

**State of California
Office of Administrative Law**

In re:

Department of Corrections and
Rehabilitation

Regulatory Action:

Title 15, California Code of Regulations

Adopt sections:

Amend sections: 3000, 3006, 3170.1, 3172.1,
3173.2, 3315, 3323

Repeal sections:

NOTICE OF APPROVAL OF EMERGENCY
REGULATORY ACTION

Government Code Sections 11346.1 and
11349.6, and Penal Code Section 5058.3

OAL File No. 2011-1121-02 EON

On October 5, 2011, Governor Edmund G. Brown Jr. signed into law urgency legislation (Senate Bill 26) which took effect immediately enacting section 4576 of the Penal Code concerning wireless communication devices in prisons. The Department of Corrections and Rehabilitation has certified as an Operational Necessity under Penal Code section 5058.3 that amendments to sections 3000, 3006, 3170.1, 3172.2, 3173.2, 3315, and 3323 of title 15 of the California Code of Regulations be adopted as an emergency to implement the changes made by the adoption of section 4576 of the Penal Code.

OAL approves this emergency regulatory action pursuant to sections 11346.1 and 11349.6 of the Government Code, and section 5058.3 of the Penal Code.

This emergency regulatory action is effective on 12/9/2011 and will expire on 5/18/2012. The Certificate of Compliance for this action is due no later than 5/17/2012.

Date: 12/9/2011

RAIG TARPENNING

Craig S. Tarpenning
Senior Staff Counsel

For: DEBRA M. CORNEZ
Assistant Chief Counsel/
Acting Director

Original: Matthew Cate
Copy: Randy Blackwell

NOTICE PUBLICATION REGULATORY ACTION SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-08)

EMERGENCY

OAL FILE NUMBERS Z-	NOTICE FILE NUMBER	REGULATORY ACTION NUMBER	EMERGENCY NUMBER 2011-1121-02EON
For use by Office of Administrative Law (OAL) only		2011 DEC -9 PM 1:28	
NOTICE		REGULATIONS	
2011 NOV 21 PM 2:18		OFFICE OF ADMINISTRATIVE LAW	

AGENCY WITH RULEMAKING AUTHORITY
California Department of Corrections and Rehabilitation

AGENCY FILE NUMBER (if any)

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

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

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Wireless Communication Devices/Cell Phones	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
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SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT	ENDORSED APPROVED DEC 9 2011 Office of Administrative Law
	AMEND	
	3000, 3006, 3170.1, 3172.1, 3173.2, 3315 3323	
TITLE(S) 15	REPEAL	

3. TYPE OF FILING

<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input checked="" type="checkbox"/> Other (Specify) <u>Emergency Op Nec. PC 5050.3</u>	

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

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)

<input type="checkbox"/> Effective 30th day after filing with Secretary of State	<input checked="" type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> §100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify) _____
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6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

<input checked="" type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal
<input type="checkbox"/> Other (Specify) _____		

7. CONTACT PERSON Randy Blackwell	TELEPHONE NUMBER (916) 445-2220	FAX NUMBER (Optional) (916) 324-6075	E-MAIL ADDRESS (Optional) randy.blackwell@cdcr.ca.gov
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE 	DATE 11/16/11
TYPED NAME AND TITLE OF SIGNATORY Terri McDonald, Undersecretary, Operations	

TEXT OF PROPOSED REGULATIONS

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

Title 15, Division 3.

3000 Definitions.

Section 3000 is amended to add the definitions below and merge them alphabetically with existing definitions in this section.

Dangerous contraband means materials or substances that could be used to facilitate a crime or could be used to aid an escape or that have been altered from their original manufactured state or purpose and which could be fashioned into a weapon. Examples would include, but not be limited to, metal, plastic, wood, or wire. Also included are: sharpened objects such as scissors or other tools not authorized to be in the inmate's possession, as well as poison, caustic substances, ~~or~~ flame producing devices i.e. matches or lighters; or cellular telephones or wireless communication devices or any components thereof, including, but not limited to, a subscriber identity module (SIM card), memory storage device, cellular phone charger.

Possession means having actual physical custody or control of an object and Constructive Possession exists where a person has knowledge of an object plus the ability to control the object, even if the person has no physical contact with it.

Note: Authority cited: Sections 2717.3, 3000.03, 5058 and 5058.3, Penal Code; Section 10115.3(b), Public Contract Code; and Sections 4525(a), 4526 and 14837, Government Code. Reference: Sections 186.22, 243, 314, 530, 532, 646.9, 653m, 832.5, 1170.05, 1203.8, 1389, 2080, 2081.5, 2600, 2601, 2700, 2717.1, 2717.6, 2932.5, 3003.5(a), 3550, 4570, ~~4576~~, 5009, 5054, 5068, 7000 et seq. and 11191, Penal Code; Sections 1132.4 and 1132.8, Labor Code; Sections 10106, 10108, 10108.5, 10115, 10115.1, 10115.2, 10115.3 and 10127, Public Contract Code; and Section 999, Military and Veterans Code; Section 391, Code of Civil Procedure; Section 297.5, Family Code; Section 8550 and 8567, Government Code; Governor's Prison Overcrowding State of Emergency Proclamation dated October 4, 2006; In re Bittaker, 55 Cal.App.4th 1004, 64 Cal. Rptr. 2d 679; Section 11007, Health and Safety Code; and Madrid v. Cate (U.S.D.C. N.D. Cal. C90-3094 TEH).

Section 3006 Contraband remains unchanged.

Subsection 3006 (a) is amended to read:

(a) Dangerous Property. Inmates may not possess or have under their control or constructive possession any weapons, explosives, explosive making material, poisons or any destructive devices, nor shall they possess or assist in circulating any writing or voice recording which describes the making of any weapons, explosives, poisons, ~~or~~ destructive devices; or cellular telephones or wireless communication devices or any component thereof including, but not

limited to, a subscriber identity module (SIM card) or memory storage devices and cellular telephone chargers.

Subsection 3006(c)(1) through 3006(c)18) remains unchanged.

Subsection 3006(c)(19) is being deleted.

~~(19) Cellular telephone or other electronic communications device.~~

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

3170.1 General Visiting Guidelines.

Subsections 3170.1 (a) through (g) remain unchanged.

Subsection 3170.1 (h) is being adopted to read:

(h) Possession and/or use of a cell phone, wireless communication device or their components thereof is prohibited within the secure perimeter of the institution without authorization. Any such unauthorized device is subject to confiscation and the visitor may be subject to penalties allowed by law. Any visitor who brings such devices inside the secure perimeter is deemed to have consented to the department to preventing electronic communications to and from the device. Notice shall be posted in areas where visitors are searched.

NOTE: Authority cited: section 5058, Penal Code. Reference: Sections 2600, 2601(c)(2), 4570, 4576 and 5054, Penal Code.

3172.1 Approval/Disapproval of Prospective Visitors.

Subsection 3172.1(b)(3)(B) is being amended to read:

(B) Transporting contraband (weapons, alcohol, escape and drug paraphernalia, cell phones or other wireless communication devices or the components thereof etc.) in or out of a state prison, correctional institution/facility or jail.

Subsections 3172.1(c) through (g) remain unchanged.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 4576, and 5054, Penal Code.

3173.2 Searches and Inspections.

Subsections 3173.2(a) through (g) remain unchanged.

Subsection 3173.2(h) is being adopted to read:

(h) Any person who brings an unauthorized cell phone or wireless communication device within the secure perimeter of the California Department of Corrections and Rehabilitation facility is deemed to have given consent to the department to prevent wireless communication using available technology.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 4576 and 5054, Penal Code.

3315 Serious Rule Violations.

Subsection 3315(a)(3)(A) through 3315(a)(3)(W) remain unchanged.

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

(X) Possession and/or constructive possession of a cell phone or wireless communication device or any component thereof including, but not limited to, a subscriber identity module (SIM card), memory storage devices or cellular telephone chargers.

Existing Subsection 3315(a)(3)(X) is renumbered and relocated to new subsection 3315(a)(3)(Y) and remains unchanged.

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

3323 Disciplinary Credit Forfeiture Schedule.

Subsection 3323(a) is amended to read:

(a) Upon a finding of guilt of a serious rule violation, a credit forfeiture against any determinate term of imprisonment or any minimum eligible parole date for an inmate sentenced to an indeterminate sentence, as defined in in section 3000 Indeterminate Sentence Law (ISL), shall be assessed within the ranges specified in (b) through (h) below:

Subsections 3323(b) through 3323(f)(14) remain unchanged.

Subsection 3323(f)(15) is adopted to read:

(15) Possession and/or constructive possession of a cellular telephone or wireless communication device or any component thereof including, but not limited to, a subscriber identity module (SIM card), memory storage devices or cellular telephone chargers.

Subsection 3323(h)(7) is amended to read:

(7) Possession of dangerous contraband as identified in section 3000 excluding cell phones or wireless communication devices or any component or accessory thereof.

Subsection 3323(j) is amended to read:

(j) Inmates shall be provided written notice of any credit forfeited by disciplinary action, of anticipated release date changes based on credit forfeiture set aside through the departmental appeal process, or a ~~Board of Prison Terms~~ Board of Parole Hearings review.

Subsection 3323(k)(4) is amended to read:

(4) A ~~Board of Prison Terms~~ Board of Parole Hearings review results in restoration of all or part of the credit forfeiture ordered in the disciplinary hearing.

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