

OFFICE OF ADMINISTRATIVE LAW

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Kenneth J. Pogue
Director



Date: January 26, 2026

To: Kourtney Michelle Ussery-Sweet, on behalf of Crystal Sweet, aka Michael Allen Sweet

From: Chapter Two Compliance Unit

Subject: **2026 OAL DETERMINATION NUMBER 2 (S)**
(CTU2025-1218-02)
(Summary Disposition issued pursuant to Gov. Code, § 11340.5; Cal. Code Regs., tit. 1, § 270, subd. (f).)

Petition challenging as an underground regulation a memorandum dated January 2, 2024, issued by the California Department of Corrections and Rehabilitation under signature of Travis Pennington, Warden (A), California Institution for Men, titled "Prevention from Opposite Gender Viewing for Perforated Steel Cell Doors California Institution for Men Facility Bravo."

On December 18, 2025, the Office of Administrative Law (OAL) received your petition asking for a determination as to whether a memorandum dated January 2, 2024, issued by the California Department of Corrections and Rehabilitation, titled "Prevention from Opposite Gender Viewing for Perforated Steel Cell Doors California Institution for Men Facility Bravo" (One-Towel Memo) is an underground regulation.¹ In substance, the One-Towel Memo articulates a rule under which incarcerated persons may use a single towel to provide temporary privacy screening in certain situations. The One-Towel Memo was issued under signature of the warden at the California Institution for Men, a state prison located in San Bernardino County, and is attached hereto as Exhibit A.

In issuing a determination, OAL renders an opinion only as to whether a challenged rule is a "regulation" as defined in Government Code section

¹ OAL also received your "resubmission and amended petition" concerning this same matter on December 19, 2025.

11342.600² which should have been, but was not, adopted pursuant to the Administrative Procedure Act (APA).³ Nothing in this analysis evaluates the advisability or the wisdom of the underlying action or enactment. OAL has neither the legal authority nor the technical expertise to evaluate the underlying policy issues involved in the subject of this determination.

Generally, Government Code section 11340.5 requires that a rule which is a "regulation," as defined in Government Code section 11342.600, must be adopted pursuant to the APA. In some cases, however, the Legislature has chosen to establish exemptions from the requirements of the APA. Penal Code section 5058, subdivision (c), establishes exemptions expressly for the Department of Corrections and Rehabilitation:

(c) The following are deemed not to be "regulations" as defined in Section 11342.600 of the Government Code:

(1) Rules issued by the director applying solely to a particular prison or other correctional facility....

This exemption is called the "local rule" exemption. It applies only when a rule is established for a single correctional institution.

In *In re Garcia* (67 Cal.App.4th 841, 845), the court discussed the nature of a "local rule" adopted by the warden for the Richard J. Donovan Correctional Facility (Donovan) which dealt with correspondence between inmates at Donovan:

The Donovan inter-institutional correspondence policy applies solely to correspondence entering or leaving Donovan. It applies to Donovan inmates in all instances.

...

The Donovan policy is not a rule of general application. It applies solely to Donovan and, under Penal Code section 5058, subdivision (c)(1), is not subject to APA requirements.

Similarly, the rule challenged by your petition was issued by the warden of

² "Regulation" means 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.

³ Such a rule is called an "underground regulation" as defined in California Code of Regulations, title 1, section 250, subsection (a):

"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.

the California Institution for Men and applies solely to the persons incarcerated in that facility. Incarcerated persons at other facilities are governed by those other facilities' criteria for privacy screening. Therefore, the rule is a "local rule" and is exempt from compliance with the APA pursuant to Penal Code section 5058, subdivision (c)(1). It is not an underground regulation.⁴

The issuance of this summary disposition does not restrict your right to litigate the alleged violation of section 11340.5 of the Government Code.

January 26, 2026

Timothy D. Findley

Timothy D. Findley
Senior Attorney

For: Kenneth J. Pogue
Director

Copy: Jeffrey Macomber, Secretary, CDCR
Renee Rodriguez, CDCR

⁴ The rule challenged by your petition is the proper subject of a summary disposition letter pursuant to California Code of Regulations, title 1, section 270. Subsections (f)(1) and (f)(2) of section 270 provides:

(f)(1) If facts presented in the petition or obtained by OAL during its review pursuant to subsection (b) demonstrate to OAL that the challenged rule is not an underground regulation, OAL may issue a summary disposition stating that conclusion. A summary disposition may not be issued to conclude that a challenged rule is an underground regulation.

(2) Circumstances in which facts demonstrate that the challenged rule is not an underground regulation include, but are not limited to, the following:

(A) The challenged rule is contained in a California statute.

(B) The challenged rule is contained in a regulation that has been adopted pursuant to the rulemaking provisions of the APA.

(C) The challenged rule is statutorily exempt from the rulemaking provisions of the APA.

Exhibit A

Memorandum

Date: January 2, 2024

To: All Staff
California Institution for Men

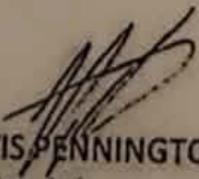
Subject: PREVENTION FROM OPPOSITE GENDER VIEWING FOR PERFORATED STEEL CELL DOORS
CALIFORNIA INSTITUTION FOR MEN FACILITY BRAVO

The purpose of this memorandum is to inform staff and the inmate population, recently during the Prison Rape Elimination Act (PREA) audit, it was determined buildings on Bravo Facility, specifically Bravo 2 and Bravo 5 were not compliant with Federal PREA, standard 115.15(d) which states, *"The facility shall implement policies and procedures that enable inmates to shower, perform bodily functions, and change clothing without non-medical staff of the opposite gender viewing their breasts, buttocks, or genitalia, except in exigent circumstances or when such viewing is incidental to routine cell checks."*

Inmates who are housed in cells with perforated steel doors are permitted to put one state-issued towel on the door when toileting and changing clothing. The towel is to be attached to the cell door by pushing the corners of the towel into the holes. This is ONLY PERMITTED when non-medical staff of the opposite gender are in the housing unit. The purpose of this directive is to prevent non-medical staff of the opposite gender from viewing an inmate's buttocks or genitalia when utilizing the toilet or changing clothing. The towel is to be removed when toileting or changing clothing is finished. This directive applies only to cells with perforated steel cell doors (cell doors with perforated holes).

No additional items are approved to be placed on the cell door for this purpose.

If you have any questions, contact the PREA Compliance Manager, H. Padilla at extension 7291.


TRAVIS PENNINGTON
Warden (A)
California Institution for Men