

**STATE OF CALIFORNIA**  
**OFFICE OF ADMINISTRATIVE LAW**

**2018 OAL DETERMINATION NO. 5**  
**(OAL MATTER NO. CTU2018-0530-01)**

**ENDORSED - FILED**  
In the office of the Secretary of State  
of the State of California

**DEC 06 2018**

1:39 p

**REQUESTED BY:** Trayzon C. Gilbert

**CONCERNING:** Department Operations Manual (DOM) Article 25, section 52100.4; Inmate Indecent Exposure and Sexual Disorderly Conduct Management; Security Measures, Issued by the Department of Corrections and Rehabilitation.

**DETERMINATION ISSUED PURSUANT TO GOVERNMENT  
CODE SECTION 11340.5.**

**SCOPE OF REVIEW**

A determination by the Office of Administrative Law (OAL) evaluates whether or not an action or enactment by a state agency complies with California administrative law governing how state agencies adopt regulations. Nothing in this analysis evaluates the advisability or the wisdom of the underlying action or enactment. Our review is limited to the sole issue of whether the challenged rule meets the definition of "regulation" as defined in Government Code section 11342.600 and is subject to the Administrative Procedure Act (APA). If a rule meets the definition of "regulation," but was not adopted pursuant to the APA and should have been, it is an "underground regulation" as defined in California Code of Regulations, title 1, section 250.<sup>1</sup> OAL has neither the legal authority nor the technical expertise to evaluate the underlying policy issues involved in the subject of this determination.

**CHALLENGED RULE**

The challenged rule was issued by the Department of Corrections and Rehabilitation (Department) and is contained in Article 25, section 52100.4 of the Department's Operations Manual (DOM).<sup>2</sup> DOM section 52100.4 establishes security measures for inmates who engage in acts of indecent exposure or sexual disorderly conduct. It is attached as Exhibit A, hereafter referred to as DOM section 52100.4.

<sup>1</sup> As defined by title 1, section 250(a), an

"Underground regulation" means any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, including a rule governing a state agency procedure, that is a regulation as defined in Section 11342.600 of the Government Code, but has not been adopted as a regulation and filed with the Secretary of State pursuant to the APA and is not subject to an express statutory exemption from adoption pursuant to the APA.

<sup>2</sup> The challenged rule attached as Exhibit A was taken from the Department's website at: [https://www.cdcr.ca.gov/Regulations/Adult\\_Operations/docs/DOM/DOM%202018/2018%20DOM.pdf](https://www.cdcr.ca.gov/Regulations/Adult_Operations/docs/DOM/DOM%202018/2018%20DOM.pdf), on November 26, 2018, as the copy provided by the Petitioner, although legible, was not of adequate quality for reproduction.

## **DETERMINATION**

OAL determines that DOM section 52100.4 meets the definition of “regulation” that should have been adopted pursuant to the APA, but was not. DOM section 52100.4 is therefore an underground regulation.

## **FACTUAL BACKGROUND**

On May 30, 2018, Trayzon Gilbert (Petitioner) submitted a petition to OAL challenging DOM section 52100.4 as an underground regulation. DOM section 52100.4 issued by the Department, is part of Article 25 – “Inmate Indecent Exposure and Sexual Disorderly Conduct Management,” that indicates an effective date of September 2007.

OAL accepted the petition for consideration on July 24, 2018. The petition was published in the California Regulatory Notice Register on August 10, 2018. Comments from the public were solicited until September 10, 2018. OAL did not receive any comments. A response to the petition from the Department was due no later than September 25, 2018. No response was received from the Department.

DOM section 52100.4 is titled “Security Measures,” and provides the following:

Inmates who engage in acts of Indecent Exposure or Sexual Disorderly Conduct will be subject to Security Measures that are designed to decrease the opportunity for the inmate to repeat the behavior and/or minimize the impact that the behavior has on prison staff and others. Security Measures are tools used by staff for a determinate period to identify, prevent, reduce, and eliminate the behavior.

DOM section 52100.4 articulates security measure requirements concerning the following subject areas:

- Security Precautions
- Application of Security Precautions
- Common Area Offenses
- In Cell/Bed Area Offenses
- Yellow Cell Front Coverings
- Cell Front Covering Requirements
- Exposure Control Jumpsuit
- Disciplinary Restrictions
- District Attorney Referrals
- Classification
- Assessment of SHU Term
- Family Visiting Restrictions
- Mental Health Referral and Evaluations

- Training
- Employee Policy Recommendations regarding Indecent Exposure or Sexual Disorderly Conduct Incidents

In particular, Petitioner is concerned with the requirements for covering the cell windows of inmates accused of indecent exposure with yellow coverings or placards, as well as the mandatory use of "Exposure Control Jumpsuits" (a jumpsuit with a padlock on it) for a minimum of 30 days.

## UNDERGROUND REGULATIONS

Government Code section 11340.5, subdivision (a), provides that:

No state agency shall issue, utilize, enforce, or attempt to enforce any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, which is a regulation as defined in [Government Code] Section 11342.600, unless the guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule has been adopted as a regulation and filed with the Secretary of State pursuant to [the APA].

When an agency issues, utilizes, enforces, or attempts to enforce a rule in violation of Government Code section 11340.5 it creates an underground regulation as defined in title 1, California Code of Regulations, section 250.

OAL may issue a determination as to whether or not an agency has issued, utilized, enforced, or attempted to enforce a rule that meets the definition of "regulation" as defined in Government Code section 11342.600 and should have been adopted pursuant to the APA (Gov. Code sec.11340(b)). An OAL determination is not enforceable against the agency through any formal administrative means, but it is entitled to "due deference" in any subsequent litigation of the issue. (*Grier v. Kizer* (1990) 219 Cal.App.3d 422 [268 Cal.Rptr. 244].)

## ANALYSIS

OAL's authority to issue a determination extends only to the limited question of whether the challenged rule is a "regulation" subject to the APA. This analysis will determine (1) whether the challenged rule is a "regulation" within the meaning of Government Code section 11342.600, and (2) whether the challenged rule falls within any recognized exemption from APA requirements.

A regulation is defined in Government Code section 11342.600 as:

... every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure.

In *Tidewater Marine Western, Inc. v. Victoria Bradshaw* (1996) 14 Cal.4<sup>th</sup> 557, 571 [59 Cal.Rptr.2d 186], the California Supreme Court found that:

A regulation subject to the Administrative Procedure Act (APA) (Gov. Code, §11340 et seq.) has two principal identifying characteristics. First, the agency must intend its rule to apply generally, rather than in a specific case. The rule need not, however, apply universally; a rule applies generally so long as it declares how a certain class of cases will be decided. Second, the rule must implement, interpret, or make specific the law enforced or administered by the agency, or govern the agency's procedure (Gov. Code, §11342, subd. (g)).<sup>3</sup>

As stated in *Tidewater*, the first element used to identify a “regulation” is whether the rule applies generally. As *Tidewater* points out, a rule need not apply to all persons in the state of California. It is sufficient if the rule applies to a clearly defined class of persons or situations.<sup>4</sup>

DOM section 52100.4 was issued by the Department to “ensure that every Indecent Exposure or Sexual Disorderly Conduct incident is reported, tracked, managed, subject to discipline, and referred for prosecution as set forth in [the] policy.” It applies to all inmates within the custody of the Department and is, therefore, a rule of general applicability.

The second element used to identify a “regulation” as stated in *Tidewater* is that the rule must implement, interpret or make specific the law enforced or administered by the agency, or govern the agency's procedure. Penal Code section 5054 specifically provides that the care and custody of inmates, as well as the management and control of state prisons, is vested in the Secretary of the Department. It states:

Commencing July 1, 2005, the supervision, management and control of the state prisons, and the responsibility for the care, custody, treatment, training, discipline and employment of persons confined therein are vested in the Secretary of the Department of Corrections and Rehabilitation.

The Secretary, through the use of the Department Operations Manual, is implementing, interpreting and making specific the duties delegated to the Secretary pursuant to section 5054 of the Penal Code when managing inmates who are alleged to have committed Indecent Exposure or Sexual Disorderly Conduct. Indecent Exposure is defined in Penal Code section 314 and Sexual Disorderly Conduct is defined in Title 5, section 3000 of the California Code of Regulations. DOM section 52100.4 further implements, interprets and makes specific those provisions of law.

DOM section 52100.4, therefore, meets the definition of “regulation” in Government Code section 11342.600.

The final issue to examine is whether the challenged rule falls within an express statutory exemption from the APA. Exemptions from the APA can be general exemptions that apply to

<sup>3</sup> Section 11342(g) was re-numbered in 2000 to section 11342.600 without substantive change.

<sup>4</sup> See also *Roth v. Department Of Veterans Affairs*, (1980) 110 Cal.App.3d 14, 19; 167 Cal.Rptr. 552, 557.

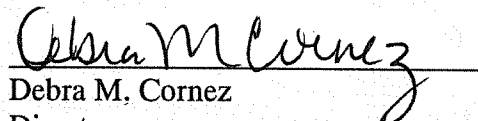
all state rulemaking agencies. Exemptions may also be specific to a particular rulemaking agency or a specific program. Pursuant to Government Code section 11346, the procedural requirements established in the APA “shall not be superseded or modified by any subsequent legislation *except to the extent that the legislation shall do so expressly.*” (Emphasis added.)

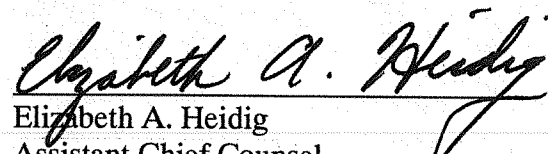
The Department has not identified an express statutory exemption from the APA that would apply to DOM section 52100.4, nor did OAL find such an exemption.

### CONCLUSION

In accordance with the above analysis, OAL determines that DOM section 52100.4 meets the definition of “regulation” that should have been adopted pursuant to the APA, but was not. DOM section 52100.4, therefore, is an underground regulation.

Date: December 6, 2018

  
Debra M. Cornez  
Director

  
Elizabeth A. Heidig  
Assistant Chief Counsel

# EXHIBIT A

- Upon return to the institution after a mutual aid call, the employee in charge shall call the watch commander to advise of the return and report any unusual incidents or activity while away from the institution.
- Inmate firefighters shall not drive on a public road, except in an extreme emergency.
- On extended mutual aid responses where the crew is to be away from the institution for more than one day, the employee in charge shall notify the watch commander at least every 24 hours, or as soon as practical thereafter, of the status of the crew.

**52090.22 Revisions**

The Deputy Director, Administration Services, or designee shall ensure that the contents of this section are current.

**52090.23 References**

CCR.

National Fire Protection Association Life Safety Code.

PC.

VC.

## ARTICLE 25 — INMATE INDECENT EXPOSURE AND SEXUAL DISORDERLY CONDUCT MANAGEMENT

*Effective-September 2007*

**52100.1 Policy**

Indecent Exposure and Sexual Disorderly Conduct will not be tolerated by the California Department of Corrections and Rehabilitation (CDCR). Penal Code (PC) Section 314 defines Indecent Exposure as "the willful and lewd exposure of a person, or the private parts thereof, in any public place or in any place where there are present other persons to be offended or annoyed thereby." Sexual Disorderly Conduct is defined in California Code of Regulations (CCR) Section 3000 as "every person who touches, without exposing, their genitals, buttocks or breasts in a manner, or other circumstance of this touching, that demonstrates it is for the purpose of sexual arousal, gratification, annoyance, or offense, and that any reasonable person would consider this conduct offensive."

**52100.2 Purpose**

To ensure that every Indecent Exposure or Sexual Disorderly Conduct incident is reported, tracked, managed, subject to discipline, and referred for prosecution as set forth in this policy. An inmate who engages in Indecent Exposure or Sexual Disorderly Conduct shall be subject to a variety of Security Measures in an attempt to identify, prevent, reduce, and eliminate the opportunity to repeat the behavior.

It is the policy of the Department to provide support to every employee who observes an Indecent Exposure or Sexual Disorderly Conduct incident. Such support can include the Employee Assistance Program, the Employee Post Trauma Program, the Equal Employment Opportunity (EEO) referral process, and the imposition of Security Measures as described in Section 52100.4.

**52100.3 Implementation****Incident Reporting and Tracking:**

Every Indecent Exposure or Sexual Disorderly Conduct incident shall be documented by the observing employee on a CDC Form 115, Rules Violation Report (RVR).

Indecent Exposure is classified as either a Division D or a Division B offense. If the inmate has no prior criminal convictions for PC Section 314, Indecent Exposure, or PC Section 288, Lewd Act on a Child or Dependent Person, the inmate will be charged with the Division D offense of Indecent Exposure. If the inmate has any prior criminal conviction for PC Section 314 or 288, the inmate will be charged with the Division B offense of Indecent Exposure with a Prior.

In addition, the Indecent Exposure shall be reported as an incident on the CDCR Form 837, Crime/Incident Report. All Indecent Exposure Incident CDCR 837's shall be referred to the District Attorney.

An inmate who masturbates or engages in inappropriate touching of his/her genitals, buttocks, or breasts in public without exposing his/her genitals, for example under the clothing, will be charged with the Division E offense of Sexual Disorderly Conduct.

An inmate who engages in Indecent Exposure or Sexual Disorderly Conduct shall be referred for a mental health assessment through the submittal of a CDCR Form 115-MH, Rules Violation Report: Mental Health Assessment Request.

All employees observing an Indecent Exposure or Sexual Disorderly Conduct incident shall be provided the opportunity to complete a CDCR Form 2152, Employee Report of Inmate Sexual Misconduct. All Supervisors are required to complete the appropriate sections of the CDCR 2152, regardless of the employee's decision to complete the form.

**Inmate clerks shall not prepare or type an Indecent Exposure or Sexual Disorderly Conduct RVR**

The assigned Captain shall be responsible for identifying all Indecent Exposure and Sexual Disorderly Conduct offenders within their area. A tracking list shall be distributed on a monthly basis to Correctional Administrators, Facility Lieutenants, the Chief/Senior Psychiatrist or Chief/Senior Psychologist, and the Indecent Exposure Review Committee (IERC), (see Section 52100.5 "Monitoring").

This list is highly restrictive and shall not be duplicated, but shall be available for staff review at the facility/unit program office.

**52100.4 Security Measures**

Inmates who engage in acts of Indecent Exposure or Sexual Disorderly Conduct will be subject to Security Measures that are designed to decrease the opportunity for the inmate to repeat the behavior and/or minimize the impact that the behavior has on prison staff and others. Security Measures are tools used by staff for a determinate period to identify, prevent, reduce, and eliminate the behavior.

There are two types of Security Measures. They are immediate Security Precautions and post Disciplinary Restrictions.

**Security Precautions:**

Immediate Security Precautions are implemented following a report, whether verbal or written, of Indecent Exposure or Sexual Disorderly Conduct. Correctional Officers/Sergeants shall implement Security Precautions. These Security Precautions shall be approved, tracked, and reviewed by the Lieutenant/assigned Captain on a weekly basis. In an Administrative Segregation Unit (ASU), Security Housing Unit (SHU), and Psychiatric Services Unit (PSU) the assigned Captain in consultation with the Interdisciplinary Treatment Team (IDTT) may remove or extend these precautions based on the overall case factors and institution security needs as appropriate.

Security Precautions include:

- Solid door with yellow placard, cell and/or side-window covering, or other devices primarily used to alert staff of an inmate's propensity to engage in Indecent Exposure or Sexual Disorderly Conduct behavior and secondarily used to limit the inmate's ability to observe staff while engaging in the behavior.
- Use of an Exposure Control Jumpsuit to limit the ability of the inmate to engage in the behavior.
- Temporary restriction from yard or other settings which may provide a venue for the behavior.
- Substitution of activity setting to reduce the possibility of the behavior impacting staff.

**Application of Security Precautions:**

Upon the first and subsequent Indecent Exposure or Sexual Disorderly Conduct offense(s), the inmate shall be identified on an Indecent Exposure Offender Tracking Memorandum.

**Common Area Offenses:**

If the Indecent Exposure or Sexual Disorderly Conduct occurs outside of the cell/bed area in the General Population (GP) the following protocols shall be followed:

All offenses: Place in Administrative Segregation/status. Apply yellow cell front covering and Exposure Control Jumpsuit.

No yard access for 10 days followed by Exposure Control Jumpsuit while outside of cell.

If the Indecent Exposure or Sexual Disorderly Conduct occurs outside of the cell/bed area in ASU/SHU the following protocol shall be followed:

All offenses: Apply yellow cell front covering.

First offense: No yard access for 10 days followed by Exposure Control Jumpsuit while outside of cell, and apply yellow window covering in an equipped facility.

Second offense: No yard access for 10 days followed by Exposure Control Jumpsuit while outside of cell, and apply yellow window covering in an equipped facility.

If the Indecent Exposure or Sexual Disorderly Conduct occurs outside of the cell in PSU the following protocol shall be followed:

All offenses: Apply yellow cell front covering.

First offense: No yard access for 10 days, followed by concrete yard for 60 days. Exposure Control Jumpsuit optional.

Second offense: No yard access for 10 days, followed by concrete yard for 120 days. Exposure Control Jumpsuit optional.

#### **In Cell/Bed Area Offenses:**

If the Indecent Exposure or Sexual Disorderly Conduct occurs inside the cell/bed area in the GP the following protocol shall be followed:

All offenses: Place in Administrative Segregation/status. Apply yellow cell front covering.

If the Indecent Exposure or Sexual Disorderly Conduct occurs inside the cell/bed area in ASU/SHU the following protocol shall be followed:

All offenses: Apply yellow cell front covering.

If the Indecent Exposure or Sexual Disorderly Conduct occurs inside the cell/bed area in PSU the following protocol shall be followed:

All offenses: Apply yellow cell front covering.

Restricted to 30 days concrete yard access.

If the Indecent Exposure or Sexual Disorderly Conduct offense occurs in a PSU Group setting the following protocol shall be followed:

Immediately remove inmate from group and return to cell.

Apply yellow cell front covering.

First offense: Refer to IDTT. Recommend 30-day suspension of group where, on a case-by-case basis, IDTT/clinical staff may temporarily restrict the inmate from group activity. Exposure Control Jumpsuit status upon return to group for 30 days with IDTT review and approval.

Second offense: Refer to IDTT. Recommend 60-day suspension of group where, on a case-by-case basis, IDTT/clinical staff may temporarily restrict the inmate from group activity. Exposure Control Jumpsuit status upon return to group for 90 days with IDTT review and approval.

All Security Precautions are reviewed weekly with the IDTT.

Any group suspension for Enhanced Out Patient level of care inmates requires clinical staff authorization.

#### **Yellow Cell Front Coverings:**

The application, review, and removal of yellow cell front coverings will be as follows:

The placement of yellow cell front coverings is mandatory for all Indecent Exposure and Sexual Disorderly Conduct offenses as a Security Precaution.

The reporting employee may initiate this Security Precaution immediately. The reporting employee shall submit a CDC 128-B advising of the yellow cell front covering. Distribution will include C-File, inmate, housing unit, and program office. If the reporting employee does not submit the Chrono, it is the Incident Commander's responsibility to ensure that a CDC 128-B is completed.

For the first offense the yellow cell front covering shall be applied for 90 days from the date of the offense.

For a second offense within 12 months from the most recent offense, or while on yellow cell front status, the inmate will be placed on yellow cell front status for 6 months from the most recent offense, which will run concurrent with the existing precaution.

#### **Cell Front Covering Requirements:**

The Warden will have the discretion to use solid yellow placards or cell front coverings, according to their cell front designs and material on hand, (lexan, paper, cardboard, etc.) as long as there is a review process in place to remove the Security Precautions when an inmate's behavior has been corrected.

**Solid door:** This type of door requires a yellow placard (yellow paper). Yellow paper is applied to the cell front windows as well as the count window, where applicable, leaving approximately eight to nine inches from the top or bottom of the windows uncovered, depending on the angle of control booth visual or upper/lower tier. When removing an inmate from a cell, conducting hourly security checks, and/or during count, it is required practice to remove the yellow paper completely in order to appropriately complete these duties.

#### **Exposure Control Jumpsuit:**

Exposure Control Jumpsuits are not to be used in the GP as the inmate requires close monitoring when wearing a jumpsuit.

The placement of an inmate onto Exposure Control Jumpsuit status is mandatory for all out-of-cell Indecent Exposure and Sexual Disorderly Conduct incidents as a Security Precaution in SHU and ASU.

The placement of an inmate onto Exposure Control Jumpsuit status is optional for all Indecent Exposure and Sexual Disorderly Conduct out-of-cell offenses in PSU.

The reporting employee may initiate this Security Precaution by submitting a CDC 128-B. If a CDC 128-B is not submitted by the reporting employee, the Incident Commander is responsible to ensure that a CDC 128-B is completed.

First offense: An inmate shall be placed on Exposure Control Jumpsuit Security Precaution for 30 days from the date of the offense.

Second and Subsequent offenses: Should the inmate re-offend within 12 months of the most recent offense, or while on jumpsuit status, the inmate will be placed on jumpsuit status for 90 days from the most recent offense, which will run concurrent with the existing precaution.

#### **Disciplinary Restrictions:**

Disciplinary Restrictions are applied as a result of a disciplinary action where inmates are afforded due process.

Inmates found guilty of committing an Indecent Exposure or Sexual Disorderly Conduct offense through the inmate disciplinary process may be subject to credit and privilege loss.

The suspension of privileges based on a finding of guilt in a disciplinary hearing, pursuant to CCR Sections 3007, 3323(d)(7), 3323(f)(5), and 3323(g)(8) shall be assessed as follows:

First offense: A finding of guilt in a disciplinary hearing for Indecent Exposure or Sexual Disorderly Conduct may result in the loss of privileges including, but not limited to, any or all of the following, for up to a 90 day period:

- (1) Canteen.
- (2) Appliances.
- (3) Vendor packages.
- (4) Telephone privileges.
- (5) Personal property.

Second or subsequent offense: A finding of guilt in a disciplinary hearing for Indecent Exposure or Sexual Disorderly Conduct may result in the loss of any or all of these privileges for up to a 180 day period.

Following the completion of the disciplinary process and a finding of guilt, security precautions and disciplinary restrictions may remain in effect for a period of time designated by the Senior Hearing Officer (SHO) consistent with this policy. If a finding of not guilty results, the security precautions shall be removed.

#### **District Attorney Referrals:**

All Indecent Exposure incidents shall be referred to the District Attorney per the current Memorandum of Understanding between the institution and the District Attorney.

This Memorandum of Understanding will include an explanation concerning the reason Indecent Exposure misdemeanor cases require prosecution.

The IERC shall publish a status report concerning Indecent Exposure incident cases referred to the District Attorney no less than quarterly. A copy of the status report shall be provided to the Warden and the District Attorney.

#### **Classification:**

Any inmate charged with an Indecent Exposure or Sexual Disorderly Conduct offense shall be placed in ASU and reviewed by the ICC to determine the appropriateness of ASU retention, pending disciplinary matters, and/or future housing considerations.

Inmates found guilty in a disciplinary hearing of committing an Indecent Exposure (either Division D or Division B offense) may also be subject to the imposition of an "R" suffix custody designation (refer to DOM Section 62010.4.3.1.).

A review of the "R" suffix custody designation shall be initiated by the Institutional Classification Committee (ICC) when an inmate has been found guilty in a disciplinary hearing for Indecent Exposure.

#### **Assessment of SHU Term:**

A determinate period of confinement in a SHU may be established for an inmate when found guilty of an Indecent Exposure or Sexual Disorderly Conduct per CCR Section 3341.5(c)(9)(K) "Sexual Misconduct." The term shall be established by the ICC utilizing the standards in the SHU Term Assessment Chart in CCR Section 3341.5.

#### **Family Visiting Restrictions:**

Per CCR, Title 15, Section 3177(b)(1)(A), an inmate may be restricted from family visiting even without a criminal conviction, provided there is substantial evidence of such misconduct. Substantial evidence includes a



guilty finding on a disciplinary report. Therefore, a guilty finding for Indecent Exposure may prohibit the inmate from family visiting. This prohibition may be permanent. This restriction on family visiting is not a penalty imposed by the SHO as part of the disciplinary disposition. A classification committee may impose this restriction when family visiting is reviewed. In the hearing summary, it is sufficient for the SHO to note the inmate has been found guilty of an offense listed under the CCR, Title 15, Section 3177(b)(1)(A), as prohibiting family visiting.

#### **Mental Health Referral and Evaluation:**

An inmate who engages in Indecent Exposure or Sexual Disorderly Conduct shall be referred for a mental health assessment through the submittal of a CDCR Form 115-MH, Rules Violation Report: Mental Health Assessment Request. At the same time, custody staff will implement Security Precautions as described in Section 52100.4.

Offenders who are already enrolled in the Mental Health Services Delivery System (MHSDS) will have this issue addressed by the IDTT assigned to that unit. The IDTT may recommend specific behavioral security precautions, in addition to appropriate adjustments to medications and/or other therapeutic interventions, in an effort to identify, prevent, reduce, and eliminate the behavior.

The receipt of the mental health assessment by mental health clinicians shall be reviewed for potential further mental health screening or a comprehensive mental health evaluation to determine if the inmate has a condition that warrants entry into the MHSDS. A diagnosis of Exhibitionism requires entry into the MHSDS under the medical necessity designation.

The results of Indecent Exposure or Sexual Disorderly Conduct related Mental Health Assessments shall be provided to the IERC no less than quarterly.

#### **Training:**

Training will be provided to impacted personnel necessary for the ongoing management of the Indecent Exposure and Sexual Disorderly Conduct Procedures.

#### **Employee Policy Recommendations regarding Indecent Exposure or Sexual Disorderly Conduct Incidents:**

All staff shall be allowed to make policy recommendations regarding Indecent Exposure or Sexual Disorderly Conduct incidents to their supervisor at any time. Written recommendations shall be submitted to the employee's supervisor who shall forward the recommendation to the IERC for consideration.

#### **52100.5 Monitoring**

The IERC will monitor the implementation and effectiveness of the policy and procedures set forth above. The IERC will meet no less than quarterly. The IERC is comprised of administrative staff at the level of Associate Warden, Chief or Senior Psychiatrist and Chief or Senior Psychologist, other program staff as appropriate, and other mental health staff as appropriate, Custodial Management, Litigation Coordinator, and a Recorder who will prepare minutes from the meeting. The IERC will evaluate policy compliance and effectiveness, and monitor the impact of Security Measures, and clinical programs using the tracking reports, Incident Reports, and the Employee Report of Inmate Sexual Misconduct.

The Warden will forward monitoring information to headquarters on a regular basis and headquarters will monitor the activities of the IERC.

#### **52100.6 Revisions**

The Director of the Division of Adult Institutions or designee is responsible for ensuring that the contents of this Article are kept current and accurate.

#### **52100.7 Reference**

CCR §§ 3000, 3007, 3177, 3323, 3341.5

DOM, Section 62010.4.3.1,

PC §§ 288, 314

### **ARTICLE 26 — AIR SPACE MANAGEMENT**

*Effective September 21, 1989*

#### **52110.1 Policy**

The Department shall maintain operational control of the air space immediately adjacent to and above each institution consistent with State and Federal laws and regulations.

#### **52110.2 Purpose**

The purpose of this section is to provide guidelines for maintaining operational control of each institution's air space.

#### **52110.3 Institution Air Space**

Air traffic is controlled by the Federal Aviation Administration (FAA). The FAA has rules governing all movement of aircraft.

Federal Aviation Regulation (FAR) 91.79 requires a fixed wing aircraft to maintain a minimum altitude of 1,000 feet above the highest point of land or structure within a horizontal radius of 2,000 feet from the aircraft.

A helicopter has no altitude restrictions other than that which does not endanger persons or property below and which, if the engine failed, would allow the aircraft to safely auto-rotate to the ground. These altitude standards apply to all normal air traffic in the vicinity of an institution.

All aircraft observed violating FAR 91.79 shall be reported to the appropriate Air Route Traffic Control Center:

- Northern California (415) 797-3200.
- Southern California (805) 947-4101.

#### **52110.4 Air Traffic Restrictions**

The FAA has the authority (FAR 91.91) to restrict aircraft from flying over designated areas. There are two types of restrictions:

- Permanent.
- Temporary.

Permanent restrictions are usually limited to areas containing:

- Military bases.
- National Monuments.
- Areas consistent with greater public safety or security.

Temporary restrictions are granted on an as needed basis for a single event such as:

- To protect persons or property from danger during disaster relief.
- To prevent an unsafe congestion of sightseers and other aircraft above an incident that has or may generate a high degree of public interest.

A temporary restriction may be requested from the FAA Air Route Traffic Control Center and if granted will result in a Notice to Airman (NOTAM) of this restriction. See DOM 52110.3 for the Air Route Traffic Control Center telephone numbers.

#### **52110.5 Responsibility**

Each Warden or designee shall:

- Coordinate and implement communication with outside agencies to ensure a clear understanding of departmental policy regarding air traffic needs, emergency response and escape procedures.
- Develop or refine mutual aid agreements with local law enforcements or other airborne units. These units may assist in prevention of escapes, identification of unauthorized aircraft in the vicinity, and give air space protection during a critical incident or major disturbance.
- Identify and clearly mark a helicopter landing area for emergency landings, rescue flights, or public official visits. The landing site shall be outside the security area and, if possible, within the coverage of an armed post.
- Establish supplemental procedures for notification/reporting violations of air space and specify the contact person for notification/coordination with other agencies.
- Ensure that updated post orders are available to all armed posts informing them of the policy concerning air space control, including use of firearms, emergency landings, attempts to escape, authorized low altitude flyovers and emergency rescue.
- Ensure that all staff and inmates are informed by written and/or verbal notice of the policy regarding air traffic. Warning signs shall be posted as necessary.

#### **52110.6 Emergency Situations**

If any aircraft enters an institution's air space without prior permission, attempts shall be made to wave it off.

If it appears to be in distress, attempts shall be made to direct it to the designated landing site or adjacent area.

Occupants shall be directed to remain in the aircraft, under security coverage, until the situation can be resolved.

#### **52110.7 Escape Attempts**

If any aircraft entering an institution's air space appears to be involved in an escape attempt, all means shall be taken to prevent or halt an escape.

Attempts shall be made to direct an aircraft away from inmate occupied and/or security areas. The use of weapons fire as a warning is prohibited.

Firearms shall not be discharged in a direction that would endanger innocent employees or civilians not involved in an escape attempt.

Firearms shall not be used to bring down or disable an aircraft in flight.

Once an aircraft being used for an escape attempt has landed, all efforts will be made, including the use of firearms, to disable the aircraft and render it unable to fly.

Weapons fire may be returned at any attacker within an aircraft when that is the only means available to save the lives of innocent and/or uninvolved persons.

Recommended target areas for helicopters are to the transmission and motor located below the large horizontal rotor blades on top of the main cabin, and the rear tail rotor. Destroying the wheels or propeller of a fixed wing aircraft will disable it.

Inmates shall be ordered to move away from the aircraft. Failure to do so is considered an attempt to escape and shall be treated consistent with existing policy.

#### **52110.8 Revisions**

The Deputy Director, Institutions Division, shall ensure that the content of this section is accurate and current.

#### **52110.9 References**

CCR (15) (3) § 3295.

Federal Aviation Regulations 91.79 and 91.91.

### **ARTICLE 27 — UNASSIGNED**

### **ARTICLE 28 — UNASSIGNED**

### **ARTICLE 29 — SOCIAL SERVICES AND COUNSELING**

*Effective September 22, 1989*

#### **53030.1 Policy**

The Department shall provide a range of individual counseling and social services designed to meet the casework and program needs of inmates.

#### **53030.2 Purpose**

This section establishes objectives to ensure the maximum constructive impact of correctional staff on inmates within the correctional setting.

#### **53030.3 Definition**

Social services are programs or activities designed to assist inmates in their adjustment to institution living or to educate and provide skill training to prepare the individual for return to the community.

#### **53030.4 Responsibility**

Each Warden shall establish and maintain counseling and social service programs in conjunction with inmate classification procedures and individual program or casework needs.

The program shall be administered by a staff member preferably at the associate Warden level.

All institution personnel shall be familiar with social services available at their facility and shall inform inmates of available services when appropriate. Correctional counselors shall provide needed casework services which may be augmented by volunteer community resources as detailed in DOM 31040, Volunteers.

#### **53030.5 Reception Centers**

Every inmate committed to the Department shall be assigned to the caseload of a Correctional Counselor upon reception.

Inmates shall be provided an orientation to the Department which shall include information related to the:

- CCR (15) (3).
- CCR (15) (2) BPT Rules.
- Available institution social services.
- The work incentive program.

#### **53030.6 Institution Social Services**

Every inmate shall be assigned to the caseload of a Correctional Counselor upon arrival at the receiving institution.

Correctional counselors shall qualify, by experience and education, to provide individual and group counseling services, as needed.

The Correctional Counselor shall be available for scheduled individual interviews and shall provide for a regularly scheduled "open line."

Inmates may request scheduled interviews by "Request for Interview" forms or through contact at "open line."

Counselors may ducat inmates from their assignments to facilitate necessary casework contacts when such contacts cannot be reasonably made during the inmate's off-time hours including the inmate's regular days off. (Refer to DOM 53130, IW/TIP)

The assigned counselor shall monitor the inmate's participation in program activity considering mutually established goals.

Social services provided shall include but not be limited to:

- Program development and evaluation.
- Institution adjustment.
- Parole planning.
- Interpersonal relationships.
- Family planning.
- Marital, family relationships.
- Parental education.
- Substance abuse.
- Crisis intervention.
- Assessment of special needs.
- Referral to available academic, vocational, religious, recreational, work and community programs.

#### **53030.7 Community Resources**

For additional information, refer to DOM 31040, Volunteers; DOM 53020, Inmate Activity Groups; and DOM 53130, IW/TIP.

#### **53030.8 Revisions**

The Deputy Director, Institutions Division, or designee shall ensure that the content of this section is current and accurate.

#### **53030.9 References**

PC § 3409.

CCR (15) § 3233.

ACA Standards 2-4472 - 2-4480.

### **ARTICLE 30 — INMATE SMOKING POLICY**

*Revised August 22, 2005*

#### **53040.1 Policy**

Smoking, possession, or use of tobacco products by inmates, is prohibited. A tobacco product in the possession of an inmate is considered contraband.

#### **53040.2 Purpose**

This Article sets forth the operational practices associated with the Department's ban on inmate smoking and tobacco possession. Implementation of the ban is based on the Penal Code (PC) Section 5038.1 and the applicable regulations are found in the Title 15 of the California Code of Regulations (CCR), Sections 3006, 3187, 3188, and 3189.

#### **53040.3 Definitions**

For purposes of this Article, the following definitions shall apply:

- Smoke or smoking means inhaling, exhaling, burning, or carrying any lighted cigarette, cigar, pipe, or smoking paraphernalia used for consuming the smoke of tobacco or any other burning product.
- Tobacco product means any product that contains tobacco, the prepared leaves of any plant belonging to the nicotiana family, which shall include, but not be limited to, cigarettes, loose tobacco, cigars, snuff, chewing tobacco, or any other preparation of tobacco, tobacco substitutes, smoking paraphernalia, and all other items developed or processed for the primary purpose of facilitating the use or possession of tobacco or tobacco related products as well as packaging material. Packing material includes, but is not limited to, snuff or cigarette containers.

#### **53040.4 Tobacco Use Cessation Assistance.**

All institutions/facilities shall provide tobacco use cessation assistance to inmates in a manner consistent with its physical design and security requirements. However, no institution/facility is obligated to purchase tobacco cessation aids for inmates pursuant to this Policy. Tobacco use cessation assistance may include, but will not be limited to, the following:

- Tobacco use cessation classes.
- Distribution of printed tobacco cessation material.