constitutional and Statutory Rights

The California Constitution protects some fundamental rights.¹¹ California courts generally have the authority to interpret the California constitution in a manner that grants more protections than the federal constitution.¹² However, in practice, courts rarely interpret the California Constitution as providing increased rights.

Moreover, California’s statute on general rights for people in prison mirrors the federal constitutional standard by allowing prison officials to deprive people of their rights to the extent as a “reasonably related to legitimate penological interests.”¹³ Although the law also lists some specific protected rights of people in prison, those rights are subject to the same standard.¹⁴

There are also specific California statutes governing various aspects of life in prison. The rights of people in prison under such statutes are discussed in the sections of this *Handbook* to which they apply.

2.4 Rights under California Regulations

The California Legislature has given the CDCR the power to make regulations for the administration of the state prisons and parole operations.¹⁵ Similarly, the Board of Parole Hearings (BPH) has the authority to make regulations regarding parole suitability processes.¹⁶ These agencies have adopted hundreds of rules governing almost every aspect of prison and parole. The rules are found in Title 15 of the California Code of Regulations (CCR), Division 2 (BPH) and Division 3 (CDCR Adult Operations and Programs).

The CDCR is supposed to provide each person in prison with a copy of the CDCR regulations within 14 days after arrival in the prison system.¹⁷ The book of regulations is commonly referred to as “Title 15” or the “CDCR Rulebook.” The CDCR regulations are also on the CDCR website www.cdcr.ca.gov/Regulations. All California regulations, including the CDCR and BPH regulations, are available at www.calregs.com.

¹¹ California Constitution, Article I, §§ 1-31.

¹² *People v. Brisendine* (1975) 13 Cal.3d 528, 549550 [119 Cal.Rptr. 315].

¹³ Penal Code § 2600; see *Thompson v. California Dept. of Corrections* (2001) 25 Cal.4th 117, 130 [105 Cal.Rptr.2d 46]. The law has changed over the years. Prior to 1976, California followed the “civil death” doctrine, which stripped all the civil rights rights of people in prison during imprisonment. Between 1976 and 1994, Penal Code §§ 2600 and 2601 listed specific rights and forbade deprivations of those rights unless necessary to satisfy reasonable security interests. See *In re Arias* (1986) 42 Cal.3d 667, 689-690 [230 Cal.Rptr. 505]; *De Lancie v. Superior Court* (1982) 31 Cal.3d 865, 868 [183 Cal.Rptr. 866].

¹⁴ Penal Code § 2601. The specific rights listed are to the right to (a) own and sell or convey personal property (but allowing restrictions on sales or conveyances for business purposes), (b) correspond confidentially with lawyers and public officials, (c) purchase and receive newspapers, magazines and books (with limitations), (d) bring civil actions, (e) to marry, (f) create a power of appointment, (g) make a will, and (h) certain Labor Code benefits.

¹⁵ Penal Code § 5058(a).

¹⁶ Penal Code § 3052.

¹⁷ Penal Code § 2930; 15 CCR § 3002(a).

An administrative regulation has the force of law and is binding on the issuing agency.¹⁸ This means that the CDCR and BPH must follow their own regulations and cannot interpret a regulation in a manner that is arbitrary or capricious or has no reasonable basis.¹⁹

2.5 Rights Regarding Enactment of Regulations

California's Administrative Procedures Act (APA) requires agencies like the CDCR and BPH to adopt their regulations in a formal manner that includes notice to the public, opportunity for public comments, and approval by the Office of Administrative Law (OAL), the agency that oversees compliance with the APA.²⁰

Anyone can ask the CDCR or BPH to adopt, amend, or repeal a rule.²¹ The request can be made by sending a letter to the CDCR Secretary. The request must state what change is proposed, the reason for the request, and why the state agency has the authority to take the requested action.²² The agency is not required to grant the request. However, within 30 days of receiving such a request, the agency must either notify the person in writing why the requested change has been denied or set the matter for a public hearing.²³

Except in emergencies, a California agency must give notice to the public before it adopts a new rule or changes or repeals an existing rule. The notice must include a statement of reasons for the change.²⁴ Each CDCR "Notice of Change to Regulations" is distributed to prison law libraries, advisory councils and interested people on the outside, and should be made available to people housed in Security Housing Units (SHUs). The notices also are published on the CDCR website at www.cdcr.ca.gov/Regulations.

The public (including people in prison) must then have an opportunity to submit written comments on the proposed changes.²⁵ The deadline and address for comments will be on the Notice

¹⁸ *Atkins v. Rivera* (1986) 477 U.S. 154, 162 [106 S.Ct. 2456; 91 L.Ed.2d 131]; *United States v. Nixon* (1974) 418 U.S. 683, 695-696 [94 S.Ct. 3090; 41 L.Ed.2d 1039]; *Agricultural Labor Relations Board v. Superior Court* (1976) 16 Cal.3d 392, 401 [128 Cal.Rptr. 183]; *In re Reina* (1985) 171 Cal.App.3d 638 [217 Cal.Rptr. 535]; see also *In re French* (1980) 106 Cal.App.3d 74, 85 fn. 24 [164 Cal.Rptr. 800] (CDCR regulations are binding on individual prisons).

¹⁹ *In re Scott* (2003) 113 Cal.App.4th 38, 44 [5 Cal.Rptr.3d 887]; see also *In re Lusero* (1992) 4 Cal.App.4th 572, 575 [5 Cal.Rptr.2d 729]; *In re Carter* (1988) 199 Cal.App.3d 271, 276-277 [244 Cal.Rptr. 648].

²⁰ Government Code § 11340 et seq.; Penal Code § 5058(a); Penal Code § 5076.2(a). A "regulation" is "every rule, regulation, order, or standard of general application adopted by any agency to implement, interpret, or make specific the law enforced or administered by the agency, or to govern its procedure." Government Code § 11342.600. There is an exception to the APA requirements for rules concerning only internal management the agency. Government Code § 11340.9(d).

²¹ Government Code § 11340.6.

²² Government Code § 11340.6.

²³ Government Code § 11340.7.

²⁴ Government Code § 11346 et seq.

²⁵ Government Code § 11346 et seq.

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of Change to Regulations. In addition, any person may request that a public hearing be held on the rule change proposal; if a request is made, the agency must hold a hearing.²⁶

An agency may temporarily adopt an emergency regulation if agency officials believe the rule change must be made immediately for the sake of public peace, health, safety, or welfare. Emergency regulations go into effect before any public comments are received or a hearing is held.²⁷ In addition to this general authority to enact emergency regulations, the CDCR has the power to adopt emergency regulations when necessary to operate the prison or parole system.²⁸

To adopt an emergency regulation, the CDCR must file a statement with the OAL certifying that the regulations are required by operational needs or some other public need.²⁹ The CDCR must then go through the formal rulemaking process (giving public notice and allowing public comment) within either 160 days or 180 days of making the emergency change; otherwise the emergency regulation will lapse and no longer be in effect.³⁰ However, the CDCR may ask the OAL to extend the deadline.³¹

The CDCR also can implement “pilot programs” without first complying with the usual APA process.³² Regulations creating or affecting a pilot program may affect no more than 10 percent of people in CDCR prisons and must lapse after two years unless the CDCR proceeds with formal adoption in accord with the APA.³³

In addition, the CDCR can issue “confidential rules” without complying with the normal APA procedures and without disclosing the rules to the public.³⁴ Confidential rules are allowed when disclosure of the rule would endanger safety or the successful completion of investigations.³⁵

All proposed regulations must be reviewed by the OAL before a regulation can be officially and permanently adopted. The OAL determines whether the APA requirements have been met, and whether the regulation is necessary, based on proper authority, clear, consistent, properly referenced, and not duplicative. If the OAL approves the change, the regulation will be formally filed with the Secretary of State and published in Title 15 of the California Code of Regulations (CCR).³⁶

²⁶ Government Code § 11346.8(a).

²⁷ Government Code § 11346.1(b).

²⁸ Penal Code § 5058.3.

²⁹ Penal Code § 5058.3(a)(2).

³⁰ The 160-day timeline is for “operational necessity” emergency regulations”. Penal Code §§ 5058.2-5058.3. The 180-day timeline is for other emergency regulations. Government Code § 11346.1(e).

³¹ The OAL can grant two 90-day extensions for a normal emergency regulation (Government Code § 11346.1(h)) or one 90-day extension for an “operational necessity” emergency regulation (Penal Code § 5058.3(a)(2)).

³² Penal Code § 5058.1.

³³ Penal Code § 5058.1. A pilot program that involves only people in men’s prisons may affect no more than 10 percent of the total population of people in men’s prisons. A pilot program that involves only people in women’s prisons may affect no more than 10 percent of the people in women’s prisons.

³⁴ Penal Code § 5058(c)(3).

³⁵ Government Code § 6254(f).

³⁶ Government Code § 11349.1.

2.6 Right to Challenge “Underground” Regulations

All of the CDCR and BPH “Title 15” regulations have been adopted in accord with the APA requirements. However, sometimes the CDCR and BPH adopt system-wide policies without going through the formal APA process. Such rules may be found in policy memoranda or in the CDCR’s Department Operations Manual (DOM). These “underground” rules policies technically are illegal and cannot be enforced unless and until the CDCR or the BPH complies with the APA.³⁷

Local policies made by the officials at an individual prison do not constitute “regulations” and are not subject to the APA’s rulemaking requirements.³⁸ Policies issued by the CDCR Director that apply only to a particular prison usually are not regulations subject to the APA.³⁹

Any interested person can request a determination of whether a policy is an underground regulation. The request should be filed with the OAL.⁴⁰ The OAL website has suggested formats for requests and information about how the review will be conducted.⁴¹ An OAL determination about whether a policy is an underground regulation can be challenged by filing a petition in the state courts.⁴²

People in prison and their advocates have successfully blocked enforcement of underground CDCR rules.⁴³ However, if the OAL finds a policy is an underground rule, the CDCR can take steps to have the regulation formally adopted. If the rule is declared an emergency regulation, the CDCR may enforce the rule while it is going through the APA process.⁴⁴ Still, challenges to underground

³⁷ Government Code § 11342.1; *Union of American Physicians and Dentists v. Kizer* (1990) 223 Cal.App.3d 490, 496 [272 Cal.Rptr. 886].

³⁸ See 2001 OAL Determination No. 5 (CCC’s “yard call” policy, which required people to be locked out of their housing every weekday morning for cleaning, was not a regulation and not subject to the APA); *In re Garcia* (1998) 67 Cal.App.4th 841 [79 Cal.Rptr.2d 357] (local rules limiting correspondence between people in prison were not underground rules, even though the CDCR had unsuccessfully attempted to pass nearly identical regulations); compare with *Morales v. CDCR* (2008) 168 Cal.App.4th 729 [85 Cal.Rptr.3d 724] (CDCR protocol on executions by lethal injection was a rule of general application subject to the APA because it governed all cases of a certain type).

³⁹ Penal Code § 5058(c).

⁴⁰ 1 CCR § 260(a); see also 1 CCR § 250(a) (defining “underground regulation”). The Office of Administrative Law (OAL) can be contacted at 300 Capitol Mall, Suite 1250, Sacramento, CA 95814 and www.oal.ca.gov. A copy should be sent to the CDCR Regulations and Policy Management Branch, P.O. Box 942883, Sacramento, CA 94283.

⁴¹ OAL website at www.oal.ca.gov. The website also has the underground regulation determinations made by the OAL since 1986.

⁴² Government Code § 11340.5(d); see, e.g., *Morales v. California Dept. of Corrections and Rehabilitation* (2008) 168 Cal.App.4th 729, 732, 739-740 [85 Cal.Rptr.3d 724].

⁴³ See e.g., 2010 OAL Determination No. 7 (Prison Industries Authority (PIA) pay schedule in DOM § 51121.5 was underground regulation); 2007 OAL Determination No. 3 (“Authorized Personal Property Schedule” in DOM § 54030.17 et seq. was underground regulation); 2007 OAL Determination No. 2 (double-celling policy in CDCR memorandum was underground regulation); *Morales v. California Dept. of Corrections and Rehabilitation* (2008) 168 Cal.App.4th 729, 732, 739-740 [85 Cal.Rptr.3d 724] (striking down Operational Procedure on lethal injection of people on death row as an underground rule; this was not a local rule because it applied to all people of a certain class (people on death row who had an execution date) and governed actions by some staff outside of San Quentin); *Hillery v. Rushen* (9th Cir. 1983) 720 F.2d 1132, 1135 (barring CDCR from enforcing rules on possession of personal property that were not enacted pursuant to the APA); *Stoneham v. Rushen* (1982) 137 Cal.App.3d 729 [188 Cal.Rptr. 130] (CDCR enacted regulations after court directed CDCR to cease using “underground” classification system).

⁴⁴ Government Code § 11346.1(e); Penal Code §§ 5058.2-5058.3.

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regulations may force the CDCR to clarify its policies and produce a regulation that is more clear and fair than the one it replaces.

2.7 Right to Challenge Regulations

The APA provides that any person who may be affected by a regulation may for review of the regulation by filing a complaint for declaratory and injunctive relief in a state superior court. Grounds upon which a regulation can be challenged include (1) a substantial failure to comply with the APA procedures; (2) for an emergency regulation, that the facts recited in the statement of necessity do not constitute an emergency; or (3) the record of the rulemaking proceeding does not contain sufficient evidence that the regulation is reasonably necessary to carry out the purpose of the law relied upon as authority.⁴⁵

Moreover, a regulation can be challenged on the ground that it violates a higher federal law (like the U.S. Constitution or federal statutes that apply to the states) or higher state law (like the California Constitution or statutes).

VISITATION AND COMMUNICATION RIGHTS

2.8 Rights to Personal Visits

The First Amendment to U.S. Constitution includes a right of association to maintain family relationships; however, the U.S. Supreme Court has taken the view that freedom of association is among the rights least compatible with incarceration. Accordingly, the Court has upheld rather strict regulations restricting prison visiting on the grounds that the restrictions had a rational relationship to a legitimate penological interest.⁴⁶ The Court has also held that the U.S. Constitution's Fourteenth Amendment due process clause does not directly protect any right to "unfettered" visitation; and that state regulations create a due process liberty interest (enforceable federal right) in visitation only if they (a) place substantive limits on prison officials' discretion" and (b) the restriction of visitation imposes "an atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life."⁴⁷ However, the Court has cautioned that actions such as permanent withdrawal of all visiting or arbitrary long-term denial of visiting to a particular person might constitute cruel and unusual punishment in violation of the U.S. Constitution's Eighth Amendment.⁴⁸

The California legislature has recognized that visiting is good for improving prison safety, maintaining meaningful connections with family and community, and preparing a person for successful release.⁴⁹ A California statute allows prison officials to restrict visitation where there is a

⁴⁵ Government Code § 11350; *Rabuck v. Superior Court* (2013) 221 Cal.App.4th 1334 [165 Cal.Rptr.3d 354]; *California Assn of Medical Products Suppliers v. Maxwell-Jolly* (2011) 199 Cal.App.4th [131 Cal.Rptr.3d 692]; *Environmental Protection Information Center v. Dept. of Forestry* (1996) 43 Cal.App.4th 1011, 1017-1018 [50 Cal.Rptr.2d 892].

⁴⁶ *Overton v. Bazgetta* (2003) 539 U.S. 126, 133-134, 136 [123 S.Ct. 2162; 156 L.Ed.2d 162].

⁴⁷ *Kentucky Dept. of Corrections v. Thompson* (1989) 490 U.S. 454, 460 [109 S.Ct. 1904; 104 L.Ed.2d 506]; *Cooper v. Garcia* (S.D. Cal. 1999) 55 F.Supp.2d 1090, 1095-1098. *Torricellas v. Poole* (C.D. Cal. 1996) 954 F.Supp. 1405, 1413-1414; see also *Sandin v. Conner* (1995) 515 U.S. 472 [115 S.Ct. 2293; 132 L.Ed.2d 418].

⁴⁸ *Overton v. Bazgetta* (2003) 539 U.S. 126, 133-134, 137 [123 S.Ct. 2162; 156 L.Ed.2d 162].

⁴⁹ Penal Code § 6400.

rational relationship between the restriction and a legitimate penological interest.⁵⁰ However, the CDCR has regulations that provide more specific visiting rights and state the circumstances in which visits may be denied or restricted.⁵¹

Under the regulations, each prison must have a visiting schedule of no fewer than 12 hours a week. There must be visiting hours on Saturdays, Sundays and designated holidays.⁵²

2.9 Procedures for Personal Visits

The CDCR also has information and a manual on visiting procedures (*Visiting a Friend or Loved One in Prison*) on its website at www.cdcr.gov/visitors/docs/inmatevisitingguidelines.pdf. Visitors can also get information on visiting rules and procedures by calling the CDCR visiting hotline at (800) 374-8474.

A prospective visitor can find the location of a person using the Inmate Locator on the CDCR Website (www.cdcr.ca.gov), calling the CDCR Identification Unit at (916) 445-6713, or faxing that unit a request at (916) 322-0500. For calls or faxes, the visitor will need to provide the full name of the person in prison and either their date of birth or CDCR identification number.

Except in very exceptional hardship or emergency circumstances, anyone who wants to visit a person in prison must get approval in advance by submitting a CDCR Form 106 Visiting Questionnaire (attached as Appendix 2-A); the person in prison should get the Form 106, sign it, and send it to the prospective visitor to complete and mail to the prison's Visiting Sergeant or Lieutenant.⁵³ In addition, a person who has been released from prison must get special approval by the warden, and anyone on probation, parole, or other supervision must get approval from their supervising agent.⁵⁴ There is no set deadline for prison officials to process a visiting approval request.

The CDCR regulations list reasons why a person may be denied approval to visit.⁵⁵ Generally, denial can be for failing to provide accurate and complete information on the visiting questionnaire, failing to get approval from the warden (for a person who has been released from prison) or supervising agent (for anyone on parole or probation), or due to a certain type of criminal record.⁵⁶ The criminal records that will result in visiting denial are: having an outstanding warrant, having been a co-defendant of the person in prison; having a conviction for one felony in the past three years or two felonies in the past six years or three felonies in the past ten years, or having a conviction for a particularly sensitive crime such as trafficking drugs or contraband into a prison or jail or involvement

⁵⁰ Penal Code § 2601. Prior to 1996, Penal Code §§ 2600 and 2601(d) guaranteed people in prison the right to receive personal visits, subject only to restrictions necessary for the reasonable security of the institution. See, e.g., *In re Roark* (1996) 48 Cal.App.4th 1946 [56 Cal.Rptr.2d 582]; *In re French* (1980) 106 Cal.App.3d 74, 84 fn. 22 [164 Cal.Rptr. 800].

⁵¹ Penal Code §§ 3170-3178.

⁵² 15 CCR § 3172.2.

⁵³ 15 CCR § 3172. CDCR, *Visiting a Friend or Loved One in Prison* (includes prison addresses).

⁵⁴ Penal Code § 3712(d); Penal Code § 3172.1(b)(4)-(5).

⁵⁵ 15 CCR § 3172.1(b).

⁵⁶ 15 CCR § 3172.1(b)(1)-(2).

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in an escape attempt.⁵⁷ The CDCR must give the visitor and the person in prison notice of why visiting is being denied.⁵⁸

In most cases, an approved visitor may go the prison's visitors' entrance during visiting hours and be processed in for a visit without scheduling an appointment in advance. However, CDCR now has a system for on-line scheduling of contact visits, the Visitor Processing Appointment Scheduling System (VPASS). Using VPASS can help reduce lengthy visiting wait times. Note that visitors must make appointments for all non-contact visits, such as those with people housed in reception centers or other segregation, and for all visits with people housed on Death Row; appointments are made by calling the prison.⁵⁹

Upon arriving at the prison, a visitor must show an official photo identification such as a driver's license, passport, state identification card, or USCIS identification card.⁶⁰

An emancipated minor under age 18 or a minor legal spouse of a person in prison may apply as an adult visitor, with proof of the emancipation or marriage.⁶¹ Otherwise, children under 18 years old must be accompanied by an adult who is an approved visitor. If a child is accompanied by their parent, the parent must bring a certified copy of the child's birth certificate. If the child is accompanied by their legal guardian, a certified copy of the child's birth certificate and proof of legal guardianship is required. If the child is accompanied by someone other than the parent or legal guardian, then the adult must bring a certified copy of the child's birth certificate and a notarized authorization form signed by the minor child's parent or legal guardian giving permission for the child to visit a person in prison.⁶²

Visitors must go through a body scanning device.⁶³ A visitor who cannot clear the scanner due to a medical implant or prosthetic device must present a letter signed by a health care professional verifying the type of implant or device and where it is located. Visitors with temporary devices are required to renew the verification letter every two years; visitors with permanent devices are required to update the verification only when there are changes to the device. A visitor who uses a wheelchair will be required to transfer to a CDCR wheelchair while the visitor's own wheelchair is inspected, unless the visitor presents a letter from a physician confirming the need for a battery-powered or custom designed wheelchair.⁶⁴

⁵⁷ 15 CCR § 3172.1(b).

⁵⁸ 15 CCR § 3172(c).

⁵⁹ CDCR, *Visiting a Friend or Loved One in Prison* (includes prison phone numbers).

⁶⁰ 15 CCR § 3173(b).

⁶¹ 15 CCR § 3172(b).

⁶² 15 CCR § 3172(c); CDCR, *Visiting a Friend or Loved One in Prison* (includes official CDCR authorization form). See also Legal Services for Prisoners with Children, *Child Custody and Visiting Rights Manual*, available at www.prisonerswithchildren.org.

⁶³ 15 CCR § 3173.2. See more information on searches of visitors at § 2.14.

⁶⁴ 15 CCR § 3173.2(d)-(e).

There are CDCR regulations for visitor dress codes, behavior standards, and the number of people who can visit a person in prison at one time.⁶⁵ The prisons also place strict limits on the items that visitors can bring into the visiting area.

The CDCR staff may turn away an approved visitor, place restrictions on a visit, or revoke or suspend permission to visit due to an institutional emergency or overcrowding in the visiting area,⁶⁶ misconduct by the visitor,⁶⁷ or as punishment for rule violations.⁶⁸ If the action is due to the visitor's misconduct, the CDCR must give the visitor a written notice stating the reasons for the action; for formal warnings, terminations, suspensions and revocations, the person in prison must also be provided with written notification.⁶⁹

The visitor and person in prison may challenge a visiting denial, restriction, or suspension.⁷⁰ Administrative appeals of visiting issues are discussed in § 1.32. State habeas corpus actions and federal civil rights lawsuits, the most common types of court actions for challenging visiting restrictions, are discussed in Chapter 15 and Chapter 17.

2.10 Non-Contact Visiting Restrictions

Prison officials may limit people to non-contact visiting if there is a “reasonable relationship” between the restriction and a legitimate penological interest.⁷¹ Non-contact visits usually take place in a booth where the visitor and person in prison can see each other through glass and speak through a grating or a phone handset; these conversations may be monitored by prison staff.

The CDCR's policy is to allow physical contact between people in prison and visitors except when there is a substantial reason to believe that physical contact with visitors or other people in prison will seriously endanger safety or security.⁷² More specifically, the CDCR prohibits contact visits for people housed in reception centers or in any type of segregation units, although the warden may allow exceptions on a case-by-case basis for people in administrative segregation.⁷³ Prison officials may also restrict a person to non-contact visits temporarily as a punishment for willful failure or refusal to comply with visiting rules.⁷⁴

⁶⁵ 15 CCR § 3170.1; 15 CCR §§ 3174-3175. People in prison and their visitors should be allowed to exchange legal documents during contact visits. 15 CCR § 3170.1(g).

⁶⁶ 15 CCR § 3170(c); 15 CCR § 3176(a)(9)-(10).

⁶⁷ 15 CCR § 3176; 15 CCR § 3176.1.

⁶⁸ 15 CCR § 3176.4.

⁶⁹ 15 CCR § 3176(b); 15 CCR § 3176.3(g).

⁷⁰ 15 CCR § 3179.

⁷¹ See *Block v. Rutherford* (1984) 468 U.S. 576 [104 S.Ct. 3227; 82 L.Ed.2d 438] (upholding non-contact restriction on all jail visiting for purpose of preventing entry of contraband); *Toussaint v. McCarthy* (9th Cir. 1986) 801 F.2d 1080, 1113-1114 (upholding non-contact visiting restriction visits for people housed in segregation).

⁷² 15 CCR § 3170(d)(1).

⁷³ 15 CCR § 3170.1(e)-(f).

⁷⁴ 15 CCR § 3170(d)(2).

2.11 Limits on Visiting with Children

California law prohibits visits between people in prison who have been convicted of certain sex offenses and the victims of those offenses who are children under age 18.⁷⁵ A parent, guardian, or child victim can request an exception to this bar by asking for a juvenile court hearing to determine whether allowing visitation is in the best interest of the child.⁷⁶

CDCR regulations restrict visits between children and people in prison convicted of some types of child sex offenses or other crimes involving children to non-contact visits only. Some the non-contact restrictions apply to all of the person's child visitors and some apply just to the child victims of the person's crimes. In some cases, the Institutional Classification Committee (ICC) may make exceptions.⁷⁷ A person who has been arrested but not convicted of certain offenses against children may be limited to non-contact visiting with children if the ICC determines that contact visiting would pose a threat of harm to the child.⁷⁸

People in prison may also be at least temporarily barred from visits with children or limited to non-contact visits with children due to in-prison misconduct.⁷⁹

2.12 Family (Overnight) Visits

Each California prison has facilities for "family visits" (sometimes called "conjugal" visits) with "immediate family members."⁸⁰ These visits allow a person in prison to be with their family for approximately 30 to 40 hours in a private space, usually a small trailer on the prison grounds. There is no cost to the person in prison or visitors, but the visitors must provide food for themselves and the person in prison. An eligible person must put in an application for a family visit with their correctional counselor.

For the purpose of family visiting, "immediate family members" are the person's legal spouse, registered domestic partner, natural parents, adoptive parents (if the adoption occurred prior to incarceration), stepparents or foster parents, grandparents, siblings, natural and adopted children, stepchildren, and grandchildren.⁸¹ A verified foster sibling may be allowed to participate in family visiting with prior approval from the warden.⁸²

⁷⁵ Penal Code § 1202.05; 15 CCR § 3173.1(a); see *People v. Ochoa* (2011) 192 Cal.App.4th 562, 565 [121 Cal.Rptr.3d 448] (court erred in issuing no-visitation order because defendant was not convicted of qualifying sex offense); *People v. Scott* (2012) 203 Cal.App.4th 1303, 1312-1313 [138 Cal.Rptr.3d 236] (court cannot impose prohibition on visits if victim reached age 18 before the person is sentenced).

⁷⁶ Penal Code § 1202.05; Welfare & Institutions Code § 362.6; 15 CCR § 3173.1(a).

⁷⁷ 15 CCR § 3173.1(b)-(d); see *Robin J. v. Superior Court* (2004) 124 Cal.App.4th 414 [21 Cal.Rptr.3d 417] (finding regulations valid and holding that juvenile courts cannot override them).

⁷⁸ 15 CCR § 3173.1(e)-(f).

⁷⁹ See 15 CCR § 3176.4; *Dunn v. Castro* (9th Cir. 2010) 621 F.3d 1196, 1203-1205 (upholding 18-month bar on visits with children after person had sexually explicit phone conversation with child).

⁸⁰ 15 CCR § 3177.

⁸¹ 15 CCR § 3000; 15 CCR § 3177.

⁸² 15 CCR § 3177(a).

The CDCR regulations state that family visiting is a privilege rather than a right.⁸³ Courts have upheld restrictions on family visiting against various constitutional challenges.⁸⁴

Prison officials may restrict family visiting as necessary for prison operations or to maintain order, safety, or security.⁸⁵ A person cannot have family visits while any action that restricts, suspends, or denies that person from having contact visits is in effect.⁸⁶

Under the CDCR regulations, some people are not eligible to receive family visits. These are:

- ◆ People convicted of a violent offense involving a minor or family member or of any sex offense. In addition, a person may be prohibited from family visits if there is substantial information that they committed any of these types of offenses, even if they were not convicted;
- ◆ People who are sentenced to death;
- ◆ People in a reception center or in any type of segregation unit, or classified as Maximum or Close custody;
- ◆ People found guilty of A Division A or B prison rule violation within the last 12 months or who have ever been found guilty of narcotics distribution in prison;
- ◆ People in privilege group C.⁸⁷

2.13 Legal Visits

An attorney can arrange to have legal visits with a person in prison through the prison's litigation coordinator.⁸⁸ Legal visits may be carried out by the attorney or by a representative of the attorney such as an investigator, law student or paralegal.⁸⁹ However, people who are representing

⁸³ 15 CCR § 3177(b).

⁸⁴ *In re Cummings* (1982) 30 Cal.3d 870 [180 Cal.Rptr. 826] (upholding exclusion of common-law spouse and spouse's child from family visiting); *Pro-Family Advocates v. Gomez* (1996) 46 Cal.App.4th 1674 [54 Cal.Rptr.2d 600] (rejecting ex post facto and equal protection challenges to new regulations making more people ineligible for family visits) *Cooper v. Garcia* (S.D. Cal. 1999) 55 F.Supp.2d 1090, 1098-1100 (upholding bar on family visits for people with "R" suffix even though person never convicted of a sex offense).

⁸⁵ 15 CCR § 3177(b)(1)(A).

⁸⁶ 15 CCR § 3177(d).

⁸⁷ 15 CCR § 3177(b). The CDCR previously excluded people serving life without the possibility of parole (LWOP) or indeterminate life terms from family visiting. As of 2017, this has been changed so that people with LWOP or other life sentences without parole dates may have family visiting if they meet the other eligibility criteria. Penal Code § 6404; CDCR, *Memorandum: Revision to the Family Visiting (Overnight) Offender Eligibility* (Feb. 17, 2017).

⁸⁸ The CDCR website at ww.cdcr.ca.gov/Ombuds/litigation.html lists telephone and fax numbers for each prison's litigation coordinator.

⁸⁹ 15 CCR § 3178(a), (c); see also *Procurier v. Martinez* (1974) 416 U.S. 396, 419-421 [94 S.Ct. 1800; 40 L.Ed.2d 224] (striking down rule restricting legal visits to attorneys and licensed investigators).

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themselves cannot get confidential legal visits with non-lawyers who are assisting them with their legal work.⁹⁰

The CDCR regulations set forth the procedures for obtaining a security clearance for a legal visit. Usually the process takes at least a few days.⁹¹ Prison staff may search legal visitors, their property, and their vehicles for contraband and illegal drugs using technology devices and passive alert dogs; a legal visitor may also be subject to a patdown search following a positive dog alert. Refusal to submit to searches can result in non-contact visiting restriction or denial of the visit.⁹²

People in prison have constitutional, statutory, and regulatory rights to private and confidential consultation with their attorneys during legal visits.⁹³ In addition, legal visits should be contact visits unless a legitimate security need justifies a non-contact restriction.⁹⁴ People in prison and their attorneys should be allowed to exchange legal documents during visits; staff may inspect the documents for contraband, but may not read the documents without the attorney's and person in prison's consent.⁹⁵

An attorney's or representative's authorization to have confidential visits may be restricted or suspended for abuse of the attorney-client privilege or other misconduct; very serious misconduct can result in a long-term exclusion barring the attorney or representative from entering the prison.⁹⁶

2.14 Searches of Visitors and Their Vehicles and Property

“Unreasonable” searches of prison visitors, their vehicles, and their property may violate the Fourth Amendment of the U.S Constitution and Article I, § 13 of the California Constitution. A “legitimate administrative search (1) must be clearly necessary to a vital governmental interest; (2) must be limited, and no more intrusive than necessary to accomplish the governmental interest; (3) must be

⁹⁰ *Morris v. Superior Court* (1983) 145 Cal.App.3d 561 [193 Cal.Rptr. 496] (rejecting due process challenge to rule that visits must be by attorney or representative of an attorney).

⁹¹ 15 CCR § 3178.

⁹² 15 CCR §§ 3410.1-3410.2; see also 15 CCR § 3173.2.

⁹³ 15 CCR § 3178(m); see *Procunier v. Martinez* (1974) 416 U.S. 396, 419-421 [94 S.Ct. 1800; 40 L.Ed.2d 224] (Fourteenth Amendment due process right of access to courts); *In re Poe* (1966) 65 Cal.2d 25, 32, fn. 5 [51 Cal.Rptr. 896] (confidential communication essential to Sixth Amendment right to counsel); *People v. Torres* (1990) 218 Cal.App.3d 700 [267 Cal.Rptr. 213]; see also Penal Code § 636 (eavesdropping on conversation between attorney and client in prison is felony).

⁹⁴ *Ching v. Lewis* (9th Cir. 1990) 895 F.2d 608; *Nevada County v. Superior Court (Siegfried)* (2015) 236 Cal.App.4th 1001; 1009-1011[187 Cal.Rptr.3d 27] (striking down policy barring on all legal contact visits in jail); compare with *Small v. Superior Court (Barrett)* (2000) 79 Cal.App.4th 1000 [94 Cal.Rptr.2d 550] (non-contact restriction reasonable for person with history of contraband, weapons, and assaults in prison); *California Dept. of Corrections v. Superior Court (Jordan)* (1982) 131 Cal.App.3d 245 [182 Cal.Rptr. 294] (non-contact restrictions reasonable where person was prone to violence); see also *In re Roark* (1996) 48 Cal.App.4th 1946 [56 Cal.Rptr.2d 582] (under older standards, it was unnecessary to require restrict attorney to non-contact visits unless he removed artificial leg for inspection); see also 15 CCR § 3178(b)(2)(CDCR officials can authorize contact legal visits for person who is otherwise on non-contact status).

⁹⁵ 15 CCR § 3178(n)-(o).

⁹⁶ 15 CCR § 3178(s)-(t); see also 15 CCR § 3176.3.

reasonably effective in accomplishing its purpose; and (4) must be conducted for a purpose other than the gathering of evidence for criminal purposes.”⁹⁷

The CDCR regulations provide that “Any person coming onto the property of an institution/facility shall be subject to inspection “as necessary to ensure institution/facility security including prevention of the introduction of contraband.” Inspections may include a search of the visitor’s person, personal property and vehicle(s) when there is “reasonable suspicion” to believe the visitor is attempting to bring contraband or unauthorized items into or out of the prison.”⁹⁸

At a minimum, every visitor should expect to go through a scanning device and for CDCR staff to inspect any property being carried. Searches for drugs using Electronic Drug Detection Equipment (EDDE) or dog “sniffs” may also be conducted. Visitors shall not be forcibly searched unless a court has issued a search warrant or prison officials are detaining or arresting the visitor for a crime that poses an immediate and significant threat to people in prison, prison staff, or the public.⁹⁹

The CDCR has particular rules regarding dog sniffs. If the visitor agrees to a sniff, and the dog does not alert, the visitor shall be processed normally. If the visitor submits to a sniff, and the dog alerts during the scan, the visitor will be required to submit to a clothed body search in order to visit and will be restricted to a non-contact visit. If the visitor refuses to submit to a dog sniff, contact visiting will be denied, but a non-contact visit shall be permitted if facilities are available and the visitor submits to a clothes body search. Further refusals to submit to dog sniffs, electronic drug detection, or clothed body searches after a positive drug scan will result in increasingly severe restrictions on and denials of visiting, up to a possible long-term visiting ban.¹⁰⁰

2.15 Personal Mail

Under CDCR regulations, almost any person may write to a person in prison and a person in prison may write to almost any person; there is no requirement that correspondents be placed on an “approved” list and no limit on how many letters a person may send or receive.¹⁰¹

A person in prison must obtain approval from prison officials to correspond with any other person who is in criminal or juvenile custody (federal, state, or county), anyone committed to a civil addict program, anyone on parole, probation or civil outpatient status, and anyone released from a CDCR facility within the past 12 months. Correspondence may be approved so long as the correspondent does not have any affiliation with a Security Threat Group (STG), terrorist group, or racketeering enterprise. At the very least, a person must be allowed to correspond with other people in prison who are immediate family members’ co-litigants on an “active case”, or the parent of the person in prison’s child; unless either correspondent has violated prison rules. If the correspondents

⁹⁷ *Estes v. Rowland* (1993) 14 Cal.App.4th 508, 517 [17 Cal.Rptr.2d 901]; see also *People v. Boulter* (2011) 199 Cal.App.4th 761, 769-771 [131 Cal.Rptr.3d 185] (jail staff could search locker provided for visitors, even though the locker was outside entrance to visitor’s center and before sign warning visitors that their possessions could be subject to search); *Estes v. Rowland* (1993) 14 Cal.App.4th 508 [17 Cal.Rptr.2d 901] (allowing random dog sniffs of prison visitors’ cars, although with restrictions as to the manner of the searches).

⁹⁸ 15 CCR § 3173.2(a).

⁹⁹ 15 CCR § 3173.2(b).

¹⁰⁰ 15 CCR § 3173.2.

¹⁰¹ 15 CCR § 3133.

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are in separate institutions, approval of both wardens must be obtained; if one of the correspondents is on parole, probation or outpatient status, the supervising agent or officer must also give approval.¹⁰²

People who do not have funds can receive paper, envelopes and postage for up to five one-ounce letters per week; foreign mail requiring additional postage may be limited to two of the five letters.¹⁰³

Incoming mail must be properly addressed with the person in prison's name and CDCR number and the mailing address of the prison and have a return address showing the sender's name.¹⁰⁴ The regulations list various items that can be enclosed with letters, including such items as photographs, envelopes and postage, news clippings, printed emails or internet articles, and checks for deposit in a trust account (see § 2.31 for more information about sending funds to people in prison).¹⁰⁵

Prison officials can open and read incoming and outgoing mail, except confidential legal mail (see § 2.16).¹⁰⁶ Mail may be disallowed if the contents present a danger or threat of danger to any person; the regulations give examples of subjects or items that are disallowed, including various types of material that is deemed to be "obscene." However, mail cannot be disallowed merely because prison officials disagree with the writer's moral values or believe the letter contains lies or exaggerations.¹⁰⁷ A person in prison should receive a notice if mail is withheld or returned.¹⁰⁸

People in prison may appeal problems with correspondence through the normal appeal procedure; if the person files a timely appeal within 30 days, the staff must keep the correspondence until the third level of review is completed. Outside correspondents may also appeal mail issues by writing to the CDCR Director (if the issue concerns a Department rule or policy) or to the institution warden (if the problem concerns a facility procedure, practice or decision) (see § 1.32).¹⁰⁹

¹⁰² 15 CCR § 3139. Immediate family members are the person's legal spouse; registered domestic partner, natural parents; adoptive parents, if the adoption occurred and a family relationship existed prior to incarceration; step-parents or foster parents; grandparents; natural, step, or foster siblings; the person's natural and adoptive children; grandchildren, and legal stepchildren. 15 CCR § 3000. See also *Turner v. Safley* (1987) 482 U.S. 78 [107 S.Ct. 2254; 96 L.Ed.2d 64] (upholding Missouri rule limiting correspondence between in people in prison to immediate family members, legal matters, and where deemed to be in the best interests of both people).

¹⁰³ 15 CCR § 3138.

¹⁰⁴ 15 CCR § 3133(b); see *Morrison v. Hall* (9th Cir. 2001) 261 F.3d 896 (Oregon law requiring incoming mail to include sender's name and return address was constitutional).

¹⁰⁵ 15 CCR § 3134; 15 CCR § 3140; see *Clement v. California Dept. of Corrections* (9th Cir. 2004) 364 F.3d 1148 (former CDCR rules prohibiting people from receiving mail containing material that originated on the internet violated First Amendment); *Canadian Coalition Against the Death Penalty v. Ryan* (D. Ariz. 2003) 269 F.Supp.2d 1199 (Arizona law that prevented people in prison from corresponding with Internet service provider violated first Amendment).

¹⁰⁶ 15 CCR § 3133(b)(3).

¹⁰⁷ 15 CCR § 3135.

¹⁰⁸ 15 CCR § 3136.

¹⁰⁹ 15 CCR § 3137.

2.16 Confidential Mail

People in prison have rights under the U.S. Constitution’s Sixth and Fourteenth Amendments to confidential written communication for the purpose of seeking and receiving the assistance of attorneys.¹¹⁰ People also have First Amendment rights to communicate with the government and courts about their grievances and to have in-coming legal mail opened only in their presence.¹¹¹

A California statute guarantees people in prison the right to correspond confidentially with any California attorney or any government official, but allows prison staff to open and inspect incoming mail to search for contraband.¹¹² Accordingly, CDCR regulations state that “confidential” correspondence must be opened only in the presence of the person in prison, cannot be read by prison staff, and can be inspected only to check for contraband or to determine whether the correspondence is actually with a person or office allowed to have confidential correspondence. Further inspection is allowed only if there is good cause, such as a reasonable belief that the letter contains contraband or is to or from someone who is not allowed to have confidential correspondence.¹¹³ Documents enclosed with a confidential letter are also deemed to be confidential.¹¹⁴

CDCR rules permit confidential correspondence with the following people and their staff:

- ◆ All state and federal elected officials.
- ◆ All state and federal officials appointed by the Governor or the President of the United States.

¹¹⁰ *Wolff v. McDonnell* (1974) 418 U.S. 539, 577 [94 S.Ct. 2963; 41 L.Ed.2d 935] (upholding a Nebraska regulation that allowed prison officials to open and inspect—but not read—legal mail); *Nordstrom v. Ryan* (9th Cir. 2017) 856 F.3d 1265 (Arizona policy and practice of scanning each page of outgoing legal mail violated right to counsel); *Mangiaracina v. Penzone* (9th Cir. 2017) 849 F.3d 1191 (allowing person in jail to proceed with claim that staff unlawfully opened legal mail outside his presence); *Nordstrom v. Ryan* (9th Cir. 2014) 762 F.3d 903 (allowing person in Arizona prison to proceed with Sixth Amendment claim alleging that prison staff read confidential communication to attorney); *Gomez v. Vernon* (9th Cir. 2001) 255 F.3d 1118, 1133 (sanctioning Idaho government attorneys for reading, and using confidential communication between people in prison and their attorney); *Witherow v. Paff* (9th Cir. 1995) 52 F.3d 264, 265-266 (finding constitutional a Nevada prison regulation requiring brief visual inspection of outgoing mail from people in prison to check for offensive material in mailings to public officials); *In re Jordan* (1974) 12 Cal.3d 575 [116 Cal.Rptr. 371] (finding unlawful former CDCR rule treating enclosures in attorney mail as non-confidential); *In re Jordan* (1972) 7 Cal.3d 930 [103 Cal.Rptr. 849] (finding unlawful former CDCR rules allowing staff to open and review contents of attorney mail); *In re Poe* (1966) 65 Cal.2d 25, 32, fn. 5 [51 Cal.Rptr. 896] (confidential communication essential to right to counsel); *People v. Torres* (1990) 218 Cal.App.3d 700 [267 Cal.Rptr. 213] (same); *In re Short* (1976) 55 Cal.App.3d 268 [127 Cal.Rptr. 498] (ordering CDCR to adopt regulation requiring presence of person in prison when opening court mail).

¹¹¹ See *Cruz v. Beto* (1972) 405 U.S. 319, 321 [92 S.Ct. 1079; 31 L.Ed.2d 263] (rules allowing people in prison to have confidential correspondence with government officials protect the right to petition government for redress of grievances); *Hayes v. Idaho Correctional Center* (9th Cir. 2017) 849 F.3d 1204 (people have First Amendment interest in having properly marked legal mail, including civil legal mail, opened only in their presence); but see *O’Keefe v. Van Boening* (9th Cir. 1996) 82 F.3d 322 (Nevada policy that allowed confidential communication with only some types of government officials did not violate First Amendment).

¹¹² Penal Code § 2601(b).

¹¹³ 15 CCR §§ 3141-3144; DOM §§ 54010.12-54010.12.7.

¹¹⁴ 15 CCR § 3145.

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- ◆ All city, county, state, and federal officials with responsibility for the person's present, prior, or anticipated future custody, parole, or probation supervision.
- ◆ All state and federal judges and courts.
- ◆ County agencies regarding child custody proceedings.
- ◆ An attorney at law listed with any state bar association.
- ◆ The Director, Chief Deputy Director, Deputy Directors, Assistant Directors, Executive Assistant to the Director, and Chief, Inmate Appeals, of the Department of Corrections and Rehabilitation.
- ◆ Legitimate legal service organizations, including but not limited to the American Civil Liberties Union, the Prison Law Office, the Young Lawyers Section of the American Bar Association, the National Association of Criminal Defense Lawyers, and the California Appellate Project.
- ◆ Officials of a foreign consulate.¹¹⁵

A person in prison who wants to send a confidential letter must write the word “confidential” on the face of the envelope and present the letter and envelope to prison staff for inspection. After inspecting the items for contraband in front of the person, the staff member will sign and date the back of the envelope across the seal and deposit the envelope in the outgoing mail.¹¹⁶

Attorneys or other authorized persons who send confidential mail should clearly identify themselves on the return address of the envelope. It is also recommended that the attorney type or stamp the words “Legal Mail” or “Confidential Mail” on the face of the envelope (although the CDCR regulations do not require this).¹¹⁷

People without funds must use their weekly allotment of free postage-paid envelopes for correspondence with their attorneys. However, people without funds are allowed unlimited free postage for mail to the courts and the Attorney General's Office. If a person has an active court case, prison officials can evaluate on a case-by-case basis whether additional free postage should be provided; for example, in additional free postage might be appropriate when a person is required to serve court documents on other parties to a lawsuit.¹¹⁸

2.17 Receiving Publications

The U.S. Constitution's First Amendment protects the rights of people in prison to receive published material, like magazines, newspapers, and books. As with other general rights, prison

¹¹⁵ 15 CCR § 3141(c). The right to confidential correspondence should also apply to attorneys in other nations. *In re Gonzales* (1989) 212 Cal.App.3d 459 [260 Cal.Rptr. 506] (person in prison had right to correspond confidentially with Canadian attorney).

¹¹⁶ 15 CCR § 3142(d).

¹¹⁷ 15 CCR § 3143.

¹¹⁸ 15 CCR § 3138(g)-(h).

officials impose restrictions on access to publications that are reasonably related to legitimate penological interests.¹¹⁹ People in prison have a Fourteenth Amendment procedural due process right to review of a decision excluding a publication.¹²⁰

A California statute also provides people in prison with the right to receive publications. However, the statute allows prison officials to prohibit publications containing material that is obscene, that tends to incite violence, or that concerns gambling or a lottery.¹²¹

Under the CDCR regulations, people may receive books, magazines, and newspapers, but the publications must be sent directly from a publisher or bookstore, and the person in prison must agree to removal of any hard covers.¹²² Prison officials cannot require that the distributor or publisher be on a pre-approved vendor list.¹²³ The books may be purchased by the person in prison or by someone outside of prison.¹²⁴

The CDCR regulations list examples of materials that are considered to be a threat to institutional security. Such materials include descriptions of how to make weapons or sabotage computers or electronics, catalogs that solicit a response from a person in prison, maps depicting an area within a 10-mile radius of a facility, and materials that are a threat to penological interests.¹²⁵ The CDCR regulations also bar people from possessing obscene material; the definition of obscene

¹¹⁹ *Beard v. Banks* (2006) 548 U.S. 521 [126 S.Ct. 2572; 165 L.Ed.2d 697] (upholding Pennsylvania regulations barring the “most dangerous” people from access to publications until their behavior improved); *Thornburgh v. Abbott* (1989) 490 U.S. 401 [109 S.Ct. 1874; 104 L.Ed.2d 459] (upholding federal prison rule allowing wardens to bar publications deemed detrimental to the security, good order, or discipline of the institution); *Stefanow v. McFadden* (9th Cir. 1996) 103 F.3d 1466 (upholding confiscation of book that advocated violence and dissension against Jews and the government); see also *Hrdlicka v. Reniff* (9th Cir. 2011) 631 F.3d 1044 (allowing publisher to proceed with First Amendment challenge to jail policy barring person from receiving unsolicited copies of the publication).

¹²⁰ *Krug v. Lutz* (9th Cir. 2003) 329 F.3d 692, 696-698.

¹²¹ Penal Code § 2601(c)(1).

¹²² 15 CCR § 3134.1(a)-(c); see also publications procedures in DOM 54010.21-54010.21.3; *Bell v. Wolfish* (1979) 441 U.S. 520, 550-551 [99 S.Ct. 1861; 60 L.Ed.2d 447] (upholding prison rule banning all hardcover books not mailed directly from a publisher, book club, or bookstore); *Prison Legal News v. Lehman* (9th Cir. 2005) 397 F.3d 692; (rule barring people from receiving non-subscription publications and bulk mail violated the First Amendment).

¹²³ 15 CCR § 3134.1(a); *Ashker v. California Dept. of Corrections* (N.D. Cal. 2002) 224 F.Supp.2d 1253, 1259-1262, affirmed, (9th Cir. 2003) 350 F.3d 917, 922-924. (former PBSP policy, which prohibited people from receiving publications without pre-approved label, struck down as violating First Amendment).

¹²⁴ 15 CCR § 3134.1(a); *Crofton v. Roe* (9th Cir. 170 F.3d 957, 960-961 (total prohibition on gift publications violated First Amendment).

¹²⁵ 15 CCR § 3006; see also *Thornburgh v. Abbott* (1989) 490 U.S. 401 [109 S.Ct. 1874; 104 L.Ed.2d 459] (upholding federal prison rule allowing wardens to bar publications deemed detrimental to the security, good order, or discipline of the institution); *Prison Legal News v. Lehman* (W.D. Wash. 2003) 272 F.Supp.2d 1151, 1160-1161 (Washington policy prohibiting people from receiving information that could create risk of violence or physical harm did not violate First Amendment).

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material is broad, and includes any depictions of frontal nudity (although exceptions may be made on a case-by-case basis for educational, medical, artistic, or scientific materials).¹²⁶

Prison staff must inform both the person in prison and the publisher when a publication is withheld or disallowed; prison staff are also supposed to notify officials at CDCR Headquarters to request approval or disapproval of the decision to bar a publication.¹²⁷ The publisher can appeal the decision by writing to either the CDCR Director of the Division of Adult Institutions or the warden of the prison (depending on whether the appeal concerns a CDCR policy or a facility procedure or practice). The person may appeal the decision through the CDCR Form 602 administrative appeal process (see § 1.32). If a person submits an appeal within 30 days of receiving the notice of disapproval, prison staff are supposed to keep the item until the third-level review is completed.¹²⁸

2.18 Communication with the Media

The First Amendment does not require prison officials to allow people in prison to have face-to-face visits with journalists.¹²⁹

California prison regulations do not give media representatives any special rights to interviews with particular people in prison; they must go through the ordinary process to get approval to visit and follow the regular visiting rules. The journalist may bring only pens, pencils and a pad of paper to the visit.¹³⁰ However, prison officials may give journalists permission to enter the prison, use cameras or recording equipment, and conduct random interviews with people while touring facilities or observing various prison activities or programs.¹³¹

People in prison may correspond with or call media representatives, but only through the regular monitored mail and phone systems; they are not included in the groups allowed to have confidential correspondence or phone calls.¹³²

¹²⁶ 15 CCR § 3006(c); *Snow v. Woodford* (2005) 128 Cal.App.4th 383 [26 Cal.Rptr.3d 862] (upholding this policy); *In re Johnson* (2009) 176 Cal.App.4th 290 [97 Cal.Rptr.3d 692] (upholding CDCR decision to bar person from receiving a *Men's Health* magazine describing sexual acts, positions, and techniques and including pictures of “scantily clad” women); see also *Bahrampour v. Lampert* (9th Cir. 2004) 356 F.3d 969 (upholding Oregon policy denying people access to books and magazines containing portrayals of sexual acts or roleplaying or fantasy game material); *Frost v. Symington* (9th Cir. 1999) 197 F.3d 348, 357 (regulation banning publications depicting penetration did not violate First Amendment rights); *Mauro v. Arpaio* (9th Cir. 1999) 188 F.3d 1054, 1059 (upholding Arizona policy banning all sexually explicit materials depicting frontal nudity based on concerns that such materials increased sexual misconduct toward female staff); but see *In re Martinez* (2013) 216 Cal.App.4th 1141 [157 Cal.Rptr.3d 701] (striking down CDCR decision to confiscate erotic werewolf romance novel, finding the book was not obscene and not likely to incite violence).

¹²⁷ 15 CCR § 3134.1(d).

¹²⁸ 15 CCR § 3137.

¹²⁹ *Pell v. Procunier* (1974) 417 U.S. 817 [94 S.Ct. 2800; 41 L.Ed.2d 495].

¹³⁰ 15 CCR § 3261.5(b).

¹³¹ 15 CCR §§ 3261.1-3261.7.

¹³² 15 CCR § 3261.5(c); see also 15 CCR § 3141; 15 CCR § 3282.

It is an open question whether a person may be barred from publishing articles in the media reporting on life in prison.¹³³

The CDCR regulations prohibit retaliation against a person for communicating with the media.¹³⁴

2.19 Telephone Calls

Courts have held that people in prison have some constitutional First Amendment right of access to telephones to maintain contact with friends, family, and attorneys. However, the right can be limited when the restriction is reasonably related to legitimate penological interests.¹³⁵ In particular, courts have allowed prison officials to restrict or deny regular access to telephones for people in high security units.¹³⁶

CDCR regulations state that prisons must provide telephones for use by people housed in general population. People in prison may place collect calls to almost anyone they choose at the times set forth in local prison procedures.¹³⁷ There are a few restrictions on the types of calls that may be placed and people who may be called.¹³⁸ The frequency of phone access is determined by a person's work/privilege group, ranging from nearly unlimited access during times the person is not at work or training to no or very rare access for most people in segregation.¹³⁹ People with hearing and other impairments shall have access to a Telecommunication Device for the Deaf (TDD) or other assistive device and a person may get additional phone time where communication is more time-consuming due to a disability.¹⁴⁰ All people may be granted emergency phone calls in cases of serious illness, injury, or death of an immediate family member.¹⁴¹ All phone calls can be monitored and recorded by prison staff,¹⁴² except those made under the provisions for confidential attorney phone calls (see § 2.20).

¹³³ See *Martin v. Rison* (N.D. Cal. 1990) 741 F.Supp. 1406, vacated as moot by *Chronicle Publishing Company v. Rison* (9th Cir. 1992) 962 F.2d 959 (federal judge held that prohibiting person in federal prison from publishing articles in newspaper did not violate First Amendment rights; however, the person was paroled while the case was on appeal and the opinion was vacated as moot).

¹³⁴ 15 CCR § 3261.5(b)(1).

¹³⁵ *Keenan v. Hall* (9th Cir. 1996) 83 F.3d 1083, 1092; *Strandberg v. City of Helena* (9th Cir. 1986) 791 F.2d 744, 747; see also *Valdez v. Rosenbaum* (9th Cir. 2002) 302 F.3d 1039, 1045 (upholding restriction on phone calls for jail detainee); *Orantes-Hernandez v. Smith* (C.D. Cal. 1982) 541 F.Supp. 351, 385; *Rutherford v. Pitchess* (C.D. Cal. 1978) 457 F.Supp. 104, 115.

¹³⁶ *Thompson v. Enomoto* (9th Cir. 1990) 915 F.2d 1383, 1390 (upholding telephone restriction for people on death row).

¹³⁷ 15 CCR § 3282(b), (d).

¹³⁸ 15 CCR § 3282(c).

¹³⁹ 15 CCR § 3044(c)-(j).

¹⁴⁰ 15 CCR § 3282(b), (h).

¹⁴¹ 15 CCR § 3282(a)(1), (g).

¹⁴² 15 CCR § 3282(a)(3), (f), (i).

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Global Tel*Link (GTL) contracts with the CDCR to provide telephone services. GTL customer service number is 1-866-607-6006. The CDCR and GTL websites have information and notices about how to set up an account to accept collect calls from people in prison.¹⁴³

In the past, phone calls from people in prison were sometimes extraordinarily high due in part to concession fees for the contractors that provide telephone services to people in state facilities. However, a state law required such fees to be phased out entirely by 2011 and the telephone rates to be reduced accordingly.¹⁴⁴

2.20 Confidential Telephone Calls to Attorneys

The CDCR regulations allow attorneys to request “confidential” telephone calls with people in prison, subject to the discretion of prison officials. A confidential call between a person and their attorney is one that both the attorney and the person in prison intend to be private.¹⁴⁵ To arrange a confidential call, the attorney should email, fax or mail a request to the prison litigation coordinator on letterhead stationery with the attorney’s identification information, proof of good standing with a bar association, and the nature of their professional relationship with the person in prison; a completed CDCR Form 106-A Confidential Phone Call Request should be sent with the letter. If the attorney wishes to have a representative conduct the confidential phone call, both the attorney and the attorney’s representative must fill out Form 106-A. The attorney should explain why legal mail or attorney visits cannot reasonably be used for the communication.¹⁴⁶

The prison staff will check the attorney’s and/or representative’s criminal histories and verify the attorney’s good standing with the bar association prior to approving a confidential call. Prison officials have discretion to deny requests for confidential phone calls if normal legal mail or visits can reasonably be used for the communication. People in prison and attorneys may appeal a decision concerning confidential phone calls, using the same procedures that apply to appeals of visiting denials (see § 1.32).¹⁴⁷

When a confidential call is approved, the person is usually brought to a counselor’s or other staff person’s office for the call. The phone line should not be monitored and prison staff should not be able to overhear any of the conversation.¹⁴⁸

If the request for a confidential call is denied, and the attorney is representing a person in a pending case, the attorney should consider seeking a court order for a confidential phone call. Indeed,

¹⁴³ CDCR website at www.cdcr.ca.gov/Visitors/; GTL website at www.gtl.net.

¹⁴⁴ Senate Bill 81 (2007-2008), ch. 175, § 32.

¹⁴⁵ 15 CCR § 3282(a)(2).

¹⁴⁶ 15 CCR § 3282(g); DOM § 52060.8. CDCR Form 106-A is available on the First District Appellate Program website at www.fdap.org/downloads/forms/CDCR-ConfidentialCallRequest-106a.pdf. Contact numbers for the litigation coordinators are on the CDCR website at ww.cdcr.ca.gov/Ombuds/litigation.html.

¹⁴⁷ 15 CCR § 3282(g); DOM § 52060.8.

¹⁴⁸ 15 CCR § 3282(g).

some denials of confidential phone access to counsel might be deemed to be a violation of the right of access to counsel.¹⁴⁹

2.21 Publications by People in Prison

CDCR rules authorize the prisons to publish newspapers, magazines, or newsletters by people in prison.¹⁵⁰ However, few, such publications currently exist. The most notable one is the *San Quentin News*, published in print and online at www.sanquentinnews.com.

A newspaper by people in prison is entitled to some First Amendment freedom of speech protections, so that the CDCR may not exercise “total or arbitrary power” over the contents of such publications. However, the CDCR may regulate, censor or ban articles for security reasons or other legitimate penological reasons.¹⁵¹

Under the CDCR rules, a publication can have writers and editors in prison but a journalism instructor or other staff must supervise the publication and have discretion to approve or disapprove of proposed material.¹⁵² Any disagreement between the writers and editors and the supervising editor is referred to a higher level staff person who has been appointed to the role of administrative editor.¹⁵³ Termination of a publication (other than a temporary suspension during an emergency) requires approval by the CDCR Director.¹⁵⁴

CDCR publications by people in prison cannot include material that the warden or institution head determines to be a threat to security or safety; that is offensive to any race, gender, nationality, religion, or sexual preference; that is lewd or pornographic; that attacks any individual; that serves as a conveyance for individual complaints or as a substitute for the administrative appeal process; or that uses the name or photograph of a person in prison or staff member without the individual’s written permission.¹⁵⁵

The regulations governing participation in publications do not create enforceable Fourteenth Amendment due process liberty interests.¹⁵⁶

¹⁴⁹ *In re Grimes* (1989) 208 Cal.App.3d 1175, 1182-1183 [256 Cal.Rptr. 690] (jail’s collect-only telephone system denied convicted people and people held pre-trial reasonable access to counsel).

¹⁵⁰ 15 CCR §§ 3250-3253.

¹⁵¹ *Bailey v. Loggins* (1982) 32 Cal.3d 907, 922 [187 Cal.Rptr. 575]; see also *Diaz v. Watts* (1987) 189 Cal.App.3d 657 [234 Cal.Rptr. 334] (upholding CDCR publication regulations); *In re Williams* (1984) 159 Cal.App.3d 600 [205 Cal.Rptr. 903] (similar).

¹⁵² 15 CCR § 3250.2.

¹⁵³ 15 CCR § 3250.3.

¹⁵⁴ 15 CCR § 3250.4.

¹⁵⁵ 15 CCR § 3250.1.

¹⁵⁶ *Myron v. Terhune* (9th Cir. 2007) 476 F.3d 716, 718.

OTHER PERSONAL RIGHTS

2.22 Freedom of Religion

The First and Fourteenth Amendments to the U.S. Constitution protect the freedom to practice a religion and to be free from state-imposed religion; these protections extend to people in prison. Also, the Fourteenth Amendment equal protection clause requires the state to treat all similarly situated people equally; thus, people in prison are entitled to a reasonable opportunity to pursue their practice of religion comparable to the opportunity afforded to other people who adhere to religious precepts.¹⁵⁷ To gain constitutional protection, a person's belief must be both "sincerely held" and "religious in nature."¹⁵⁸ However, prison officials can impose restrictions on religious rights without violating the constitution if the policy or action is "reasonably related" to a "legitimate penological interest." Courts consider four factors in deciding whether a policy or action is reasonable: (1) whether the policy or action has a logical connection to legitimate governmental interests invoked to justify it, (2) whether people have alternative means of exercising the religious right, (3) what impact accommodation of the religious right will have on prison staff, other people in prison, and prison resources, and (4) whether there are ready alternatives to the regulation that could be implemented.¹⁵⁹

The Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA) is a federal law that gives people in prison more religious rights than the First Amendment. People in California state prisons are protected by RLUIPA because the California prison system accepts federal funding. Under RLUIPA a person has to show that prison officials imposed a "substantial burden" on the practice of a sincerely held religious belief; the practice does not need to be compelled by or central to the religion. To justify a policy or action that substantially burdens the practice of religion, prison officials must show that the policy or action "(1) is in furtherance of a compelling governmental interest and (2) is the least restrictive means of furthering that compelling governmental interest." In analyzing a RLUIPA issue, a court may consider alternatives put forward by the person in prison, can propose its own potential alternatives, and can look at whether other prisons have adopted less restrictive policies.

¹⁵⁷ *Cruz v. Beto* (1972) 405 U.S. 319, 322, and fn. 2 [92 S.Ct. 1079; 31 L.Ed.2d 263].

¹⁵⁸ *Shakur v. Schrivo* (9th Cir. 2008) 514 F.3d 878, 885.

¹⁵⁹ *O'Lone v. Estate of Shabazz* (1987) 482 U.S. 342 [107 S.Ct. 2400; 96 L.Ed.2d 282] (regulations that precluded people who are Muslim from taking time off jobs to attend Friday religious services did not violate First Amendment); *Shakur v. Schrivo* (9th Cir. 2008) 514 F.3d 878 (allowing person who is Muslim to proceed with First Amendment and equal protection claim challenging refusal to provide meat consistent with Halal requirements); see, e.g., *Anderson v. Angelone* (9th Cir. 1997) 123 F.3d 1197 (regulations prohibiting person in prison from acting as minister of his own church did not violate First Amendment); *Ward v. Walsh* (9th Cir. 1993) 1 F.3d 873 (refusal to allow person who is an Orthodox Jew to have candles in cell and failure to provide Orthodox rabbi did not violate First Amendment, but remanding for further proceedings regarding denial of kosher diet); *Friend v. Kolodziejczak* (9th Cir. 1991) 923 F.2d 126 (rule barring rosaries and scapulars in cells did not violate First Amendment) *Standing Deer v. Carlson* (9th Cir. 1987) 831 F.2d 1525 (regulation banning wearing of religious headbands did not violate First Amendment).

Where there are viable less restrictive alternatives, prison officials must set forth detailed evidence, tailored to the situation, which identifies the failings in those alternatives.¹⁶⁰

Placing a person in administrative segregation does not necessarily justify denying all outlets for the practice of religion or all opportunities for group worship. Courts must still balance religious rights against security needs under the First Amendment and/or RLUIPA standards.¹⁶¹

There are also California laws that generally protect religious rights. A statute provides that it is the intention of the state to allow reasonable opportunities to exercise religious freedom, and allows clergy and spiritual advisors to get authorization to visit people in prison.¹⁶² The CDCR regulations state that a warden “shall make every reasonable effort” to provide for the religious and spiritual welfare of all interested people.¹⁶³ The CDCR regulations also state that a warden “may” employ ministers and chaplains of various faiths.¹⁶⁴ If a chaplain cannot be obtained for a particular faith, the warden may designate a qualified person in prison to minister to others of that religion.¹⁶⁵ Information received by chaplains performing their duties is privileged from disclosure to prison staff, except when failure to disclose the information would jeopardize any person’s safety or prison security.¹⁶⁶ It is a felony for a prison official to monitor without permission any conversation between a person and a religious advisor.¹⁶⁷

The CDCR regulations state that a warden shall allow “reasonable time and accommodation” for religious services “in keeping with facility security and other necessary institutional operations and activities.”¹⁶⁸ State laws allow prison officials to make exceptions the smoking ban for approved

¹⁶⁰ 42 U.S.C. § 2000cc et seq.; *Holt v. Hobbs* (2015) ___ U.S. ___ [135 S.Ct. 853; 190 L.Ed.2d 747] (grooming regulation that did not allow any religious exceptions, such as a 1/2” beard for Muslims, violated RLUIPA); *Warsoldier v. Woodard* (9th Cir. 2005) 418 F.3d 989, 998-1000 (granting preliminary injunction in RLUIPA challenge to former CDCR grooming regulations); *Walker v. Beard* (9th Cir. 2015) 789 F.3d 1125 (refusal to grant religious-based request for housing only with members of his own race did not violate RLUIPA because state had compelling interest in avoiding racial discrimination).

¹⁶¹ See *Pierce v. County of Orange* (9th Cir. 2008) 526 F.3d 1190, 1209-1211 (upholding injunction requiring that people in county jail administrative segregation be given opportunities for worship, provided they were not disruptive or violent); *Greene v. Solano County Jail* (9th Cir. 2008) 513 F.3d 982, 987-989 (striking down jail policy prohibiting people in maximum security from participating in group worship under RLUIPA because policy substantially burdened the right to exercise religion and there was no evidence jail officials had considered less restrictive measures).

¹⁶² Penal Code § 5009.

¹⁶³ 15 CCR § 3210(a).

¹⁶⁴ 15 CCR § 3210; see also *Rouser v. White* (E.D. Cal. 2009) 630 F.Supp.2d 1165 (Wiccan person in prison allowed to proceed with lawsuit claiming lack of a paid Wiccan chaplain and policies inhibiting group worship violated the RLUIPA, the First Amendment, and the Equal Protection Clause of the Fourteenth Amendment) *Rouser v. White* (E.D. Cal. 2010) 707 F.Supp.2d 1055 (preliminary injunction protecting Wiccan rights to hold religious ceremonies); *Rouser v. White* (9th Cir. 2016) 825 F.3d 1076 (discussing how these actions led to a consent decree); *Hartmann v. California Dept. of Corrections and Rehabilitation* (9th Cir 2013) 707 F.3d 1114, 1125-1127 (allowing Wiccan people in prison to proceed with Fourteenth Amendment claim that they should have a full-time paid Wiccan chaplain because full-time paid chaplains were provided for other faiths with fewer adherents).

¹⁶⁵ 15 CCR § 3211.

¹⁶⁶ 15 CCR § 3212.

¹⁶⁷ Penal Code § 636.

¹⁶⁸ 15 CCR § 3210.

religious ceremonies.¹⁶⁹ With prior written approval of the warden, persons may be allowed to bring ceremonial drinks (such as sacramental wine) or other religious items into a prison.¹⁷⁰ Chapels, religious sanctuaries, and grounds designated for religious use are subject to reasonable searches by prison staff.¹⁷¹

One frequently raised First Amendment and RLUIPA issue has been whether people whose religions include diet restrictions are entitled to special meals.¹⁷² The CDCR has a Religious Diet Program which offers vegetarian, kosher and meat alternate (Halal) diet options and makes provisions for meals for observances of religious holidays.¹⁷³ A person who wants to be in one of the CDCR religious diet programs must obtain a CDCR Form 3030 Religious Diet Request form from a prison chaplain, fill out the form, and submit it to the chaplain. The chaplain will interview the person, determine if they are eligible, and provide a written notice of the decision. An approved person must sign a CDCR Form 3030-A Religious Diet Program Agreement; they will then receive a CDCR Form 3030-B Religious Diet Card and be added to the Religious Diet participant list.¹⁷⁴ The whole process should generally be completed within 30 calendar days after the chaplain receives a completed Religious Diet Request form.¹⁷⁵ People should be allowed to receive their religious diet meals no matter where they are housed and should continue to receive their religious diet meals if they are transferred.¹⁷⁶ A person who does not follow the rules in the Religious Diet Program Agreement will receive a warning, and further violations may result in removal from the religious diet program.¹⁷⁷

¹⁶⁹ Penal Code § 5030.1(a); 15 CCR § 3188(c)(1).

¹⁷⁰ 15 CCR § 3213(a).

¹⁷¹ 15 CCR § 3213(f).

¹⁷² See, e.g., *In re Garcia* (2012) 202 Cal.App.4th 892, 904-906 [136 Cal.Rptr.3d 298] (denial of request to participate in kosher meals program, based on fact that he was a Messianic Jew and not participating in traditional Jewish services, violated RLUIPA); *McElyea v. Babbitt* (9th Cir. 1987) 833 F.2d 196, 198 (people entitled to religious diet to extent security and budgetary concerns permit); *Johnson v. Moore* (9th Cir. 1991) 948 F.2d 517, 520 (person who wants special diet must show the dietary requirements are rooted in religious beliefs); *Ward v. Walsh* (9th Cir. 1993) 1 F.3d 873, 877-879 (remanding for further proceedings on kosher diet claim); *Ashebelman v. Wawrzaszek* (9th Cir. 1997) 111 F.3d 674, 678 (people are entitled to food that satisfies dietary rules of their religion); *Olumwa v. Gomez* (9th Cir. 1998) 133 F.3d 1237, 1240 (remanding for further proceedings a claim by Rastafarian seeking vegan diet containing no grapes or other vine fruits); *Cooper v. California* (N.D. Cal. 2007) No. C02-03712, Order (requiring kosher meals); *Menefield v. Cate* (E.D. Cal. Oct. 5, 2009) No. 08-00751, Order (in the absence of Halal meals, Muslims should be allowed the option of a Kosher meal); *In re Lewis* (Marin Superior Ct., Dec. 12, 2008) No. SC158441A, Order (same).

¹⁷³ 15 CCR §§ 3053-3054.5; DOM § 54080.14.

¹⁷⁴ 15 CCR § 3054.4; DOM § 54080.14; see also *Resnick v. Adams* (9th Cir. 2003) 348 F.3d 763 (approving similar religious diet procedures adopted by the federal prison system).

¹⁷⁵ 15 CCR § 3054.4; DOM § 54080.14.

¹⁷⁶ 15 CCR § 3054(c); DOM § 54080.14. However, medical diet needs take precedence over religious diets. 15 CCR § 3054(d).

¹⁷⁷ 15 CCR § 3054.5; DOM § 54080.14.

People sometimes raise concerns about access to religious books and other religious property used for worship.¹⁷⁸ The CDCR has a Religious Personal Property Matrix, which lists approved religious property items and which is incorporated by reference in the CDCR's regulations.¹⁷⁹ Religious items are subject to reasonable searches by staff.¹⁸⁰ Approved religious items may be removed or restricted if necessary to eliminate a serious threat to facility security or the safety of people in prison or staff; removal or restriction for a period of longer than 30 calendar days requires approval by the associate director of the Statewide Religious Review Committee (SRRC), a committee that addresses statewide religious/spiritual issues for people in prison.¹⁸¹

There have been legal disputes about whether people can wear religious clothing or get exceptions to prison grooming and clothing standards that are contrary to their religious beliefs.¹⁸² Currently, the CDCR rules do not place restrictions on hair and facial hair; people may grow their hair and facial hair as they wish, so long as it is clean and groomed.¹⁸³ The CDCR rules also allow people to wear or carry religious items such as a beaded headband, beaded wristband, beaded choker, religious medallion and chain, religious headgear, medicine bag, prayer beads, and tallit katan/tsitsit.¹⁸⁴

Another issue is whether people can get time off from work to practice their religion. The CDCR rules provide that excused time off (ETO) may be used to attend religious services or functions. For routine religious services, use of ETO shall be limited to instances in which it would be unduly burdensome to change the person's work or school schedule.¹⁸⁵

Sometimes people wish to use religious names that are different from their legal names. California law provides that no person can file an application for a change of name except as permitted at the discretion of the CDCR.¹⁸⁶ The CDCR has adopted a procedure for considering a request for

¹⁷⁸ *Rouser v. White* (E.D. Cal. 2009) 630 F.Supp.2d 1165 (Wiccan person in prison allowed to proceed with lawsuit claiming that lack access to religious items violated RLUIPA, the First Amendment, and the Equal Protection Clause of the Fourteenth Amendment) *Rouser v. White* (E.D. Cal. 2010) 707 F.Supp.2d 1055 (preliminary injunction protecting Wiccan rights to have religious texts and items); *Rouser v. White* (9th Cir. 2016) 825 F.3d 1076 (discussing how these actions led to a consent decree).

¹⁷⁹ 15 CCR § 3190(b); 15 CCR § 3213(b); DOM § 54030.10.9; The Religious Personal Property Matrix (RPPM) is in the Appendix to the DOM.

¹⁸⁰ 15 CCR § 3213(b)-(d).

¹⁸¹ 15 CCR § 3213(e); see also 15 CCR § 3000.

¹⁸² See *Holt v. Hobbs* (2015) ___ U.S. ___ [135 S.Ct. 853; 190 L.Ed.2d 747] (Arkansas grooming regulation that did not allow any religious exceptions, such as a 1/2" beard for Muslims, violated RLUIPA); *In re Ben-Sholom* (Marin Superior Ct. Mar. 1996) No. SC77668, Order (Jewish person on death row obtained court order allowing him to wear a yarmulke); *Warsoldier v. Woodford* (9th Cir. 2005) 418 F.3d 989 (former CDCR policy requiring Native American person to have short hair, and subjecting him to punishment if he did not comply, violated RLUIPA); *Mayweathers v. Newland* (E.D. Cal. 2004) 328 F.Supp.2d 1086 (applying RLUIPA, court barred prison officials from disciplining Muslims for wearing 1/2-inch beards in violation of former CDCR grooming standards); but see *Henderson v. Terhune* (9th Cir. 2004) 379 F.3d 709 (applying First Amendment standard, the CDCR's former hair-length regulations were found to serve important penological interests that outweighed a person's religious interests).

¹⁸³ See 15 CCR § 3062.

¹⁸⁴ 15 CCR § 3213(b)-(c).

¹⁸⁵ 15 CCR § 3045.2(d)(4).

¹⁸⁶ Code of Civil Procedure § 1279.5(b).

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a name change.¹⁸⁷ Forms and information concerning legal name changes are available on the California courts website.¹⁸⁸

2.23 Marriage and Procreation

People have a fundamental federal Fourteenth Amendment constitutional right to marry while they are incarcerated, subject to reasonable restrictions.¹⁸⁹

The right of people in prison to marry is also guaranteed by a California statute,¹⁹⁰ and permission to marry may not be denied on the grounds that the person's prospective spouse has violated a visiting regulation.¹⁹¹ The CDCR allows both heterosexual and same sex couples to marry, but marriages between two people in prison are not allowed.¹⁹²

To get married, a person in CDCR and their prospective spouse must obtain a marriage license from the county clerk; there are special rules that allow the clerk to issue a "confidential marriage licenses" where one of the prospective spouses cannot appear in front of the clerk. The person in prison must then arrange for the marriage ceremony to take place by contacting the correctional counselor or other staff member designated by the prison to process marriage requests. The counselor should notify the person of the legal requirements, help obtain approval for the wedding ceremony and coordinate efforts to get clearances for wedding guests and clergy to enter the prison. Generally, a marriage may be performed by a priest, rabbi or minister of any denomination and attended by two other people in prison and ten outside guests.¹⁹³

A person does not have a right to procreate (conceive a child) while in prison.¹⁹⁴

2.24 Freedom of Association

Incarceration, by its very nature, removes a person from society and restricts their rights to associate with people on the outside.¹⁹⁵

¹⁸⁷ DOM § 73010.6.1.

¹⁸⁸ See www.courts.ca.gov/selfhelp-namechange.htm.

¹⁸⁹ *Turner v. Safley* (1987) 482 U.S. 78, 96 [107 S.Ct. 2254; 96 L.Ed.2d 64] (striking down Missouri regulation that banned people in prison from marrying unless the prison superintendent found there were compelling reasons for permitting a marriage).

¹⁹⁰ Penal Code § 2601(e).

¹⁹¹ *In re Carraja* (1978) 77 Cal.App.3d 788 [143 Cal.Rptr. 848].

¹⁹² CDCR, *Memorandum: Same Sex Marriage Between Inmates* (Aug. 30, 2013).

¹⁹³ 15 CCR § 3216; DOM §§ 101070.1-101070.9.

¹⁹⁴ *Gerber v. Hickman* (9th Cir. 2002) 291 F.3d 617, 623 (person in men's prison did not have right to mail semen from prison to artificially inseminate partner).

¹⁹⁵ *Pell v. Procunier* (1974) 417 U.S. 817, 822-823 [94 S.Ct. 2800; 41 L.Ed.2d 495].

A CDCR regulation gives people in California prisons the right to belong to any outside organization.¹⁹⁶ Also, outside groups can distribute literature to family members and friends of people in prison in prison parking lots, subject to reasonable restrictions on the time, place and manner of exercising their rights of free expression.¹⁹⁷

The U.S. Constitution's First Amendment does not prohibit prison officials from placing restrictions on groups of people in prison in soliciting membership and holding meetings.¹⁹⁸ CDCR regulations allow prison officials to permit the formation of "inmate leisure time activity groups which promote educational, social, cultural and recreational interests of participating inmates," and set forth procedures for establishing and terminating such groups.¹⁹⁹ Each "inmate activity" group may be authorized to run up to three fund-raising campaigns a year for recognized charitable causes.²⁰⁰ People in prison are otherwise barred from establishing or participating in any in-prison club, activity group or association.²⁰¹

In addition to groups established by people in prison, the CDCR sponsors an "inmate advisory council" in each prison. The council operates under a constitution approved by the warden. Council members advise and communicate with the warden and other staff about matters of interest and concern to the population of people in prison. The council is supposed to be composed of members who are representative of the facility's ethnic groups.²⁰² An institution head can also appoint committed people in prison to perform special services.²⁰³

2.25 Freedom of Expression: Buttons, Armbands, Clothing, and Grooming

Generally, most people in California prisons wear clothing provided by the state. Each person is provided with state-issued clothing, linens, shoes, socks and undergarments, and there is a weekly laundry exchange.²⁰⁴ The standard uniform is blue jeans and blue chambray shirts for people in men's prisons and blue jeans and white and blue baseball-style shirts for people in women's prisons.²⁰⁵ People in special housing areas like reception centers, administrative segregation, or SHUs usually wear orange or red jumpsuits or "scrub suits."

¹⁹⁶ 15 CCR § 3237(a). The rules make contradictory statements about whether people in prison can possess membership cards of outside organizations. 15 CCR § 3237(c) (people in prison may possess membership cards unless it would jeopardize security or safety); 15 CCR § 3190(s) (people in prison "shall not possess any membership cards. . . other than those issued by the department").

¹⁹⁷ *Prisoners Union v. Cal. Dept. of Corrections* (1982) 135 Cal.App.3d 930 [185 Cal.Rptr. 634].

¹⁹⁸ *Jones v. North Carolina Prisoners' Union* (1977) 433 U.S. 119, 128-132 [97 S.Ct. 2532; 53 L.Ed.2d 629]; *In re Price* (1979) 25 Cal.3d 448, 454 [158 Cal.Rptr. 873] (upholding as reasonable restrictions on meetings of people in prison, even though Prisoners' Union was denied the right to hold meetings to the same extent as other prison activity groups).

¹⁹⁹ 15 CCR §§ 3233-3235.

²⁰⁰ 15 CCR § 3240.

²⁰¹ 15 CCR § 3020.

²⁰² 15 CCR § 3230; 15 CCR § 3232.

²⁰³ 15 CCR §§ 3231-3232.

²⁰⁴ Penal Code § 2084; 15 CCR § 3030; 15 CCR § 3031(b).

²⁰⁵ 15 CCR § 3030(b).

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People who are transgender should be provided with state-issued brassieres or boxer shorts as appropriate to their chosen identity.²⁰⁶ The CDCR also has personal property schedules that allow people who are transgender to possess some appropriate personal clothing and hygiene items.²⁰⁷ A recent court order also requires the CDCR to allow people who are transgender and housed in men's prisons access to some other items of clothing and grooming items permitted in women's prisons, and to provide compression tops and binders to people who are transgender and housed in women's prisons.²⁰⁸

Most prisons also allow people to have some personally owned clothing.²⁰⁹ Reasonable restrictions on clothing choices will be upheld by the courts.²¹⁰

The constitutional First Amendment right to freedom of expression encompasses the right to wear buttons or armbands in support of an idea.²¹¹ The CDCR rules allow people in prison who are members or supporters of outside organizations to wear buttons and lapel pins of those organizations, unless doing so would jeopardize security or safety.²¹²

The CDCR grooming standards provide that people in prison may have hair of any length as long as it does not extend over the eyebrows, cover the face, or pose a threat to safety or security. A person with long hair must wear it in a neat, plain style that does not draw undue attention, and must unbraid, undo, or take it down when so requested for searches. People may have mustaches and beards. People must keep their fingernails short and people in women's prisons can use only clear fingernail polish and natural-looking cosmetics. People may not dye their hair or shave it into shapes or symbols or pierce their bodies.²¹³ A person who noticeably changes their appearance will be charged for a new identification card.²¹⁴ People who do not comply with grooming standards can be disciplined and placed in Work/Privilege Group C.²¹⁵

2.26 Voting

The Fourteenth Amendment to the U.S. Constitution guarantees the right to vote, but states that the right may be abridged for participation in a crime. This has been interpreted as allowing a state to prohibit people convicted of crimes from voting, including people who have fully completed

²⁰⁶ DOM § 62080.14.

²⁰⁷ 15 CCR § 3030(c)-(d) and CDCR, Transgender Inmates Authorized Personal Property Schedule (TIAPPS).

²⁰⁸ *Quine v. Beard* (N.D. Cal. June 12, 2017) No. 14-CV-02726, Order.

²⁰⁹ Appendix A to the DOM is an "Authorized Personal Property Schedule" that states what sort of personal clothing is allowed for people in various security levels and privilege groups.

²¹⁰ *In re Alcala* (1990) 222 Cal.App.3d 345 [271 Cal.Rptr. 674].

²¹¹ *Tinker v. Des Moines School District* (1969) 393 U.S. 503, 505 [89 S.Ct. 733; 21 L.Ed.2d 731]; see also *In re Reynolds* (1979) 25 Cal.3d 131 [157 Cal.Rptr. 892] (holding under the former more liberal version of Penal Code § 2600 that people in prison are entitled to wear an outside organization's button).

²¹² 15 CCR § 3237(c).

²¹³ 15 CCR § 3062.

²¹⁴ 15 CCR § 3075(g).

²¹⁵ 15 CCR § 3062(m). See § 4.21 and § 8.30.

serving their prison sentences and parole terms.²¹⁶ Courts have thus far held that various states' restrictions on the voting rights of people with felonies does not violate the Fourteenth Amendment right to equal protection or the federal Voting Rights Act (VRA) by having a disparate impact on a minority group's voting power.²¹⁷

California law provides somewhat broader voting rights than is required by federal law. Only people with felonies (including people in local custody awaiting transfer to prison to serve a felony term or temporarily on out-to-court status) and people on parole shall be deprived of the right to vote.²¹⁸ People serving time in local jails for a felony jail sentence, a misdemeanor conviction, or as a condition of felony or misdemeanor probation have the right to vote.²¹⁹ A person in prison with a felony regains the right to vote after being released from prison and finishing any required parole term. Also, people on Post Release Community Supervision (PRCS) and local mandatory supervision are eligible to vote.²²⁰

RIGHTS TO BE FREE FROM DISCRIMINATION

2.27 Discrimination Based on Race

People in prison are protected under the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution from discrimination based on race.²²¹ Federal statutes also prohibit racial discrimination in programs receiving federal funding.²²² Racial segregation, which is unconstitutional outside prisons, is unconstitutional inside prisons, except where necessary for prison security and discipline.²²³

The “reasonably related to a legitimate penological interest” standard should not be applied to race discrimination. Instead, race discrimination in prison must be analyzed under a “strict scrutiny” test. “Strict scrutiny” means that race discrimination will be found unlawful unless the government

²¹⁶ *Richardson v. Ramirez* (1974) 418 U.S. 24, 56 [94 S.Ct. 2655; 41 L.Ed.2d 551]; see also *Harvey v. Brewer* (9th Cir. 2010) 605 F.3d 1067 (upholding Arizona law that deprives people with felonies of the right to vote until they have completed their sentences and paid all fines or restitution).

²¹⁷ 42 U.S.C. § 1973; *Farrakhan v. Gregoire* (9th Cir. 2010) 623 F.3d 990; *Johnson v. Florida* (11th Cir. 2005) 405 F.3d 1214; *Hayden v. Pataki* (2d Cir. 2006) 449 F.3d 305.

²¹⁸ California Constitution, Article II, § 4; *Flood v. Riggs* (1978) 80 Cal.App.3d 138, 151-157 [145 Cal.Rptr. 573]; Elections Code § 2101.

²¹⁹ *League of Women Voters of California v. McPherson* (2006) 145 Cal.App.4th 1469 [52 Cal.Rptr.3d 585]. More information on voting rights is on the ACLU of Northern California website at www.aclunc.org/our-work and the California Secretary of State's website at www.sos.ca.gov/elections/voting-resources/voting-california.

²²⁰ *Scott v. Bowen* (Alameda County Superior Ct. May 7, 2014) No. RG14-712570, Order.

²²¹ *Wolff v. McDonnell* (1974) 418 U.S. 539, 556 [94 S.Ct. 2963; 41 L.Ed.2d 935]; *Lee v. Washington* (1968) 390 U.S. 333 [88 S.Ct. 994; 19 L.Ed.2d 1212].

²²² 42 U.S.C. § 2000(d).

²²³ *Cruz v. Beto* (1972) 405 U.S. 319, 321 [92 S.Ct. 1079; 31 L.Ed.2d 263]; *Johnson v. California* (9th Cir. 2000) 207 F.3d 650, 655.

can prove that the policies “are narrowly tailored measures that further compelling governmental interests.”²²⁴

In 2006, CDCR officials agreed to end a policy of automatically housing people with people of the same race and to develop a system of integrated housing.²²⁵ (See § 4.27 for the current policy.)

The CDCR’s former practice of locking down groups of people based on race was subject to legal challenges.²²⁶ The CDCR agreed to cease race-based modified programs or lockdowns and instead use individualized threat assessment forms to determine who would be retained on a modified program or lockdown.²²⁷ A CDCR regulation now distinguishes lockdowns of all people in a facility from “Modified Program” restrictions that affect only some people or some activities. Modified programming “shall not target a specific racial or ethnic group unless it is necessary and narrowly tailored to further a compelling government interest.”²²⁸

2.28 Discrimination Based on Gender

People in prison are protected from discrimination based on gender under the Equal Protection Clause of the U.S. Constitution’s Fourteenth Amendment. Differential treatment based on gender will be deemed unconstitutional unless the state can show it serves “important governmental objectives and that the discriminatory means employed” are “substantially related to the achievement of those objectives.”²²⁹ This equal protection standard also applies to discriminatory treatment of people who are transgender.²³⁰

²²⁴ *Johnson v. California* (2005) 543 U.S. 499, 505 [125 S.Ct. 1141; 160 L.Ed.2d 949]; *Mitchell v. Washington* (9th Cir. 2016) 818 F.3d 436, 444-447 (strict scrutiny applies to race-based medical treatment decisions); see also *Harrington v. Scribner* (9th Cir. 2015) 785 F.3d 1299, 1307-1308 (court erred by instructing jury that Eighth Amendment obligation to protect people in prison competes with Fourteenth Amendment obligation not to discriminate based on race, and that jury could defer to officials rather than assess whether race-based actions were narrowly tailored).

²²⁵ *Johnson v. California* (9th Cir. Jan. 3, 2006) No. 01-56436, Order and Settlement Agreement.

²²⁶ *In re Morales* (2013) 212 Cal.App.4th 1410 [152 Cal.Rptr.3d 123] (forbidding prison officials from giving preferential treatment to people on the basis of race but permitting race-based separation of people if prison security requires it, so long as it is on a short-term basis only and is not done preferentially); *Richardson v. Runnels* (9th Cir. 2010) 594 F.3d 666, 671-672 (prison officials failed to satisfy the strict scrutiny test where they had not shown that isolated incidents of assaults by a few African-American people justified the lockdown of all African-American people); *Walker v. Gomez* (9th Cir. 2004) 370 F.3d 969 (lockdown unlawful where race was the only factor in the decision to exclude African-American people from the critical-worker list during lockdowns and that prison officials failed to present evidence sufficient to support the policy).

²²⁷ *Mitchell v. Cate* (E.D. Cal. Oct 20, 2014) No. 08-CIV-1196 Stipulated Settlement.

²²⁸ 15 CCR § 3000.

²²⁹ *United States v. Virginia* (1996) 518 U.S. 515, 532-533 [116 S.Ct. 2264; 135 L.Ed.2d 735]; *Sassman v. Brown* (9th Cir 2015) 99 F.Supp.3d 1223, 1234 (requiring CDCR to accept people in men’s prisons into alternative custody program formerly available only to people in women’s prisons); see also *Jeldness v. Pearve* (9th Cir. 1994) 30 F.3d 1220, 1227.

²³⁰ *Norsworthy v. Beard* (N.D. Cal. 2015) 87 F.Supp.3d 1104, 1119-1120.

In addition, federal statutes specifically protect people from gender-based discrimination in access to prison educational and vocational programs; penological interests may be a factor in how the statute is applied, but they are not a defense to discrimination.²³¹

2.29 Discrimination Based on Disability

Some disability-related issues can constitute violations of the U.S. Constitution. For example, failure to provide an accessible environment to a person with disabilities, causing unsafe living conditions, can amount to cruel and unusual punishment in violation of the Eighth Amendment.²³² Placing a person who is reliant on a wheelchair in a non-accessible segregation cell without their wheelchair for two months was found to impose an atypical and significant hardship, triggering Fourteenth Amendment due process protections.²³³

Moreover, the Americans with Disabilities Act (ADA) -- which prohibits a “public entity” from discriminating against a “qualified individual with a disability” on account of the disability -- applies to state prisons.²³⁴ The Rehabilitation Act of 1973 (“Section 504”) provides identical protections against disability-based discrimination to public entities that receive federal funding.²³⁵ In applying these statutes in prison cases, courts will find differential treatment of people with disabilities valid only if “it is reasonably related to legitimate penological interests.”²³⁶

CDCR rules state that no qualified person in prison or on parole with a disability, as defined in the ADA, shall, because of that disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of the Department, or be subjected to discrimination.²³⁷

The CDCR has developed remedial plans to bring its programs and facilities into compliance with the ADA. The CDCR has a screening form for identifying certain disabilities (CDCR Form 1845), and a Disability Placement Program (DPP) for identifying and accommodating people with disabilities including serious mobility, hearing, visual, and/or speech impairments. The types of accommodations required under the plan include adding wheelchair-accessible cells and handrails in showers, as well as providing sign language interpreters and assistive reading devices.²³⁸ There has been further litigation

²³¹ 20 U.S.C. § 1681; *Jeldness v. Pearce* (9th Cir. 1994) 30 F.3d 1220, 1225, 1230.

²³² *Frost v. Agnos* (9th Cir. 1998) 152 F.3d 1124; *Akhtar v. Mesa* (9th Cir. 2012) 698 F.3d 1202, 1213-1214 (person with disabilities could sue CDCR for deliberate indifference to serious medical needs after he was relocated multiple times to inaccessible housing, despite medical orders for a lower bunk in a ground floor cell).

²³³ *Serrano v. Francis* (9th Cir. 2003) 345 F.3d 1071, 1079.

²³⁴ 42 U.S.C. § 12131 et seq.; *Pennsylvania Dept. of Corrections v. Yeskey* (1998) 524 U.S. 206 [118 S.Ct. 1952; 141 L.Ed.2d 215].

²³⁵ 29 U.S.C. § 794; see also *Clark v. California* (9th Cir. 1997) 123 F.3d 1267 (ADA and Rehabilitation Act were validly enacted pursuant to Enforcement Clause powers).

²³⁶ *Gates v. Rowland* (9th Cir. 1994) 39 F.3d 1439, 1447; see also *Pierce v. County of Orange* (9th Cir. 2008) 526 F.3d 1190, 1217-1222 (policy of segregating people in jail with disabilities was justified, but officials violated ADA by failing to provide accessible bathrooms and denying people with disabilities access to programs).

²³⁷ 15 CCR § 3085.

²³⁸ *Armstrong v. Davis* (N.D. Cal. Jan. 3, 2001) No. C94-2307, Remedial Plan; see also *Armstrong v. Wilson* (N.D. Cal. 1996) 942 F.Supp. 1252; *Armstrong v. Wilson* (9th Cir. 1997) 124 F.3d 1019.

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to enforce these requirements.²³⁹ Lawyers from the Prison Law Office and Rosen Bien Galvan & Grunfeld are monitoring the CDCR level of compliance with the remedial plans.

The CDCR also has a Developmental Disabilities Program (DDP) to provide safe housing and assistance to people with mental retardation and other developmental or cognitive disabilities.²⁴⁰ In addition, the CDCR has agreed to end discriminatory practices that unfairly exclude people with serious mental illness from programs, services and activities.²⁴¹ Lawyers from the Prison Law Office are monitoring the CDCR's level of compliance.

The CDCR's obligation to provide accommodations to people with disabilities in prison and on parole extends to people who are in county jails for parole revocation proceedings.²⁴² Even though county courts conduct parole revocation hearings and most parole revocation terms are served in county jails, CDCR officials still must track the needs of people who are disabled in the county jails, communicate with jail officials about person's needs, and provide a grievance process for disability issues.²⁴³

The CDCR has a special administrative appeal form (CDCR Form 1824 Reasonable Modification or Accommodation Request) and process for people with disabilities to request modifications or accommodations to gain access to programs, services or activities, or to raise issues about discrimination based on disability.²⁴⁴ This procedure is discussed in § 1.26.²⁴⁵ In addition, there is a process for people with disabilities to seek accommodations in parole proceedings, as described in § 1.38.

PROPERTY RIGHTS

2.30 General Standards

The U.S. Constitution's Fifth Amendment Takings Clause prohibits the government taking a person's private property for public use without just compensation. The Fourteenth Amendment Due Process Clause protects people from intentionally being deprived of their property without due process of the law. Some property issues may implicate a person's First Amendment rights to practice their religion (see § 2.22) or their Fourteenth Amendment rights to access to legal materials (see §

²³⁹ *Armstrong v. Brown* (9th Cir. 2014) 768 F.3d 975 (discussing CDCR failure to comply with ADA and modifications to court injunction); *Armstrong v. Schwarzenegger* (9th Cir. 2010) 622 F.3d 1058, 1063 (after CDCR found to be in violation of ADA and RA, new remedial plan produced); *Armstrong v. Brown* (N.D. Cal. 2013) 939 F.Supp.2d 1012 (ordering the CDCR to comply with orders to provide sign language interpreters for people with hearing impairments during psychiatric technician rounds and classes); *Armstrong v. Brown* (N.D. Cal. Feb. 3, 2015) No. C 94-2307, Order Granting Motion for Further Enforcement (prohibiting the CDCR from placing people with disabilities in administrative segregation instead of in accessible cells or beds).

²⁴⁰ *Clark v. California* (N.D. Cal. Mar. 1, 2002) No. C96-1486, Remedial Plan.

²⁴¹ *Hecker v. California Dept. of Corrections* (E.D. Cal. Mar. 2, 2015) No. 05-02441, Order for Final Approval of Settlement Agreement.

²⁴² *Armstrong v. Schwarzenegger* (9th Cir. 2010) 622 F.3d 1058, 1068.

²⁴³ *Armstrong v. Brown* (9th Cir. 2013) 732 F.3d. 955. See § 11.23 for more information.

²⁴⁴ 15 CCR § 3085(a).

²⁴⁵ 15 CCR § 3085(b).

19.2). In at least some circumstances, prison officials who make a deliberate decision to take a person's property or money should give the person notice and a meaningful opportunity to contest the matter before significant assets are taken.²⁴⁶

California law states that people in prison have the right “to inherit, own, sell, or convey real or personal property.” These rights are subject to restrictions that are reasonably related to legitimate penological interests; also the CDCR may restrict or prohibit sales or conveyances that are made for business purposes.²⁴⁷ The rules also state that a person in prison may not exchange, borrow, loan, give away or convey personal property to or from other people in prison.²⁴⁸

A person in prison can give someone else “power of attorney” to handle their property or money in matters such as real estate transactions, claims and litigation, tax matters, and personal affairs. A limited power of attorney can be granted to give the agent the power to perform only limited actions.²⁴⁹ More information and forms on this subject are available by writing to the Prison Law Office, General Delivery, San Quentin, CA 94964 or on the Resources page at www.prisonlaw.com.

If a person's money or personal property is lost, stolen, damaged, or destroyed through the careless or intentional act of another person in prison, the CDCR generally will not be liable.²⁵⁰ However, if CDCR staff wrongfully take, lose, or destroy a person's property, the state should compensate the person.²⁵¹ Compensation for property damaged by CDCR staff can be sought through an administrative appeal (§ 1.27) and government claims form (§§ 18.4-18.6). If those actions are unsuccessful, a person may be able to bring a state tort lawsuit (Chapter 18) or small claims court action (§ 18.11); in rare cases, a person might be able to file a federal civil rights lawsuit (§ 17.11).

2.31 Prison Trust Accounts

People in CDCR prisons have prison trust accounts into which they can deposit money they earn in prison or receive from the outside.²⁵² Family members who want to send a person money may do so by using a Lockbox system, Electronic Funds Transfer (EFT) or by mailing a check or money order to the person (payable to the CDCR; must display the sender's name and address and the person's name and CDCR number). Depending on the type of deposit, funds may be held for up to 30 days before they are available for use by the person in prison.²⁵³

If a person has been ordered to pay direct restitution or a restitution fine as part of their criminal sentence, the CDCR deducts 50 percent of the person's wages and trust account deposits to

²⁴⁶ *Shinault v. Hawks* (9th Cir. 2015) 782 F.3d 1053, 1057-1059; *Quick v. Jones* (9th Cir.1985) 754 F.2d 1521, 1523.

²⁴⁷ Penal Code §§ 2600-2601(a).

²⁴⁸ 15 CCR § 3192.

²⁴⁹ Probate Code § 4401.

²⁵⁰ 15 CCR § 3193(a).

²⁵¹ 15 CCR § 3193(b).

²⁵² Penal Code § 5008.

²⁵³ 15 CCR § 3140; DOM § 54010.13. More information is on the CDCR website at www.cdcr.ca.gov/Visitors/Sending_money_to_inmates.html.

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apply toward the restitution owed, plus a 10 percent administrative fee.²⁵⁴ Some types of deposits cannot be taken for restitution -- funds sent by family to pay for family visit or temporary community leave expenses, federal disability payments, veteran benefits, and reimbursements for lost or damaged property or undeliverable purchase orders.²⁵⁵

Interest earned on trust accounts is distributed to the accounts of qualifying people (those who have provided a valid Social Security number or Taxpayer ID number) after deduction of some administrative costs.²⁵⁶ In the past, the CDCR put all of the interest on people's trust fund accounts into the Inmate Welfare Fund to support programs and activities. This practice ended after people in prison successfully argued that it was a taking of private property for public purposes in violation of the Fifth and Fourteenth Amendments to the U.S. Constitution.²⁵⁷ However, it is lawful to deduct reasonable fees for the costs of creating and maintaining trust accounts for people in prison.²⁵⁸ The state may also withhold a small portion of a person's wages for "gate money" to be paid upon release from prison.²⁵⁹

People may use their trust accounts to make monthly purchases from the prison canteen; the amount of purchases a person may make is determined by their privilege group.²⁶⁰ A person's allotted canteen draw cannot be limited except as part of a formal disciplinary action for certain types of rule violations.²⁶¹ People also may make purchases from outside catalogs, subject to a nine percent service charge.²⁶² In addition, trust accounts also may be charged for medical co-payments (see Chapter 7),²⁶³ damage to state property,²⁶⁴ or postage and copying expenses.²⁶⁵ Note that a federal law prohibits prison officials from using a veteran's benefit payment to reimburse the state for past expenses;

²⁵⁴ Penal Code § 2085.5; 15 CCR § 3097; see also *Quarles v. Kane* (9th Cir. 2007) 482 F.3d 1154, 1155 (increases to the percentage collected by the CDCR do not violate the constitutional prohibition on ex post facto laws or the terms of plea bargains); *In re Betts* (1998) 62 Cal.App.4th 821, 823 [73 Cal.Rptr.2d 254] (Code of Civil Procedure § 704.090, which exempts any trust fund balance under \$300 from being subject to collection of restitution fines and orders, applies only to balances and does not include deposits made to the account).

²⁵⁵ 15 CCR § 3097(j)-(k). Note that unlike most forms of public benefits, people may be able to receive some veteran's benefits while in prison. Additional information is available from the Prison Law Office, General Delivery, San Quentin, CA 94964 or on the Veteran's Administration website at www.va.gov.

²⁵⁶ Penal Code § 5008; 15 CCR § 3099.

²⁵⁷ *Schneider v. California Dept. of Corrections* (9th Cir. 2003) 345 F.3d 716; see also *McIntyre v. Bayer* (9th Cir. 2003) 339 F.3d 1097 (challenged to similar Nevada policy).

²⁵⁸ *Vance v. Barrett* (9th Cir. 2003) 345 F.3d 1083, 1089-1091.

²⁵⁹ *Ward v. Ryan* (9th Cir. 2010) 623 F.3d 807 (withholding gate money where person was serving 197-year sentence).

²⁶⁰ 15 CCR § 3044; 15 CCR §§ 3090-3095.

²⁶¹ 15 CCR § 3090(d).

²⁶² 15 CCR § 3104; see *In re Hamilton* (1996) 41 Cal.App.4th 926, 933 [48 Cal.Rptr.2d 845] (allowing surcharge on prison handicraft supplies).

²⁶³ 15 CCR § 3354.2(c)(2).

²⁶⁴ 15 CCR § 3090(d).

²⁶⁵ 15 CCR § 3162(a); 15 CCR § 3265(d).

however, once a veteran's benefit check is deposited in the trust account, a person in prison may be assessed a co-pay or charge for future purchases.²⁶⁶

A person in prison may make a personal donation from their trust account funds at any time and for any reason or cause. However, approval of a donation is subject to the following conditions: there is no evidence of coercion, the amount is less than the trust account balance, the person is not mentally incompetent, the amount is one dollar or more, and the reason or cause supported would not jeopardize security or safety.²⁶⁷ The CDCR will deduct a ten percent processing fee from any donation.²⁶⁸

People in California prisons may have outside savings accounts. Former prison regulations prohibiting withdrawal of trust account funds to establish outside savings accounts were held invalid.²⁶⁹

The California legislature enacted a law that required that proceeds from the sale of the person's story about their crimes be placed in an involuntary trust for five years. However, the California Supreme Court held that this "Son of Sam law" violates the U.S. Constitution's First Amendment and the California Constitution, Article I, § 2(a);²⁷⁰ thus people should be allowed to sell their stories and get immediate access to the proceeds.

2.32 Personal Property

The CDCR strictly limits how much and what types of property a person may have in their actual possession. Generally, a person may not have more than six cubic feet of combined state-issued and personal property, not including legal materials, health care appliances, and state-provided educational materials.²⁷¹ Detailed rules about the amount and types of property are set forth in CDCR rules and "Authorized Personal Property Schedules" for the various security levels, segregation units, and women's prisons; there are a few exemptions allowing for additional items at specific prisons.²⁷² Special CDCR rules regarding medical appliances are discussed in Chapter 7. Rules regarding religious property are discussed in § 2.27, and special property for people who are transgender is discussed in § 2.25.

²⁶⁶ 38 U.S.C. § 5301(a); *Nelson v. Heiss* (9th Cir. 2001) 271 F.3d 891, 896.

²⁶⁷ 15 CCR § 3240.1.

²⁶⁸ 15 CCR § 3240.2.

²⁶⁹ *In re Parker* (1984) 151 Cal.App.3d 583 [198 Cal.Rptr. 796].

²⁷⁰ Civil Code § 2225(b); *Keenan v. Superior Court of Los Angeles County* (2002) 27 Cal.4th 413 [117 Cal.Rptr.2d 1 (note the court did not address the constitutionality of the law that requires placement in a trust fund of profits from the sale of crime memorabilia); see also *Simon & Schuster, Inc. v. Members of New York State Crime Victims Board* (1991) 502 U.S. 105 [112 S.Ct. 501; 116 L.Ed.2d 476] (striking down New York law requiring people convicted of a crime and their publishers to turn over profits from the story to a victim trust fund).

²⁷¹ 15 CCR § 3161; 15 CCR § 3190(e), (m), (q).

²⁷² 15 CCR § 3006; 15 CCR § 3190; DOM §§ 54030.1-54030.18; DOM, Appendix A Authorized Personal Property Schedules; see also DOM, Appendix D Non-Disciplinary Segregation Personal Property Matrix.

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People must register certain types of property (such as electronic appliances, typewriters, jewelry) that are of significant value or security concern.²⁷³ If the property found in one person's cell is registered to another person, it will be returned to the authorized owner, unless the owner is found guilty of a disciplinary action for misusing the property and approval to possess the property is rescinded.²⁷⁴

The CDCR has additional rules regarding the possession and storage of "legal materials," such as law books, transcripts of court proceedings, pleadings, legal research notes and attorney-client communications. Although these materials are included in the six-cubic-foot property limit, people may keep up to one additional cubic foot of legal materials related to their active cases in their cells. People may request that the institution store excess legal materials (except law books) that are related to their active cases.²⁷⁵ Otherwise, excess legal materials must be sent home or returned to the sender at the person in prison's expense, donated to a charitable institution or to the facility, or destroyed.²⁷⁶

Some people in prison may receive personal property packages; eligibility is based on a privilege group. Packages may be ordered by the person in prison or by family members or friends and must be purchased from departmentally-approved vendors and shipped directly to the facility by the vendor.²⁷⁷ In addition, people in prison and their outside correspondents may order some special purchase items: health care appliances, legal materials, correspondence courses, religious items, handicraft material, entertainment appliances, and books. The items must be purchased and sent directly from approved vendors, except that books and periodicals (including legal publications) may be received from any publisher or distributor that does mail order business, such as Amazon.²⁷⁸ A person who orders a personal property package or special purchase item must pay a service charge of 10 percent of the purchase price to be deposited in the Inmate Welfare Fund, except that there is no service charge on orders of medical appliances, correspondence courses, nonfiction books, religious items, and legal materials.²⁷⁹

When a person is sent out to court or for medical treatment, their property should be inventoried and stored for their return.²⁸⁰ If a person is placed in Privilege Group C or in segregation, any property that is disallowed will be inventoried and stored temporarily, but if a classification committee confirms the Privilege Group C status, places the person in the SHU or a PSU, or transfers a person to a facility with different property rules, the person in prison will have to dispose of the disallowed property.²⁸¹ Options for disposal include mailing the property to an outside person at the

²⁷³ 15 CCR § 3191(a)-(b).

²⁷⁴ 15 CCR § 3191(b).

²⁷⁵ 15 CCR § 3161; DOM § 54030.10.2.

²⁷⁶ 15 CCR § 3161; 15 CCR § 3191(c).

²⁷⁷ 15 CCR § 3190(g). See 15 CCR § 3044(d)-(j) for privilege groups and eligibility to receive packages.

²⁷⁸ 15 CCR § 3190(k), (p).

²⁷⁹ 15 CCR § 3190(q).

²⁸⁰ 15 CCR § 3190(u).

²⁸¹ 15 CCR § 3190(f), (l), (u)-(v).

person in prison's expense, returning the item to the sender at the person in prison's expense, donating the item to charity or to the prison, or simply having it thrown away or destroyed.²⁸²

Possession of any property that is unauthorized, is in excess of the maximum quantity allowed, poses a threat to safety or security, or is not registered when required is contraband and may result in confiscation of the property and disciplinary action.²⁸³ If required for an ongoing investigation or by a court order, staff will keep the contraband and dispose of it once any disciplinary, investigative, or court requirements are completed.²⁸⁴ A person should be given written notice of any property removed from their cell by prison staff.²⁸⁵

PRIVACY RIGHTS

2.33 General Standards

People in prison have a very limited federal constitutional Fourth Amendment right of privacy and to be free from unreasonable searches. A test of reasonableness under the Fourth Amendment requires balancing the need for the particular search against the invasion of personal rights. Courts must consider the scope of the intrusion, the manner in which it is conducted, the justification for initiating it, and the place in which it is conducted.²⁸⁶

The California Constitution also guarantees the right of privacy. However, this gives people in California prisons no greater protection than is provided by federal law.²⁸⁷

2.34 Video and Audio Monitoring

California Law Code makes it a crime to eavesdrop on a private conversation between a person in prison and their attorney, religious advisor, or physician.²⁸⁸ See § 2.13, § 2.16, and § 2.20 for more information on the right of communication with attorneys, § 2.22 regarding rights to communication with religious advisors, and Chapter 7 on confidentiality of health care information.

As for other conversations, the Fourth Amendment is not violated by routine monitoring and recording of the telephone calls for a person in prison.²⁸⁹ Likewise law enforcement may monitor and

²⁸² 15 CCR § 3191(c).

²⁸³ 15 CCR §§ 3006, 3191. 15 CCR § 3006; 15 CCR §§ 3190-3192; see also laws barring people in prison from possessing tobacco or any products containing nicotine. Penal Code § 5030.1; 15 CCR § 3006(c)(18); 15 CCR § 3188.

²⁸⁴ 15 CCR § 3191(c).

²⁸⁵ 15 CCR § 3287(a)(4).

²⁸⁶ *Hudson v. Palmer* (1984) 468 U.S. 517, 525-526 [104 S.Ct. 3194; 82 L.Ed.2d 393]; see also *Bell v. Wolfish* (1979) 441 U.S. 520 [99 S.Ct. 1861; 60 L.Ed.2d 447] (people who are held pretrial have diminished scope of reasonable expectation of privacy); *Block v. Rutherford* (1984) 468 U.S. 576 [104 S.Ct. 3277; 82 L.Ed.2d 438] (limited Fourteenth Amendment rights to bodily privacy in pretrial detention).

²⁸⁷ California Constitution, Article I, § 1; Penal Code § 2600; *People v. Loyd* (2002) 27 Cal.4th 997, 1008 [119 Cal.Rptr.2d 360] (noting that prior to 1994, Penal Code § 2600 gave people in California prisons greater privacy protection).

²⁸⁸ Penal Code § 636.

²⁸⁹ *United States v. Van Poyck* (9th Cir. 1996) 77 F.3d 285, 291-292; see also *People v. Windham* (2006) 145 Cal.App.4th 881 [51 Cal.Rptr.3d 884] (recording jail calls does not violate federal or state wiretap laws).

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record unprivileged conversations between a person in prison and their visitors to gather evidence for a criminal case.²⁹⁰

Still, some practices may run afoul of the constitution. In one case, a jail's installation of webcams that broadcast live video footage of people who are being held pre-trial on the Internet was held to violate due process rights.²⁹¹

2.35 Cell and Property Searches

As a general rule, people have no Fourth Amendment reasonable expectation of privacy in their cells, and thus no federal right to be free of random cell searches or to observe cell searches.²⁹² However, the United States Supreme Court has suggested that repeated unjustified cell searches might violate the Fourth Amendment or constitute cruel and unusual punishment in violation of the Eighth Amendment.²⁹³

The CDCR rules provide that cells can be searched on an infrequent or unscheduled (random) basis, or more frequently if security requires, but that random searches cannot be used to harass a person or as a punitive measure. A person has no right to be present during a routine inspection of living quarters. However, they should be allowed to observe any special inspection or search that is initiated because of suspected contraband, so long as it is reasonably possible and safe to do so.²⁹⁴

2.36 Body Searches

Routine visual strip (unclothed body) searches of people in prison, including visual inspection of body cavities, generally are considered to be reasonable whenever officials deem them appropriate.²⁹⁵ Additional searches may be conducted when prison staff have a particular reason to

²⁹⁰ *People v. Loyd* (2002) 27 Cal.4th 997 [119 Cal.Rptr.2d 360].

²⁹¹ *Demery v. Arpaio* (9th Cir. 2003) 378 F.3d 1020, 1029-1030.

²⁹² *Hudson v. Palmer* (1984) 468 U.S. 517, 525-526 [104 S.Ct. 3194; 82 L.Ed.2d 393]; *Block v. Rutherford* (1984) 468 U.S. 576 [104 S.Ct. 3277; 82 L.Ed.2d 438] (similar in regards to the Fourteenth Amendment due process rights of people held pretrial); see also *Mitchell v. Dupnik* (9th Cir. 1996) 75 F.3d 517, 523 (Arizona prison regulations did not create due process liberty interest in being present during cell search of legal papers).

²⁹³ See *Hudson v. Palmer* (1984) 468 U.S. 517, 530 [104 S.Ct. 3194; 82 L.Ed.2d 383].

²⁹⁴ 15 CCR § 3287(a), (c).

²⁹⁵ *Bell v. Wolfish* (1979) 441 U.S. 520, 558-560 [99 S.Ct. 1861; 60 L.Ed.2d 447] (allowing visual cavity inspections after contact visits); *Florence v. County of Burlington* (2012) 566 U.S. 318 [132 S.Ct. 1510; 182 L.Ed.2d 566] (visual strip-searches as routine part of county jail intake struck did not violate Fourth and Fourteenth Amendments even for low-level offenses); *Rickman v. Avanti* (9th Cir. 1988) 854 F.2d 327 (allowing visual strip and cavity searches when people in segregation left cells); *Bull v. City and County of San Francisco* (9th Cir. 2010) 595 F.3d 964, 975 (upholding jail policy of routine visual strip searches of people who are arrested); *Michenfelder v. Sumner* (9th Cir.1988) 860 F.2d 328, 334-336 (Nevada jail visual body cavity searches conducted every time person left or returned to unit and after movement under escort within unit were did not violate Fourth Amendment rights).

believe a person may be carrying contraband.²⁹⁶ Random visual strip searches have been upheld as long as the search is reasonably related to penological interests.²⁹⁷

The CDCR also sometimes uses low dose full body x-ray scanners to search people for contraband in some situations, such as after visiting or work. The CDCR has procedures to limit the amount of x-ray scans a person can be subjected to each year.²⁹⁸

CDCR rules state that a person may be searched, clothed or unclothed, if there is “reasonable suspicion” that they have contraband on their person or may have been involved in “an altercation of any kind”, or as a routine requirement when being moved into or out of a high-security-risk area; a prison warden may also authorize random or spot-check searches to prevent possession of movement of controlled or dangerous substances. Any physical inspection of a person’s body cavity must be conducted under the direct supervision of a physician and physical intrusion into body cavities may be done only by a physician and only after less obtrusive methods have been inconclusive.²⁹⁹ People may also be searched for drugs by a dog sniff search.³⁰⁰ All inspections of people’s bodies should be done in a professional manner which avoids embarrassment or indignity.³⁰¹

People in prison do have a federal constitutional Fourteenth Amendment right to privacy from unrestricted exposure to the glare of guards of the opposite sex, which may be infringed upon only to the extent it is reasonably related to legitimate penological interests.³⁰² Also, searches that involve unreasonable touching of sexual areas by guards of the opposite sex may violate the Fourth or the Eighth Amendment.³⁰³ However, routine clothed pat-down searches by guards of the opposite sex do not violate constitutional rights.³⁰⁴ Likewise, infrequent and casual observations of naked people in prison by guards of the opposite sex is not unconstitutional.³⁰⁵

The CDCR rules prohibit unclothed body searches by officers of the opposite sex, except in emergency situations. Routine clothed pat-down inspections of people in men’s prisons may be performed by staff of either sex, but patdowns of people in women’s prisons must be performed by women staff except in emergencies.³⁰⁶ A person who is transgender is to be searched by an officer of

²⁹⁶ *People v. Collins* (2004) 115 Cal.App.4th 137, 155 [8 Cal.Rptr.3d 731] (visual body cavity search was reasonable where officials received anonymous notes stating that person was selling drugs and had them on his person).

²⁹⁷ *Thompson v. Souza* (9th Cir. 1997) 111 F.3d 694; *Nunez v. Duncan* (9th Cir. 2010) 591 F.3d 1217, 1227-1228.

²⁹⁸ CDCR, Memorandum: Use of Low Dose Full Body X-Ray Scanner (Nov. 30, 2016).

²⁹⁹ 15 CCR § 3287(b).

³⁰⁰ 15 CCR § 3287(c).

³⁰¹ 15 CCR § 3287(b).

³⁰² *Michenfelder v. Sumner* (9th Cir.1988) 860 F.2d 328, 333-334; *Bowling v. Enomoto* (N.D. Cal. 1981) 514 F.Supp. 201.

³⁰³ *Jordan v. Gardner* (9th Cir. 1993) 986 F.2d 1521 (requiring male guards to conduct random non-emergency clothed body searches on people in women’s prisons, including squeezing genitals and pushing on breasts, was cruel and unusual punishment); *Byrd v. Maricopa County Sheriff’s Department* (9th Cir. 2011) 629 F.3d 1135, 1142 (search of person in men’s prison by female officer violated Fourth Amendment where officer touched buttocks and genitals with search watched by multiple officers).

³⁰⁴ *Grummett v. Rusben* (9th Cir. 1985) 779 F.2d 491, 495-496.

³⁰⁵ *Somers v. Thurman* (9th Cir. 1997) 109 F.3d 614; *Michenfelder v. Sumner* (9th Cir.1988) 860 F.2d 328, 334-336.

³⁰⁶ 15 CCR § 3287(b); see also DOM § 54040.5.

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the same biological sex.³⁰⁷ Also, people shall be allowed to shower, perform bodily functions, and change their clothing without non-medical staff of the opposite sex viewing their breasts, buttocks or genitalia, except when incidental to routine cell checks or in urgent circumstances.³⁰⁸ For information on additional rules concerning sexual misconduct by prison staff, see §§ 3.8-3.9.

2.37 Blood, Saliva, and Urine Samples

People in prison may be subjected to involuntary taking of blood, urine, or saliva samples for many penological or medical reasons.

California law requires that many people to provide DNA samples for the Department of Justice DNA Database, usually through buccal (cheek) swabs. This includes all people arrested for, charged with, or convicted of any felony; all juveniles adjudicated for a felony under Welfare and Institutions Code § 602, all people found not guilty by reason of insanity of a felony offense are now required to provide DNA samples; and adults and juveniles convicted of or adjudicated for certain misdemeanors.³⁰⁹ Refusal to provide a DNA samples is a misdemeanor and tampering with or knowingly facilitating collection of a false sample is a felony.³¹⁰ In addition, law enforcement officials are allowed to use “reasonable force” in collecting blood and saliva samples if a person refuses to provide the samples.³¹¹ CDCR rules also set forth with these requirements.³¹² People in prison who do not comply are subject to disciplinary sanctions.³¹³

Mandatory and even forcible takings of DNA samples from people with felony convictions have consistently been upheld by the courts against constitutional privacy, due process, or cruel and unusual punishment claims.³¹⁴ In addition, the U.S. Supreme Court has upheld a Maryland law allowing officers to take DNA samples from anyone arrested for a violent or serious crime.³¹⁵ The California Supreme Court has upheld the taking of DNA samples from people who are arrested, at least where the arrest is for a serious felony and pursuant to a warrant finding probable cause for the arrest.³¹⁶

A California law also requires some people with sex offenses to submit to mandatory AIDS testing. This law has been upheld by the courts.³¹⁷ Prison officials can also require people to submit to AIDS testing on other occasions for public health reasons subject to strict rules. Prison staff or

³⁰⁷ DOM § 52050.16.

³⁰⁸ DOM § 54040.4.

³⁰⁹ Penal Code §§ 295-296.2.

³¹⁰ Penal Code § 298.1.

³¹¹ Penal Code § 298.1(b)-(c).

³¹² 15 CCR § 3025.

³¹³ 15 CCR § 3025(i); 15 CCR § 3315(a)(3)(S).

³¹⁴ *Hamilton v. Brown* (9th Cir. 2011) 630 F.3d 889; *United States v. Kincade* (9th Cir. 2004) 379 F.3d 813; *People v. Travis* (2006) 139 Cal.App.4th 1271; *People v. McCray* (2006) 144 Cal.App.4th 258 [50 Cal.Rptr.3d 343]; *People v. Adams* (2004) 115 Cal.App.4th 243 [9 Cal.Rptr.3d 170]; *Alfaro v. Terhune* (2002) 98 Cal.App.4th 492 [120 Cal.Rptr.2d 197].

³¹⁵ *Maryland v. King* (2013) 569 U.S. 435 [133 S.Ct. 1958; 186 L.Ed.2d 1].

³¹⁶ *People v. Buzza* (2018) 4 Cal.5th 658 [230 Cal.Rptr.3d 681].

³¹⁷ Penal Code § 1202.1; Penal Code § 1202.6; *People v. McVickers* (1992) 4 Cal.4th 81 [13 Cal.Rptr.2d 850].

other people in prison may request that a person be forced to submit to an AIDS test where the person making the request may have come into contact with the person's bodily fluids; the decision whether to allow the testing will be made by the prison's chief medical officer.³¹⁸ A chief medical officer also may order a person in prison to be tested if they conclude that the person has clinical symptoms of HIV infection or AIDS.³¹⁹ There are special procedures by which the person who is ordered to be tested can immediately appeal the decision prior to testing; an appeal may be heard first by a panel of three doctors (the chief medical officer, a doctor selected by the CDCR, and an independent doctor selected by the state Department of Health Services) and then by a superior court.³²⁰

Under California law, prison officials are required to test people in prison for tuberculosis (TB) at least once a year.³²¹

Finally, the CDCR rules allow prison officials to test a person for the use of alcohol or drugs by collecting a urine sample in the following four circumstances:

- ◆ when there is reasonable cause to believe the person has possessed, distributed used, or is under the influence of a controlled substance or alcohol;
- ◆ when mandatory testing is a condition for the person's participation in a specific program, assignment or activity;
- ◆ when testing is part of the disposition of a prior disciplinary hearing for drug or alcohol related misconduct; or
- ◆ when the person is selected for random drug testing.³²²

A person in prison must provide a urine sample when ordered to do so.³²³ Refusal to submit to a drug test is a serious rule violation,³²⁴ and credits lost for refusing to test can never be restored.³²⁵

³¹⁸ Penal Code §§ 7510-7512.

³¹⁹ Penal Code § 7512.5.

³²⁰ Penal Code §§ 7515-7516.5.

³²¹ Penal Code § 7573.

³²² 15 CCR § 3290(c).

³²³ 15 CCR § 3290(d).

³²⁴ 15 CCR § 3315(a)(3)(R).

³²⁵ 15 CCR § 3327(a)(4).

<p>READ CAREFULLY. Please PRINT or TYPE. The information requested will be used by officials of the California Department of Corrections and Rehabilitation (CDCR) to determine whether your questionnaire will be approved or disapproved. The information provided will be maintained in a file pertaining to the inmate.</p> <p>In accordance with the Privacy Act of 1974 (PL93-579), providing your Social Security number is optional. However, any omission or falsification on this questionnaire may cause for denial of visiting. Please mail this form directly to the visiting office of the institution where the inmate is confined.</p>									
NAME OF INMATE YOU WANT TO VISIT (LAST FIRST MIDDLE)							INMATE'S CDC NUMBER		
2. YOUR NAME: (Print your name exactly as indicated on the photo identification you will be using)							SUFFIX (Jr., Sr., etc.)		HOME TELEPHONE NUMBER ()
3. MAIDEN NAME (If applicable)		HAVE YOU EVER USED ANOTHER NAME? IF SO, PLEASE LIST					RELATIONSHIP TO INMATE (Spouse, Son/Daughter, etc)		
4. DATE OF BIRTH		AGE	GENDER (Check one)	BIRTHPLACE (City County State)			Country		
5. ID NUMBER		ID TYPE (Check one) <input type="checkbox"/> DRIVER'S LICENSE <input type="checkbox"/> STATE ID <input type="checkbox"/> MILITARY ID <input type="checkbox"/> PASSPORT <input type="checkbox"/> MATRICULA CONSULAR DE ALTA SEGURIDAD (MCAS)							
OFFICIAL USE ONLY		ISSUED BY (County State Country)					6. SOCIAL SECURITY NUMBER		
EXPIRATION DATE:									
7. CURRENT RESIDENCE ADDRESS: STREET ADDRESS Apt. # (If applicable)					CITY		STATE	ZIP CODE	
8. MAILING ADDRESS: (If different from Residence Address)					CITY		STATE	ZIP CODE	
9. PREVIOUS ADDRESS WITHIN PAST TWO YEARS Apt. # (If applicable)					CITY		STATE	ZIP CODE	
10. ACCOMPANYING MINOR(S) (If any) NAME, DOB, RELATIONSHIP TO INMATE									
1.			2.			3.			
10. Continued									
4.			5.			6.			
11. HAVE YOU EVER VISITED ANOTHER INMATE(S) IN A CALIFORNIA PRISON?									
(Check one) <input type="checkbox"/> YES <input type="checkbox"/> NO If YES, complete Item 11A. Attach additional sheet(s) if more than two inmates.									
11A. INMATE NAME		CDC NUMBER		INSTITUTION WHERE YOU VISIT INMATE			RELATIONSHIP TO INMATE		
1.									
2.									
12. HAVE YOU EVER BEEN DETAINED, ARRESTED, OR CONVICTED OF A CRIME?				If YES, complete Item 12A. List all detentions, arrests and/or convictions. Failure to list all requested information may result in denial of visiting. Attach additional sheet(s) if necessary.					
(Check one) <input type="checkbox"/> YES <input type="checkbox"/> NO									
12A. OFFENSE		APPROX. DATE		DISPOSITION: (Dismissed, Probation, Jail, Prison)			COUNTY		STATE
13. ARE YOU ON PROBATION?		ARE YOU ON PAROLE OR CIVIL ADDICT		HAVE YOU BEEN INCARCERATED IN A STATE		14. ARE YOU CURRENTLY UNDER ANY TYPE OF COURT IMPOSED PROGRAM?			
(Check one) <input type="checkbox"/> YES <input type="checkbox"/> NO		(Check one) <input type="checkbox"/> YES <input type="checkbox"/> NO		(Check one) <input type="checkbox"/> YES <input type="checkbox"/> NO		(Check one) <input type="checkbox"/> YES <input type="checkbox"/> NO			
If YES, answer 13		If YES, answer 13a		If YES, answer 13b		If YES, please explain on additional sheet and attach to this form.			
13A. TYPE: (Court, Formal, Informal, etc.)		SUPERVISING AGENCY		NAME, ADDRESS, AND TELEPHONE NUMBER OF YOUR PROBATION/PAROLE OFFICER			COUNTY		STATE
13B. If you were discharged from an institution or discharged from parole or outpatient status within the last twelve (12) months, you must have prior written approval of the Warden before visiting will be permitted. You will also need to provide a copy of your discharge paperwork.									

14. If you are under 18 years of age and are not an emancipated minor or the inmate's legal spouse, you must have the written notarized consent of a parent or legal guardian and be accompanied by a responsible adult who is also approved to visit. The notarized written consent must be presented each time a minor visits unless prior approval has been attained from the Warden for an inmate to visit with his or her unchaperoned children.
15. **VISITORS WITH DISABILITIES:** If you have special requirements related to your disability (medical implants, prosthetic devices or requiring mobility assistive devices, i.e., crutches, walkers, braces, wheelchairs, battery operated or custom prescribed wheelchairs, guide dog for the visually or hearing impaired, insulin kit with syringes, etc.) you will need to attach a verifying statement from your physician. Visitors with guide dogs will need to provide the dog's certification paperwork upon visit check-in. The CDCR will make every effort to provide reasonable accommodations for all qualified/eligible visitors with disabilities in keeping with the safety and security of the institution and the public. If you have any questions and/or concerns, please contact the institution where the inmate is confined.

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**STATE OF CALIFORNIA
VISITING QUESTIONNAIRE
CDCR 106 (Rev. 05/17)**

DEPARTMENT OF CORRECTIONS AND REHABILITATION

Page 2 of 2

16. The following laws relate to prison visitation:

SUBJECT TO SEARCH: Visitors entering the correctional institution, camp or facility grounds are subject to a search of their person, vehicle and property. Except as described below, visitors may leave the institution, camp, or facility grounds rather than submit to a search of their person, vehicle or property. Refusal to submit to the search will result in denial of visiting for that day.

A vehicle may be chosen to be searched as part of the Department's canine visitor vehicle search program. Visitors have the right to refuse the search, in exercising this right the driver of the vehicle will be required to remove that vehicle from institution grounds, however, the visitor will not lose their ability to visit this date, provided they return without the vehicle. A refusal to consent to a canine vehicle search on part will not prohibit any passengers of the vehicle from continuing in the visiting process. Should consent be given and narcotics and/or contraband are discovered, the driver and all passengers will be subject to arrest. Should the canine alert to the presence of narcotics, regardless if narcotics are discovered, all passengers will be subject to a more intensive search of their person as a condition of visiting on that date.

Visitors may not elect to leave the correctional institution, camp or facility grounds rather than submit to a search when institution officials possess a court issued search warrant or cause for a search arises while the visitor is on the institution grounds and the cause for the search is believed by institutional officials to be a criminal offense.

FIREARMS AND DRUGS ON INSTITUTIONAL GROUNDS/ASSISTING INMATES TO ESCAPE: It is a felony for anyone to assist inmates to escape. Bringing firearms, deadly weapons, explosives, tear gas, drugs, drug paraphernalia, or selling drugs on prison grounds, or giving/selling inmates firearms, weapons, explosives, liquor, cocaine, or other narcotics of any kind of drugs, including marijuana, is a crime (Sections 2772, 2790, 4534, 4535, 4550, 4573, 4573.5, 4573.6, 4573.8, 4573.9, 4574, 4600, California Penal Code).

GIVING LETTERS TO INMATES OR TAKING LETTERS OUT FOR INMATES BY ANYONE IS A MISDEMEANOR: (Sections 4570, 4570.1, California Penal Code).

FALSE IDENTIFICATION: Anyone who falsely identifies himself/herself to gain admittance to a prison is guilty of a misdemeanor. Persons previously convicted of a felony in the State who come upon the grounds of a prison without permission of the official in charge are guilty of a felony. (Sections 4570.5, 4571, California Penal Code).

PERIOD OF EMERGENCY: In the event of an emergency situation that affects a significant portion of the inmate population at an institution, the visiting program and other program activities may be suspended during the period of emergency (Section 2601(d), California Penal Code).

GIVING OR RECEIVING GIFTS: Visitors shall not give or receive gifts from inmates (Section 3010, California Code of Regulations, Title 15, Division 3, Chapter 1).

HOSTAGES: Hostages will not be recognized for bargaining purposes during attempted escapes by inmates (Section 3304, California Code of Regulations, Title 15, Division 3, Chapter 1).

17. If you are APPROVED to visit, the inmate will be notified and it is his/her responsibility to notify you.
If you are DISAPPROVED to visit, the institution will notify you by mail. You will not be allowed to visit until your application is approved.

I have read and understand the above information and agree to follow all Federal, State and CDCR rules and regulations. <div style="display: flex; justify-content: space-between;"> _____ VISITOR SIGNATURE _____ DATE </div>	<div align="center">VERIFICATION OF MAILING</div> I have mailed this Visiting Questionnaire to the visitor applicant. <div style="display: flex; justify-content: space-between;"> _____ INMATE SIGNATURE/CDC # _____ DATE </div>
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OFFICIAL USE ONLY – TO BE COMPLETED BY INSTITUTION STAFF

Criminal History: ☐ YES ☐ NO CII/FBI #: _____

☐ APPROVED

☐ DISAPPROVED, for the following reason(s): (if DISAPPROVED, the applicant and inmate are to be informed in writing of the disapproval.)

☐ Omissions and/or falsifications Section(s): _____ ☐ Need copy of Declaration of Discharge

☐ Need disposition(s) for _____

☐ Applicant is under: ☐ Parole ☐ Formal Probation ☐ Civil Addict Outpatient Supervision

☐ Arrest record received via DOJ indicates applicant has an extensive and/or recent history of criminal activity for offenses that are particularly sensitive to the institutional security. May reapply after: (DATE: _____)

☐ Other: _____

☐ Applicant's privileges to visit will be reconsidered:

☐ Upon receipt of the above requested information and/or ☐ after (DATE: _____)

PRINT NAME	SIGNATURE	TITLE	INSTITUTION	DATE
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☐ INMATE/VISITOR NOTIFIED ON (DATE) _____ ☐ BY WHOM _____