

## TEXT OF PROPOSED REGULATIONS

In the following, underline indicates new or additional text and ~~strikethrough~~ indicates deleted text.

**California Code of Regulations, Title 15, Division 3, Adult Institutions, Programs, and Parole**

**TABLE OF CONTENTS, Subchapter 6. ADULT PAROLE, Article 10. Civil Addicts, title heading is repealed.**

~~Article 10. Civil Addicts~~

**TABLE OF CONTENTS, Subchapter 6. ADULT PAROLE, Article 10, title heading is adopted.**

Article 10. Urinalysis Testing Program

**TABLE OF CONTENTS, Subchapter 6. ADULT PAROLE, Article 10, Sections 3620 and 3625 title headings are repealed.**

~~3620 Special Requirements of Civil Addict Release or Parole~~

~~3625 Civil Addict Program Exclusion~~

**TABLE OF CONTENTS, Subchapter 6. ADULT PAROLE, Article 10, Sections 3620 through 3626 title headings are adopted.**

3620 Urinalysis Testing Program Policy

3621 Instant Test Kit

3622 Tracking of Urinalysis Sample and Documentation

3623 Locked Urinalysis Sample Storage Container

3624 Transfer to Vendor Process

3625 Documentation of Laboratory Test Results

3626 Adjudication of a Parole Violation as a Result of Positive Test

**Chapter 1, Rules and Regulations of Adult Operations and Programs**

**Article 1. Behavior**

**3000. Definitions.**

**Section 3000 is amended to alphabetically merge the definitions below with those that exist in the regulations.**

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Urinalysis Testing (previously referred to as Anti-Narcotic Testing) is a process to detect the presence of prohibited substances used by parolees.

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Note: Authority cited: Sections 2717.3, 3000.03, 5058, 5058.3 and 1170.05, 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), 3020, 3450, 3550, 4570, 4576, 5009, 5050, 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; Sections 8550, 8567, 12838 and 12838.7, 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).

## **SUBCHAPTER 6. ADULT PAROLE**

### **Article 2. Preventing Parolee Crime Program**

#### **3521.1 Parolee Service Center Program.**

**Section 3521.1 is unchanged.**

**Subsection 3521.1(a) is amended to read:**

a) PSC facilities are used for residential placement of eligible parolees on a non-sanctioned basis, meaning that the placement was not the result of an adjudicated parole violation. PSC facilities may be used for residential placement of eligible parolees on a sanctioned basis, meaning that the placement was the result of an adjudicated parole violation at the parole unit level, or as a result of an an Board of Parole Hearings action and referral by the parole authority. PSC facilities provide services to newly paroled inmates that do not have available resources, as well as homeless parolees and parolees seeking a positive change to their current situation.

**Subsection 3521.1(b) is unchanged.**

**Subsections 3521.1(c) through 3521.1(c)(2) are unchanged but shown for reference.**

(c) The following parolees will be considered on a case-by-case basis for participation in the PSC Program:

- (1) Parolees who have a past or current violent felony conviction pursuant to PC section 667.5(c).
- (2) Parolees who have a current felony conviction pursuant to PC section 1192.7(c) and/or 1192.8.

**Subsections 3521.1(c)(3)-(7) are amended and renumbered to read:**

~~(3) Civil addict commitments.~~

(43) Parolees with a misdemeanor hold.

(54) Parolees who are designated high notoriety.

(65) Parolees who have a restraining order/court order and/or victim notification in the county of the PSC facility.

(76) Street gang members.

(87) Validated prison gang members.

**Subsections 3521.1(d) through 3521.1(e) are unchanged.**

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 3000.03, 3068 and 5054, Penal Code.

**3521.2 Residential Multi-Service Center Program.**

**Subsections 3521.2(a) through 3521.2(c)(7) are unchanged.**

**Subsections 3521.2(d) through 3521.2(d)(2) are unchanged but shown for reference.**

(d) The following parolees will be considered on a case-by-case basis for participation in the RMSC Program:

(1) Parolees who have a past or current violent felony conviction pursuant to PC section 667.5(c).

(2) Parolees who have a current felony conviction pursuant to PC section 1192.7(c) and/or 1192.8.

**Subsections 3521.2(d)(3)-(8) are amended and renumbered to read:**

~~(3) Civil addict commitments.~~

(43) Parolees with a misdemeanor hold.

(54) Parolees who are designated as a Public Interest Case.

(65) Parolees who have a restraining order/court order and/or victim notification in the county of the RMSC facility.

(76) Street gang members.

(87) Validated prison gang members.

**Subsection 3521.2(e) is unchanged.**

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 3000.03, 3068 and 5054, Penal Code.

**Article 3. Electronic Monitoring**

**3545. Persons to Participate in Continuous Electronic Monitoring.**

**Subsections 3545(a) through 3545(b) are unchanged.**

**Subsections 3545(c) through 3545(c)(2) are unchanged but shown for reference.**

(c) The following target population may be eligible for continuous electronic monitoring:

(1) Parolees classified with a risk number value of 1, 2, 3, 4, or 5, as described in section 3768.1.

(2) Parolees who commit minor violations of the law.

**Subsections 3545(c)(3)-(7) are amended and renumbered to read:**

~~(3) Civil addict parolees.~~

(43) Interstate cases.

(54) Gang members.

(65) Serious and/or violent offenders.

(76) Any offenders not already subject to Global Positioning System (GPS) supervision.

**Subsection 3545(d) is unchanged.**

Note: Authority cited: Sections 5058 and 5058.3, Penal Code. Reference: Sections 3004, 3010, 3010.1, 3010.2, 3010.3, 3010.4, 3010.5, 3010.6, 3010.7, 3010.8, 3010.9 and 5054, Penal Code.

**Existing Article 10 title is repealed.**

~~Article 10. Civil Addicts~~

**New Article 10 title is adopted.**

Article 10. Urinalysis Testing Program

**Existing Section 3620 title heading and contents are repealed.**

**~~3620. Special Requirements of Civil Addict Release or Parole.~~**

~~A parole agent may impose special requirements necessary for a civil addict releasee's or parolee's successful adjustment to their release or parole. Any such requirements which are to remain in effect for more than seven days shall be given to the releasee or civil addict parolee in writing. Any such conditions to remain in effect for more than 30 days shall be submitted to the Board of Parole Hearings as a recommendation to impose as a special condition of release or parole.~~

~~Note: Authority cited: Section 5058, Penal Code. Reference: Sections 3151 and 3201(c), Welfare and Institutions Code; and Section 5054, Penal Code.~~

**Existing Section 3625 title heading and contents are repealed.**

**~~3625. Civil Addict Program Exclusion.~~**

~~(a) A civil addict parolee or releasee who is determined by the department to be unfit for the civil addict program shall be returned to the court in which the case originated for further proceedings on the criminal charges that the court may deem warranted.~~

~~(b) Such a determination may be based upon any of the following reasons:~~

~~(1) The person engaged in any of the following activities:~~

~~(A) Extensive criminal behavior.~~

~~(B) Serious criminal behavior unrelated to addiction or substance abuse.~~

~~(C) Sales, or possession for sale, of drugs valued at more than \$10,000.~~

~~(D) Repeated possession of a controlled substance in quantities considered excessive for personal use.~~

~~(E) A pattern of using or threatening to use force.~~

~~(2) The person commits an act which involved violence or the use of a deadly weapon.~~

~~(3) The person refuses to participate in department prescribed programming.~~

~~(4) The person repeatedly absconds from supervision.~~

~~(5) The person continues in a pattern of criminal activity not likely to change as a result of supervision.~~

~~(6) The person has a long term medical or psychiatric problem which renders them unsuitable for outpatient supervision.~~

~~(7) The person is not available for supervision because of deportation or a felony commitment to a state or federal prison.~~

~~(8) The person has been at large for more than six months and has a prior conviction for violence, sales of drugs, robbery, or possession of a weapon.~~

~~(9) The person has been at large for more than 12 months.~~

~~(c) The decision to exclude a civil addict parolee from the Civil Addict Program will be the result of a case conference between the parole agent and the unit supervisor.~~

~~(d) When it is determined exclusion procedures will commence, the parole agent shall send the releasee or civil addict parolee a notification letter advising him or her that an exclusion letter will be sent to the committing court in 15 calendar days if they do not report to the parole agent in person. The letter shall be sent to the releasee or civil addict parolee's last known address. If the releasee or civil addict parolee so reports, the parole agent will case conference with the unit supervisor. Based upon the facts and~~

~~circumstances surrounding the parolee's unavailability for parole supervision, the unit supervisor will decide whether or not to proceed with the exclusion letter.~~

~~(e) The parole agent shall prepare an exclusion letter for the signature of the Warden of the California Rehabilitation Center. The exclusion letter shall include the following information:~~

~~(1) Date releasee or civil addict parolee's parole status was suspended by the Board of Parole Hearings.~~

~~(2) Efforts made to locate the releasee or civil addict parolee.~~

~~(3) Any arrests made prior to or after suspension.~~

~~(4) Last known address prior to suspension.~~

~~(5) Date parole agent sent releasee or civil addict parolee a notification letter as per subsection 3625(d).~~

~~(f) Upon receipt of a minute order from the originating court vacating the commitment, the parole agent shall cancel the warrant if issued by the Board of Parole Hearings.~~

~~(g) When the parole agent becomes aware that a releasee or parolee at large has been arrested, and an exclusion letter has already been sent, the parole agent shall contact the committing court to determine whether that court has vacated the civil addict commitment.~~

~~(1) If the committing court has vacated the civil commitment, a detainer shall not be placed on the releasee at large or parolee at large.~~

~~(2) If it cannot be determined whether or not the committing court has acted on the exclusion letter, a detainer shall not be placed until such time as confirmation can be obtained.~~

~~(3) If it is confirmed that the committing court has not yet vacated the civil commitment, a detainer may be placed while a decision is made whether or not to rescind the exclusion letter.~~

Note: Authority cited: Section 5058, Penal Code. Reference: Section 3053, Welfare and Institutions Code; and Section 5054, Penal Code.

**New Subsections 3620 through 3626 title headings and contents are adopted to read:**

**3620. Urinalysis Testing Program Policy.**

All parolees may be subject to Urinalysis (UA) Testing for prohibited substances, pursuant to section 3504. All confirmed positive UA test results must be addressed by intervention and/or sanctions to promote positive lifestyle changes.

(a) Parolees with a narcotic-related conviction within five years of incarceration for their current offense, or who have a history of alcohol or substance abuse, may have a special condition of parole imposed requiring UA testing at the direction of the Parole Agent (PA). Upon approval by the field Parole Unit Supervisor (US), the special condition of parole to participate in UA testing shall be imposed and documented on the CDCR Form 1515 Addendum (Rev. 04/13), Special Conditions of Parole. If reasonable belief exists that a prohibited substance was recently used, the CDCR Form 1515 Addendum is not required for the PA to instruct the parolee to provide a UA specimen for testing.

(1) The frequency in which UA testing is administered shall be determined by the supervision requirements, pursuant to Section 3504, and/or any imposed special conditions of parole set by the parole US, the court authority, or the Board of Parole Hearings (BPH).

(2) The UA test is conducted when the PA obtains a random, unscheduled urine sample from the parolee.

(b) Prior to collecting the urine sample, the PA shall inquire of the parolee whether the parolee is taking any prescription or over-the-counter medications which may result in a positive UA test result. The PA shall document the parolee's response to the inquiry on the CDCR Form 1650-D (Rev. 06/12), Record of Supervision, which is incorporated by reference, only when the parolee declares that he or she is taking prescription medication. If the parolee admits to taking prescription medication, and/or the PA suspects that the type of medication may indicate a positive UA test result for a prohibited substance, the PA shall instruct the parolee to provide proof of the current and valid prescription. This information shall be documented on the CDCR Form 1502 (Rev. 10/06), Activity Report, and a copy shall be placed in the parolee's field file.

(c) The UA sample shall be taken under direct observation of the PA whenever possible, where he or she can clearly observe the flow of urine into the approved specimen bottle. During the collection of the UA sample, the PA shall adhere to the following:

(1) Check the restroom for contraband and conduct a visual search of the parolee's person prior to administering the test.

(2) Conduct a pat down search when necessary to ensure parolee is not in possession of any contraband, only when safe to do so (e.g., in the parole office, or when in the community in the presence of another law enforcement officer).

(3) Prohibit the parolee from taking anything other than the test kit into the restroom, and note the temperature and color of the sample immediately following the test.

(4) In the event that direct observation is not possible, further steps may be taken to reduce the chance of manipulation (e.g., no running water or flushing the toilet).

(5) Documentation and placement of the sample into the locked UA sample storage container pursuant to section 3623.

(d) The UA samples being sent to the laboratory for confirmation must include the security labels provided by the contracted laboratory, and must be completed by the PA who collected the UA sample. The PA must clearly indicate the type of UA tests to be completed. The security label shall be placed on the sample bottle, and shall include the following:

(1) The date the sample was obtained.

(2) The parolee's CDC number.

(3) The parole unit's identification or billing number.

(4) The name or initials of the PA who collected the UA sample.

Note: Authority Cited: Sections 5058 and 5058.3, Penal Code. Reference: Sections 3060.9, 3063.1, 3063.2, 3068, and 5054, Penal Code.

### **3621. Instant Test Kit.**

Collection of the UA test sample shall first be obtained by utilizing an onsite testing device which is an instant test kit. A positive or negative test result shall determine the next course of action.

(a) In the event of a negative instant test result, the PA shall have the parolee discard the sample and the test kit.

(1) No further laboratory confirmation is required.

(2) The negative test result shall be recorded on the CDCR Form 2249 (06/12), Urinalysis Sample Control Log, which is incorporated by reference, and shall also be documented on the CDCR Form 1650-D (Rev. 06/12), Record of Supervision.

(b) In the event of an undisputed presumptive positive instant test, the PA shall record the instant test result on the CDCR Form 2249 and obtain a signed CDCR Form 1527 (Rev. 06/12), Voluntary Statement of Admission, which is incorporated by reference.

(1) The PA shall have the parolee discard the sample and the test kit.

(2) No further laboratory confirmation is required.

(3) The PA shall adjudicate the presumptive positive test utilizing swift and certain interventions which may include immediate community drug treatment.

(c) In the event of a disputed positive instant test result, the PA shall record the instant test results on the CDCR Form 2249. The PA shall adhere to the following steps to preserve the chain of custody of the UA sample:

(1) Process the sample in the contract laboratory-approved specimen bottle.

(2) Process the identification label and instruct the parolee to place the label on the specimen bottle in the PA's presence.

(3) Ensure that the bottle shall be sealed by the parolee and placed into the individual specimen bag.

(4) Secure the sample in accordance with section 3623(b).

(d) Upon laboratory confirmation, the PA shall ensure that the positive test result shall be adjudicated to include immediate interventions.

(e) If the parolee admits to use of a prohibited substance, the PA shall obtain a CDCR Form 1527, signed by the parolee indicating a voluntary admission for the use of a prohibited substance.

Note: Authority Cited: Sections 5058 and 5058.3, Penal Code. Reference: Sections 3060.9, 3063.1, 3063.2, 3068, and 5054, Penal Code.

### **3622. Tracking of Urinalysis Sample and Documentation.**

(a) In order to maintain the integrity of the chain of custody from point of receipt of the sample, the PA shall log every sample received by the parolee, and take the following steps:

(1) Enter the UA test sample on the CDCR Form 2249 (06/12), Urinalysis Sample Control Log, to include the parolee's name, parolee's signature, CDC number, PA's initials, collection date and time, and UA test results.

(2) For disputed positive test results requiring laboratory confirmation, the PA shall deposit the sample into the locked UA sample storage container pursuant to section 3623, and make an indication on the CDCR Form 2249 verifying that the sample was sent to the contract laboratory.

(3) Enter the sample collection event, the test result, and the outcome on the CDCR Form 1650-D (Rev. 06/12), Record of Supervision.

(4) Submit the CDCR Form 2249 to the US for processing.

(b) The PA shall deposit collected UA samples into the locked UA sample storage container upon returning to the parole unit, prior to the end of his or her shift, but no later than close of business the next business day.

Note: Authority Cited: Sections 5058 and 5058.3, Penal Code. Reference: Sections 3060.9, 3063.1, 3063.2, 3068, and 5054, Penal Code.

### **3623. Locked Urinalysis Sample Storage Container.**

(a) To ensure the integrity of the UA sample is not compromised in temporary storage, the US or designee must maintain security of the UA sample from the point of collection and storage to the subsequent transfer to the contract courier.

(1) Each parole unit shall maintain the locked UA sample storage container in a fixed location. This is to be an area where parolees are not allowed unattended access.

(2) Only the US or designee shall be granted access to the locked UA sample storage container to retrieve the UA samples for transfer to the courier service employee.

(3) The US or designee shall maintain the storage container key.

(b) The UA sample, in the labeled bottle and individually sealed in the bag, shall be secured in the locked UA sample storage container; this shall serve to maintain the chain of custody of the UA sample.

(1) The transportation bag shall be maintained inside the locked UA sample storage container until the transportation bag/s (to include the UA samples) are transferred to the courier service employee by the US or designee.

Note: Authority Cited: Sections 5058 and 5058.3, Penal Code. Reference: Sections 3060.9, 3063.1, 3063.2, 3068, and 5054, Penal Code.

### **3624. Transfer to Vendor Process.**

(a) Upon arrival of the laboratory courier, the US or designee shall:

(1) Unlock the locked UA sample storage container and remove the plastic transportation bag containing the individually packaged UA samples.

(2) Secure the bag and transfer the sealed bag to the vendor courier service employee.

(3) Print his or her name and sign the CDCR Form 2250 (06/12), Urinalysis Sample Transfer Log, which is incorporated by reference.

(4) Obtain the vendor courier service employee printed name and signature documenting the date and time of pick-up on the CDCR Form 2250.

(5) Place a new plastic transportation bag in the locked UA sample storage container and lock the container.

Note: Authority Cited: Sections 5058 and 5058.3, Penal Code. Reference: Sections 3060.9, 3063.1, 3063.2, 3068, and 5054, Penal Code.

### **3625. Documentation of Laboratory Test Results.**

(a) The laboratory responsible for analyzing the UA samples shall provide each parole unit with the test results for all submitted UA samples. Typically, the test results are sent to the parole unit via facsimile. Laboratory test results shall be logged, maintained, and processed by designated parole unit support staff. A legible copy of each individual test result shall be kept in the parolee's field file for use at a later date, if needed. The parole unit support staff shall:

(1) Maintain one copy of all test results for the parole unit in a central location, accessible to all staff.

(2) Provide the US with one copy of the test results.

(3) Verify the Parole Agent of Record (AOR) assignment for each parolee with a positive UA test result, and provide that AOR with a copy of the test results of the affected parolee.

Note: Authority Cited: Sections 5058 and 5058.3, Penal Code. Reference: Sections 3060.9, 3063.1, 3063.2, 3068, and 5054, Penal Code.

### **3626. Adjudication of a Parole Violation as a Result of Positive Test.**

In the event of a positive test result, the PA shall case conference the violation with the US or PAII (Supervisor) to determine the appropriate interventions and/or sanctions based on the case factors and available resources. The PA shall document the results on the CDCR Form 1650-D (Rev. 06/12), Record of Supervision, and complete a CDCR Form 1500 (05/13), Parole Violation Decision Making Instrument, identifying appropriate resources and/or interventions based on identified criminogenic needs. The US or PA II (Supervisor) must verify that all positive test results have been adjudicated pursuant to section 3768.

Note: Authority Cited: Sections 5058 and 5058.3, Penal Code. Reference: Sections 3060.9, 3063.1, 3063.2, 3068, and 5054, Penal Code.

## **Article 21. PC 3050 Residential Aftercare Program**

### **3800.2. Treatment Incentive Program Exclusionary Criteria.**

**Subsections 3800.2(a) through 3800.2(a)(2) are unchanged but shown for reference.**

(a) An inmate is excluded from Treatment Incentive Program participation if any of the following conditions exist:

- (1) The inmate is currently serving time as a parole violator who has been returned to custody.
- (2) The inmate was convicted on or after January 1, 1997 of Corporal Injury pursuant to PC section 273.5; Violation of a Protective Order pursuant to PC section 273.6; or Stalking pursuant to PC section 646.9, where they are required to complete a 52-week batterer's program as outlined in PC Section 3053.2.

**Subsections 3800.2(a)(3)-(5) are amended and renumbered to read:**

~~(3) The inmate is currently serving a Civil Addict commitment as described in Welfare and Institutions Code section 3051.~~

(43) The inmate is currently serving or has served a prior indeterminate sentence or a sentence for:

- (A) A violent felony of any of the crimes listed as a violent felony in PC section 667.5(c).
- (B) A serious felony of any of the crimes listed as a serious felony in PC sections 1192.7(c) and 1192.8.
- (C) A crime that requires him or her to register as a sex offender pursuant to PC section 290.

(54) The inmate is eligible to participate in non-revocable parole status pursuant to Institution Classification action and as noted on CDC Form 128-B (Rev. 04/74), General Chrono.

**Subsection 3800.2(b) is unchanged.**

**Note Section is amended to read:**

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 273.5, 273.6, 290, 646.9, 667.5(c), 667.59(c), 1192.7(c), 1192.8, 3050, 3053.2 and 5054, Penal Code; ~~and Section 3051, Welfare and Institutions Code.~~