



Department of Corrections and Rehabilitation

**NOTICE OF CHANGE TO
REGULATIONS**

Section: 3124

Number:

15-05

Publication Date:

June 26, 2015

Effective Date:

June 2, 2015

INSTITUTION POSTING AND CERTIFICATION REQUIRED

This Notice announces the amendment of Section 3124 of the California Code of Regulations (CCR), Title 15, Crime Prevention and Corrections, to incorporate into the CCR provisions concerning the contents of institution law libraries.

IMPLEMENTATION: IMMEDIATELY

PUBLIC COMMENT PERIOD

Any person may submit written comments about the proposed regulations to the California Department of Corrections and Rehabilitation, Regulation and Policy Management Branch (RPMB), P.O. Box 942883, Sacramento, CA 94283-0001, by fax to (916) 324-6075, or by e-mail to RPMB@cdcr.ca.gov. All written comments must be received by the close of the public comment period **August 19, 2015, at 5:00 p.m.**

PUBLIC HEARING INFORMATION

A public hearing regarding these proposed regulations will be held Wednesday, August 19, 2015, from 10:00 a.m. to 11:00 a.m. in the Kern/Colorado Room located at 1515 S Street, North Building, Sacramento CA. The purpose of the hearing is to receive oral comments about this action. It is not a forum to debate the proposed regulations. No decision regarding the permanent adoption of these regulations will be rendered at this hearing. Written or facsimile comments submitted during the prescribed comment period are given the same significance and weight as oral comments presented at the hearing. This hearing site is accessible to the mobility impaired.

POSTING

This notice shall be posted immediately upon receipt at locations accessible to inmates, parolees, and employees in each Department facility and field office, not later than five calendar days after receipt. Also, facilities shall make this Notice available for review by inmates in segregated housing who do not have access to the posted copies, and shall distribute it to inmate law libraries and advisory councils. Certification of Posting, CDCR Form 621-A, shall be returned to the RPMB electronically, by fax, or by mail. See Department Operations Manual sections 12010.12.1 and 12010.12.2 for posting and certification of posting procedures.

CONTACT PERSON

Inquiries regarding this notice should be directed to Timothy M. Lockwood, Chief, RPMB, California Department of Corrections and Rehabilitation, P.O. Box 942883, Sacramento, CA 94283-0001, by telephone at (916) 445-2269 or e-mail at RPMB@cdcr.ca.gov. Inquiries regarding the subject matter of these regulations may be directed to David Ramirez, Office of Correctional Education, at (916) 324-8783.

Original Signed By:

SCOTT KERNAN

Undersecretary, Operations

California Department of Corrections and Rehabilitation

Attachments

NOTICE OF PROPOSED REGULATIONS

California Code of Regulations Title 15, Crime Prevention and Corrections Department of Corrections and Rehabilitation

NOTICE IS HEREBY GIVEN that the Secretary of the California Department of Corrections and Rehabilitation (CDCR or the Department), pursuant to the authority granted by Government Code Section 12838.5 and Penal Code (PC) Section 5055, and the rulemaking authority granted by PC Section 5058, in order to implement, interpret and make specific PC Section 5054, proposes to amend Section 3124 of the California Code of Regulations, Title 15, concerning the content of institution law libraries.

PUBLIC HEARING:

Date and Time: **August 19, 2015 - 10:00 a.m. to 11:00 a.m.**
Place: Kern/Colorado Room
1515 S Street, North Building
Sacramento, CA 95811
Purpose: To receive comments about this action.

PUBLIC COMMENT PERIOD:

The public comment period will close **August 19, 2015, at 5:00 p.m.** Any person may submit public comments in writing (by mail, by fax, or by e-mail) regarding the proposed changes. To be considered by the Department, comments must be submitted to the CDCR, Regulation and Policy Management Branch, P.O. Box 942883, Sacramento, CA 94283-0001; by fax at (916) 324-6075; or by e-mail at RPMB@cdcr.ca.gov before the close of the comment period.

CONTACT PERSON:

Please direct any inquiries regarding this action to:

**Timothy M. Lockwood, Chief
Regulation and Policy Management Branch
Department of Corrections and Rehabilitation
P.O. Box 942883, Sacramento, CA 94283-0001
Telephone (916) 445-2269**

In the event the contact person is unavailable, inquires should be directed to the following back-up person:

**Josh Jugum
Regulation and Policy Management Branch
Telephone (916) 445-2228**

Questions regarding the substance of the proposed regulatory action should be directed to:

**David Ramirez
Office of Correctional Education
Telephone (916) 324-8783**

AUTHORITY AND REFERENCE

PC Section 5000 provides that commencing July 1, 2005, any reference to the Department of Corrections in this or any code, refers to the CDCR, Division of Adult Operations.

PC Section 5050 provides that commencing July 1, 2005, any reference to the Director of Corrections, in this or any other code, refers to the Secretary of the CDCR. As of that date, the office of the Director of Corrections is abolished.

PC Section 5054 provides that 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 CDCR.

PC Section 5058 authorizes the Director to prescribe and amend regulations for the administration of prisons.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW:

This action will:

- Amend the list of specific legal materials required to be available to inmates in print and/or electronically in CDCR institution law libraries. These legal materials will remain compliant with existing court decisions regarding law library contents. Inmate access to law libraries and their use of law library materials are unchanged by these proposed amendments.

DOCUMENTS INCORPORATED BY REFERENCE

None

SPECIFIC BENEFITS ANTICIPATED BY THE PROPOSED REGULATIONS

The Department anticipates that these regulations will help to benefit inmates and the Department by providing a more expansive collection of legal materials in law libraries through use of the Electronic Law Library Delivery System. This will ensure consistency throughout all of the institutional law libraries, and may help to reduce costs associated with making legal materials available because the new vendor provides a larger share of legal material electronically, potentially reducing the cost of purchasing hard copy titles.

EVALUATION OF CONSISTENCY / COMPATIBILITY WITH EXISTING LAWS/REGULATIONS

The Department has reviewed existing regulations pertaining to the content of institution law libraries and has determined that these proposed regulations are not inconsistent or incompatible with existing state laws and regulations.

LOCAL MANDATES:

This action imposes no mandates on local agencies or school districts, or a mandate which requires reimbursement of costs or savings pursuant to Government Code Sections 17500 - 17630.

FISCAL IMPACT STATEMENT:

- Cost to any local agency or school district that is required to be reimbursed: *None*
- Cost or savings to any state agency: *None*
- Other nondiscretionary cost or savings imposed on local agencies: *None*
- Cost or savings in federal funding to the state: *None*

EFFECT ON HOUSING COSTS:

The Department has made an initial determination that the proposed action will have no significant effect on housing costs.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES:

The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT ON BUSINESS:

The Department has initially determined that the proposed regulations will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

EFFECT ON SMALL BUSINESSES:

The Department has determined that the proposed regulations may not effect small businesses. It is determined that this action has no significant adverse economic impact on small business because they are not affected by the internal management of state prisons.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT:

The Department has determined that the proposed regulation will have no effect on the creation of new, or the elimination of existing, jobs or businesses within California, or affect the expansion of businesses currently doing business in California. The Department has determined that the proposed regulations will have no effect on worker safety, the state's environment, or the health and welfare of California residents because they relate strictly to the internal management of CDCR institutions.

CONSIDERATION OF ALTERNATIVES:

The Department must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law, than the proposed regulatory action. Interested persons are invited to present statements or arguments with respect to any alternatives to the changes proposed at the scheduled hearing or during the written comment period.

AVAILABILITY OF PROPOSED TEXT AND INITIAL STATEMENT OF REASONS:

The Department will make available the text and the Initial Statement of Reasons (ISOR) of the proposed regulations. The rulemaking file for this regulatory action, which contains those items and all information on which the proposal is based is available to the public upon request directed to the Department's contact person. The proposed text, ISOR, and Notice of Proposed Action will also be made available on the Department's website <http://www.cdcr.ca.gov>.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS:

Following its preparation, a copy of the Final Statement of Reasons may be obtained from the Department's contact person.

AVAILABILITY OF CHANGES TO PROPOSED TEXT:

After considering all timely and relevant comments received, the Department may adopt the proposed regulations substantially as described in this Notice. If the Department makes modifications which are sufficiently related to the originally proposed text, it will make the modified text, with the changes clearly indicated, available to the public for at least 15 days before the Department adopts the regulations as revised. Requests for copies of any modified regulation text should be directed to the contact person indicated in this Notice. The Department will accept comments regarding the modified regulations for 15 days after the date on which they are made available.

INITIAL STATEMENT OF REASONS

The California Department of Corrections and Rehabilitation (CDCR) proposes to amend Section 3124 of the California Code of Regulations, Title 15, Division 3, concerning Content of Law Libraries.

Existing regulations establish that each institution shall make legal materials available to inmates through its law library. CDCR has changed its vendor of electronic law library materials. This proposed amendment revises the list of specific legal materials required to be available in print and/or electronically through the Electronic Law Library Delivery System. These legal materials will remain compliant with existing court decisions regarding law library contents as cited in the Reference section of Section 3124. These amendments will have no effect on inmate access to law libraries or their use of law library materials.

Benefits of the Regulations

The proposed regulatory action will benefit inmates and the Department by providing a more expansive collection of legal materials in law libraries through use of the Electronic Law Library Delivery System. This will ensure consistency throughout all of the institutional law libraries, and may help to reduce costs associated with making legal materials available because the new vendor provides a larger share of legal material electronically, potentially reducing the cost of purchasing hard copy titles.

ECONOMIC IMPACT ASSESSMENT

The Department has determined the proposed regulations will have no impact on the creation or elimination of jobs within the state. The proposed regulations affect the internal management of prisons only.

The Department has determined the proposed regulations will have no impact on the creation of new businesses or the elimination of existing businesses within California. The proposed regulations affect the internal management of prisons only, and place no requirements or restrictions upon businesses.

The Department has determined the proposed regulations will have no impact on the expansion of businesses currently doing business in California. The proposed regulations affect the internal management of prisons only, and place no requirements or restrictions on businesses.

The Department has determined the proposed regulations will have no impact on the health and welfare of California residents, worker safety, or the state's environment as they affect the internal management of prisons only.

Determinations of Impact on Business and Small Business

The Department has made an initial determination that no reasonable alternatives to the regulations have been identified or brought to the attention of the Department which would lessen any adverse impact on small business.

The Department has made an initial determination the action will not have a significant adverse economic impact on business. Additionally, there has been no testimony or other evidence provided that would alter the Department's initial determination. The proposed regulations affect the internal management of prisons only, and place no requirements or restrictions on businesses.

Reports, Studies, and Documents Relied Upon

The department, in proposing amendments to these regulations, has not identified nor has it relied upon any technical, theoretical, or empirical study, report, or similar document.

Consideration of Alternatives

The Department must determine that no reasonable alternatives considered, or that have otherwise been identified and brought to the attention of the Department, would be more effective in carrying out the purpose for which this action is proposed, would be as effective and less burdensome to affected private persons than the action proposed, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Currently, no reasonable alternatives have been brought to the attention of the Department that would alter the Department's initial determination.

Specific Purpose and Rationale for each Section per Government Code 11346.2(b)(1)

Section 3124. Content of Law Libraries

Subsection 3124(a) is amended to include “or other electronic” after the words “with any necessary print.” This is necessary to establish that electronic versions of specific legal materials will be available in addition to a printed version.

Subsections 3124(a)(1) through 3124(a)(16) are amended to replace the titles of legal materials that will no longer be available with the new titles that will be available in institution law libraries. The legal resources are equivalent to those that were available through the previous vendor. Subsection 3124(a)(16) is also amended to correct a non-substantive typographical error in existing text.

Subsections 3124(a)(17) through 3124(a)(20) are unchanged.

New Subsections 3124(a)(21)) through (27) are adopted to add seven new legal documents or collections of legal documents to the list of legal materials required to be available in law libraries. These additional documents may be useful to inmates in ensuring meaningful access to the courts. They are equivalent to the legal resources that were provided to inmates through the previous vendor.

Subsection 3124(b)(1) through 3124(b)(5) are repealed. This is necessary to establish that these titles are no longer available through the adult institution law libraries.

Existing Subsections 3124(b)(6) through 3124(b)(8) are renumbered to 3124(b)(1) through 3124(b)(3) due to the deletion of existing subsections 3124(b)(1) through 3124(b)(5).

TEXT OF PROPOSED REGULATIONS

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

Chapter 1. Rules and Regulations of Adult Operations and Programs

Subchapter 2. Inmate Resources

Article 3. Library

3124. Content of Law Libraries.

(a) Each institution shall maintain at least one law library for the use of inmates, in print and/or by means of the Electronic Law Library Delivery System with any necessary print or other electronic supplements. Except for items that are out of print, the law library collection shall include, but shall not be limited to, the following current and updated legal materials or their equivalents from other publishers:

- (1) ~~West's Annotated California Codes.~~ Deering's California Codes Annotated.
- (2) ~~West's California Digest (latest edition).~~ Judicial Counsel of California Civil and Criminal Jury Instructions.
- (3) ~~West's California Reporter, volumes 1 to 286.~~ California Official Reports.
- (4) ~~West's California Reporter, Second Series, volumes 1 to 135.~~ Matthew Bender, Standard California Codes: Rules of Court (latest edition).
- (5) ~~West's California Reporter, Third Series, volumes 1 to date.~~ Matthew Bender, California Criminal Defense Practice (latest edition).
- (6) ~~Witkin and Epstein, California Criminal Law (latest edition).~~ Matthew Bender, California Criminal Discovery (latest edition).
- (7) ~~Continuing Education of the Bar, California Criminal Law Procedure and Practice (latest edition).~~ Matthew Bender, California Evidence Courtroom Manual (latest edition).
- (8) ~~Continuing Education of the Bar, Appeals and Writs in Criminal Cases (latest edition).~~ Matthew Bender, California Forms of Pleading and Practice (latest edition).
- (9) ~~United States Code Annotated.~~ United States Code Service.
- (10) ~~West's Federal Practice Digest (latest edition).~~ Matthew Bender, Moore's Federal Practice (latest edition).
- (11) ~~Supreme Court Reporter, volumes 70 to date.~~ All United States Supreme Court Cases.
- (12) ~~Federal Reporter, Second Series, volumes 176 to 999.~~ All Federal Appeals Court Cases – All Circuits.
- (13) ~~Federal Reporter, Third Series, volumes 1 to date.~~ All Federal District Court Cases – All Districts.
- (14) ~~Federal Supplement, volumes 180 to 999.~~ Anderson, Constitutional Rights of Prisoners (latest edition).

- (15) ~~Federal Supplement, Second Series, volumes 1 to date.~~ Michie, Federal Habeas Corpus Practice and Procedure (latest edition).
- (16) ~~United States Law Week~~ The Daily Journal (newspaper), one year back file.
- (17) Shepard's United States Citations.
- (18) Shepard's Federal Citations.
- (19) Shepard's California Citations.
- (20) A recognized law dictionary, such as Black's or Ballantine's (latest edition).
- (21) California Code of Regulations.
- (22) California Family Law Litigation Guide (latest edition).
- (23) California Family Law Practice and Procedure (latest edition).
- (24) Civil Rights Actions (latest edition).
- (25) California Courtroom Evidence, by Cotchett.
- (26) California Juvenile Courts Practice and Procedure (latest edition).
- (27) California Superior Court Local Rules.

(b) Each institution shall also make supplemental legal materials available to inmates from an outside source. Except for items that are out of print, the supplemental legal materials shall include, but shall not be limited to, the following legal materials or their equivalents from other publishers:

- (1) ~~Federal Supplement, volumes 1 to 179.~~
- (2) ~~United States Supreme Court Reports, Lawyers' Edition, First Series, volumes 1 to 93.~~
- (3) ~~California Reports, First Series.~~
- (4) ~~California Reports, Second Series.~~
- (5) ~~California Appellate Reports, First Series.~~
- (16) Federal Rules Decisions.
- (27) Corpus Juris Secundum.
- (38) California Jurisprudence (latest edition).

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code; *Gilmore v. Lynch*, 319 F.Supp. 105 (N.D. Cal. 1970); *Toussaint v. McCarthy*, 801 F.2d 1080 (9th Cir. 1986); *Toussaint v. McCarthy*, USDC N.D. Cal. No. C 73-1422 SAW, First Special Report of the Monitor, August 19, 1987; *Toussaint v. Rowland*, USDC N.D. Cal. No. C 73-1422 SAW, Second Special Report of the Monitor, June 30, 1988; *Zakto v. Rowland*, 835 F.Supp. 1174 (N.D. Cal. 1993); *Lewis v. Casey*, 518 U.S. 343 (1996).