

**FINAL STATEMENT OF REASONS
AMENDMENT, ADOPTION AND REPEAL OF REGULATIONS OF THE
BOARD OF STATE AND COMMUNITY CORRECTIONS**

**MINIMUM STANDARDS FOR LOCAL DETENTION FACILITIES
TITLE 15, DIVISION 1, CHAPTER 1, SUBCHAPTER 4**

LOCAL MANDATE DETERMINATION

As required by Government Code Section 11346.9(a)(2), the Board of State and Community Corrections (BSCC) has determined that there will be no mandates imposed on local agencies or school districts through the adoption of these Title 15 regulations as proposed.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.9(a)(4), the BSCC must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention 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 than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The BSCC has determined that there is no alternative that would be more effective or as effective, less burdensome, and more cost effective, to affected persons. Public comments were received in writing and at the public hearing held at the Board of State and Community Corrections on September 15, 2016, the response to which are provided below. The BSCC held two other public hearings to which there were no attendees on September 12, 2016 in Visalia, CA and on September 14, 2016 in San Diego, CA.

UPDATES TO INITIAL STATEMENT OF REASONS

No updates have been made to the Initial Statement of Reasons.

INCORPORATION BY REFERENCE

There are no documents being incorporated by reference into these regulations.

DOCUMENTS RELIED UPON

The below listed documents have been relied upon, as disclosed in the Notice of Proposed Action published on July 29, 2016.

- 2011 Dietary Reference Intakes (DRI) of the Food and Nutrition Board, Institute of Medicine of the National Academies
- 2008 California Food Guide
- 2015-2020 Dietary Guidelines for Americans

NONDUPLICATION

The proposed regulations, in part, duplicate and/or overlap enabling statutory language which is cited as either “authority” or “reference” for the proposed regulations. The duplication and/or overlapping of language is necessary to satisfy the clarity standards provided in Government Code Section 11349.1(a)(3). The proposed regulatory language, where duplicating/overlapping statute, was included in an attempt to provide agencies to which these regulations apply with as much information and clarity as possible.

SUMMARY AND RESPONSE TO COMMENTS

COMMENTER #1

Steven Meinrath, Advocate

American Civil Liberties Union of California

August 29, 2016 (Letter) and September 15, 2016 (Public Hearing Comment)

Summary of Comment

The proposed amendments fail to comply with the minimum standards required of local detention facilities under the federal Prison Rape Elimination Act of 2003 (PREA). By failing to include these federally mandated duties, the regulations fall below the minimum standards required by federal law. The proposed regulations thus are in conflict with federal law and their adoption would violate the Administrative Procedures Act. State regulations must be consistent with and cannot fall below the minimum standards established by PREA.

In 2005, Section 6030 of the Penal Code was amended to require the BSCC to adopt standards for local correctional facilities including the requirement that inmates who are pregnant be provided prenatal and postpartum information and health care. (AB 478 – Chap. 608, Statutes of 2005.) Eleven years later, there are still no such regulations in Title 15 that establish specific standards pertaining to women in county jails. Title 15 § 1206(f) merely states that local jails must set forth policies and procedures regarding care for pregnant and lactating women “in conformance with applicable state and federal law.” The state regulatory code, however, does contain a number of such provisions regarding women in state prisons (located in Cal. Code Regs., Title 15 § 3355.2). We strongly recommend that the BSCC make the provisions “Treatment of Pregnant Inmates,” found in Cal. Code Regs., Title 15 § 3355.2(a)-(l), applicable to women incarcerated in county facilities.

We also recommend that the BSCC include a requirement that postpartum women be given lactation accommodation (specifically - being provided a breast pump and instructions, and the ability to store milk for pick-up and delivery to the child). One of the major issues we have seen in county facilities is the lack of awareness that postpartum women need to express breastmilk. We have seen family crises affecting both incarcerated mother and her baby when facilities do not provide lactation accommodation, and therefore strongly suggest clearer guidance on this point.

BSCC Response

Title 15 FSOR

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The proposed regulations do not include PREA standards and/or requirements. At the BSCC Board meeting held on September 22, 2016, the Board discussed the incorporation of PREA into Title 15 adult and juvenile regulations and directed staff to compose a panel of experts to further discuss and make recommendations on incorporating PREA language. This incorporation will be the subject of a separate rulemaking to take place at a later date, this comment will be included in that rulemaking file.

The bulk of Title 15 regulations that pertain to minimum standards for local detention facilities are performance-based in nature. The performance-based method of regulation requires local agencies to operate their facilities in compliance with state regulation while maintaining the flexibility to make more specific and stringent requirements within their own agency's policies. Assembly Bill (AB) 478 (Chapter 608, Statutes of 2005) directed BSCC to establish minimum standards requiring that inmates received by a facility while they are pregnant are provided all of the following: (1) A balanced, nutritious diet approved by a doctor; (2) Prenatal and postpartum information and health care, including, but not limited to, access to necessary vitamins as recommended by a doctor; (3) Information pertaining to childbirth education and infant care; and (4) a dental cleaning while in a state facility. California Code of Regulations Section 1206(f) was added in response to AB 478, states "provision for screening and care of pregnant and lactating women, including prenatal and postpartum information and health care, including but not limited to access to necessary vitamins as recommended by a doctor, information pertaining to childbirth education and infant care, and other services mandated by statute." This performance-based requirement allows for local agencies to create individual plans while still requiring that they follow all applicable state and federal laws. The provisions of Title 15, Section 3355.2, as referenced in the comment, are regulations specific to state prisons which may not be wholly applicable to local, non-state, detention facilities.

COMMENTER #2

Legal Services for Prisoners with Children September 12, 2016 (Letter)

Summary of Comment

Legal Services for Prisoners with Children (LSPC) seeks greater clarity on sections 1058.5 and 1122.5 of the Minimum Standards for County Jails. Title 15 fails to clarify the implementation of the law (Penal Code Section 3407). Merely repeating the exact text of Penal Code Section 3407 is duplicative and will not adequately protect pregnant women.

BSCC Response

On September 28, 2012, Assembly Bill (AB) 2530 (Chapter 726, Statutes of 2012) was passed adopting Penal Code Section 3407 into law. The language of AB 2530 directed the BSCC to develop standards regarding restraint of pregnant women at the next biennial review.

The BSCC employed a workgroup of experts in reviewing the language being proposed for Sections 1058.5 and 1122.5. The workgroup's recommendations were brought to an executive steering committee for review before the BSCC Board approved the language.

The choice to restate Penal Code 3407 was made because the law had already been in effect for three years, facilities have already written policies and procedures pertaining to restraints of pregnant inmates and have been practicing them without the language of 1058.5. It is the responsibility of the BSCC to provide minimum standards, consistent with many other BSCC Title 15 minimum standards Sections 1058.5 and 1122.5 are proposed to provide additional standards that provide agencies the ability to individualize their policy and procedures while still meeting the intent of the law.

COMMENT #3

Lynn Wu, Staff Attorney, Juvenile Justice Policy and Projects Manager

Prison Law Office

September 12, 2016 (Letter) and September 15, 2016 (Public Hearing Comment)

Summary of Comment

The Prison Law Office submits the following comments on the proposed amendments to the Minimum Standards for the Local Detention Facilities, Title 15, Division 1, Chapter 1, Subchapter 4, California Code of Regulations. Our comments address compliance with the federal Prison Rape Elimination Act of 2003 (PREA).

Adopting the proposed regulations would be a violation of the Administrative Procedures Act. All local correctional facilities are required to comply with PREA. The DOJ promulgated regulations that are binding on every detention facility in the country, including local jails and juvenile facilities. The proposed amendments to the minimum standards in Title 15 fail to incorporate the duties federally mandated by PREA.

As the state regulatory agency that establishes the minimum standards for local facilities, including county jails, and inspects those facilities for compliance, the BSCC, for purposes of PREA is the “organization responsible for the accreditation” of jails in California. Failure to adopt standards that meet or exceed those set in PREA will make the BSCC ineligible for any new Federal grants until those standards are adopted.

By failing to incorporate PREA into the minimum standards in Title 15 and conducting biennial inspections of local facilities for compliance with standards that fall below the PREA requirements, the BSCC is failing its local partners and leaving them susceptible to litigation. A facility’s policies or practices that fall below the standards set forth in PREA are evidence of “deliberate indifference”.

We urge the BSCC to establish minimum standards that rise to the level set by PREA. Adopting standards below this threshold will violate the Administrative Procedures Act and leave counties susceptible to a loss in federal funding and liability.

BSCC Response

The proposed regulations do not include PREA standards and/or requirements. At the BSCC Board meeting held on September 22, 2016, the Board discussed the incorporation of PREA into Title 15 adult and juvenile regulations and directed staff to compose a panel

of experts to further discuss and make recommendations on incorporating PREA language. This incorporation will be the subject of a separate rulemaking to take place at a later date, this comment will be included in that rulemaking file.