

**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: 3315, 3375.2

Repeal sections:

**NOTICE OF APPROVAL OF EMERGENCY
REGULATORY ACTION**

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

OAL Matter Number: 2016-0316-02

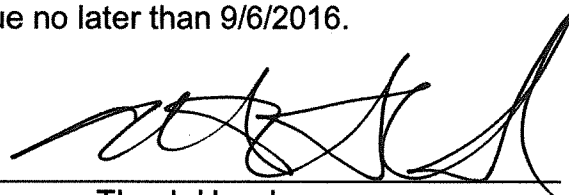
**OAL Matter Type: Emergency Operational
Necessity (EON)**

This rulemaking action by the Department of Corrections and Rehabilitation (Department) is an emergency of operational necessity pursuant to Penal Code section 5058.3. This action amends title 15, sections 3315 and 3375.2 of the California Code of Regulations to remove language that limited inmates from participating in Substance Abuse Treatment (SAT) programs. It also adopts a new administrative determinant code that allows inmates more access to SAT programs.

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 3/29/2016 and will expire on 9/7/2016. The Certificate of Compliance for this action is due no later than 9/6/2016.

Date: March 29, 2016



**Thanh Huynh
Senior Attorney**

**For: Debra M. Cornez
Director**

**Original: Scott Kernan
Copy: Jon Struckmann**

EMERGENCY

For use by Secretary of State only

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-	REGULATORY ACTION NUMBER	EMERGENCY NUMBER 2016-0316-02EON
------------------	---------------------------------	--------------------------	--

For use by Office of Administrative Law (OAL) only

<p>2016 MAR 16 P 3:24</p> <p>OFFICE OF ADMINISTRATIVE LAW</p>	<p>2:21 PM</p>
NOTICE	REGULATIONS

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

MAR 29 2016

2:21 PM

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) Substance Abuse Treatment referrals and Admin. Determinants	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
---	--

2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)	SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT
		AMEND
	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 §511349.3, 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. Necessity - PC 5058.3</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 January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input checked="" type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> \$100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify)
---	---	--	--

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

<input 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 Jon Struckmann	TELEPHONE NUMBER (916) 445-2276	FAX NUMBER (Optional) (916) 324-6075	E-MAIL ADDRESS (Optional) jonathan.struckmann@cdr.ca.gov
-------------------------------------	------------------------------------	---	---

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 3-5-16
TYPED NAME AND TITLE OF SIGNATORY KENNETH J. POGUE, Undersecretary, Administration and Offender Services, CDCR	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

MAR 29 2016

Office of Administrative Law

3315. Serious Rule Violations.

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

Subsections 3315(a) through 3315(f)(5)(J)1 remain unchanged.

(J) Violation of subsections 3016(a), 3016(c), and 3290(d) shall result in:

1. For the first offense, the inmate shall be required to attend Alcoholic Anonymous or Narcotic Anonymous meetings or assigned to a substance abuse education and/or treatment programs to the extent such programs are available in the institution/facility and loss of pay for 90 days from a paid work assignment.

Subsections 3315(f)(5)(J)2. and (f)(5)(J)3 are amended to read:

2. For the second offense, the inmate shall be referred for endorsement to a substance abuse treatment program, ~~provided that program eligibility criteria is met~~ and loss of pay for 180 days from a paid work assignment.

3. For the third offense, the inmate shall be referred for endorsement to a substance abuse treatment program, ~~provided that program eligibility criteria is met~~, and mandatory treatment shall be a condition of parole. Additionally, the inmate shall be referred for removal from paid work assignment for one year for the third offense.

Subsections 3315 3315(f)(5)(K) through 3315(f)(5)(M)1 remain unchanged.

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

3375.2. Administrative Determinants.

Subsections 3375.2(a) through 3375.2(b)(21) remain unchanged.

(b) The following three-letter codes are used to indicate those administrative or irregular placement conditions known as administrative determinants, which may be imposed by Departmental officials to override the placement of an inmate at a facility according to his/her placement score.

Subsection 3375.2(b)(22) through 3375.2(b)(32) are adopted, renumbered, and amended to read:

(22) REH. Inmate requires retention or transfer to a Rehabilitative Program, other than a Reentry Hub, in order to receive treatment for an identified rehabilitative program need.

~~(22)~~(23) REN. Inmate is currently endorsed to or requires transfer to a Reentry Hub program and a Reentry Hub program is not available at a facility with a security level which is consistent with the inmate's placement score.

~~(23)~~(24) SCH. Inmate is involved in an academic program which is not available at a facility with a security level that is consistent with his/her placement score.

~~(24)~~(25) SEC. Shall be used only by a CSR to indicate that the inmate has been designated as a Security Concern by an ICC and requires Close B Custody.

~~(25)~~(26) SEX. Inmate has a prior incidence of rape, oral copulation, sodomy, or a lewd and lascivious act which requires restricted custody or placement.

~~(26)~~(27) SOR. Inmate's bisexual or homosexual orientation may require special placement.

~~(27)~~(28) STG. Documentation establishes that the inmate's STG designation may require special attention or placement consideration.

~~(28)~~(29) TIM. Inmate's time to serve is long, requiring placement at a facility with a security level higher than that which is consistent with his/her placement score.

~~(29)~~(30) VIO. Inmate has a current or prior conviction for a violent felony, or a sustained juvenile adjudication including, but not limited to, those listed under Penal Code section 667.5(c), which, as determined by the CSR, requires placement in a facility with a higher security level than that indicated by his/her placement score.

(A) For the purposes of this subdivision, a "sustained juvenile adjudication" means a guilty determination or ruling rendered in a juvenile judicial proceeding.

(B) The following administrative determinations regarding allegations of violent acts, including but not limited to those offenses described in Penal Code Section 667.5(c), shall have the same force and effect as a current or prior conviction for a violent felony or a sustained juvenile adjudication:

1. Board of Parole Hearings or Parole Hearings Division good cause finding or probable cause finding, or;
2. California Youth Authority/Division of Juvenile Justice/Youth Offender Parole Board sustained allegation.

(C) A probation or Post-Release Community Supervision violation finding in a court of law involving, but not limited to those offenses described in Penal Code Section 667.5(c), shall have the same force and effect as a current or prior conviction in a court of law for a violent felony.

~~(30)~~(31) VOC. Inmate is involved in a Career Technical Education program, also referred to as a vocational program, which is not available at a facility with a security level which is consistent with the inmate's placement score.

~~(31)~~(32) WOR. Inmate has a work skill in a critical trade which warrants special placement consideration.

Note: Authority cited: Sections 5058 and 5058.3, Penal Code. Reference: Sections 3450, 5054 and 5068, Penal Code; *Sandin v. Connor* (1995) 515 U.S. 472; *Madrid v. Gomez* (N.D. Cal. 1995) 889 F.Supp. 1146; *Wright v. Enomoto* (N.D. Cal. 1976) 462 F. Supp. 397; and *Stoneham v. Rushen* (1984) 156 Cal. App. 3d 302.