TITLE 15 MINIMUM STANDARDS FOR LOCAL DETENTION FACILITIES
Proposed Revisions for ESC Initial Review 5.25.21
(5/4/2021)

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ARTICLE 1. GENERAL INSTRUCTIONS

§ 1004. Severability.

If any article, section, subsection, sentence, clause or phrase of these regulations is for any reason held to be unconstitutional, contrary to statute, exceeding the authority of the Board, or otherwise inoperative, such decision shall not affect the validity of the remaining portion of these regulations.

Note: Authority cited: Section 6030, Penal Code. Reference: Section 6030, Penal Code.

Discussion Notes

No changes recommended; this regulation is an historical legal preamble to the regulations.

§ 1005. Other Standards and Requirements.
Nothing contained in the standards and requirements hereby fixed shall be construed to prohibit a city, county, or city and county agency operating a local detention facility from adopting standards and requirements governing its own employees and facilities; provided, such standards and requirements meet or exceed and do not conflict with these standards and requirements. Nor shall these regulations be construed as authority to violate any state fire safety standard, building standard, or health and safety code.

Note: Authority cited: Section 6030, Penal Code. Reference: Section 6030, Penal Code.

Discussion Notes

No changes recommended; this regulation is an historical legal preamble to the regulations.

§ 1007. Pilot Projects.
The pilot project is the short-term method used by a local detention facility/system, approved by the Board, to evaluate innovative programs, operations or concepts which meet or exceed the intent of these regulations.

The Board may, upon application of a city, county or city and county, grant pilot project status to a program, operational innovation or new concept related to the operation and management of a local detention facility. An application for a pilot project shall include, at a minimum, the following information:

(a) The regulations which the pilot project will affect.
(b) Review of case law, including any lawsuits brought against the applicant local detention facility, pertinent to the proposal.
(c) The applicant's history of compliance or non-compliance with standards.
(d) A summary of the "totality of conditions" in the facility or facilities, including but not limited to;
    (1) program activities, exercise and recreation;
    (2) adequacy of supervision;
    (3) types of inmates affected; and,
    (4) inmate classification procedures.
(e) A statement of the goals the pilot project is intended to achieve, the reasons a pilot project is necessary and why the particular approach was selected.
(f) The projected costs of the pilot project and projected cost savings to the city, county, or city and county, if any.
(g) A plan for developing and implementing the pilot project including a time line where appropriate.
(h) A statement of how the overall goal of providing safety to staff and inmates will be achieved.

The Board shall consider applications for pilot projects based on the relevance and appropriateness of the proposed project, the completeness of the information provided in the application, and staff recommendations.

Within 10 working days of receipt of the application, Board staff will notify the applicant, in writing, that the application is complete and accepted for filing, or that the application is being returned as deficient and identifying what specific additional information is needed. This does not preclude the Board members from requesting additional information necessary to make a determination that the pilot project proposed actually meets or exceeds the intent of these regulations at the time of the hearing. When complete, the application will be placed on the agenda for the Board's consideration at a regularly scheduled meeting. The written notification from the Board to the applicant shall also include the date, time and location of the meeting at which the application will be considered. (The Board meeting schedule for the current calendar year is available through its office in Sacramento.)

When an application for a pilot project is approved by the Board, Board staff shall notify the applicant, in writing within 10 working days of the meeting, of any conditions included

in the approval and the time period for the pilot project. Regular progress reports and evaluative data on the success of the pilot project in meeting its goals shall be provided to the Board. If disapproved, the applicant shall be notified in writing, within 10 working days of the meeting, the reasons for said disapproval. This application approval process may take up to 90 days from the date of receipt of a complete application.

Pilot project status granted by the Board shall not exceed twelve months after its approval date. When deemed to be in the best interest of the application, the Board may extend the expiration date for up to an additional twelve months. Once a city, county, or city and county successfully completes the pilot project evaluation period and desires to continue with the program, it may apply for an alternate means of compliance as described in Section 1008 of these regulations.

Note: Authority cited: Sections 6024 and 6030, Penal Code. Reference: Section 6029, Penal Code.

Discussion Notes

No changes recommended.

The Workgroup reviewed this section and discussed whether this regulation is relevant anymore; the pilot project process has not been used in many years. The group ultimately decided to keep the regulation as is in case it is needed in the future. Pilot projects are a commonly accepted method to allow local detention facility administrators to identify and test a new or innovative program, concept, or operation that is intended to meet or exceed regulations.

§ 1008. Alternate Means of Compliance.
The alternate means of compliance is the long-term method used by a local detention facility/system, approved by the Board, to encourage responsible innovation and creativity in the operation of California's local detention facilities. The Board may, upon application of a city, county, or city and county, consider alternate means of compliance with these regulations after the pilot project process has been successfully evaluated (as defined in Section 1007). The city, county, or city and county must present the completed application to the Board no later than 30 days prior to the expiration of its pilot project.

Applications for alternate means of compliance must meet the spirit and intent of improving jail management, shall be equal to or exceed the existing standard(s) and shall include reporting and evaluation components. An application for alternate means of compliance shall include, at a minimum, the following information:

(a) Review of case law, including any lawsuits brought against the applicant local detention facility, pertinent to the proposal.
(b) The applicant's history of compliance or non-compliance with standards.
(c) A summary of the "totality of conditions" in the facility or facilities, including but not limited to:
    (1) program activities, exercise and recreation;
    (2) adequacy of supervision;
    (3) types of inmates affected; and,
    (4) inmate classification procedures.
(d) A statement of the problem the alternate means of compliance is intended to solve, how the alternative will contribute to a solution of the problem and why it is considered an effective solution.
(e) The projected costs of the alternative and projected cost savings to the city, county, or city and county if any.
(f) A plan for developing and implementing the alternative including a time line where appropriate.
(g) A statement of how the overall goal of providing safety to staff and inmates was achieved during the pilot project evaluation phase (Section 1007).

The Board shall consider applications for alternate means of compliance based on the relevance and appropriateness of the proposed alternative, the completeness of the information provided in the application, the experiences of the jurisdiction during the pilot project, and staff recommendations.

Within 10 working days of receipt of the application, Board staff will notify the applicant, in writing, that the application is complete and accepted for filing, or that the application is being returned as deficient and identifying what specific additional information is needed. This does not preclude the Board from requesting additional information necessary to make a determination that the alternate means of compliance proposed meets or exceeds the intent of these regulations at the time of the hearing. When complete, the application will be placed on the agenda for the Board's consideration at a regularly scheduled meeting. The written notification from the Board to the applicant shall also include the date, time and location of the meeting at which the application will be

considered. (The Board meeting schedule for the current calendar year is available through its office in Sacramento.)

When an application for an alternate means of compliance is approved by the Board, Board staff shall notify the applicant, in writing within 10 working days of the meeting, of any conditions included in the approval and the time period for which the alternate means of compliance shall be permitted. The Board may require regular progress reports and evaluative data as to the success of the alternate means of compliance. If disapproved, the applicant shall be notified in writing, within 10 working days of the meeting, the reasons for said disapproval. This application approval process may take up to 90 days from the date of receipt of a complete application.

The Board may revise the minimum jail standards during the next biennial review (reference Penal Code Section 6030) based on data and information obtained during the alternate means of compliance process. If, however, the alternate means of compliance does not have universal application, a city, county, or city and county may continue to operate under this status as long as they meet the terms of this regulation.

Note: Authority cited: Sections 6024 and 6030, Penal Code. Reference: Section 6030, Penal Code.

Discussion Notes

No changes recommended.

Like Section 1007, Pilot Projects, the Workgroup discussed whether this regulation on alternate means of compliance is relevant or necessary. After discussing the pros and cons of removing the regulation, the group chose to leave it as is. Alternate means of compliance are a commonly accepted method to allow local detention facilities to administer an innovative or creative program, concept, or operation following the Pilot Project process.

ARTICLE 2. INSPECTION AND APPLICATION OF STANDARDS

§ 1010. Applicability of Standards.

(a) All standards and requirements contained herein shall apply to Types I, II, III and IV facilities except as specifically noted in these regulations.

(b) Court holding facilities shall comply with the following regulations:

(1) 1012, Emergency Suspensions of Standards or Requirements
(2) 1018, Local Detention Facility Appeal Process
(3) 1024, Court Holding and Temporary Holding Facility Training
(4) 1027, Number of Personnel
(5) 1027.5, Safety Checks
(6) 1028, Fire and Life Safety Staff
(7) 1029, Policy and Procedures Manual
(8) 1030, Suicide Prevention Program
(9) 1032, Fire Suppression Preplanning
(10) 1044, Incident Reports
(11) 1046, Death in Custody
(12) 1050, Classification Plan
(13) 1051, Communicable Diseases
(14) 1052, Mentally Disordered Inmates
(15) 1053, Administrative Segregation
(16) 1057, Developmentally Disabled Inmates
(17) 1058, Use of Restraint Devices
(18) 1058.5, Restraints and Pregnant Inmates
(19) 1068, Access to Courts and Counsel
(20) Title 24, Section 13-102(c)1, Letter of Intent
(21) Title 24, Section 13-102(c)3, Operational Program Statement
(22) Title 24, Section 13-102(c)5, Submittal of Plans and Specifications
(23) Title 24, Section 13-102(c)6C, Design Requirements
(24) Title 24, Part 2, Section 1231.2, Design Criteria for Required Spaces
(25) Title 24, Part 2, Section 1231.3, Design Criteria for Furnishings and Equipment
(26) 1200, Responsibility for Health Care Services
(27) 1220, First Aid Kit(s)
(28) 1246, Food Serving and Supervision
(29) 1280, Facility Sanitation, Safety, Maintenance

(c) In addition to the regulations cited above, court holding facilities that hold minors shall also comply with the following regulations:

(1) 1047, Serious Illness of a Minor in an Adult Detention Facility
(2) 1122.5, Pregnant Minors
(3) 1160, Purpose
(4) 1161, Conditions of Detention
(5) 1162, Supervision of Minors
(6) 1163, Classification

(d) Temporary holding facilities shall comply with the following regulations:

(1) 1012, Emergency Suspensions of Standards or Requirements
(2) 1018, Local Detention Facility Appeal Process
(3) 1024, Court Holding and Temporary Holding Facility Training
(4) 1027, Number of Personnel
(5) 1027.5, Safety Checks
(6) 1028, Fire and Life Safety Staff
(7) 1029, Policy and Procedures Manual
(8) 1030, Suicide Prevention Program
(9) 1032, Fire Suppression Preplanning
(10) 1044, Incident Reports
(11) 1046, Death in Custody
(12) 1050, Classification Plan
(13) 1051, Communicable Diseases
(14) 1052, Mentally Disordered Inmates
(15) 1053, Administrative Segregation
(16) 1057, Developmentally Disabled Inmates
(17) 1058, Use of Restraint Devices
(18) 1058.5, Restraints and Pregnant Inmates
(19) 1067, Access to Telephone
(20) 1068, Access to Courts and Counsel
(21) Title 24, Section 13-102(c)1, Letter of Intent
(22) Title 24, Section 13-102(c)3, Operational Program Statement
(23) Title 24, Section 13-102(c)5, Submittal of Plans and Specifications
(24) Title 24, Section 13-102(c)6C, Design Requirements
(25) Title 24, Part 2, Section 1231.2, Design Criteria for Required Spaces
(26) Title 24, Part 2 Section 1231.3, Design Criteria for Furnishings and Equipment
(27) 1200, Responsibility for Health Care Services
(28) 1207, Medical Receiving Screening
(29) 1209, Transfer to Treatment Facility
(30) 1212, Vermin Control
(31) 1213, Detoxification Treatment
(32) 1220, First Aid Kit(s)
(33) 1240, Frequency of Serving
(34) 1241, Minimum Diet
(35) 1243, Food Service Plan
(36) 1246, Food Serving and Supervision
(37) 1280, Facility Sanitation, Safety, Maintenance

(e) The following sections are applicable to temporary holding facilities where such procedural or physical plant items are utilized.

(1) 1055, Use of Safety Cell
(2) 1056, Use of Sobering Cell
(3) 1058, Use of Restraint Devices
(4) 1058.5, Restraints and Pregnant Inmates

(5) 1080, Rules and Disciplinary Penalties
(6) 1081, Plan for Inmate Discipline
(7) 1082, Forms of Discipline
(8) 1083, Limitations on Disciplinary Actions
(9) 1084, Disciplinary Records
(10) Title 24, Part 2, Section 1231.2.1 Area for Reception and Booking
(11) Title 24, Part 2, Section 1231.2.4 Sobering Cell
(12) Title 24, Part 2, Section 1231.2.5 Safety Cell
(13) Title 24, Part 2, Section 1231.3.4 Design Criteria for Showers
(14) Title 24, Part 2, Section 1231.3.5 Design Criteria for Beds/Bunks
(15) Title 24, Part 2, Section 1231.3.8 Design Criteria for Cell Padding
(16) 1270, Standard Bedding and Linen Issue
(17) 1272, Mattresses

(f) Law enforcement facilities, including lockups, that hold minors in temporary custody shall, in addition to the previously cited applicable regulations, comply with the following regulations:
(1) 1046, Death in Custody
(2) 1047, Serious Illness of a Minor in an Adult Detention Facility
(3) 1140, Purpose
(4) 1141, Minors Arrested for Law Violations
(5) 1142, Written Policies and Procedures
(6) 1143, Care of Minors in Temporary Custody
(7) 1144, Contact Between Minors and Adult Prisoners
(8) 1145, Decision on Secure Detention
(9) 1146, Conditions of Secure Detention
(10) 1147, Supervision of Minors Held Inside a Locked Enclosure
(11) 1148, Supervision of Minors in Secure Detention Outside a Locked Enclosure
(12) 1149, Criteria for Non-secure Custody
(13) 1150, Supervision of Minors in Non-secure Custody
(14) 1151, Intoxicated and Substance Abusing Minors in a Lockup

Note: Authority cited: Section 6030, Penal Code. Reference: Section 6030, Penal Code.

Discussion Notes

This regulation details which sections of Title 15 apply to each facility type. In Sections 1010(b)(2) and (d)(2) of this regulation, “Appeal” has been changed to “Local Detention Facility Appeal Process,” to reflect changes proposed to Section 1018.

There is no best practice that would apply to this type of regulation. Each regulation cited in this section will be reviewed for best practices individually.

- **Operational impact:** There is no operational or fiscal impact anticipated from this change; the revision will ensure consistency with applicable regulations.

- **Fiscal Impact:** There is no fiscal impact anticipated because of this revision.

§ 1012. Emergency Suspensions of Standards or Requirements.
Nothing contained herein shall be construed to deny the power of any facility administrator to temporarily suspend any standard or requirement herein prescribed in the event of any emergency which threatens the safety of a local detention facility, its inmates or staff, or the public. Only such regulations directly affected by the emergency may be suspended. The facility administrator shall notify the Board in writing in the event that such a suspension lasts longer than three days. Suspensions lasting for more than 15 days require approval of the chairperson of the Board. Such approval shall be effective for the time specified by the chairperson.

Note: Authority cited: Sections 6024 and 6030, Penal Code. Reference: Section 6030, Penal Code.

Note to ESC: *The ESC may consider adding verbiage to this regulation that will require agencies to submit mitigation plans if a suspension becomes long term. A consideration may be: is 15 days an appropriate amount of time before Board chair approval?*

Discussion Notes

No revisions recommended.

The Workgroup reviewed the requirements for emergency suspension of standards, discussing the recent and ongoing COVID-19 pandemic. Many facilities continue to suspend standards as the pandemic continues.

The regulation currently requires that a facility report any suspension of standard that lasts more than 15 days, which has been twice a month for some, since March 2020. The group discussed removing the 15-day requirement for Board Chair approval or modifying it in some way. The current reporting period of suspensions has recently changed to every 30-days; a period that may change again, at the discretion of the Board Chairperson, as the pandemic situation evolves. Because of the flexibility and discretion given to the Board Chairperson, the Workgroup chose to keep the regulation as is.

While there is no single identified “best practice” on suspending standards in a local detention facility, the workgroup and BSCC staff reflected on US Department of Justice, National Institute of Corrections’ guides for emergency planning, current federal Centers for Disease Control and Prevention guidelines related to the COVID-19 pandemic, current BSCC practices for suspending regulations during the COVID-19 pandemic, and workgroup members’ professional experiences with ongoing suspension of standards due to the COVID-19 pandemic.

§ 1013. Criminal History Information.
Such criminal history information as is necessary for conducting facility inspections as specified in Section 6031.1 of the Penal Code and detention needs surveys as specified in Section 6029 of the Penal Code shall be made available to the staff of the Board. Such information shall be held confidential except that published reports may contain such information in a form which does not identify an individual.

Note: Authority cited: Sections 6024 and 6030, Penal Code. Reference: Sections 6029, 6030, and 11105 Penal Code.

Discussion Notes

No changes recommended.

The Workgroup reviewed Section 1013, discussing the possibility of adding a regulatory requirement that Board staff be prohibited from sharing criminal history or medical documents that are confidential. Ultimately no changes were made to this section.

While there is no single identified national best practice on access to criminal history, current and best practices would indicate that it is necessary for BSCC staff to appropriately access individual criminal history information, in accordance with applicable state and federal laws, to review and verify facility compliance with applicable Title 15 regulations.

§ 1016. Contracts for Local Detention Facilities.
In the event that a county, city or city and county contracts for a local detention facility with a community-based public or private organization, compliance with appropriate Title 15 and Title 24 regulations shall be made a part of the contract. Nothing in this standard shall be construed as creating enabling language to broaden or restrict privatization of local detention facilities beyond that which is contained in statute.

Note: Authority cited: Section 6030, Penal Code. Reference: Section 6030, Penal Code.

Discussion Notes

No changes recommended.

BSCC staff provided further information on the types of facilities that this regulation might apply to and the number and types of facilities that currently utilize contracted staff or other types of security solutions such as G4S. Ultimately, the group chose not to change the regulation, the language is sufficient as-is.

The BSCC Standards and Training for Corrections (STC) requirements, current practices, and relevant statutes require agencies that contract with outside organizations to operate their local detention facilities in adherence and compliance with Titles 15 and 24 minimum standards; this is reflective of best practices. It is essential that privately-run agencies are meeting state-issued minimum standards.

§ 1018. Local Detention Facility Appeal Process.
The appeal hearing procedures are intended to provide a review concerning the Board application and enforcement of standards and regulations in local detention facilities and lockups. A county, city, or city and county facility may appeal on the basis of alleged misapplication, capricious enforcement of regulations, or substantial differences of opinion as may occur concerning the proper application of regulations or procedures.

(a) Levels of Appeal.
(1) There are two levels of appeal as follows:
(A) appeal to the Executive Director; and,
(B) appeal to the Board.
(2) An appeal shall first be filed with the Executive Director.

(b) Appeal to the Executive Director.
(1) If a county, city, or city and county facility is dissatisfied with an action of the Board staff, it may appeal the cause of the dissatisfaction to the Executive Director. Such appeal shall be filed within 30 calendar days of the notification of the action with which the county or city is dissatisfied.
(2) The appeal shall be in writing and:
(A) state the basis for the dissatisfaction;
(B) state the action being requested of the Executive Director; and,
(C) attach any correspondence or other documentation related to the cause for dissatisfaction.

(c) Executive Director Appeal Procedures.
(1) The Executive Director shall review the correspondence and related documentation and render a decision on the appeal within 30 calendar days except in those cases where the appellant withdraws or abandons the appeal.
(2) The procedural time requirement may be waived with the mutual consent of the appellant and the Executive Director.
(3) The Executive Director may render a decision based on the correspondence and related documentation provided by the appellant and may consider other relevant sources of information deemed appropriate.

(d) Executive Director's Decision.
The decision of the Executive Director shall be in writing and shall provide the rationale for the decision.

(e) Request for Appeal Hearing by Board.
(1) If a county, city, or city and county facility is dissatisfied with the decision of the Executive Director, it may file a request for an appeal hearing with the Board. Such appeal shall be filed within 30 calendar days after receipt of the Executive Director's decision.
(2) The request shall be in writing and:
(a) state the basis for the dissatisfaction;
(b) state the action being requested of the Board; and,

(c) attach any correspondence related to the appeal from the Executive Director.

(f) Board Hearing Procedures.

(1) The hearing shall be conducted by a hearing panel designated by the Chairman of the Board at a reasonable time, date, and place, but not later than 21 days after the filing of the request for hearing with the Board, unless delayed for good cause. The Board shall mail or deliver to the appellant or authorized representative a written notice of the time and place of hearing not less than 7 days prior to the hearing.

(2) The procedural time requirements may be waived with mutual consent of the parties involved.

(3) Appeal hearing matters shall be set for hearing, heard, and disposed of by a notice of decision within 60 days from the date of the request for appeal hearing, except in those cases where the appellant withdraws or abandons the request for hearing or the matter is continued for what is determined by the hearing panel to be good cause.

(4) An appellant may waive a personal hearing before the hearing panel and, under such circumstances, the hearing panel shall consider the written information submitted by the appellant and other relevant information as may be deemed appropriate.

(5) The hearing is not formal or judicial in nature. Pertinent and relative information, whether written or oral, shall be accepted. Hearings shall be tape recorded.

(6) After the hearing has been completed, the hearing panel shall submit a proposed decision in writing to the Board at its next regular public meeting.

(g) Board of State and Community Corrections Decision.

(1) The Board, after receiving the proposed decision, may:

(a) adopt the proposed decision;

(b) decide the matter on the record with or without taking additional evidence; or,

(c) order a further hearing to be conducted if additional information is needed to decide the issue.

(2) The Board, or notice of a new hearing ordered, notice of decision or other such actions shall be mailed or otherwise delivered by the Board to the appellant.

(3) The record of the testimony exhibits, together with all papers and requests filed in the proceedings and the hearing panel's proposed decision, shall constitute the exclusive record for decision and shall be available to the appellant at any reasonable time for one year after the date of the Board's notice of decision in the case.

(4) The decision of the Board shall be final.

Note: Authority cited: Section 6030, Penal Code. Reference: Section 6030, Penal Code.

Discussion Notes

This regulation outlines the appeal process for local detention facilities that disagree with a BSCC decision on compliance.

The Workgroup discussed this section and agreed that the regulation lacked clarity; as it does not expressly state who may appeal a BSCC decision and in what instances an appeal may be used. The addition of “Local Detention Facilities …Process” was made to specify that the regulation outlines the appeals process for local detention facilities and therefore applies to city, county and city/county local detention facilities; community members may not appeal such decision.

While there is no single national best practice identified on this subject, it is considered best practice and a commonly accepted practice to allow a local detention facility the opportunity to appeal a decision made by the BSCC based on alleged misapplication, capricious enforcement of regulations, or substantial differences of opinion as may occur concerning the proper application of regulations or procedures.

- **Operational impact:** None anticipated; this revision does not change who can appeal to the BSCC.

- **Fiscal Impact:** None anticipated.

ARTICLE 3. TRAINING, PERSONNEL AND MANAGEMENT

§ 1020. Corrections Officer Core Course.
(a) In addition to the provisions of California Penal Code Section 831.5, all custodial personnel of a Type I, II, III, or IV facility shall successfully complete the "Corrections Officer Core Course" as described in Section 179 of Title 15, CCR, within one year from the date of assignment.

(b) Custodial Personnel who have successfully completed the course of instruction required by Penal Code Section 832.3 shall also successfully complete the "Corrections Officer Basic Academy Supplemental Core Course" as described in Section 180 of Title 15, CCR, within one year from the date of assignment.

Note: Authority cited: Section 6030, Penal Code. Reference: Section 6030, Penal Code.

Discussion Notes

No changes recommended.

The Workgroup reviewed section 1020 and the one-year training requirement stipulated in the Standards and Training for Corrections regulations (Section 179 of Title 15, CCR). While it is best practice to ensure that trained staff are working in local detention facilities, there is recognition that not all agencies are able to get staff trained immediately after hire. STC minimum standards and best practices dictate that staff be trained as soon as possible, but no later than one year of assignment to the jail; allowing untrained staff to work the facility for longer than a year could be dangerous. BSCC staff recommends that staff be assigned alongside trained staff until they receive core training.

There are many nationally accepted best practices related to the training of custodial personnel; specific training standards are contained in STC minimum standards and related Penal Code sections. The current regulation reflects the STC standards that custodial personnel shall successfully complete required training within one year from date of assignment; the STC core manual and best practices encourage agencies to train custodial staff as soon as possible, recognizing that not all staff may be able to get to a training program immediately.

§ 1021. Jail Supervisory Training.
Prior to assuming supervisory duties, jail supervisors shall complete the core training requirements pursuant to Section 1020, Corrections Officer Core Course. In addition, supervisory personnel of any Type I, II, III or IV jail shall also be required to complete either the STC Supervisory Course (as described in Section 181, Title 15, CCR) or the POST supervisory course within one year from date of assignment.

Note: Authority cited: Sections 6030, 6031.6 and 6035, Penal Code. Reference: Section 6030, Penal Code.

Discussion Notes

No changes recommended.

Workgroup members considered current STC and Peace Officers Standards and Training as current best practices.

§ 1023. Jail Management Training.
Managerial personnel of any Type I, II, III or IV jail shall be required to complete either the STC management course (as described in Section 182, Title 15, CCR) or the POST management course within one year from date of assignment.

Note: Authority cited: Sections 6030, 6031.6 and 6035, Penal Code. Reference: Section 6030, Penal Code.

Discussion Notes

No changes recommended.

Members discussed requiring jail managers to receive core training within one year if they transferred in from outside the jail; ultimately, they decided to not recommend any change. Jail Managers will typically have a supervisor with Core training working below them to directly supervise custody operations. Workgroup members considered current STC and Peace Officers Standards and Training current best practices.

§ 1024. Court Holding and Temporary Holding Facility Training.
At a minimum, all supervisors of, and personnel who supervise inmates in, a Court Holding or Temporary Holding facility shall complete 8 hours of specialized corrections training. Such training shall include, but not be limited to:
(a) applicable minimum jail standards;
(b) jail operations liability;
(c) inmate segregation;
(d) emergency procedures and planning, fire and life safety;
(e) suicide prevention;
(f) de-escalation;
(g) juvenile procedures;
(h) racial bias; and,
(i) mental illness.
Such training shall be completed as soon as practical, but in any event not more than six months after the date of assigned responsibility. Successful completion of Core training or supplemental Core training, pursuant to Section 1020, Corrections Officer Core Course, may be substituted for the initial eight hours of training.

A total of eight hours of refresher training shall be completed every two years. Successful completion of the requirements in Section 1025, Continuing Professional Training may be substituted for the eight-hour refresher.

Each agency shall determine if additional training is needed based upon, but not limited to, the complexity of the facility, the number of inmates, the employees' level of experience and training, and other relevant factors.

Note: Authority cited: Sections 6024 and 6030, Penal Code. Reference: Section 6030, Penal Code.

Discussion Notes

This regulation outlines the training that must be included for personnel who supervise inmates in Temporary Holding and Court Holding Facilities. The proposed revisions provide a baseline of contemporary and appropriate training for persons working in temporary and court holding facilities that are reflective of current best practices.

The Workgroup recommended several changes to the regulation to modernize, standardize, and clarify requirements, including re-phrasing the opening paragraph for clarity. Adding “a total” of eight hours of refresher training will encourage agencies to use in-house training and spread-out hours when beneficial.

Members discussed adding requirements of, or references to, the Prison Rape Elimination Act (PREA), but ultimately decided not to add those since PREA is applicable to such facilities regardless of addition to regulation.

The workgroup also agreed to incorporate the four additional required training topics to the minimum court and temporary holding facility training as recommended by the Type I and Temporary Holding Workgroup. While these requirements may be covered in POST

or other trainings, requiring them in regulation will ensure that all staff receive training on these important and relevant topics.

Revisions bring clarity and align the regulation with national best practices and contemporary practices, and include the following benefits:

- Revisions emphasize that these training requirements are a minimum for persons working in temporary and court holding facilities.
- Extraneous language related to the effective date of this regulation was deleted; this language was unclear and unnecessary.
- "A total" of eight hours of refresher training was added to clarify that the eight hours of training may be delivered in blocks and does not have to be in one eight-hour block. Many police departments roll out training in manageable blocks. This revision aligns the regulation with current best practice.
- De-escalation, juvenile procedures, racial bias, and mental illness are added to the list of items to be included for persons working in temporary holding and court holding facilities. This is reflective of national best practices and current POST requirements; many staff will receive this information as part of regularly assigned training.

There are many currently accepted national best practices related to supervision and treatment of individuals held in local detention facilities. Workgroup members and staff considered as many as possible that were relevant to this regulation, including current federal, state and local laws, PREA, and POST training requirements for police officers.

- **Operational impact:** Agencies that are not providing training on the new topics will have to add those to curricula. Agencies that were providing refresher training in one 8-hour block may benefit from spreading training out into manageable blocks.

- **Fiscal impact:** There may be minimal costs associated with adding some of the revised training topics; however, some agencies may see fiscal benefit from spreading training out into manageable blocks.

§ 1025. Continuing Professional Training.
With the exception of any year that a core training module is successfully completed, all facility/system administrators, managers, supervisors, and custody personnel of a Type I, II, III, or IV facility shall successfully complete the “annual required training” specified in Section 184 of Title 15, CCR.

Note: Authority cited: Section 6030, Penal Code. Reference: Section 6030, Penal Code.

Discussion Notes

No changes recommended. STC minimum standards and commonly accepted best practices indicate that annual training be required for all custodial personnel working in local detention facilities to ensure that they remain informed of contemporary issues in the field.

§ 1027. Number of Personnel.

A sufficient number of personnel shall be employed in each local detention facility to ensure the implementation and operation of the programs and activities required by these regulations.

Whenever there is an inmate in custody, there shall be at least one employee on duty at all times in a local detention facility or in the building which houses a local detention facility who shall be immediately available and accessible to inmates in the event of an emergency. Such an employee shall not have any other duties which would conflict with the supervision and care of inmates in the event of an emergency. Whenever one or more female inmates are in custody, there shall be at least one female employee who shall be immediately available and accessible to such females.

Additionally, in Type IV programs the administrator shall ensure a sufficient number of personnel to provide case review, program support, and field supervision.

In order to determine if there is a sufficient number of personnel for a specific facility, the facility administrator shall prepare and retain a staffing plan indicating the personnel assigned in the facility and their duties. Such a staffing plan shall be reviewed by the Board staff at the time of their biennial inspection. The results of such a review and recommendations shall be reported to the local jurisdiction having fiscal responsibility for the facility.

Note: Authority cited: Section 6030, Penal Code. Reference: Sections 6030, 6031 and 6031.1, Penal Code.

Discussion Notes

No changes recommended. The workgroup discussed the possibility of including staff to inmate ratios. After discussion, members agreed that there is no one commonly or nationally accepted best practice for staff to inmate ratios and that it would be difficult to quantify a ratio that would work for all local detention facilities, considering the variation in physical layout and supervision across the state.

While there is recommended inmate to staff ratios found in literature, media reports, and core standards, there is no one single ratio that is recommended or recognized as a national best practice. The National Institute of Corrections recommends that agencies conduct a comprehensive analysis of the individual jail, including building design, number and types of programs offered, and the number of individuals housed to determine how many staff are needed to adequately and safety operate the facility and ensure safety of individuals who are incarcerated and staff. The current regulation reflects nationally accepted best practices by requiring that "*A sufficient number of personnel shall be employed in each local detention facility to ensure the implementation and operation of the programs and activities required by these regulations.*"

§ 1027.5 Safety Checks.
Safety checks shall be conducted at least hourly through direct visual observation of all inmates. There shall be no more than a 60-minute lapse between safety checks. There shall be a written plan that includes the documentation of routine safety checks and a process to review completed safety checks.

Note: Authority cited: Section 6030, Penal Code. Reference: Section 6030, Penal Code.

ESC Recommendation
The ESC acknowledged that an internal review of safety checks is an important practice that could be strengthened by revision to this regulation. A suggested revision:

> *Safety checks shall be conducted at least hourly through direct visual observation of all inmates. There shall be no more than a 60-minute lapse between safety checks. There shall be a written plan that includes the documentation of routine safety checks and a process to review completed safety checks.*

Discussion Notes

This regulation outlines the requirement for 60-minute safety checks of incarcerated persons. The revision will require that supervisors regularly review safety checks to ensure that safety checks are occurring in accordance with regulation and so that staff may be held accountable for lack of safety checks, as necessary. Many agencies already have such a process in place. A hyphen is added to fix a grammatical error.

The Workgroup concurred with the ESC recommendation, and that of the Type I and Temporary Holding Workgroup to add a supervisory review to safety checks conducted in the facility.

There are many commonly accepted and nationally recognized guidelines for safety checks inside local detention facilities. Best and commonly accepted practices reflect that supervisors should be regularly reviewing completed safety checks and documenting this review. This is a currently occurring practice in many agencies, as indicated by BSCC Field Representatives.

- **Operational impact:** This revision will increase the likelihood that safety checks continue to be conducted appropriately. Agencies that do not already require this process will need to develop related policy and procedures.

- **Fiscal impact:** There should be no fiscal impact; this process can be absorbed by current supervisor responsibilities.

§ 1028. Fire and Life Safety Staff.
Pursuant to Penal Code Section 6030(c), effective January 1, 1980, whenever there is an inmate in custody, there shall be at least one person on duty at all times who meets the training standards established by the Board for general fire and life safety. The facility manager shall ensure that there is at least one person on duty who trained in fire and life safety procedures that relate specifically to the facility.

Note: Authority cited: Section 6030, Penal Code. Reference: Section 6030, Penal Code.

Discussion Notes

No changes recommended.

Best practices dictate that there are always appropriately trained staff in the facility to ensure proper response in the event of a fire or life safety emergency. This practice coupled with appropriate fire suppression pre-planning with local fire and life safety officials can help to ensure safety in the event of an emergency.

§ 1029. Policy and Procedures Manual.

Facility administrator(s) shall develop and publish a manual of policy and procedures for the facility. The policy and procedures manual shall address all applicable Title 15 and Title 24 regulations and shall be comprehensively reviewed and updated at least every two years. Such a manual shall be made available to all employees.

(a) The manual for Temporary Holding, Type I, II, and III facilities shall provide for, but not be limited to, the following:
    (1) Table of organization, including channels of communications.
    (2) Inspections and operations reviews by the facility administrator/manager.
    (3) Policy on the use of force that meets current state and federal legal requirements and includes prohibition of the use of carotid holds.
    (4) Policy on the use of restraint equipment, including the restraint of pregnant inmates as referenced in Penal Code Section 3407.
    (5) Procedure and criteria for screening newly received inmates for release.
    (6) Security and control including physical counts of inmates, searches of the facility and inmates, contraband control, and key control. Each facility administrator shall, at least annually, review, evaluate, and make a record of security measures. The review and evaluation shall include internal and external security measures of the facility including security measures specific to prevention of sexual abuse and sexual harassment.
    (7) Emergency procedures include:
        (A) fire suppression preplan as required by section 1032 of these regulations;
        (B) escape, disturbances, and the taking of hostages;
        (C) mass arrests;
        (D) natural disasters;
        (E) periodic testing of emergency equipment; and,
        (F) storage, issue, and use of weapons, ammunition, chemical agents, and related security devices.
    (8) Suicide Prevention.
    (9) Separation of Inmates.
    (10) Zero tolerance in the prevention of sexual abuse and sexual harassment.
    (11) Policy and procedure to detect, prevent, and respond to retaliation against any staff or inmate after reporting any abuse.
    (12) Release policy, including release planning for the individual.

(b) The policies and procedures required in subsections (a)(6) and (a)(7) may be placed in a separate manual to ensure confidentiality.

(c) The manual for court holding facilities shall include all of the procedures listed in subsection (a), except number (5).

(d) The manual for Type IV facilities shall include, in addition to the procedures required in subsection (a), except number (5), procedures for:
    (1) accounting of inmate funds;
    (2) community contacts;
    (3) field supervision;
    (4) temporary release; and
    (5) obtaining health care.

(e) The manual for Temporary Holding, Court Holding, Type I, II, III, and IV facilities shall provide for, but not be limited to, the following:
(1) multiple internal ways for inmates to privately report sexual abuse and sexual harassment, retaliation by other inmates or staff for reporting sexual abuse and sexual harassment, and staff neglect or violation of responsibilities that may have contributed to such incidents,
(2) a method for uninvolved inmates, family, community members, and other interested third parties to report sexual abuse or sexual harassment. The method for reporting shall be publicly posted at the facility.

Note: Authority cited: Section 6030, Penal Code. Reference: Section 6030, Penal Code.

Discussion Notes

This regulation outlines what topics must be covered in a local detention facility manual. Revisions remove reference to statute that are no longer applicable, change the word "segregation" to "separation" to reflect actual practices and propose a new requirement for the inclusion of a release policy which would include release planning for individuals. An additional change is made to the term "third parties" to correct a grammatical error. Revisions will clarify requirements and modernize terminology.

The Workgroup elected to remove reference to statute related to release as these codes are no longer relevant. Members also agreed to change the word "segregation" to "separation" as this more accurately reflects actual facility process.

Revisions will also specify that facility policies on use of force be compliant with state and federal legal requirements to ensure safety for incarcerated people. In addition to state and federal law, and case law such as Topete v. County of San Bernardino (Case 5:16-cv-00355VAP-DTB, 2017) which resulted in a remedial plan, there are best practices related to the use of force in detention settings. The addition of a requirement that agency policy meet state and federal legal requirements is broad enough to ensure that agency administrators consider all possible laws that impact use of force.

Revisions also include a requirement that carotid holds are prohibited. On September 30, 2020, Governor Gavin Newsom signed Assembly Bill 1196 (Chapter 324, Statutes of 2020), which prohibited law enforcement agencies from authorizing the use of carotid holds.

Local detention facility staff will no longer be trained on the use of the carotid hold; there will likely be little to no operational impact due to the inability to use hold. Agencies will be required to update policies and procedures to maintain compliance with Title 15, CCR.

Changes in this section further reflect Governor Gavin Newsom's October 12, 2019, veto message for Senate Bill 42, The Getting Home Safe Act. The message noted that the intent of the vetoed bill may be accomplished through methods that do not create a significant state reimbursable mandate. There is no existing regulation related to the

allowance of released individuals voluntarily staying in local detention facilities. The regulation was reviewed and chosen by the Safe Release of Inmates and Transportation Workgroup to meet the Governor's veto message intent, and according to the authority listed in Penal Code Section 4024.

The Workgroup reviewed the ESC Recommendation, Public Comment, Penal Code Section 4024, and requirements that would have been adopted had Senate Bill 42 passed. In addition, the members considered available best practices related to safe transportation. Section 4024 of the Penal Code, particularly the statement "the sheriff may offer a voluntary program to the prisoner that would allow that prisoner to stay in the custody facility for up to 16 additional hours…" was discussed at length. The group did not find that the above passage gave the Board of State and Community Corrections enough authority to adopt a regulation requiring that a facility release individuals between specific hours, nor did it find authority to require an option to for individuals to voluntarily stay in the jail for up to 16 hours as the text of Senate Bill 42 would have.

Though the Workgroup could not adopt the same requirements of the vetoed Senate Bill 42, members felt that the safety of individuals being released is still an important and necessary aspect that must be addressed in Title 15 for local detention facilities. Section 1029, Policy and Procedure Manual has been modified to include a requirement that facility policies include a policy on release that includes release planning for individuals. This addition to Title 15 recognizes the importance of release planning for individuals and allows each agency flexibility to develop standard operating procedures relative to safe release. Members felt that including a mandate for "transportation" would be unnecessarily burdensome on agencies.

There are many national and commonly accepted best practices for what should be included in a local detention facility's policy and procedure manual; however, there is no one single resource for this information. BSCC has been updating this regulation regularly as best practices are identified in consultation with practitioners, community members, advocates, and in accordance with current case law. As an example, requirements for elements related to PREA were recently incorporated into the regulation, and workgroups reviewed other State's regulations and policies including The Texas Commission on Jail Standards regarding release times, and the District of Columbia, Safe Release of Inmates Amendment Act of 2010.

- **Operational impact:** There is no operational impact anticipated.
- **Fiscal impact:** There is no fiscal impact anticipated because of this revision.

§ 1030. Suicide Prevention Program.

The facility shall have a comprehensive written suicide prevention program developed by the facility administrator or designee, in conjunction with the health authority and mental health director, to identify, monitor, and provide treatment to those inmates who present a suicide risk. The program shall consider national best practices and include the following:

(a) Annual suicide prevention training for all custodial personnel.
(b) Intake screening for suicide risk immediately upon intake and prior to housing assignment.
(c) Screening during special situations, including placement in restrictive housing, following a hearing, and after a transfer or change in classification.
(d) Provisions facilitating communication among arresting/transporting officers, facility staff, court staff, medical and mental health personnel in relation to suicide risk.
(e) Housing recommendations for inmates at risk of suicide that balance safety and environment. The least restrictive environment should be considered.
(f) Supervision depending on level of suicide risk.
(g) Suicide attempt and suicide intervention policies and procedures.
(h) Provisions for reporting suicides and suicides attempts.
(i) Multi-disciplinary administrative review of suicides and attempted suicides as defined by the facility administrator, including the development of a corrective action plan to address deficiencies identified in the administrative review.
(j) Provisions for follow up care as needed.
(k) Plan for mental health consultation following return from court as needed.

Note: Authority cited: Section 6030, Penal Code. Reference: Section 6030, Penal Code.

ESC Recommendation

The ESC discussed:

- suicide prevention best practices;
- physical plant issues and suicide prevention;
- prevention, assessment and treatment options;
- recent media attention on suicides;
- recent litigation involving suicides;
- regional medical and mental health partnerships;
- mental health evaluations prior to disciplinary housing assignments and
- following return from court, particularly for those involved in high-profile
- cases; and,
- resources that could be provided to Workgroups such as National Commission on Correctional Health Care's (NCCHC) recent publication regarding suicide prevention, and Lindsay Hayes' report on suicide prevention (San Diego and Sacramento)

The ESC decided to have Section 1030 reviewed by two Workgroups (1st – Medical and Mental Health, 2nd – Classification). Workgroups should be mindful of the abilities and expenses of agencies to mitigate issues through construction. Changes to physical plant can trigger new building standards or different ADA requirements and be costly. Section

1030 focuses on staff and programs; workgroups should consider if suicide hazards belong in Section 1030.

- BSCC Staff will provide NCCHC best practices and other applicable studies and standards.

Discussion
This section outlines the operational requirements for preventing suicide in detention facilities. The revisions will require more training, better communication between staff, and corrective action as necessary to provide effective suicide prevention services and responses.

Revisions will ensure that custodial staff are receiving annual refresher training on suicide prevention, that court staff are included in communications regarding suicide prevention, and that a corrective action plan is developed when an administrative review identifies deficiencies. Revisions make requirements more prescriptive, but performance based enough so that every county can develop a plan specific to their own operations.

The addition of additional screening and housing considerations that prioritize the least restrictive environment align the regulation with NCCHC best practices.

The Medical and Mental Health Workgroup added provisions for follow up care, as needed, since best practices dictate that after identifying risk of suicide, there is an increased risk of suicide within 7-10 days of housing. Additionally, including a requirement for a mental health consultation after returning from court aligns the regulation with best practices, as there is higher risk of self-harm after court decisions that may not be favorable.

The workgroup discussed the suggestions of the ESC and the best practices and guidance established by the NCCHC and Lindsay Hayes. Both the NCCHC and Mr. Hayes' resources are widely available and should regularly be referred to when developing suicide prevention programs. The overall intent of the changes to this section are to increase suicide prevention through training, awareness, and oversight.

NCCHC Suicide Prevention Resource Guide:
https://www.ncchc.org/filebin/Publications/Suicide_Prevention_Resource_Guide_2.pdf

Lindsay Hayes' Resources (there are multiple reports also available):
https://nicic.gov/authors/hayes-lindsay-m

- **Operational impact:** There may be a minimal operational impact, as training requirements will be increased, and there may be additional duties or tasks during the administrative review of suicides or attempted suicides. Agencies will also need to create an annual training curriculum for agency staff that sufficiently meets the standard.

- **Fiscal Impact:** There may be positive fiscal impact as suicide risk may be lessened and agencies may avoid litigation costs.

§ 1032. Fire Suppression Preplanning.
Pursuant to Penal Code Section 6031.1(b), the facility administrator shall consult with the local fire department having jurisdiction over the facility, with the State Fire Marshal, or both, in developing a plan for fire suppression which shall include, but not be limited to:

(a) a fire suppression pre-plan developed with the local fire department to be included as part of the policy and procedures manual (Title 15, California Code of Regulations Section 1029);
(b) regular fire prevention inspections by facility staff on a monthly basis with two-year retention of the inspection record;
(c) fire prevention inspections as required by Health and Safety Code Section 13146.1(a) and (b) which requires inspections at least once every two years;
(d) an evacuation plan; and,
(e) a plan for the emergency housing of inmates in the case of fire.

Note: Authority cited: Sections 6024 and 6030, Penal Code. Reference: Section 6030 and 6031.1, Penal Code.

Discussion Notes

No substantive revisions recommended; a grammatical error is corrected by adding a hyphen in subsection (b). There will be no impact, this is a non-substantive change.

There are many commonly accepted and nationally recognized best practices that dictate that the best way to keep a local detention facility safe in the event of an emergency is to engage in regular pre-planning with local fire and life safety officials. The current regulation reflects these best practices.

ARTICLE 4. RECORDS AND PUBLIC INFORMATION

§ 1040. Population Accounting.
Except in court holding and temporary holding facilities, each facility administrator shall maintain an inmate demographics accounting system which reflects the monthly average daily population of sentenced and non-sentenced inmates by gender and juvenile status. Facility administrators shall provide the Board with applicable inmate demographic information as described in the Jail Profile Survey.

Note: Authority cited: Section 6030, Penal Code. Reference: Sections 6030, Penal Code.

Discussion Notes

This revision outlines the requirement for local detention facilities to have a demographic system to track information related to incarcerated persons. Revisions reflect current use of terminology when referring to individuals housed in local detention facilities; updating terminology reflects current practices.

The workgroup discussed recent legislation (SB 132) related to the respect, agency and dignity of transgender individuals in state prison. Based on members' experience with training on gender equality and inclusivity and research on how to provide inclusivity, members agreed to replace the binary terms "male and female" and replace them with gender so that agencies could be encouraged to be more inclusive. The workgroup also agreed that "juvenile" was not necessarily a classification; the term "juvenile status" is more reflective of current practices.

Best practices indicate that that the term "gender" is more inclusive than specifying binary terms such as "male" and "female." By removing the requirement that jail population accounting systems require categories of male and female, these regulations encourage agencies to be responsive to and inclusive of gender nonconforming individuals.

- **Operational impact:** Since revisions reflect terminology change, there is no anticipated effect on operations.

- **Fiscal impact:** There is no fiscal impact anticipated because of this revision.

§ 1041. Inmate Records.

(a) Each facility administrator of a Type I, II, III or IV facility shall develop written policies and procedures for the maintenance of individual inmate records which shall include, but not be limited to, intake information, personal property receipts, commitment papers, court orders, reports of disciplinary actions taken, medical orders issued by the responsible physician and staff response, and non-medical information regarding disabilities and other limitations.

(b) Each facility administrator shall collect accurate, uniform data for every allegation of sexual abuse at facilities under its direct control and from other facilities with which it contracts for the confinement of its inmates. The data collected shall include, at a minimum, the data necessary to satisfy the reporting requirements of 34 U.S.C. section 30303(a)(1).

Note: Authority cited: Section 6030, Penal Code. Reference: Section 6030, Penal Code.

Discussion Notes

No changes recommended.

The current regulation reflects best practices required by PREA for collection of data related to sexual abuse.

§ 1044. Incident Reports.
Each facility administrator shall develop written policies and procedures for the maintenance of written records and reporting of all incidents which result in physical harm, or serious threat of physical harm, to an employee or inmate of a detention facility or other person. Such records shall include the names of the persons involved, a description of the incident, the actions taken, and the date and time of the occurrence. Such a written record shall be prepared by the staff assigned to investigate the incident and submitted to the facility manager or his/her designee.

Note: Authority cited: Sections 6024 and 6030, Penal Code. Reference: Section 6030, Penal Code.

Discussion Notes

No changes recommended.

There are not easily identifiable nationally accepted best practices available for incident reports; however, the current regulation reflects historical and commonly used best practices used in local detention facilities and other industries where incidents are reported.

§ 1045. Public Information Plan.
Each facility administrator of a Type I, II, III or IV facility shall develop written policies and procedures for the dissemination of information to the public, to other government agencies, and to the news media. The public and inmates shall have available for review the following material:

(a) The Board of State and Community Corrections Minimum Standards for Local Detention Facilities as found in Title 15 of the California Code of Regulations.

(b) Facility rules and procedures affecting inmates as specified in sections:

(1) 1045, Public Information Plan
(2) 1061, Inmate Education Plan
(3) 1062, Visiting
(4) 1063, Correspondence
(5) 1064, Library Service
(6) 1065, Exercise and Recreation
(7) 1066, Books, Newspapers, Periodicals and Writings
(8) 1067, Access to Telephone
(9) 1068, Access to Courts and Counsel
(10) 1069, Inmate Orientation
(11) 1070, Individual/Family Service Programs
(12) 1071, Voting
(13) 1072, Religious Observance
(14) 1073, Inmate Grievance Procedure
(15) 1080, Rules and Disciplinary Penalties
(16) 1081, Plan for Inmate Discipline
(17) 1082, Forms of Discipline
(18) 1083, Limitations on Discipline
(19) 1200, Responsibility for Health Care Services

Note: Authority cited: Section 6030, Penal Code. Reference: Section 6030, Penal Code.

Discussion Notes

No changes recommended.

While there is no single best practice for information that should be made available to persons housed in a local detention facility, the current regulation is reflective of commonly accepted practices for public information. The regulation does not limit the amount of information that an agency may otherwise make available to the individuals housed.

§ 1046. Death in Custody.

(a) Death in Custody Reviews for Adults and Minors.
The facility administrator, in cooperation with the health administrator, shall develop written policy and procedures to ensure that there is an initial review of every in-custody death within 30 days. The review team at a minimum shall include the facility administrator or designee, the health administrator, the responsible physician and other health care and supervision staff who are relevant to the incident.

Deaths shall be reviewed to determine the appropriateness of clinical care; whether changes to policies, procedures, or practices are warranted; and to identify issues that require further study.

(b) Death of a Minor
In any case in which a minor dies while detained in a jail, lockup, or court holding facility:

(1) The administrator of the facility shall provide to the Board a copy of the report submitted to the Attorney General under Government Code Section 12525. A copy of the report shall be submitted within 10 calendar days after the death.
(2) Upon receipt of a report of death of a minor from the administrator, the Board may within 30 calendar days inspect and evaluate the jail, lockup, or court holding facility pursuant to the provisions of this subchapter. Any inquiry made by the Board shall be limited to the standards and requirements set forth in these regulations.

Note: Authority cited: Sections 6024 and 6030, Penal Code. Reference: Section 6030, Penal Code.

Discussion Notes

This regulation outlines the actions that must be taken in the event of a death in custody. Revisions will ensure that certain individuals, at a minimum, are required to participate in the review of any inmate death; this will help ensure accountability and participation. The phrase “and/or” is replaced by “or” to provide clarity that either the facility administrator or their designee shall participate, but both are not needed. The revisions clarify participants in the review process.

The workgroup discussed this regulation and added the requirement that “at a minimum” the individuals listed above would participate in the death in custody review. Agencies can then determine what additional participants may be necessary. It made sense to specify that either the facility administrator or their designee shall participate, but both are not required.

The National Commission on Correctional Health Care (NCCHC), which is a nationally recognized organization that defines best practices in correctional health care, has a standard that requires a mortality review within 30 days of death, and an administrative review in collaboration with health care and custody staff. The purpose of these reviews is to determine appropriateness of clinical care, determine whether changes to policy and

procedures are warranted, and to identify issues that require further study. The current regulation is aligned with the NCCHC standard (J-A-09, Procedure in the Event of an Inmate Death).

- **Operational impact:** None anticipated.

- **Fiscal impact:** There is no fiscal impact anticipated.

§ 1047. Serious Illness or Injury of a Minor in an Adult Detention Facility.

The facility administrator shall develop policy and procedures for notification of the court of jurisdiction and the parent, guardian, or person standing in loco parentis, in the event of a suicide attempt, serious illness, injury or death of a minor in custody.

Note: Authority cited: Section 6030, Penal Code. Reference: Section 6030, Penal Code.

Discussion Notes

No changes recommended.

Best practices dictate that the individuals responsible for a minor's care be notified in the event of a death or a significant incident like a suicide attempt, serious illness, or injury. A death of a minor would still need to be reviewed in accordance with 1046, Death in Custody.

ARTICLE 5. CLASSIFICATION AND SEPARATION

§ 1050. Classification Plan.

(a) Each administrator of a temporary holding, Type I, II, or III facility shall develop and implement a written classification plan designed to properly assign inmates to housing units and activities according to the categories of gender identity, age, criminal sophistication, seriousness of crime charged, physical or mental health needs, assaultive/non-assaultive behavior, risk of being sexually abused or sexually harassed, and other criteria which will provide for the safety of the inmates and staff. Such housing unit assignment shall be accomplished to the extent possible within the limits of the available number of distinct housing units or cells in a facility.

The written classification plan shall be based on objective criteria and include receiving screening performed at the time of intake by trained personnel, and a record of each inmate's classification level, housing restrictions, and housing assignments.

Each administrator of a Type II or III facility shall establish and implement a classification system which will include the use of classification officers or a classification committee in order to properly assign inmates to housing, work, rehabilitation programs, and leisure activities. Such a plan shall include the use of as much information as is available about the inmate and from the inmate and shall provide for a channel of appeal by the inmate to the facility administrator or designee. An inmate may request a review of their classification plan no more often than 30 days from their last review.

(b) Each administrator of a court holding facility shall establish and implement a written plan designed to provide for the safety of staff and inmates held at the facility. The plan shall include receiving and transmitting of information regarding inmates who represent unusual risk or hazard while confined at the facility, and the separation of such inmates to the extent possible within the limits of the court holding facility.

(c) In deciding whether to assign an inmate to a housing area, and in making other housing and programming assignments, the agency shall consider on a case-by-case basis whether a placement would ensure the inmate’s health and safety, and whether the placement would present management or security problems. An inmate’s own views with respect to their own safety shall be given serious consideration.

Note: Authority cited: Section 6030, Penal Code. Reference: Section 6030, Penal Code.

Discussion Notes

This regulation outlines the requirements for facility classification plans. Proposed changes update language to reflect gender equity and remove the requirement that an inmate must be sentenced to 60-days for them to request a classification plan review. People should be able to request classification reviews at any time; the 60-day requirement seems unnecessary and overly burdensome.

The workgroup discussed the fact that parts of Section 1050 refer to inmates as only being male, while other regulations refer to other genders. The workgroup recommended that the language be updated to be non-gender specific; there are many best practices related to the use of gender-inclusive language. Workgroup members considered socially accepted terms to replace gender biased, or gender-specific, language.

The Classification Workgroup discussed suggestions from the Medical and Mental Health Workgroup, which included the cleanup of pronouns, consideration of 60-day review omission as it is not current practice in the field, and consideration of periodic classification reviews.

Resources:
https://outandequal.org/wp-content/uploads/2018/11/OE-Non-Binary-Best-Practices.pdf
https://transequality.org/issues/police-jails-prisons

- **Operational impact:** None anticipated.

- **Fiscal Impact:** None anticipated.

§ 1051. Communicable Diseases.
The facility administrator, in cooperation with the responsible physician, shall develop written policies and procedures specifying those symptoms that require medical isolation of an inmate until a medical evaluation is completed. At the time of intake into the facility, an inquiry shall be made of the person being booked as to whether or not the person has or has had any communicable diseases, such as tuberculosis or has observable symptoms of tuberculosis or any other communicable diseases, or other special medical problem identified by the health authority. The response shall be noted on the medical screening form.

Note: Authority cited: Sections 6024 and 6030, Penal Code. Reference: Section 6030, Penal Code.

Public Comment
BSCC staff recommends the term "and/or" (highlighted in yellow above) be revised to ensure regulation requirements can be reasonably and logically interpreted as having only one meaning.

Note to ESC: *The revisions to this regulation were drafted before the COVID-19 pandemic; the ESC may wish to review this regulation for any proposed revisions because of the pandemic. It may be helpful to refer to Title 15, Section 1206.5. Management of Communicable Diseases in a Custody Setting:*

> *(a) The responsible physician, in conjunction with the facility administrator and the county health officer, shall develop a written plan to address the identification, treatment, control and follow-up management of tuberculosis and other communicable diseases. The plan shall cover the intake screening procedures, identification of relevant symptoms, referral for a medical evaluation, treatment responsibilities during incarceration and coordination with public health officials for follow-up treatment in the community. The plan shall reflect the current local incidence of communicable diseases which threaten the health of inmates and staff.*
> *(b) Consistent with the above plan, the health authority shall, in cooperation with the facility administrator and the county health officer, set forth in writing, policies and procedures in conformance with applicable state and federal law, which include, but are not limited to:*
>> *(1) the types of communicable diseases to be reported;*
>> *(2) the persons who shall receive the medical reports;*
>> *(3) sharing of medical information with inmates and custody staff;*
>> *(4) medical procedures required to identify the presence of disease(s) and lessen the risk of exposure to others;*
>> *(5) medical confidentiality requirements;*
>> *(6) housing considerations based upon behavior, medical needs, and safety of the affected inmates;*
>> *(7) provisions for inmate consent that address the limits of confidentiality; and,*
>> *(8) reporting and appropriate action upon the possible exposure of custody staff to a communicable disease.*

Discussion Notes
This regulation outlines the requirements for screening for communicable disease and follow up activities where there are symptoms. The term “segregation” is not appropriate; people with symptoms of communicable disease should not be punished or segregated, they need medical isolation. Updating terminology will ensure that the regulation can be clearly understood and replaces outdated language.

The Workgroup discussed the use of the word “segregation” which implies that a person who has symptoms of communicable disease receives punitive separation, which isn’t the practice or intent of the regulation or facility practice. “Segregation” was replaced with “medical isolation” to properly describe the separation of an individual in this instance. The workgroup had discussed the importance of non-gender specific language in the regulations and asked that the term “he/she” be replaced with “the person”. The group also reviewed the suggestion from BSCC staff that “and/or” be replaced with more specific language.

- **Operational impact:** None anticipated.

- **Fiscal Impact:** None anticipated.

§ 1052. Mentally Disordered Inmates.
The facility administrator, in cooperation with the responsible physician, shall develop written policies and procedures to identify and evaluate all persons at risk/persons who may be in behavioral crisis**, and may include telehealth. If an evaluation from medical or mental health staff is not readily available, an inmate shall be considered at risk/in behavioral crisis** for the purpose of this section if the person appears to be a danger to themselves or others or if they appear gravely disabled, as defined in Section 5008 of the Welfare and Institutions Code. An evaluation from medical or mental health staff shall be secured within 24 hours of identification or at the next daily sick call, whichever is earliest. Separation may be used if necessary to protect the safety of the inmate or others.

Note: Authority cited: Section 6030, Penal Code. Reference: Section 6030, Penal Code.

ESC Recommendation

The ESC discussed terminology (mentally disordered) as being outdated and undefined in Section 1006. There were many questions around who meets the definition of a "mentally disordered inmate," how staff would identify inmates who are "mentally disordered," and the diagnosis or discovery process. Suggestions for rewording include "persons at risk". Not all persons requiring assessment or mental health care are currently exhibiting a "mental disorder."

The ESC discussed how to capture those individuals who don't have a mental health diagnosis but are at risk. The regulation could be clarified to indicate who could notify mental health that a person may need services; policy and procedures should clarify what may signal that a person is at risk or requires assessment and that all staff may trigger a review or assessment.

The Classification and Medical and Mental Health Workgroups will review this section and will consider:

- A "mentally disordered" inmate may not be an inmate who has been identified as having mental health needs or a diagnosis; it could be an inmate dealing with stress, or someone who needs protection.

Notes to ESC:

****The following titles were suggested to replace "Mentally Disordered Inmates":*

1. *Persons at Risk*
2. *Behavioral Crisis Identification*
3. *Persons at Risk of Behavioral Crisis*
4. *Behavioral Crisis Intervention*
5. *Behavioral Crisis Response*

***One of these terms should be chosen, the first is recommended by the Classification Workgroup, the second by the Medical/Mental Health Workgroup.*

Discussion Notes

This regulation outlines the requirements for identification and protection for persons who are identified as requiring a mental health or behavioral response.

The workgroup agreed that the term “mentally disordered inmate” is outdated and that the more current term being used in local detention facilities is “persons at risk.” The current title also does not reflect the intent of the regulation, that there be a process by which to screen and identify people who have mental health needs. This process must be developed in consultation with the health administrator and should provide direction for custodial staff to identify and evaluate a person’s mental health needs while in custody, not just upon admission.

The intent of the regulation could be clearer if it is actually intended to provide a process for crisis intervention. *The ESC may wish to discuss further.*

The term “mentally disordered inmate” is not just outdated, it does not include persons that may need behavioral intervention even without having been diagnosed. This regulation should apply to all at risk persons and the term “gravely disabled” should be explained. The revision provides a term that is inclusive of more than mental health disorders, includes all at risk persons, references the definition for gravely disabled, corrects gender-specific language, and replaces the term “segregation” as is proposed in other sections of these regulations.

The workgroup removed gender-specific language and the term “segregation” like other revisions. The term “gravely disabled” was discussed; some members of the workgroup were unfamiliar with this term. The group agreed to add a citation to Welfare and Institutions Code, Section 5008 where the term is defined.

NCCHC Standards J-E-05 is broad and requires that, “Mental health screening is performed to ensure that urgent mental health needs are met.” Standard J-F-03 states, “Mental health services are available for all inmates who require them.”

There may be an operational change is agencies choose different assessments for persons at risk based on revisions. No fiscal impact is anticipated.

§ 1053. Administrative Separation.
Except in Type IV facilities, each facility administrator shall develop written policies and procedures which provide for the administrative separation of inmates who have demonstrated a history of: activity or behavior that is criminal in nature or disruptive to facility operations; direct action or behavior that is criminal in nature or disruptive to the safety and security of other inmates or facility staff, as well as to the safe operation of the facility; escape; assault , attempted assault, or participation in a conspiracy to assault or harm other inmates or facility staff; or likely to need protection from other inmates. Policies and procedures must require documentation to indicate that administrative separation is necessary in order to obtain the objective of protecting the welfare of inmates and staff. Administrative separation may consist of separate and secure housing but shall not involve any other deprivation of privileges than is necessary to obtain the objective of protecting the inmates and staff and separation must not adversely affect an individual's health. Each inmate placed in separation housing shall have an individualized assessment and ongoing reassessment of security risk and need for separation that indicates the length of the separation and a reasonable time frame in which administrative separation is reviewed for continuation.

Note: Authority cited: Section 6030, Penal Code. Reference: Section 6030, Penal Code.

ESC Recommendation
The ESC discussed the regulation and offered some considerations for the Classification Workgroups:

- The differences between administrative segregation, isolation, and solitary confinement are not clear in regulation.
- Administrative segregation is different than other forms of "isolation" in that there is no default loss of privileges. Administrative segregation can be considered a classification; should there be a reasonable amount of time that this classification is reviewed?
- The workgroup should review recent remediation plans to understand litigation around administrative segregation and isolation.
- Language (prone to: promote activity or behavior that is criminal…) should be reviewed and updated for clarity.

Title 15 currently allows inmates to serve 24-hours, short term lockdown and disciplinary separation as a disciplinary consequence (referred to as "punitive actions" in T15).

- Disciplinary separation is defined as, "punishment status assigned an inmate as the result of violating facility rules and which consists of confinement in a cell or housing unit."
- Given recent attention to solitary confinement, should disciplinary consequences, including time limits in separation, be reconsidered?
- Detention, medical, and mental health implications should be considered.

Public Comment
Submitted by Merced County Sheriff's Office

Word change for Administrative segregation regarding time allowed before notification is required. Inmate discipline time for review and investigations.

Disability Rights California Memorandum, February 2, 2020, Page 5.

Note to ESC: *This regulation does not necessarily require that persons be administratively separated by being placed in isolation, and the ESC should ensure that the intent of the regulation is clear. By changing the term "segregation" to "separation," this distinction is clearer, but there may be more work to do. The ESC should also consider this regulation in conjunction with others and may consider additional regulation revisions or the development of definitions related to separation and segregation.*

Discussion Notes

This regulation outlines the requirements for separating a person for administrative purposes, as opposed to punitive or disciplinary reasons. Some of the terms used in this section are outdated and no longer meet the intent of the regulation, which is to ensure that vulnerable people receive protection and potentially dangerous are kept separate from a portion of the rest of the people housed at the facility. There are also actions described that facilities cannot do, such as separating a person solely because of their influence over other inmates. There is also no mention of assessment or reassessment after an inmate has been separated.

The workgroup reviewed the comments made by the ESC and public; discussed issues with having outdated terms in regulation and the need for review of an inmate's separation status. The workgroup also discussed how facilities cannot separate an inmate solely because they have influence, or because they are promoting certain activities; they felt it was very important that separation is based on actual documented reasons or actions, rather than perceived promotion.

Removing the term segregation and replacing it with "separation" addresses some concerns of the ESC and ensures that current terms are being used. The changes also refined the reasons for separation to direct behavior, removing ambiguity and promoting reliance on fact. A requirement that there be an assessment and reassessment ensure that inmate's need for separation will be evaluated, and that the reason for administrative segregation be documented.

There are many studies and best practice recommendations related to segregation, restrictive housing and solitary confinement that condemn the use of long-term isolation because of the detrimental effect on the health and safety of those held in isolation, particularly people with mental health challenges. NCCHC Standard J-G-02 is simple in its statement that "Any practice of segregation should not adversely affect an inmate's health."

Resources:

- NCCHC April 2016 Position Statement on Solitary Confinement (LINK)
- NIJ Restrictive Housing in the US: https://www.ojp.gov/pdffiles1/nij/250323.pdf

- **Operational impact:** Facilities may need to make policy changes for updated terms and develop policy and procedure for assessment of persons placed in separation.

- **Fiscal Impact:** None anticipated. Facilities are already required to make policy updates, and many facilities already have a procedure for assessment of persons in separation.

§ 1054. Administrative Removal-Type IV Facility.
In Type IV facilities, the facility administrator shall develop written policies and procedures which provide for the administrative removal of an inmate for the safety and well-being of the inmate, the staff, the program, the facility, or the general public. Such removal shall be subject to review by the facility administrator or designee on the next business day.

Note: Authority cited: Section 6030, Penal Code. Reference: Section 6030, Penal Code.

Public Comment
BSCC staff recommends the term “and/or” be revised to ensure regulation requirements can be reasonably and logically interpreted as having only one meaning.

Discussion Notes:

The workgroup discussed the comment received regarding the unclear language and agreed to correct it and the grammatical error. The revision provides clarity and fixes the grammar issue.

While there is no single best practice identified relative to how and when to remove a person from a non-custodial Type IV facility. This regulation outlines how a person may be administratively removed from such a program, including that there shall be a review by the facility administrator no later than one day following removal.

There is no operational or fiscal impact anticipated with this revision; it is nonsubstantive.

§ 1055. Use of Safety Cell.
The safety cell described in Title 24, Part 2, Section 1231.2.5, shall be used to hold only those inmates who display behavior which results in the destruction of property or reveals an intent to cause physical harm to self or others. The facility administrator, in cooperation with the responsible physician, shall develop written policies and procedures governing safety cell use and may delegate authority to place an inmate in a safety cell to a physician.

In no case shall the safety cell be used for punishment or as a substitute for treatment.

An inmate shall be placed in a safety cell only with the approval of the facility manager or designee, or responsible health care staff; continued retention shall be reviewed a minimum of every four hours. A medical assessment shall be completed as soon as possible, but not more than 12 hours of placement in the safety cell. The inmate shall be medically cleared for continued retention, referral to advanced treatment, or removal from the safety cell a minimum of every 24 hours thereafter. The facility manager, designee or responsible health care staff shall obtain a mental health opinion/consultation with responsible health care staff on placement and retention, which shall be secured as soon as possible, but not more than 12 hours of placement. Direct visual observation shall be conducted at least twice every thirty minutes, with no more than a 15-minute lapse between safety checks. Such observation shall be documented.

Procedures shall be established to assure administration of necessary nutrition and fluids. Inmates shall be allowed to retain sufficient clothing or be provided with a suitably designed “safety garment,” to provide for their personal privacy unless specific identifiable risks to the inmate's safety or to the security of the facility are documented.

Note: Authority cited: Sections 6024 and 6030, Penal Code. Reference: Section 6030, Penal Code.

ESC Recommendation
The ESC discussed how Sheriff’s Departments are using spaces in their facilities differently to meet the needs of their populations.

In one county, safety cells are reserved for inmates who are truly at risk of harm to themselves or others. Inmates who are not actively at risk may be placed in a holding cell for observation if necessary. While holding cells may not be ideal for holding at-risk inmates and does not meet the requirements of a safety cell, there are not always options for “observation” cells.

In another, dayroom space has been modified to include beds and a clear “perimeter” around the bed space, forming a “safe zone” for inmates who are at risk for self-harm, but are not actively at risk. Mental Health staff always observe inmates in this area. The space is used as a step-down between safety cell and general population.

The ESC discussed the need for an “observation” cell or room for persons at risk of harm or suicide that could be a step-down or alternative to safety cells.

The ESC is forwarding the discussion to the Classification, Segregation, and Discipline Workgroup to be reviewed alongside Sections 1055, Safety Cell, and 1056 Use of Sobering Cell.

Additional considerations for the workgroup:

- Whether NCCHC standards may be used as a guide.
- Reviewing available best practices for at-risk inmates and high-risk placements.
- Clarifying who should be housed in safety cells and if safety cells are unavailable, what requirements (such as observation) would be required for alternative spaces being used as described above.
- How the regulations can legitimize the approaches that counties are using to provide safe, step-down spaces, keeping in mind that currently, the use of those spaces as described may not be in compliance with Title 15.
- Discuss the pros, cons, and safety issues that may come out of legitimizing such practices.

These issues must also be reviewed by the Medical and Mental Health Workgroup

Public Comment
Submitted by Juliet A. Leftwich, Attorney and Criminal/Social Justice Advocate
I would urge BSCC to limit the use of safety cells to 24 hours, given the well-established psychological damage caused to inmates who are placed in solitary confinement.

Disability Rights California Memorandum, February 2, 2020, Page 6.

NOTES TO ESC:

The ESC may wish to consider whether to limit the use of safety cell to 6 hours (DRC) or 24 hours (Julie Leftwich). NCCHC best practices indicate that an order for clinical seclusion not exceed twelve hours, and that it should be employed for the shortest time possible.

The Workgroup discussed adding the following language to the regulation to account for people who are placed in an observation room/cell:

> Areas designated to hold persons at risk, that do not meet the requirements of a safety cell that could be a step-down or alternative to a safety cell, shall be required to comply with the same standards of observation as a safety cell.

While the ESC recommended that the workgroup consider language allowing for a step-down or observation cell, it may not be appropriate to put the language in this regulation.

Discussion Notes

This regulation outlines the requirements for the use of a safety cell, which is intended to keep people who are an immediate danger to themselves or others safe. Revisions include clarifying that medical and mental health reviews occur as soon as possible, not just at the 12-hour mark. Revisions also make clear that at regular retention reviews, there is the recognition that the person may stay in the safety cell, be referred to advanced treatment, or that they be removed from the safety cell.

Below is information on timeframes for restraint and seclusions from the Journal of the American Academy of Psychiatry and the Law, Commentary: The Use of Restraint and Seclusion in Correctional Mental Health

Timeframes

- Initiation of a restraint procedure or placement of a patient in seclusion is usually an emergency procedure carried out by nursing and other professional staff in accordance with established hospital policy.
- According to CMS, a patient should be seen face to face by the physician or licensed independent practitioner within one hour after initiation of restraint or seclusion. If a patient is released from seclusion before the initial assessment, the LIP must still render an evaluation within that first hour.
- The behavioral standard also requires that written orders for physical restraint or seclusion be limited to four hours for adults, two hours for children and adolescents aged 9 to 17, and one hour for patients less than 9 years old.
- After the first specified time period, new orders for further restraint or seclusion (of similar duration) are required, which may be given on the basis of information conveyed by telephone, without face-to-face evaluations, and repeated for up to 24 hours.
- Some patients require face-to-face visits more frequently than others. Examples include those with significant concurrent medical problems, dementia or delirium, and significant intoxications, and restraint situations in which hyperthermia may occur.
- Some patients must be restrained or secluded for more than 24 hours. In such instances, a senior medical administrator, such as the chief physician of the institution or a qualified designee should review the treatment plan and concur that additional restraint or seclusion is necessary.
- It is recommended that orders be time and behavior specific, with a stated goal (e.g., “four-point restraints until patient is no longer agitated and combative, up to one hour”).
- Standing orders for restraint or seclusion should not be allowed.
- The clinician must document in the patient's record the failure of less restrictive alternatives or why they are inappropriate to attempt and the justification for continued seclusion or restraint.

- This decision should take into account the mental and physical status of the patient, his or her degree of agitation, the potential adverse effects of seclusion (both physical and emotional), and relevant other factors.
- Debriefing at the end of the episode, of staff at least and the patient when feasible, is important and should be well documented.

§ 1056. Use of Sobering Cell.
The sobering cell described in Title 24, Part 2, Section 1231.2.4, shall be used for the holding of inmates who are a threat to their own safety or the safety of others due to their state of intoxication, or to hold persons at risk of harm to themselves or others and placement in a safety cell is not warranted. The facility manager must develop and implement written policies and procedures for placement in a sobering cell. The reason for placement in a sobering cell for intoxication or safety must be clearly documented.

A person shall be removed from the sobering cell as soon they are able to continue in the processing or are no longer a risk to themselves or others. In no case shall an inmate remain in a sobering cell over six hours without an evaluation by a medical staff person or an evaluation by custody staff, pursuant to written medical procedures in accordance with section 1213 of these regulations, to determine whether the prisoner has an urgent medical problem. At 12 hours from the time of placement, all inmates will receive an evaluation by responsible health care staff. Intermittent direct visual observation of inmates held in the sobering cell shall be conducted no less than every half hour. Such observation shall be documented.

Note: Authority cited: Sections 6024 and 6030, Penal Code. Reference: Section 6030, Penal Code.

ESC Recommendation
The ESC discussed how Sheriff's Departments are using spaces in their facilities differently in order to meet the needs of their populations.

In one county, safety cells are reserved for inmates who are truly at risk of harm to themselves or others. Inmates who are not actively at risk may be placed in a holding cell for observation if necessary. While holding cells may not be ideal for holding at-risk inmates, and doesn't meet the requirements of a safety cell, there are not always options for "observation" cells.

In another, dayroom space has been modified to include beds and a clear "perimeter" around the bed space, forming a "safe zone" for inmates who are at risk for self-harm, but are not actively at risk. Mental Health staff observe inmates in this area at all times. The space is used as a step-down between safety cell and general population.

The ESC discussed the need for an "observation" cell or room for persons at risk of harm or suicide that could be a step-down or alternative to safety cells.

The ESC is forwarding the discussion to the Classification, Segregation, and Discipline Workgroup to be reviewed alongside Sections 1055, Safety Cell, and 1056 Use of Sobering Cell.

Additional considerations for the workgroup:

- Whether NCCHC standards may be used as a guide.
- Reviewing available best practices for at-risk inmates and high-risk placements.

- Clarifying who should be housed in safety cells and if safety cells are unavailable, what requirements (such as observation) would be required for alternative spaces being used as described above.
- How the regulations can legitimize the approaches that counties are using to provide safe, step-down spaces, keeping in mind that currently, the use of those spaces as described may not be in compliance with Title 15.
- Discuss the pros, cons, and safety issues that may come out of legitimizing such practices.

These issues must also be reviewed by the Medical and Mental Health Workgroup

Note to ESC: *This type of "observation cell" placement may not be practical lumped in with the sobering cell. Should there be a separate regulation for an "observation cell?" Should observation cells be short term, and only used for holding, or should they be used for housing?*

Discussion Notes

This regulation outlines the requirement for placement of intoxicated persons who are unable to care for themselves or are a danger to self or others in a sobering cell. Revisions include the shift in intent to include placement of people who may be at risk of harm to self or others but are not intoxicated. This type of shift would legitimize the current practice of using sobering cells as a "step-down", observation, or "sheltered housing" locations.

The Workgroup discussed the ESC's comments and concerns and agreed that facilities do need to have more flexibility in how they are using spaces differently. The workgroup chose to change the regulation to allow step-down type placements and a requirement for documentation.

- **Operational impact:** Needs review.

- **Fiscal Impact:** Needs review.

§ 1057. Developmentally Disabled Inmates.
The facility administrator, in cooperation with the responsible physician, shall develop written policies and procedures for the identification and evaluation, appropriate classification and housing, protection, and nondiscrimination of all developmentally disabled inmates.

The health authority or designee shall contact the regional center on any inmate suspected or confirmed to be developmentally disabled for the purposes of diagnosis or treatment within 24 hours of such determination, excluding holidays and weekends.

Note: Authority cited: Section 6030, Penal Code. Reference: Section 6030, Penal Code.

Public Comment
BSCC staff recommends the term “and/or” be revised to ensure regulation requirements can be reasonably and logically interpreted as having only one meaning.

Discussion Notes

This regulation outlines requirement for identification and evaluation of developmentally disabled persons upon intake.

The Workgroup discussed the comment received regarding the unclear language and agreed to correct it and the grammatical error. The revision provides clarity and fixes the grammar issue.

There is no operational or fiscal impact anticipated with this revision; it is nonsubstantive.

§ 1058. Use of Restraint Devices.
The facility administrator, in cooperation with the responsible physician, shall develop written policies and procedures for the use of restraint devices and may delegate authority to place an inmate in restraints to a responsible health care staff. In addition to the areas specifically outlined in this regulation, at a minimum, the policy shall address the following areas: acceptable restraint devices; signs or symptoms which should result in immediate medical/mental health referral; availability of cardiopulmonary resuscitation equipment; protective housing of restrained persons; provision for hydration and sanitation needs; and exercising of extremities.

In no case shall restraints be used for punishment or as a substitute for treatment.

Restraint devices shall only be used on inmates who display behavior which results in the destruction of property or reveal an intent to cause physical harm to self or others. Restraint devices include any devices which immobilize an inmate's extremities or prevent the inmate from being ambulatory. Physical restraints should be utilized only when it appears less restrictive alternatives, including verbal de-escalation techniques, have been attempted and are deemed ineffective.

Inmates shall be placed in restraints only with the approval of the facility manager, the facility watch commander, or responsible health care staff; continued retention shall be reviewed a minimum of every hour. Direct visual observation shall be maintained until a medical opinion can be obtained. A medical opinion on placement and retention shall be secured within one hour from the time of placement. A medical assessment shall be completed within four hours of placement. If the facility manager, or designee, in consultation with responsible health care staff determines that an inmate cannot be safely removed from restraints after eight hours, the inmate shall be taken to a medical facility for further evaluation.

Direct visual observation shall be conducted at least twice every thirty minutes to ensure that the restraints are properly employed, and to ensure the safety and well-being of the inmate. Such observation shall be documented. While in restraint devices all inmates shall be housed alone or in a specified housing area for restrained inmates which makes provisions to protect the inmate from abuse.

When restraint devices are used, the incident shall be recorded unless exigent circumstances prevent this. All events and information related to the placement in restraints shall be documented. The report shall include: the reason for placement; person authorizing placement; names of staff involved in the placement; injuries sustained; duration of placement.
The provisions of this section do not apply to the use of handcuffs, waist and leg restraints, or other restraint devices when used to restrain inmates for security reasons. Any instance in which a restraint device is used for transportation, and does not involve the use of force, is not subject to the above documentation requirements.

Note: Authority cited: Sections 6024 and 6030, Penal Code. Reference: Section 6030, Penal Code.

ESC Recommendation
The ESC discussed how smaller counties will often use restraints because they have limited options and how there should be medical consideration when using restraints.

The Workgroup should review and consider the following:

- Current Title 15 restraint regulations for Juvenile Facilities.
- Litigation related to restraints and restraint chairs.
- Other methods of restraint and whether they need to be addressed and
- regulated.
- If, and how, trauma-informed care can be addressed.
- Creation of a stand-alone regulation for the use of restraint chairs

Public Comment
Disability Rights California Memorandum, February 2, 2020, Page 3.

BSCC staff recommends that the ESC review recent revisions to juvenile regulations that outlines requirements for restraints used for movement and transportation rather than behavioral purposes.

BSCC staff recommends the term "and/or" (highlighted in yellow above) be revised to ensure regulation requirements can be reasonably and logically interpreted as having only one meaning.

***Note to ESC**: Members may wish to closely review the proposed revision and best practices related to restraints in local detention facilities. Did the workgroup capture all of the ESC's recommendations?*

Discussion Notes
The regulation uses unclear language (and/or), does not require that de-escalation techniques be used whenever possible, and does not require specific information be documented following an incident. Language requiring de-escalation, restraint devices and documentation have been added to clearly indicate requirements and standardize accountability for documenting the use of restraint devices. Many facilities already document their restraint incidents, these changes will cause facilities to update policy and in some cases procedure. The changes will ensure that facilities are accountable for actions and in documenting their use of restraint devices. The workgroup agreed that accountability and transparency would be improved if application of restraint devices is recorded.

Language was added to ensure that less restrictive alternatives, including verbal de-escalation, be attempted and deemed ineffective before restraints are used. A requirement that direct visual observation be maintained before a medical opinion is obtained was also added to ensure safety of the person before medical staff is able to make an assessment about continued retention in restraints.

Resource:

The Use of Restraint and Seclusion in Correctional Mental Health, The Journal of American Psychiatry and the Law: http://jaapl.org/content/35/4/431

- **Operational impact:** Policies, procedures and training will need to be updated and implemented to ensure that compliance with proposed revisions is met.

- **Fiscal Impact:** None anticipated.

§ 1058.5. Restraints and Pregnant Inmates.
The facility administrator, in cooperation with the responsible physician, shall develop written policies and procedures for the use of restraint devices on pregnant inmates. In accordance with Penal Code 3407 the policy shall include reference to the following:

1) An inmate known to be pregnant or in recovery after delivery or termination of the pregnancy shall not be restrained by the use of leg or waist restraints, or handcuffs behind the body.
2) A pregnant inmate in labor, during delivery, or in recovery after delivery or termination of the pregnancy, shall not be restrained by the wrists, ankles, or both, unless deemed necessary for the safety and security of the inmate, the staff, or the public.
3) Restraints shall be removed when a professional who is currently responsible for the medical care of a pregnant inmate during a medical emergency, labor, delivery, or recovery after delivery or termination of the pregnancy determines that the removal of restraints is medically necessary.
4) Upon confirmation of an inmate's pregnancy, she shall be advised, orally or in writing, of the standards and policies governing pregnant inmates.

Note: Authority cited: Section 6030, Penal Code. Reference: Sections 3407 and 6030, Penal Code.

Discussion Notes:

The workgroup discussed restraints for pregnant inmates and the statute that prohibits such use of restraints. The regulation is identical to the related statutes which were developed to align with best practices for pregnant people in detention facilities.

The Medical/Mental health workgroup elected to add “recovery after termination of pregnancy” to the list of situations in which persons cannot be restrained according to regulation.

- **Operational impact:** None anticipated.

- **Fiscal Impact:** None anticipated.

Resources:
- NCCHC P-G-O7: Care of the Pregnant Inmate
- NCCHC November 2020 Position Statement on Nonuse of Restraints for Pregnant and Postpartum Incarcerated Individuals (LINK)
- NCCHC October 2010 Position Statement on the use of restraints, “acknowledging the serious health risks involved in using restraints on pregnant inmates, and recommending that their use be avoided, if possible, and used in the least restrictive way if avoidance is not possible.”
- ACOG November 2011 Opinion: Health Care for Pregnant and Postpartum Incarcerated Women. ACOG standards specifically state “The use of restraints on pregnant incarcerated women and adolescents may not only compromise health care

but is demeaning and rarely necessary," and explain the specific health risks associated with using restraints.

- APHA Standards for Health Services in Correctional Institutions (2003): Prohibition of shackling during labor and delivery
- AMA has published a policy statement limiting its support for the use of restraints on pregnant inmates to the least restrictive restraints necessary in the 2nd or 3rd trimester of pregnancy and, the use of restraints for inmates in labor or recovering from labor only if the inmate is an immediate or serious threat of harm or flight risk
- AWHONN: October 2011 position statement, condemning all shackling of pregnant inmates unless an inmate may harm herself or others or is a serious flight risk.
- ACA January 2012 Policy Resolution approved the use of restraints in the least restrictive means possible throughout pregnancy, based on an assessment of the risk posed and medical needs of the inmate, and states that waist and electronic restraints should not be used at all during pregnancy, with leg restraints reserved only for extreme circumstances during transport.
- In 2009, the 8th Circuit Court of Appeals ruled that there is a clearly established right not to be shackled during labor.
- ABA Standard 23-6.9 Pregnant prisoners and new mothers
  (b) A prisoner in labor should be taken to an appropriate medical facility without delay. A prisoner should not be restrained while she is in labor, including during transport, except in extraordinary circumstances after an individualized finding that security requires restraint, in which event correctional and health care staff should cooperate to use the least restrictive restraints necessary for security, which should not interfere with the prisoner's labor.
- Best Practices in the Use of Restraints with Pregnant Women and Girls Under Correctional Custody (2014)
  http://www.nasmhpd.org/sites/default/files/Best_Practices_Use_of_Restraints_Pregnant%282%29.pdf

§ 1059. DNA Collection, Use of Force.
(a) Pursuant to Penal Code Section 298.1, authorized law enforcement, custodial, or corrections personnel including peace officers, may employ reasonable force to collect blood specimens, saliva samples, or thumb or palm print impressions from individuals who are required to provide such samples, specimens or impressions pursuant to Penal Code Section 296 and who refuse following written or oral request.

(1) For the purpose of this regulation, the "use of reasonable force" shall be defined as the force that an objective, trained and competent correctional employee, faced with similar facts and circumstances, would consider necessary and reasonable to gain compliance with this regulation.
(2) The use of reasonable force shall be preceded by efforts to secure voluntary compliance. Efforts to secure voluntary compliance shall be documented and include an advisement of the legal obligation to provide the requisite specimen, sample or impression and the consequences of refusal.

(b) The force shall not be used without the prior written authorization of the facility watch commander or designee on duty. The authorization shall include information that reflects the fact that the offender was asked to provide the requisite specimen, sample, or impression and refused.

(c) If the use of reasonable force includes a cell extraction, the extraction shall be videotaped, including audio. Video shall be directed at the cell extraction event. The videotape shall be retained by the agency for the length of time required by statute. Notwithstanding the use of the video as evidence in a criminal proceeding, the tape shall be retained administratively.

Note: Authority cited: Sections 298.1, 6024, and 6030, Penal Code. Reference: Sections 298.1 and 6030, Penal Code.

Discussion Notes

This regulation outlines the requirements for when force is used to collect DNA. The revision includes adding the facility watch commander's designee as a person being able to authorize force.

The Workgroup discussed he regulation and noted that not every facility uses the title of watch commander. If a facility does not use that title, they may be found out of compliance when any other employee approves the use of force. Although some facilities do not use the title, they have the same levels of hierarchy, allowing facilities to use a designee will help them become compliant while still requiring someone at a level of watch commander to make the appropriate approvals.

Since not all agencies use the title "watch commander," the term may not be applicable across the state. Keeping the term "watch commander" and adding "or designee" allows for flexibility in meeting the requirements of this regulation.

- **Operational impact:** None anticipated.
- **Fiscal Impact:** None anticipated.

ARTICLE 6. INMATE PROGRAMS AND SERVICES

§ 1061. Inmate Education Plan.
The facility administrator of any Type II or III facility shall plan and shall request of appropriate public officials an inmate education program. When such services are not made available by the appropriate public officials, then the facility administrator shall develop and implement an education program with available resources. Such a plan shall provide for the voluntary academic, vocational, or both, education of housed inmates. Reasonable criteria for program eligibility shall be established. An inmate may be provided modified academic or vocational opportunities based on sound security practices or failure to abide by facility rules and regulations.

Note: Authority cited: Section 6030, Penal Code. Reference: Section 6030, Penal Code.

Public Comment
BSCC staff recommends the term “and/or” be revised to ensure regulation requirements can be reasonably and logically interpreted as having only one meaning.

Discussion Notes

This regulation outlines the education plan that must be provided to persons housed in a detention facility. The way the regulation is written may exclude some inmates from participating. The proposed changes will ensure access to academic or vocational opportunities for all inmates in the facility by allowing modified educational services.

The Workgroup considered the BSCC staff comment and chose to modify the “and/or” to reflect that either or both academic and vocation programs may be provided.

The Workgroup also discussed Static Risk Assessments, and the need for criteria or program eligibility that is not exclusionary as some inmates may not participate in opportunities based on security or other factors. To ensure that the language does not exclude participation it was rewritten to be more inclusive and allow for modification of academic or vocational opportunities.

There are numerous studies that indicate providing educational and vocational opportunities for people housed in detention facilities is beneficial to their health and wellbeing not only while being housed, but also is beneficial as they prepare to return to the community.

- **Operational impact:** There may be some impact to agencies as they determine what a modified program will look like.

- **Fiscal Impact:** There is no fiscal impact anticipated because of this revision; costs would likely be absorbed by current programming.

§ 1062. Visiting.

(a) The facility administrator shall develop written policies and procedures for inmate visiting which shall provide for as many in-person visits and visitors as facility schedules, space, and number of personnel will allow. For sentenced inmates in Type I facilities and all inmates in Type II facilities there shall be allowed no fewer than two visits totaling at least one hour per inmate each week. In Type III and Type IV facilities there shall be allowed one or more visits, totaling at least one hour, per week.

(b) In Type I facilities, the facility administrator shall develop and implement written policies and procedures to allow visiting for non-sentenced detainees. The policies and procedures will include a schedule to assure that non-sentenced detainees will be afforded a visit no later than the calendar day following arrest.

(c) The visiting policies developed pursuant to this section shall include provision for visitation by minor children of the inmate.

(d) Video visitation may be used to supplement existing visitation programs, but shall not be used to fulfill the requirements of this section if in-person visitation is requested by an inmate.

(e) Facilities shall not charge for visitation when visitors are onsite and participating in either in-person or video visitation. For purposes of this subsection, “onsite” is defined as the location where the inmate is housed.

(f) Subdivision (d) shall not apply to facilities which (1) exclusively used video visitation prior to January 1, 2017 or (2) had been designed without in-person visitation space and conditionally awarded by the Board prior to June 27, 2017, funding authorized by Chapter 3.11 (commencing with Section 15820.90), Chapter 3.12 (commencing with Section 15820.91), Chapter 3.13 (commencing with Section 15820.92), or Chapter 3.131 (commencing with Section 15820.93).

(g) If a local detention facility offered video visitation only as of January 1, 2017, the first hour of remote video visitation per week shall be offered free of charge.

Note: Authority cited: Sections 6024 and 6030, Penal Code. Reference: Section 6030 and 4030, Penal Code, and Section 15820.948, Government Code.

Discussion Notes

No changes recommended.

The workgroup discussed the importance of visitation, normally, and during the COVID-19 pandemic. The group reviewed the possibility of adding more free time to section (g) and took public comment from Mr. Brian Goldstein of the Center on Juvenile and Criminal Justice. The current regulation requires that the first hour of off-site video visitation be free of charge; however, the group was conscious of creating state mandates and the

cost of requiring facilities to provide further free video time. Ultimately the workgroup chose not to make any changes.

There has been increased attention given to the importance of visitation for people housed in detention facilities. This regulation was recently revised to ensure access to visitation, emphasizing the requirement for in-person visitation. These revisions are aligned with recent legislation ensuring access to in-person visits and free video and phone calls. Information from the Prison Policy Institute used:
https://www.prisonpolicy.org/visitation/

§ 1063. Correspondence.

Except in Temporary Holding and Court Holding facilities, the facility administrator shall develop written policies and procedures for inmate correspondence which provide that:

(a) there is no limitation on the volume of mail that an inmate may send or receive;

(b) inmate correspondence may be read when there is a valid security reason and the facility manager or his/her designee approves;

(c) jail staff shall not review inmate correspondence to or from state and federal courts, any member of the State Bar or holder of public office, and the State Board of State and Community Corrections; however, jail authorities may open and inspect such mail only to search for contraband, cash, checks, or money orders and in the presence of the inmate;

(d) inmates may correspond, confidentially, with the facility manager or the facility administrator; and,

(e) those inmates who are without funds shall be permitted at least four postage paid envelopes and eight sheets of paper each week to permit correspondence with family members and friends but without limitation on the number of postage paid envelopes and sheets of paper to his or her attorney and to the courts.

Note: Authority cited: Sections 6024 and 6030, Penal Code. Reference: Section 6030, Penal Code.

Discussion Notes

This regulation outlines requirements for written correspondence in local detention facilities. Revisions provide clarity as to who this regulation applies to and increases the ability to connect with loved ones in the community by raising the amount of paper and paid envelopes provided to inmates without funds.

The Workgroup concurred with the recommendation of the Type I and Temporary Holding Workgroup to make clear that this regulation does not apply to those facilities who hold people for a relatively short period of time.

The group reviewed section (e) and the requirement that, at a minimum, two envelopes and pieces of paper be provided to inmates without funds; the need for communication especially during the current COVID-19 pandemic highlighted the need for the provision of more opportunities to communicate. The group heard public comment from Mr. Brian Goldstein of the Center on Juvenile and Criminal Justice and ultimately chose to propose a revision increasing the number of envelopes and paper to four and eight, respectively, to ensure access to people without funds.

There are numerous studies that indicate that people who have connection with family and loved ones in the community experience benefits, increased reduced recidivism. Information from the Prison Policy Institute used: https://www.prisonpolicy.org/visitation/

- **Operational impact:** None anticipated.

- **Fiscal Impact:** There may be an increase to facility costs due to extra postage paid envelopes and paper. This can be justified because it provides increased opportunities

for communication when a person does not have funds themselves. This revision will ensure that people continue to have access to loved ones in the community.

§ 1064. Library Service.
The facility administrator shall develop written policies and procedures for library service in all Type II, III, and IV facilities. The scope of such service shall be determined by the facility administrator. The library service shall include access to the following resources via paper documents or through electronic media and include current information on community services and resources, and religious, educational, legal reference material and recreational reading material. In Type IV facilities such a program can be either in-house or provided through access to the community.

Note: Authority cited: Section 6030, Penal Code. Reference: Section 6030, Penal Code.

ESC Recommendation
The ESC discussed issues facing facility library services, the Programs and Services Workgroup should consider that:

- Multiple copies of documents would be helpful to provide access to more than one inmate at a time.
- The word “access” needs to be clarified (copies of physical paper documents, LRA requests, kiosks, tablets?)

Public Comment
Submitted by Merced County Sheriff’s Office
The ESC should revise what is required legal material for library services.

Discussion Notes

This regulation outlines the requirements for access to library services, including legal and other resources. Revisions clarify that material should be available through paper or electronic sources; this revision provides flexibility to agencies to use methods that are most appropriate. Revisions also clarify that legal reference material must be made available through whatever means of access are used at the facility.

The Workgroup reviewed and discussed the ESC Recommendation to provide multiple copies of documents and review the meaning of “access,” choosing to add language outlining the other various methods by which library materials can be provided. The group discussed the Public Comment made by Merced County Sheriff’s Office and chose to make no changes as legal materials are not specifically defined in any known area and may be defined differently by federal, state, or local standards.

The group did not review any specific best practice; however, they considered how current technology impacts how information may be accessed.

- **Operational impact:** There is no operational impact anticipated since agencies will be able to use a paper or electronic method to deliver access to library and legal resources; these methods encompass the media that is currently used in detention facilities.

- **Fiscal Impact:** None anticipated; operations should not be affected and should not require additional resources.

§ 1065. Out of Cell Time

(a) The facility administrator of a Type II or III facility shall develop written policies and procedures for:

(1) an exercise program, in an area designed for exercise, which will allow a minimum of three hours of exercise distributed over a period of seven days..

(2) a recreation program, which will allow an opportunity for seven hours of recreational, or out of cell time, distributed over a period of seven days.

Policies should include reasonable and necessary procedures to ensure safety and security.

(b) The facility administrator of a Type I facility shall make table games, television, or both, available to inmates.

(c) In Type IV facilities, such a program can be either in-house or provided through access to the community.

Note: Authority cited: Section 6030, Penal Code. Reference: Section 6030, Penal Code.

ESC Recommendation

The ESC discussed "out of cell" time in regulation, currently set at "a minimum of three hours of exercise distributed over a period of seven days." The ESC requests that the workgroup review the amount of out of cell time that should be available to inmates, noting that some facilities may have limitations, and consider increasing the minimum time inmates should be out of their cells.

Most of California's jails were not built to withstand or accommodate longer average lengths of stay in local detention facilities.

When discussing this issue, the workgroup should consider:

- Benefits of increasing out of cell time.
- Challenges of increasing out of cell time; how it may influence a facility's ability to comply with regulation; and how it may increase the risk of litigation.
- Disability Rights California and Department of Justice definitions of out of cell time.
- Recent remediation plans, settlements and research on "out of cell" time; an estimate of 2 hours a day for socialization was discussed (UC Santa Cruz).

Resources

Attachment A, American Bar Association, Out of Cell Time

Attachment B, National Institute for Jail Operations, Prisoner Recreation: Right or Privilege?

Public Comment

BSCC staff recommends the term "and/or" be revised to ensure regulation requirements can be reasonably and logically interpreted as having only one meaning.

Submitted by Pamila Lew, Senior Attorney, Disability Rights California

Out of Cell Time—titled “Exercise and Recreation” in the regulations (§1065); also §1231.2 Exercise Area, Dayroom and Outdoor Recreation Space.

- Currently: Minimum 3 hours per week.
  - Revision: Implement standards that prevent conditions of solitary confinement (21-22 or more hours per day in cell) by requiring exercise and recreation time every day, consistent with recent court-approved settlements; require minimum outdoor time with access to sunlights.
    - Rationale: Current regulation does not provide appropriate guidance to systems regarding compliance with constitutional minimums. Compliance with Title 15 regulations should more closely approximate compliance with current legal and constitutional requirements.
      Hernandez v. Cnty. of Monterey, 110 F. Supp. 3d 929, 946 n.105 (N.D. Cal. 2015) (citing Spain v. Mountanos, 690 F.2d 742, 746 (9th Cir. 1982) ("Under the Supremacy Clause of the United States Constitution, a court, in enforcing federal law, may order state officials to take actions despite contravening state laws.")). See Sacramento County Jail’s 17 hours per week, including some out-of-cell time every day. (Mays Remedial Plan, p. 51); 24 hours per week minimum in San Bernardino County Jail (Turner v. San Bernardino, Restrictive Housing Plan).

Note to ESC: *Members may wish to closely review the proposed revision and best practices related to restraints in local detention facilities. Did the workgroup capture all the ESC’s recommendations?*

Discussion Notes
This regulation outlines requirements for exercise and recreation time in local detention facilities. Public comment, best practices, and recent facility consent decrees indicate that there is a need for “out of cell time” to be defined and specified in regulation and that the current requirement, three hours “exercise and recreation” over a seven-day period, is inadequate.

Revisions also include a rewording of the requirement that policies include reasonable and necessary procedures to ensure safety and security. This revision clarifies unclear language.

The term “and/or” was deleted and replaced with more clear language so that agencies have the flexibility to provide one item or the other and have the option to provide both table games and television.

Revisions include:
1. Separating exercise and recreation.
2. Creating a separate section that ensures a minimum of seven hours of recreation time that must be out of cell, spread over a period of seven days.

3. Retitling the regulation “out of cell time” to indicate that these activities must occur out of a locked room or cell.

Revisions will increase the minimum out of cell time from three hours over a seven-day period to ten hours over a seven-day period. Agencies will have to develop a program that considers the safety and welfare of people housed in the facility.

Studies indicate that the time people spend out of their cells contributes to their health and to the safety of the environment; conversely, studies show that time spent in “solitary confinement” can have negative effects on mental and physical health. The Workgroup also considered recent settlements that require specific out of cell time.

The Treatment of Prisoner standards of the American Bar Association recommend that correctional authorities minimize the periods during the day that prisoners are required to remain in their cells and recommend daily opportunities for significant out of cell time and at least one hour per day of outdoor exercise, weather permitting.

While reviewing the current regulation, ESC recommendations, best practices, recent consent decrees, and public comment, the Workgroup discussed the requirement for three-hours every seven days for exercise and “out of cell time,” which is not defined in Title 15. Members felt that most facilities are already providing more out of cell time than is required in this regulation, and that out of cell time should be further specified to include specific hour requirements for both exercise and recreation activities. The Workgroup ultimately chose to change the title of Section 1065 to “out of cell time” and propose a required amount of time for exercise and recreation which would total ten hours of out of cell time per week for each individual.

- **Operational impact:** The revision may affect facility operations to accommodate additional out of cell time; however, this workgroup notes that many facilities exceed the proposed minimum amount of out of cell time.

- **Fiscal Impact:** There is no fiscal impact anticipated, a change in operations will be absorbable.

§ 1066. Books, Newspapers, Periodicals, and Writings.
(a) The facility administrator of a Type II or III facility shall develop written policies and procedures which will permit inmates to purchase, receive and read any book, newspaper, periodical, or writing accepted for distribution by the United States Postal Service. The facility administrator shall develop and implement a written plan to make available a current newspaper or other like source, including a non-English language alternative, to ensure reasonable access to interested inmates. Nothing herein shall be construed as limiting the right of a facility administrator to:

(1) exclude any publications or writings based on any legitimate penological interest;
(2) exclude obscene publications or writings, and mail containing information concerning where, how, or from whom such matter may be obtained; and any matter of a character tending to incite murder, arson, riot, violent racism, or any other form of violence; any matter of a character tending to incite crimes against children; any matter concerning unlawful gambling or an unlawful lottery; the manufacture or use of weapons, narcotics, or explosives; or any other unlawful activity;
(3) open and inspect any publications or packages received by an inmate; and
(4) restrict the number of books, newspapers, periodicals, or writings the inmate may have in his/her cell or elsewhere in the facility at one time.

(b) The facility administrator of a Type I facility shall develop and implement a written plan to make available a current newspaper or other like source , including a non-English language alternative, to ensure reasonable access to interested inmates.

Note: Authority cited: Section 6030, Penal Code. Reference: Sections 6030, Penal Code.

ESC Recommendation
The ESC discussed Section 1066 and requested that it be forwarded to the Programs and Services Workgroup to consider:

- That many publications are available online now.
- Whether Type I and Temporary Holding facilities should be required to comply with 1066 given the short amount of time inmates are staying in those facilities.
- Whether the regulation should require publications be provided to inmates in languages other than English and Spanish. Additional languages could be determined on a facility-by-facility basis by the demographics of the population.

BSCC Staff Note: Many daily newspapers have gone out of publication. Those remaining have significantly increased cost for delivery making it cost-prohibitive for some facilities. For example, if a Type I facility does not hold sentenced inmates, compliance with section 1066(b) would be costly and a waste of government funds since Type I facilities typically do not hold inmates in custody over two days.

Discussion Notes

This regulation outlines the requirement that facility administrators make books, newspapers, and periodicals available to people housed in local detention facilities. The current regulation does not consider that many news sources have discontinued print news and may only have alternative sources available.

It is a commonly accepted best practice to make non-English language sources of news available to people in local detention facilities. This revision aligns with those best practices.

Revisions require the facility administrator to have a written plan that outlines how they will provide current news sources to people housed at the facility, including a non-English alternative. This will provide the agency with flexibility in how to deliver current news to the population.

The Workgroup discussed changes recommended by the Type I and Temporary Holding Facility Workgroup, concurred with their revisions, and incorporated them into both the sections applying to people in Type II-IV and in Type I and Temporary Holding Facilities.

- **Operational impact:** Facilities that do not already provide a non-English language source of news will have to add this to their operation.

- **Fiscal Impact:** There may be a cost involved with procuring a non-English source of news; this cost will be outweighed by the benefit to non-English speakers.

§ 1067. Access to Telephone.
The facility administrator shall develop written policies and procedures which allow reasonable access to a telephone or communication device beyond those telephone calls which are required by Section 851.5 of the Penal Code.

Note: Authority cited: Section 6030, Penal Code. Reference: Section 6030, Penal Code.

Discussion Notes

This section outlines the requirements for access to telephones for persons incarcerated in local detention facilities.

The Discipline Workgroup reviewed the regulation and discussed the term "reasonable" and how it is interpreted differently in facilities across the state. Public comment was taken from Ms. Jeannette Carrillo of Santa Cruz Barrios Unidos regarding the use of "reasonable"; Ms. Carrillo's concern was that some agencies are limiting communication to hours late in the night when loved ones may not be available. The Workgroup members felt strongly that regulation requirements should be applied consistently throughout the state and therefore the term "reasonable" was struck. Members also discussed the language pertaining to telephones, noting that it is outdated. Other methods of telephonic communication exist and are being used in facilities already. The group chose to insert "or communication device" so that facilities have the option of complying with the regulation using more contemporary telecommunication devices.

Workgroup members reviewed the requirements for access to telephone and discussed Senate Bill 555 (vetoed 9/30/2020 by the Governor) which proposed to cap telephone and other service rates and would have prohibited communication or information services providers from imposing and collecting specified fees. Considering the Governor's veto, the group chose not to make any proposed changes to Section 1067.

BSCC staff will continue to follow the rulings of the California Public Utilities Commission (CPUC) to determine if revisions may be made to stay consistent with any rulings.

- **Operational impact:** No operational impact exists; the proposed change allows facilities to comply with the regulation by using alternative methods of communication but does not require it.

- **Fiscal impact:** There is no anticipated fiscal impact, the proposed changes to this regulation are not requiring new or different telephone accessibility.

§ 1068. Access to the Courts and Counsel.
The facility administrator shall develop written policies and procedures to ensure inmates have access to the court and to legal counsel. Such access shall consist of:

(a) Except in Temporary Holding and Court Holding facilities, unlimited mail as provided in Section 1063 of these regulations, and,
(b) confidential consultation with attorneys.

Note: Authority cited: Section 6030, Penal Code. Reference: Section 6030, Penal Code.

Discussion Notes

This regulation outlines requirements for access to the courts and counsel in local detention facilities.

The Workgroup concurred with the recommendation of the Type I and Temporary Holding Workgroup to make clear that this regulation does not apply to those facilities who hold people for a relatively short period of time.

The language was modified to clarify that unlimited mail does not apply to temporary holding and court holding facilities. There are legal requirements for people to have access to the courts and counsel; this regulation is broad enough to ensure that facility administrators meet those requirements.

- **Operational impact:** None anticipated.

- **Fiscal Impact:** None anticipated.

§ 1069. Inmate Orientation.

(a) In Type II, III, and IV facilities, the facility administrator shall develop written policies and procedures for the implementation of a program reasonably understandable to inmates designed to orient a newly received inmate at the time of placement in a living area. Access to an orientation program may be by video or written form. Additional measures may be necessary to ensure the orientation material is understood by all. Such a program shall be published and include, but not be limited to, the following:

(1) correspondence, visiting, and telephone usage rules;
(2) rules and disciplinary procedures;
(3) inmate grievance procedures;
(4) programs and activities available and method of application;
(5) medical and mental health services;
(6) classification/housing assignments;
(7) court appearance where scheduled, if known;
(8) voting, including registration;
(9) zero tolerance policy against sexual abuse and sexual harassment; and,
10) availability of personal care items and opportunities for personal hygiene.

(b) In Type I facilities, the facility administrator shall develop written policies and procedures for a program reasonably understandable to non-sentenced detainees to orient an inmate at the time of placement in a living area. Such a program shall be published and include, but not be limited to, the following:

(1) rules and disciplinary procedures;
(2) visiting rules;
(3) availability of personal care items, opportunities for personal hygiene;
(4) availability of reading and recreational materials; and,
(5) medical/mental health procedures.

Note: Authority cited: Sections 6030, Penal Code. Reference: Section 6030, Penal Code.

BSCC Staff Note: Recent media attention has been focused on whether orientation programs offer information in a way that allows inmates to understand what is in an orientation packet. Can the regulation be revised to ensure that material is readily available to inmates, even in an alternative form, and that the information is easily understandable?

Discussion Notes

This regulation outlines the requirement for local detention facilities to provide orientation to people admitted to the facility as soon as is reasonably possible. The current regulation does not specifically require that facilities provide orientation information in writing or via video and do not note that additional measures may need to be taken to provide information in a manner that may be understood by all. Proposed changes ensure that all inmates have access to orientation information in a format that is understandable.

The Workgroup discussed how facilities are providing orientation information in different ways (print, digitally on tablets, and video) and agreed that facilities can and should provide orientation in video as well as in print so that the information can be more easily understood.

The Discipline Workgroup members reviewed inmate orientation requirements and the list of information that must be published. The group discussed the importance of providing information on mental health services at the time of orientation, as those services are just as important to the health and wellbeing of incarcerated persons as medical services are. Workgroup members also noted that personal care items and personal hygiene are not referenced in (section (a)) of the regulation; the group felt that providing such information at orientation is necessary.

It is considered best practice, and is currently a practice in the field, to provide orientation information as soon as possible once a person has been housed in a local detention facility. The items contained in the regulation provide applicable information for a person new to the facility to find information and services they need. Ensuring that the information is understood by all ensures equity in understanding. Allowing orientation to be provided via video allows agencies to get information out broadly, consistently, and as often as possible.

- **Operational impact:** If an agency does not have multiple translations of orientation information available, they may have to seek out such services.

- **Fiscal Impact:** There may be a minimal cost for the use of interpreters if a facility has not already provided reasonably understandable orientation information.

§ 1070. Individual/Family Service Programs.
The facility administrator of a Type II, III, or IV facility shall develop written policies and procedures which facilitate cooperation with appropriate public or private agencies for individual or family social service programs for inmates. Such a program shall utilize the services and resources available in the community and may be in the form of a resource guide or actual service delivery. The range and source of such services shall be at the discretion of the facility administrator and may include:

(a) risk and needs assessments;
(b) best practices in:

(1) individual, group or family counseling;
(2) drug and alcohol abuse counseling;
(3) cognitive behavioral interventions;
(4) vocational testing and counseling;
(5) employment counseling;
(6) discharge planning;

(c) referral to community resources and programs;
(d) reentry planning and service development;
(e) legal assistance;
(f) regional center services for the developmentally disabled; and,
(g) community volunteers.

Note: Authority cited: Section 6030, Penal Code. Reference: Section 6030, Penal Code.

ESC Recommendation
The ESC reviewed the public comment noting the importance of evidence-based programs and acknowledged that not all programs can be evidence-based. Likewise, the assessment of criminogenic needs is an important assessment, but there are also many other valuable assessments that indicate need. The ESC also discussed how the efficacy of programs can be negatively affected by short lengths of stay, and how complex it could become to define which programs and services were either recreation or rehabilitation. Yoga, for example, can be recreation to some, and rehabilitation to others. The labeling of programs or services as one or the other can be subjective and broad, and sometimes based on opinion. The ESC recommends that the public comment not be forwarded to the Workgroup for consideration.

The Programs and Services Workgroup should:
- Review the list of best practices (Section 1070(b) forward) for evidence based, trauma informed, gender responsive. etc., programs.

Resources
Attachment C, Urban Institute, Model Practices for Parents in Prisons and Jails
Attachment D, National Institute of Justice, The Use and Impact of Correctional Programming for Inmates on Pre- and Post-Release Outcomes

Attachment E, Crime & Justice Institute, Implementing Evidence-Based Practice in Community Corrections: The Principles of Effective Intervention

Public Comment
BSCC staff recommends the term “and/or” (highlighted in yellow above) be revised to ensure regulation requirements can be reasonably and logically interpreted as having only one meaning.

Discussion Notes

This regulation outlines the requirement for programs for people housed in local detention facilities and outlines several requirements that must be included in policy and procedures. Revisions include edits for clarity and inclusion of “discharge planning” as a potential subject of a program at the facility.

The Workgroup reviewed Section 1070, the ESC recommendations and public comment. The group agreed to removed “and/” in favor of “or” to ensure that the regulations only have one meaning, and to allow more flexibility for facility services.

Studies indicate that activities and programming in local detention facilities can ensure positive outcomes upon returning to the community. Discharge planning is considered a “best practice” to begin as soon as possible after admission to a facility. By adding discharge planning as a program/service that should be provided in local detention facilities, this addition ensures alignment with best practices.

In reviewing the best practices noted in 1070(b), the group felt it was important that discharge planning be included in the list. It was noted that requiring discharge planning in best practices could be difficult for some smaller agencies to achieve; however, since the regulation language states that the services “may include,” smaller agencies will have the discretion to choose if they want to include best practices on discharge planning.

- **Operational impact:** None anticipated; the list of services is not exclusive and facility administrators have the flexibility to choose from programs that suit their community, resources, and operations.

- **Fiscal Impact:** None anticipated; regulation revisions do not require additional programs to be incorporated.

§ 1071. Voting.
The facility administrator of a Type I (holding sentenced inmate workers) II, III or IV facility shall develop written policies and procedures whereby the county registrar of voters allows qualified voters to vote in local, state, and federal elections, pursuant to election codes.

Note: Authority cited: Section 6030, Penal Code. Reference: Section 6030, Penal Code.

Discussion Notes

No changes recommended.

Local, state, and federal election laws establish requirements and protect the voting rights of people housed in local detention facilities. This regulation requires facility administrators to develop policies and procedures in accordance with those laws.

§ 1072. Religious Observances.
The facility administrator of a Type I, II, III or IV facility shall develop written policies and procedures to provide opportunities for inmates to participate in religious services, practices and counseling on a voluntary basis.

Note: Authority cited: Sections 6024 and 6030, Penal Code. Reference: Section 6030, Penal Code.

Discussion Notes

No changes recommended.

The Religious Land Use and Incarcerated Persons Act (RLUIPA) provides significant protection for persons housed in local detention facilities to engage in religious observances. This regulation requires each local detention facility to develop policy and procedure that will ensure those protections.

The group discussed Section 1072, and how meeting the requirements can be difficult for some facilities as much of it is dependent upon community involvement. The regulation, broad as it is, affords facilities with enough flexibility to provide opportunities for participation.

§ 1073. Inmate Grievance Procedure.
(a) Each administrator of a Type II, III, or IV facility and Type I facilities which hold inmate workers shall develop written policies and procedures whereby any inmate may file grievances relating to any conditions of confinement, included but not limited to: medical care; classification actions; disciplinary actions; program participation; telephone, mail, and visiting procedures; and food, clothing, and bedding. Such policies and procedures shall include:

(1) a grievance form or instructions for registering a grievance;
(2) resolution of the grievance at the lowest appropriate staff level;
(3) appeal to the next level of review;
(4) written reasons for denial of grievance at each level of review which acts on the grievance;
(5) provision for response within a reasonable time limit; and,
(6) provision for resolving questions of jurisdiction within the facility.

(b) Grievance System Abuse:
The facility may establish written policy and procedure to control the submission of an excessive number of grievances.

Note: Authority cited: Section 6030, Penal Code. Reference: Section 6030, Penal Code.

Discussion Notes

This regulation outlines the requirements for a grievance procedure within local detention facilities. Current language states that “any inmate may appeal and have resolved grievances.” This language is unclear and assumes that all grievances can be appealed and resolved. The intent of this regulation is that any person housed in a local detention facility can file a grievance related to conditions of confinement. The steps that the grievance process must include are outlined in the regulation and include provision for appeal and response by agency representatives.

The Workgroup reviewed the regulation language with BSCC staff noting that not all grievances can be resolved. The group discussed that there are grievances that are not possible to resolve and that language should be changed to reflect actual practice.

A grievance procedure is crucial to local detention facility operations. A mechanism for people housed in local detention facilities to address legitimate conditions of confinement is critical to communication, transparency, and continuing improvements to facility operation.

After additional thought and review of the Michigan Law Prison Information Project’s Prison and Jail Grievance Policies: Lessens from a Fifty-State Survey, BSCC staff revised the language to simplify the intent of the regulation, that any person may file a grievance according to the policy outlined in the regulation. This revision clarifies the intent of the regulation.

https://www.law.umich.edu/special/policyclearinghouse/sitedocuments/foiareport10.18.15.2.pdf

- **Operational impact:** None anticipated.
- **Fiscal Impact:** None anticipated.

ARTICLE 7. DISCIPLINE

§ 1080. Rules and Disciplinary Actions.
Wherever discipline is administered, each facility administrator shall establish written rules and disciplinary actions to guide inmate conduct. Such rules and disciplinary actions shall be stated simply and affirmatively and posted conspicuously in housing units and the booking area or issued to each inmate upon booking. For those individuals with limited literacy, who are unable to read English, and for persons with disabilities, provision shall be made for the jail staff to instruct them verbally or provide them with material in an understandable form regarding jail rules and disciplinary procedures and actions.

Note: Authority cited: Sections 6024 and 6030, Penal Code. Reference: Section 6030, Penal Code.

Discussion Notes

This section outlines the requirements for facility administrators to establish written rules on discipline and inmate conduct.

The Workgroup discussed the potential for mirroring Juvenile Regulations, which reads in part:

> "*Discipline shall be imposed at the least restrictive level which promotes the desired behavior and shall not include corporal punishment, group punishment when feasible, physical or psychological degradation."*
>
> *"Group Punishment," which is not allowed, means sanctioning a group of uninvolved youth based on the actions of one or more youth."*

The group ultimately chose to address the use of the term "penalty" and lack of reference to individuals with limited literacy. The regulation language discusses disciplinary penalties, which can be interpreted to mean "punishment". The group felt that the regulation should be using terminology that is more contemporary and focused on rehabilitation rather than punitive actions; therefore, the word "penalties" has been replaced with "actions". The Workgroup also felt it was necessary to insert a reference to those individuals that may have limited literacy so that those persons receive necessary instruction and information in a form that may be understood.

There is national recognition that rehabilitation, not punishment, should be a goal in detention facilities. Additionally, there are legal precedents and case law guiding discipline in detention.

- **Operational impact:** None are anticipated; revisions make clarifications to the terminology for existing practices.

- **Fiscal impact:** There is no anticipated fiscal impact, the revisions clarify existing requirements.

§ 1081. Plan for Inmate Discipline.
Each facility administrator shall develop written policies and procedures for inmate discipline. The plan shall include, but not be limited to, the following elements:

(a) Temporary Loss of Privileges: For minor acts of non-conformance or minor violations of facility rules, staff may impose a temporary loss of privileges, such as access to television, telephones, commissary, or lockdown for less than 24 hours, provided there is written documentation and supervisory approval.

(b) Disciplinary Actions: Major violations of facility rules or repetitive minor acts of non-conformance or repetitive minor violations of facility rules shall be reported in writing by the staff member observing the act and submitted to the disciplinary officer. The consequences of such violations may include, but are not limited to:

1. Loss of good time/work time.
2. Placement in disciplinary separation.
3. Disciplinary separation diet.
4. Loss of privileges mandated by regulations.

A staff member with investigative and disciplinary authority shall be designated as a disciplinary officer to impose such consequences. Staff shall not participate in disciplinary review if they are involved in the charges.

Such charges pending against an inmate shall be acted on with the following provisions and within specified timeframes:

1. A copy of the report, or a separate written notice of the violation(s), shall be provided to the inmate.

2. Unless declined by the inmate, a hearing shall be provided no sooner than 24 hours after the report has been submitted to the disciplinary officer and the inmate has been informed of the charges in writing. The hearing may be postponed or continued for a reasonable time through a written waiver by the inmate, or for good cause.

3. The inmate shall be permitted to appear on his/her own behalf at the time of hearing and present witnesses and documentary evidence. The inmate shall have access to staff or inmate assistance when the inmate has limited literacy or the issues are complex.

4. A charge(s) shall be acted on no later than 72 hours after an inmate has been informed of the charge(s) in writing.

5. Subsequent to final disposition of disciplinary charges by the disciplinary officer, the charges and the action taken shall be reviewed by the facility manager or designee.

6. The inmate shall be advised in a written statement by the fact-finders about the evidence relied on and the reasons for the disciplinary action. A copy of the record shall be kept pursuant to Penal Code Section 4019.5.

7. There shall be a policy of review and appeal to a supervisor on all disciplinary action.

(c) Nothing in this section precludes a facility administrator from administratively segregating any inmate from the general population or program for reasons of personal, mental, or physical health, or under any circumstance in which the safety of the inmates, staff, program, or community is endangered, pending disciplinary action or a review as required by Section 1053 of these regulations.

(d) Nothing in this section precludes the imposition of conditions or restrictions that reasonably relate to a legitimate, non-punitive administrative purpose.

Note: Authority cited: Sections 6024 and 6030, Penal Code. Reference: Sections 4019.5 and 6030, Penal Code.

Public Comment

BSCC staff recommends the term “and/or” (highlighted in yellow above) be revised to ensure regulation requirements can be reasonably and logically interpreted as having only one meaning.

Discussion Notes

This regulation outlines the elements required for inmate disciplinary policies and procedures. The Workgroup reviewed the regulation and the comment from BSCC staff requesting the removal of “and/or”. Group members concurred that only “or” is necessary to ensure that notice of disciplinary information is provided to an inmate.

The Workgroup also discussed rehabilitation, and felt that it does not come from removing, but rather from providing opportunities. In discussing discipline measures, the group entertained the idea of removing the disciplinary diet as a sanction option but asked that the ESC review and decide on the issue.

During the previous regulation revision, this regulation was updated to reflect national best practices borne out of case law related to disciplinary action in detention facilities, particularly Wolff v. McDonnell. Workgroup members and BSCC staff considered these same best practices during this revision.

- **Operational impact:** There is no anticipated operational impact due to updating terminology.

- **Fiscal impact:** There is no anticipated operational impact due to updating terminology.

§ 1082. Forms of Discipline.

The degree of actions taken by the disciplinary officer shall be directly related to the severity of the rule infraction and promotion of desired behavior through a progressive disciplinary process.

Acceptable forms of discipline shall consist of, but not be limited to, the following:
(a) Loss of privileges.
(b) Extra work detail.
(c) Short term lockdown for less than 24 hours.
(d) Removal from work details.
(e) Forfeiture of "good time" credits earned under Penal Code Section 4019.
(f) Forfeiture of "work time" credits earned under Penal Code Section 4019.
(g) Disciplinary separation.
(h) Disciplinary separation diet.

Note: Authority cited: Section 6030, Penal Code. Reference: Section 6030, Penal Code.

ESC Recommendation

This topic was discussed alongside Administrative Segregation; resources should be shared with the workgroup (see below resources).

Resources

National Commission on Correctional Health Care Position Statement on Solitary Confinement
New York Times 2015 Article on Solitary Confinement in CA Prisons

Public Comment

Submitted by Pamila Lew, Senior Attorney, Disability Rights California
Administrative Segregation §1053, Isolation (no regulation—but BSCC received feedback that the difference between administrative segregation, isolation and solitary confinement are not clear in the regulations), Discipline and Acceptable Types, Including Solitary Confinement §1082

- Currently: No definition of "solitary confinement" or "isolation;" 1053 requires written policies for administrative segregation; must be separate and secure but "shall not involve any other deprivation of privileges than is necessary to obtain the objective of protecting the inmates and staff; 1082 outlines disciplinary options including "disciplinary segregation."
    - Revision: Regulations should require a generalized exclusion for people with serious mental illness or developmental/intellectual disabilities.
        - Rationale: Placement of people with SMI and people with cognitive disabilities has been consistently found to violate the U.S. Constitution. See, e.g., Madrid v. Gomez, 889 F. Supp. 1146 (N.D. Cal. 1995); see also Indiana Protection & Advocacy Services Commission v. Commissioner, 2012 WL 6738517 (S.D. Ind., Dec. 31, 2012) (holding that the Indiana Department of Correction's practice of placing prisoners with serious mental illness in segregation constituted cruel and unusual treatment in violation of

the Eighth Amendment). A generalized exclusion is appropriate, absent exigent circumstances (Mays Remedial Plan, p. 53).

- Revision: Requirement of an individualized assessment of security risk and need for separation (Mays Remedial Plan, p. 51). Add language that segregation should not be used in place of rehabilitation and/or appropriate programming. Add limitations on direct release to community from segregation units. (Mays Remedial Plan,, p. 59).
  - Rationale: Physical and psychological effects of isolation are well-documented and hinder rehabilitation and likeliness to safely reenter society. States that have limited segregation have shown reduced violence and recidivism.

Discussion Notes

This section outlines the acceptable forms of discipline that may be used in local detention facilities.

The Workgroup reviewed the regulation, resources shared by the ESC, and public comment. The group discussed various forms of discipline and how some may be punitive and not in line with the severity of an offense; many forms of discipline take things away from incarcerated persons and are not helpful to creating meaningful behavioral transformation. Consistent with changes proposed to other sections of the regulations, and existing juvenile Title 15 language on discipline, the Workgroup chose to strike the word “punitive,” and insert “and promotion of desired behavior through a progressive disciplinary process” to ensure that discipline is provided specifically to promote desired behavior and is more in line with the severity of offense.

BSCC staff and workgroup members relied on many of the same best practices and case law as similar regulations proposed for revision as well as existing Title 15 Regulations for Juvenile Facilities.

- **Operational impact:** There is no operational impact anticipated because of terminology changes and clarification that discipline be progressive in relation to severity of offense.

- **Fiscal impact:** There is no fiscal impact anticipated because of terminology changes and clarification that discipline be progressive in relation to severity of offense.

§ 1083. Limitations on Disciplinary Actions.

The Penal Code and the State Constitution expressly prohibit all cruel and unusual punishment, disciplinary actions shall not include corporal punishment, group punishment when feasible, and physical or psychological degradation.

Additionally, there shall be the following limitations:

(a) Disciplinary separation shall be considered an option of last resort and as a response to the most serious and threatening behavior, for the shortest time possible, and with the least restrictive conditions possible.
    (1) If an inmate is on disciplinary separation status for 30 consecutive days there shall be a review by the facility manager before the disciplinary separation status is continued. This review shall include a consultation with health care staff. Such reviews shall continue at least every fifteen days thereafter until the disciplinary status has ended. This review shall be documented.
    (2) The disciplinary separation cells or cell shall have the minimum furnishings and space specified in Title 24, Part 2, 1231.2.6 and 2.7. Occupants shall be issued clothing and bedding as specified in Articles 13 and 14 of these regulations and shall not be deprived of them through any portion of the day except that those inmates who engage in the destruction of bedding or clothing may be deprived of such articles. The decision to deprive inmates of such articles of clothing and bedding shall be reviewed by the facility manager or designee during each 24 hour period.
        (3) If after placement in separation, mental health or medical staff determine that an individual has serious mental illness or an intellectual disability, they shall be removed from disciplinary separation immediately upon this determination.

(b) Penal Code Section 4019.5 expressly prohibits the delegation of authority to any inmate or group of inmates to exercise the right of punishment over any other inmate or group of inmates.

(c) In no case shall a safety cell, as specified in Title 24, Part 2, 1231.2.5, or any restraint device be used for disciplinary purposes.

(d) No inmate may be deprived of the implements necessary to maintain an acceptable level of personal hygiene as specified in Section 1265 of these regulations.

(e) Food shall not be withheld as a disciplinary measure.

(f) The disciplinary separation diet described in section 1247 of these regulations shall only be utilized for major violations of institutional rules.
    (1) In addition to the provisions of Section 1247, the facility manager shall approve the initial placement on the disciplinary separation diet and ensure that medical staff is notified.
    (2) In consultation with medical care staff, the facility manager shall approve any continuation on that diet every 72 hours after the initial placement.

(g) Correspondence privileges shall not be withheld except in cases where the inmate has violated correspondence regulations, in which case correspondence may be suspended for no longer than 72 hours, without the review and approval of the facility manager.

(h) In no case shall access to courts and legal counsel be suspended as a disciplinary measure.

Note: Authority cited: Sections 6024 and 6030, Penal Code. Reference: Section 6030, Penal Code.

ESC Recommendation

This topic was discussed alongside Administrative Segregation; resources should be shared with the workgroup (see below resources).

Resources

National Commission on Correctional Health Care Position Statement on Solitary Confinement
New York Times 2015 Article on Solitary Confinement in CA Prisons

Public Comment

Submitted by Pamila Lew, Senior Attorney, Disability Rights California
Administrative Segregation §1053, Isolation (no regulation—but BSCC received feedback that the difference between administrative segregation, isolation and solitary confinement are not clear in the regulations), Discipline and Acceptable Types, Including Solitary Confinement §1082

- Currently: No definition of "solitary confinement" or "isolation;" 1053 requires written policies for administrative segregation; must be separate and secure but "shall not involve any other deprivation of privileges than is necessary to obtain the objective of protecting the inmates and staff; 1082 outlines disciplinary options including "disciplinary segregation."
    - Revision: Regulations should require a generalized exclusion for people with serious mental illness or developmental/intellectual disabilities.
        - Rationale: Placement of people with SMI and people with cognitive disabilities has been consistently found to violate the U.S. Constitution. See, e.g., Madrid v. Gomez, 889 F. Supp. 1146 (N.D. Cal. 1995); see also Indiana Protection & Advocacy Services Commission v. Commissioner, 2012 WL 6738517 (S.D. Ind., Dec. 31, 2012) (holding that the Indiana Department of Correction's practice of placing prisoners with serious mental illness in segregation constituted cruel and unusual treatment in violation of the Eighth Amendment). A generalized exclusion is appropriate, absent exigent circumstances (Mays Remedial Plan, p. 53).
    - Revision: Requirement of an individualized assessment of security risk and need for separation (Mays Remedial Plan, p. 51). Add language that segregation should not be used in place of rehabilitation and/or appropriate programming. Add limitations on direct release to community from segregation units. (Mays Remedial Plan,, p. 59).
        - Rationale: Physical and psychological effects of isolation are well-documented and hinder rehabilitation and likeliness to safely reenter society. States that have limited segregation have shown reduced violence and recidivism.

Discussion Notes

This section outlines the limitations on disciplinary actions that local detention facilities may take against incarcerated persons.

The Workgroup reviewed Section 1083, the ESC recommendation, resources, and public comment. Throughout the group's review members discussed the inclusion of language that is closer to Juvenile Title 15 requirements. After lengthy conversation over different forms of punishment the group chose to insert language specifying which types of discipline, or punishment, were to be prohibited including that the least restrictive options for the least amount of time should be exercised first. The Workgroup also felt it was important to specify that if a medical or mental health staff member determines an individual to have serious mental illness or intellectual disabilities, that the individual shall be immediately removed from disciplinary separation for their own mental and physical safety.

BSCC staff and workgroup members relied on Penal Code, the California Constitution, existing Juvenile Title 15 regulations on discipline, and many of the same best practices, case law, and remedial plans as similar regulations to propose revisions.

- **Operational impact:** Facilities are already following the majority of the proposed prohibitions, there may be a minimal impact to update manuals and provide training.

- **Fiscal impact:** There may be a nominal fiscal impact for a one-time training of current staff.

§ 1084. Disciplinary Records.

Penal Code Section 4019.5 requires that a record is kept of all disciplinary actions administered, therefore. This requirement may be satisfied by retaining copies of rule violation reports and report of the disposition of each.

Note: Authority cited: Sections 6024 and 6030, Penal Code. Reference: Section 6030, Penal Code.

BSCC Notes

This section outlines the record keeping requirements of Penal Code Section 4019.5.

The Workgroup reviewed the regulation noting that the language on punishment was now inconsistent with other changes they have proposed. The group also requested that staff replace any other instances of “punitive” and “sanction” to “action” as well.

- **Operational impact:** There is no operational impact anticipated because of terminology changes.

- **Fiscal impact:** There is no fiscal impact anticipated because of terminology changes.

ARTICLE 8. MINORS IN JAILS

§ 1100. Purpose.
The purpose of this article is to establish minimum standards for local adult detention facilities, Types II and III, in which minors are lawfully detained.

Unless otherwise specified in statute or these regulations, minors lawfully held in local adult detention facilities shall be subject to the regulations and statutes governing those facilities found in Minimum Standards for Local Detention Facilities, Title 15, Division 1, Chapter 1, Subchapter 4, Section 1000 et seq. and Title 24, Part 1, Section 13-102, and Part 2, Section 1231, California Code of Regulations.

An existing jail built in accordance with construction standards in effect at the time of construction and approved for the detention of minors by the Board shall be considered as being in compliance with the provisions of this article unless the condition of the structure is determined by the Board to be dangerous to life, health or welfare of minors.

Note: Authority cited: Sections 6024 and 6030, Penal Code. Reference: Section 6030, Penal Code.

Discussion Notes

No changes recommended.

The Workgroup considered the regulation and discussed the lack of reference to minors being held in adult jail facilities but ultimately chose not to make any changes to this section.

§ 1101. Restrictions on Contact with Adult Prisoners.
The facility administrator shall establish policies and procedures to restrict sight and sound contact, as defined in Section 1006, between detained minors and adults confined in the facility. The policies and procedures should consider trauma-informed approaches in protecting minors from contact.

In situations where brief or accidental contact may occur, such as booking or facility movement, facility staff (trained in the supervision of inmates) shall maintain a constant, side-by-side presence with the minor or the adult to prevent sustained contact.

The above restrictions do not apply to minors who are participating in supervised program activities pursuant to Section 208 (c) of the Welfare and Institutions Code.

Note: Authority cited: Section 6030, Penal Code. Reference: Section 6030, Penal Code.

Discussion Notes

This regulation outlines the requirements for how contact between adults and youth in the facility must be prohibited. The regulation comports with federal Juvenile Justice and Delinquency Prevention Act (JJDPA) requirements.

The Workgroup reviewed the BSCC staff suggestion for the second paragraph, discussed spaces where this regulation applies such as booking, and how many minors in their early teens are being booked in jails which can be a scary and uncertain process. The workgroup chose to clarify the type of separation required between minors and adults by inserting “sight and sound,” as well as language regarding trauma-informed approaches to provide minors with further protection.

Often counties equate sight and sound separation with isolation. But isolation can have detrimental and harmful results to the minor. How separation is maintained has a critical impact on a youth’s experience, well-being, and safety. Restricting contact, while protecting minors, should also consider trauma-informed approaches and how trauma may affect separation. If the changes are proposed and adopted, counties must consider and address how sight and sought contact is maintained while keeping the minor’s experience in mind.

Resources and best practices:

- Office of Juvenile Justice and Delinquency Prevention (2019). Compliance Monitoring Technical Assistance Tool: An Overview of Statutory and Regulatory Requirements for Monitoring Facilities for Compliance with . . . the Juvenile Justice and Delinquency Prevention Act, see pages 14-15 and 19 (provides standards for minors in adults jails and lockups, and court holding facilities).

- Office of Juvenile Justice and Delinquency Prevention (2019). General Regulation Definitions. Retrieved from https://ecfr.federalregister.gov/ (relevant regulation definitions on minors detained in jails and lockups).

- **Operational impact:** Minimal; Counties would have to be more thoughtful and mindful of how sight and sound separation is maintained.

- **Fiscal Impact:** None anticipated.

§ 1102. Classification.
The facility administrator shall develop and implement a written plan designed to provide for the safety of staff and minors held at the facility. The plan shall include the following:

(a) a procedure for receiving and transmitting information regarding minors who present a risk or hazard to self or others while confined at the facility, and the segregation of such minors to the extent possible within the limits of the facility.
(b) a procedure to provide care for any minor who appears to be in need of or who requests medical, mental health, or developmental disability treatment. Written procedures shall be established by the responsible health administrator in cooperation with the facility administrator.
(c) a suicide prevention program designed to identify, monitor, and provide treatment to those minors who present a suicide risk.
(d) provide that minors be housed separately from adults and not be allowed to come or remain in contact with adults except as provided in Sections 208(c) of the Welfare and Institutions Code.

Note: Authority cited: Section 6030, Penal Code. Reference: Section 6030, Penal Code.

Discussion Notes

No changes recommended.

§ 1103. Release Procedures.
Facility staff shall notify the parents or guardians prior to the release of a minor. The minor's personal clothing and valuables shall be returned to the minor, parents or guardian, upon the minor's release or consent.

Note: Authority cited: Section 6030, Penal Code. Reference: Section 6030, Penal Code.

Discussion Notes

No changes recommended.

The workgroup reviewed and discussed the possibility of adding a requirement for designated safe release times, though ultimately chose not to make any changes as the release time of a minor is highly dependent upon whether a parent or guardian is available.

§ 1104. Supervision of Minors.
The facility administrator shall develop and implement policy and procedures that provide for:

(a) continuous around-the-clock supervision of minors with assurance that staff can hear and respond; and,
(b) safety checks of minors at least once every 30 minutes. These safety checks shall include the direct visual observation of movement and skin. Safety checks shall not be replaced, but may be supplemented by, an audio/visual electronic surveillance system designed to detect overt, aggressive, or assaultive behavior and to summon aid in emergencies. All safety checks shall be documented.

Note: Authority cited: Sections 6024 and 6030, Penal Code. Reference: Section 6030, Penal Code.

Discussion Notes

The Workgroup reviewed Section 1104 and the BSCC staff suggestion to remove the term “and/or”. The group agreed that the terminology could be confusing and chose to strike out “/or” and keep “and” which would require facilities to include the direct visual observation of movement and skin when conducting safety checks of minors.

This regulation uses “and/or” which can be confusing and unclear. The removal of the word “/or” ensures that the regulation requirement is clearly understood, and that safety checks include direct visual observation of movement and skin, rather than one or the other.

- **Operational impact:** Facility safety check will need to include direct visual observation of movement and skin; policy may need to be revised for those facilities that are not already doing both.

- **Fiscal Impact:** None anticipated.

§ 1105. Recreation Programs.

The facility administrator shall develop written policies and procedures to provide a recreation program that shall protect the welfare of minors and other inmates, recognize facility security needs and comply with minimum jail standards for recreation (California Code of Regulations, Title 15, Section 1065).

Note: Authority cited: Section 6030, Penal Code. Reference: Section 6030, Penal Code.

Discussion Notes

No changes recommended.

§ 1106. Disciplinary Procedures.
Nothing in this regulation shall prevent the administrator from removing a detained minor from the general population or program for reasons of the minor's mental or physical health; or under any circumstances in which the safety of the minor, other inmates, staff, the program or community is endangered, pending a disciplinary action or review. With the exceptions noted below, the provisions of Sections 1080-1084 shall apply when a minor is involved in disciplinary actions.

(a) Pursuant to Welfare and Institutions Code Section 208.3, minors may not be placed in room confinement for disciplinary purposes.
(b) Permitted forms of discipline include:
    (1) temporary loss of privileges; and,
    (2) loss of privileges mandated by applicable regulations.
(c) Access to visitation and recreation shall be restricted only after a second level review by a supervisor or manager and shall not extend beyond five days without subsequent review.
(d) Prohibited forms of discipline include:
    (1) discipline that does not fit the violation;
    (2) corporal punishment;
    (3) inmate imposed discipline;
    (4) placement in safety cells sobering cells, or any other cell not specifically designated for the detention of minors;
    (5) deprivation of food;
    (6) room confinement; and,
    (7) the adult disciplinary diet.

Note: Authority cited: Section 6030, Penal Code. Reference: Section 6030, Penal Code.

Discussion Notes

This regulation outlines disciplinary procedures for minors housed at the facility.

Recent legislation requires this section to be updated for consistency with Welfare and Institutions Code and other sections of these regulations, including juvenile Title 15.

The Workgroup discussed Section 1106 and discussed the use of disciplinary confinement for minors. The group requested that BSCC staff review other laws relative to confinement of minors and provide the workgroup with suggested edits that will make this section consistent with other statutes and Title 15 regulations.

- **Operational impact:** None anticipated.
- **Fiscal Impact:** None anticipated.

§ 1120. Education Program for Minors in Jails.
Whenever a minor is held in a Type II or III facility, the facility administrator shall coordinate with the County Department of Education or County Superintendent of

Schools to provide education programs as required by Section 48200 of the Education Code.

Note: Authority cited: Section 6030, Penal Code. Reference: Section 6030, Penal Code.

Discussion Notes

No changes recommended.

The workgroup reviewed the regulation and discussed Section 1370 and the possibility of outside education programs being allowed entry to the facility, but ultimately the group chose not to make any changes.

§ 1121. Health Education for Minors in Jails.

The health administrator for each jail, in cooperation with the facility administrator and the local health officer, shall develop written policies and procedures to assure that age- and sex-appropriate health education and disease prevention programs are offered to minors.

The education program shall be updated as necessary to address current health priorities and meet the needs of the confined population.

Note: Authority cited: Section 6030, Penal Code. Reference: Section 6030, Penal Code.

Discussion Notes

No changes recommended.

§ 1122. Reproductive Information and Services for Minors in Jails.
The health administrator, in cooperation with the facility administrator, shall develop written policies and procedures to assure that reproductive health services are available to both male and female minors in jails.

Such services shall include, but not be limited to, those prescribed by Welfare and Institutions Code Sections 220, 221 and 222 and Health and Safety Code Section 123450.

Note: Authority cited: Section 6030, Penal Code. Reference: Section 6030, Penal Code.

Discussion Notes

No changes recommended.

The workgroup reviewed this section, noted the comparable juvenile regulation, and agreed that no changes are necessary.

§ 1122.5. Pregnant Minors

(a) The health administrator, in cooperation with the facility administrator, shall develop written policies and procedures pertaining to pregnant minors that address the requirements in Title 15, Section 1417.

(b) The facility administrator, in cooperation with the responsible physician, shall develop written policies and procedures for the use of restraint devices on pregnant minors. The policy shall address requirements of Penal Code 3407. Policy shall include reference to the following:

1) A minor known to be pregnant or in recovery after delivery or termination of the pregnancy shall not be restrained by the use of leg or waist restraints , or handcuffs behind the body.
2) A pregnant minor in labor, during delivery, or in recovery after delivery or termination of the pregnancy, shall not be restrained by the wrists, ankles, or both, unless deemed necessary for the safety and security of the minor, the staff, or the public.
3) Restraints shall be removed when a professional who is currently responsible for the medical care of a pregnant minor during a medical emergency, labor, delivery, or recovery after delivery or termination of the pregnancy determines that the removal of restraints is medically necessary.
4) Upon confirmation of a minor's pregnancy, she shall be advised, orally or in writing, of the standards and policies governing pregnant minors.

Note: Authority cited: Section 6030, Penal Code. Reference: Sections 3407 and 6030, Penal Code

Discussion Notes

See Section 1058.5 for reference; the changes made in this section mirror Section 1058.5.

§ 1123. Health Appraisals/Medical Examinations for Minors in Jails.
When a minor is held in a jail, the health administrator, in cooperation with the facility administrator, shall develop policy and procedures to assure that a health appraisal/medical examination:

(a) is received from the sending facility at or prior to the time of transfer; and
(b) is reviewed by designated health care staff at the receiving facility; or,
(c) absent a previous appraisal/examination or receipt of the record, a health appraisal/medical examination, as outlined in Minimum Standards for Juvenile Facilities, Section 1432, Health Appraisals/Medical Examinations is completed on the minor within 96 hours of admission.

Note: Authority cited: Section 6030, Penal Code. Reference: Section 6030, Penal Code.

Discussion Notes

No changes recommended.

§ 1124. Prostheses and Orthopedic Devices for Minors in Jails.
The health administrator, in cooperation with the facility administrator and the responsible physician shall develop written policy and procedures regarding the provision, retention and removal of medical and dental prostheses, including eyeglasses and hearing aids for minors in jail.

(a) Prostheses shall be provided when the health of the minor in the jail would otherwise be adversely affected, as determined by the responsible physician.
(b) Procedures for retention and removal of prostheses shall comply with the requirements of Penal Code Section 2656.

Note: Authority cited: Section 6030, Penal Code. Reference: Section 6030, Penal Code.

Discussion Notes

No changes recommended.

§ 1125. Psychotropic Medications for Minors in Jail.

The health administrator/responsible physician, in cooperation with the mental health director and the facility administrator, shall develop written policies and procedures governing the use of voluntary and involuntary psychotropic medications for minors.

(h) These policies and procedures shall include, but not be limited to:

(1) protocols for physicians' written and verbal orders for psychotropic medications in dosages appropriate to the minor's need;

(2) limitation to the length of time required for a physician's signature on verbal orders;

(3) the length of time voluntary and involuntary medications may be ordered and administered before re-evaluation by a physician;

(4) provision that minors who are on psychotropic medications prescribed in the community are continued on their medications pending re-evaluation and further determination by a physician;

(5) provision that the necessity for continuation on psychotropic medications is addressed in pre-release planning and prior to transfer to another facility or program; and,

(6) provision for regular clinical/administrative review of utilization patterns for all psychotropic medications, including every emergency situation.

(b) Psychotropic medications shall not be administered to a minor absent an emergency unless informed consent has been given by the parent/guardian or the court.

(1) Minors shall be informed of the expected benefits, potential side effects and alternatives to psychotropic medications.

(2) Absent an emergency, minors may refuse treatment.

(c) Minors found by a physician to be a danger to themselves or others by reason of a mental disorder may be involuntarily given psychotropic medication immediately necessary for the preservation of life or the prevention of serious bodily harm, and when there is insufficient time to obtain consent from the parent, guardian, or court before the threatened harm would occur. It is not necessary for harm to take place prior to initiating treatment.

(d) Administration of psychotropic medication is not allowed for disciplinary reasons.

Note: Authority cited: Sections 6024 and 6030, Penal Code. Reference: Section 6030, Penal Code.

Discussion Notes

No changes recommended.

The workgroup noted the comparable Title 15 regulation and reviewed regulation language. The under, or over, treatment of minors (E.g., minors being given hormones) was discussed, however, the amount of treatment or medication dispensed is not within the BSCC’s authority to regulate.

ARTICLE 9. MINORS IN TEMPORARY CUSTODY IN A LAW ENFORCEMENT FACILITY

§ 1140. Purpose.

The purpose of this article is to establish minimum standards for law enforcement facilities in which minors are held in secure or non-secure custody.

Unless otherwise specified in statute or these regulations, minors lawfully held in local adult detention facilities shall be subject to the regulations and statutes governing those facilities found in Title 15, Division 1, Chapter 1, Subchapter 4, Section 1000 et seq. and Title 24, Part 1, Section 13-102, and Part 2, Section 1231, California Code of Regulations.

Note: Authority cited: Sections 6024 and 6030, Penal Code; and Section 210.2, Welfare and Institutions Code. Reference: Section 6030, Penal Code; and Section 210.2, Welfare and Institutions Code.

Discussion Notes

No changes recommended.

§ 1141. Minors Arrested for Law Violations.

Any minor taken into temporary custody by a peace officer, on the basis that they are a person described by Section 602 of the Welfare and Institutions Code, may be held in secure or non-secure custody within a law enforcement facility that contains a lockup for adults provided that the standards set forth in these regulations are met.

Note: Authority cited: Sections 6024 and 6030, Penal Code; and Section 210.2, Welfare and Institutions Code. Reference: Section 6030, Penal Code; and Section 210.2, Welfare and Institutions Code.

Discussion Notes

No changes recommended.

§ 1142. Written Policies and Procedures.

The facility administrator shall develop written policies and procedures concerning minors being held in temporary custody which shall address:

(a) suicide risk and prevention;
(b) use of restraints;
(c) emergency medical assistance and services; and,
(d) prohibiting use of discipline.

Note: Authority cited: Section 6030, Penal Code; and Section 210.2, Welfare and Institutions Code. Reference: Section 6030, Penal Code; and Section 210.2, Welfare and Institutions Code.

Discussion Notes

No changes recommended.

§ 1143. Care of Minors in Temporary Custody.

(a) The following shall be made available to all minors held in temporary custody:

(1) access to toilets and washing facilities;
(2) one snack during term of temporary custody if the minor has not eaten within the past four (4) hours or is otherwise in need of appropriate nourishment;
(3) access to drinking water;
(4) access to language services;
(5) access to disabilities services;
(6) sanitary napkins, panty liners, and tampons as requested
(7) privacy during consultation with family, guardian, and/or lawyer:
(8) blankets and clothing, as necessary, to assure the comfort of the minor; and,
(9) his or her personal clothing unless the clothing is inadequate, presents a health or safety problem, or is required to be utilized as evidence of an offense.

(b) Upon entry, the minor shall be informed in writing of what is available under this section, and it shall be posted in at least one conspicuous place to which minors have access.

Note: Authority cited: Sections 6024 and 6030, Penal Code; and Section 210.2, Welfare and Institutions Code. Reference: Section 6030, Penal Code; and Section 210.2, Welfare and Institutions Code.

Discussion Notes

This regulation outlines what needs to be available to minors that are brought into temporary custody in a law enforcement facility. The added language would ensure that all minors would be informed of what they are entitled to and what items are available. In some circumstances, minors may be unaware that they are entitled to a snack, but as the requirement is currently, the minor must request a snack to receive one. The revision will require that facilities provide a snack for minors, without the minor having to ask, and that the food given provides nourishment. These revisions would also make it clear what are the responsibilities of facility for the minors in their care.

The Workgroup discussed whether minors know what to expect when they enter an adult jail facility. They discussed how minors are to be advised of information in this section, ultimately choosing printed and posted materials; special dietary needs, hygiene products, and removing the requirement that minors need ask for a snack were also discussed.

- **Operational impact:** Minimal as these are existing responsibilities. The language makes it clear what all facilities should all be doing already.

- **Fiscal Impact:** None anticipated.

§ 1144. Contact Between Minors and Adult Prisoners.
The facility administrator shall establish policies and procedures to restrict contact, as defined in Section 1006, between minors and adults confined in the facility. In situations where brief or accidental contact may occur, such as booking or facility movement, facility staff (trained in the supervision of inmates) shall maintain a constant, side-by-side presence with the minor or the adult to prevent sustained contact.

Note: Authority cited: Sections 6024 and 6030, Penal Code; and Section 210.2, Welfare and Institutions Code. Reference: Section 6030, Penal Code; and Section 210.2, Welfare and Institutions Code.

Discussion Notes

No changes recommended.

The Workgroup reviewed the regulation and discussed how the regulation is influenced by the JJDPA laws. No necessary changes were identified. Best practices reviewed:

- Office of Juvenile Justice and Delinquency Prevention (2019). Compliance Monitoring Technical Assistance Tool: An Overview of Statutory and Regulatory Requirements for Monitoring Facilities for Compliance with . . . the Juvenile Justice and Delinquency Prevention Act, see pages 14-15 and 19 (provides standards for minors in adults jails and lockups, and court holding facilities).
- Office of Juvenile Justice and Delinquency Prevention (2019). General Regulation Definitions. Retrieved from https://ecfr.federalregister.gov/ (relevant regulation definitions on minors detained in jails and lockups).

§ 1145. Decision on Secure Custody.

A minor who is taken into temporary custody by a peace officer on the basis that he or she is a person described by Section 602 of the Welfare and Institutions Code may be held in secure custody in a law enforcement facility that contains a lockup for adults if the minor is 14 years of age or older and if, in the reasonable belief of the peace officer, the minor presents a serious security risk of harm to self or others, as long as all other conditions of secure custody set forth in these standards are met. Any minor in temporary custody who is less than 14 years of age, or who does not in the reasonable belief of the peace officer present a serious security risk of harm to self or others, shall not be placed in secure custody, but may be kept in non-secure custody in the facility as long as all other conditions of non-secure custody set forth in these standards are met.

In making the determination whether the minor presents a serious security risk of harm to self or others, the officer may take into account the following factors:

(a) age, maturity, and delinquent history of the minor;
(b) severity of the offense(s) for which the minor was taken into custody;
(c) minor's behavior, including the degree to which the minor appears to be cooperative or non-cooperative;
(d) the availability of staff to provide adequate supervision or protection of the minor; and,
(e) the age, type, and number of other individuals who are detained in the facility.

Note: Authority cited: Sections 6024 and 6030, Penal Code; and Section 210.2, Welfare and Institutions Code. Reference: Section 6030, Penal Code; and Section 210.2, Welfare and Institutions Code.

Discussion Notes

No changes recommended.

§ 1146. Conditions of Secure Custody.

While in secure custody, minors may be locked in a room or other secure enclosure, secured to a cuffing rail, or otherwise reasonably restrained as necessary to prevent escape and protect the minor and others from harm.

Note: Authority cited: Sections 6024 and 6030, Penal Code; and Section 210.2, Welfare and Institutions Code. Reference: Section 6030, Penal Code; and Section 210.2, Welfare and Institutions Code.

Discussion Notes

No changes recommended.

§ 1147. Supervision of Minors in Secure Custody Inside a Locked Enclosure.
(a) Minors shall receive adequate supervision which, at a minimum, includes:

(1) constant auditory access to staff by the minor; and,
(2) safety checks, as defined in Section 1006, of the minor by staff of the law enforcement facility, at least once every 30 minutes, which shall be documented.

(b) Males and females shall not be placed in the same locked room unless under constant direct visual observation by staff of the law enforcement facility.

Note: Authority cited: Sections 6024 and 6030, Penal Code; and Section 210.2, Welfare and Institutions Code. Reference: Section 6030, Penal Code; and Section 210.2, Welfare and Institutions Code.

Discussion Notes

No changes recommended.

§ 1148. Supervision of Minors in Secure Custody Outside of a Locked Enclosure.
Minors held in secure custody outside of a locked enclosure shall not be secured to a stationary object for more than 60 minutes unless no other locked enclosure is available. A staff person from the facility shall provide constant direct visual observation to assure the minor's safety while secured to a stationary object. Securing minors to a stationary object for longer than 60 minutes, and every 30 minutes thereafter, shall be approved by a supervisor. The decision for securing a minor to a stationary object for longer than 60 minutes, and every 30 minutes thereafter shall be based upon the best interests of the minor and shall be documented.

Note: Authority cited: Sections 6024 and 6030, Penal Code; and Section 210.2, Welfare and Institutions Code. Reference: Section 6030, Penal Code; and Section 210.2, Welfare and Institutions Code.

Discussion Notes

No changes recommended.

The Workgroup reviewed the regulation language and discussed the idea of adding further requirements related to visual monitoring, whether in person or via video, but there were no further group discussions and ultimately no changes were made.

§ 1149. Criteria for Non-Secure Custody.
Minors held in temporary custody, who do not meet the criteria for secure custody as specified in Section 207.1(d) of the Welfare and Institutions Code, may be held in non-secure custody to investigate the case, facilitate release of the minor to a parent or guardian, or arrange for transfer of the minor to an appropriate juvenile facility. While minors are held in temporary non-secure custody the provisions of Section 1143 apply.

Note: Authority cited: Sections 6024 and 6030, Penal Code; and Section 210.2, Welfare and Institutions Code. Reference: Section 6030, Penal Code; and Section 210.2, Welfare and Institutions Code.

Discussion Notes

This regulation outlines the criteria for non-secure custody. The current regulation language is unclear that Section 1143 applies to non-secure custody. Changes to this regulation ensure that facilities understand the requirements of non-secure custody, including those provisions in Section 1143.

The Workgroup reviewed the regulation and BSCC staff comment and discussed the addition of advisement language similar to what was proposed for Section 1143.

- **Operational impact:** None anticipated; this is already a requirement.

- **Fiscal Impact:** None anticipated.

§ 1150. Supervision of Minors in Non-Secure Custody.

Minors held in non-secure custody shall receive constant direct visual observation by staff of the law enforcement facility. Entry and release times shall be documented and made available for review. Monitoring a minor using audio, video, or other electronic devices shall never replace constant direct visual observation.

Note: Authority cited: Section 6030, Penal Code; and Section 210.2, Welfare and Institutions Code. Reference: Section 6030, Penal Code; and Section 210.2, Welfare and Institutions Code.

Discussion Notes

No changes recommended.

§ 1151. Minors Under the Influence of Any Intoxicating Substance in Secure or Non-Secure Custody.

Facility administrators shall develop policies and procedures providing that a medical clearance shall be obtained for minors, who are under the influence of drugs, alcohol or any other intoxicating substance to the extent that they are unable to care for themselves, prior to secure or non-secure custody of that minor.

Supervision of minors in secure custody in a locked room shall include safety checks at least once every 15 minutes until resolution of the intoxicated state or release. These safety checks shall be documented, with actual time of occurrence recorded.

Supervision of minors in secure custody outside of a locked room shall be supervised in accordance with Section 1148.

Supervision of minors in nonsecure custody shall be supervised in accordance with Section 1150.

Note: Authority cited: Sections 6024 and 6030, Penal Code; and Section 210.2, Welfare and Institutions Code. Reference: Section 6030, Penal Code; and Section 210.2, Welfare and Institutions Code.

Discussion Notes

This regulation outlines requirements for handling intoxicated minors who are brought to the facility. The current regulation language lacks clarity and conciseness. Language has been clarified to ensure that it is interpreted correctly to mean that medical clearance is obtained prior to the secure or non-secure custody of a minor.

The Workgroup reviewed the regulation and discussed the need for clarity when minors under the influence do not show signs of intoxication, could the regulation be clarified to include minors telling staff that they are intoxicated? Nothing in the regulation excludes minors from telling staff information. Ultimately the Workgroup chose not those changes but did insert language ensuring that medical clearance is received prior to detaining a minor in secure or non-secure custody.

- **Operational impact:** None anticipated.

- **Fiscal Impact:** None anticipated.

ARTICLE 10. MINORS IN COURT HOLDING FACILITIES

§ 1160. Purpose.
The purpose of this article is to establish minimum standards for court holding facilities in which minors are held pending appearance in juvenile or criminal court.

Unless otherwise specified in statute or these regulations, minors held in court holding facilities shall be subject to the regulations and statutes governing those facilities found in Title 15, Division 1, Chapter 1, Subchapter 4, Section 1000 et seq. and Title 24, Part I, Section 13-102, and Part 2, Section 1231, California Code of Regulations.

Note: Authority cited: Section 6030, Penal Code. Reference: Section 6030, Penal Code.

Discussion Notes

No changes recommended.

§ 1161. Conditions of Detention.
Court holding facilities shall be designed to provide the following:

(a) Separation of minors from adults in accordance with Section 208 of the Welfare and Institutions Code.
(b) Segregation of minors in accordance with an established classification plan.
(c) Secure non-public access, movement within and egress. If the same entrance/exit is used by both minors and adults, movements shall be scheduled in such a manner that there is no opportunity for contact.

An existing court holding facility built in accordance with construction standards at the time of construction shall be considered as being in compliance with this article unless the condition of the structure is determined by the appropriate authority to be dangerous to life, health, or welfare of minors. Upon notification of noncompliance with this section, the facility administrator shall develop and submit a plan for corrective action to the Board within 90 days.

Note: Authority cited: Section 6030, Penal Code. Reference: Section 6030, Penal Code.

Discussion Notes

No changes recommended.

The Workgroup discussed the addition of an advisement language like what was proposed for Section 1143; however, no changes were ultimately made to this section. The decision to make no changes was due in part to the multiple jurisdictions that operate within, and provide services to, court holding facilities and court buildings. For the purposes of Title 15, BSCC only has authority over the agency that operates the court holding facility.

§ 1162. Supervision of Minors.
A sufficient number of personnel shall be employed in each facility to permit unscheduled safety checks of all minors at least twice every 30 minutes, and to ensure the implementation and operation of the activities required by these regulations. There shall be a written plan that includes the documentation and review of safety checks.

Note: Authority cited: Section 6030, Penal Code. Reference: Section 6030, Penal Code.

Discussion Notes

This regulation outlines the requirements for supervision and safety checks for minors in detention. The current regulation is not clear that safety checks require review. The revision makes it clear that there should be a plan in place for review of safety checks so that noncompliance may be addressed immediately at the facility level, rather than waiting till a biennial inspection occurs.

The Workgroup discussed Section 1162, and through discussion learned that another workgroup had inserted a requirement for review of safety checks in Section 1027.5. The group chose to insert the same language here for consistency and to ensure that there is a process of review.

- **Operational impact:** None anticipated.

- **Fiscal Impact:** None anticipated.

§ 1163. Classification.
The administrator of a court holding facility shall establish and implement a written plan designed to provide for the safety of staff and minors held at the facility. The plan shall include receiving and transmitting of information regarding minors who represent a risk or hazard to self or others while confined at the facility, and the separation of such minors to the extent possible within the limits of the court holding facility, and for the separation of minors from any adult inmate(s) as required by Section 208 of the Welfare and Institutions Code.

Note: Authority cited: Section 6030, Penal Code. Reference: Section 6030, Penal Code.

Public Comment
BSCC staff suggest clarity regarding separation and segregation. For example, Section 1102 makes clear that separation refers to the separation between adults and minors in custody whereas segregation refers to administrative segregation.

Discussion Notes

This regulation outlines the requirements for a classification plan in court holding facilities. The regulation language is inconsistent and changing “segregation” to “separation” will ensure consistency with other regulation sections and current industry language.

The Workgroup reviewed Section 1163 and the suggestion from BSCC staff choosing to change the word “segregation” to “separation” for consistency with currently accepted terms and other sections of Title 15 regulation.

- **Operational impact:** None anticipated.

- **Fiscal Impact:** None anticipated.

ARTICLE 11. MEDICAL/MENTAL HEALTH SERVICES

§ 1200. Responsibility for Health Care Services.
(a) In Type I, II, III and IV facilities, the facility administrator shall have the responsibility to ensure provision of emergency and basic health care services to all inmates. Medical, dental, and mental health matters involving clinical judgments are the sole province of the responsible qualified health care professionals, dentist, and psychiatrist or psychologist respectively; however, security regulations applicable to facility personnel also apply to health personnel.

Each facility shall have at least one physician available. In Type IV facilities, compliance may be attained by providing access into the community; however, in such cases, there shall be a written plan for the treatment, transfer, or referral in the event of an emergency.

(b) In court holding and temporary holding facilities, the facility administrator shall have the responsibility to develop written policies and procedures which ensure provision of emergency health care services to all inmates.

Note: Authority cited: Section 6030, Penal Code. Reference: Section 6030, Penal Code.

Discussion Notes

Section 1200 outlines the responsibilities and requirements for health care services in local detention facilities. The Workgroup reviewed the regulation and discussed the requirement that a “responsible physician” specifically be the individual to make medical judgements noting that some systems employ nurse practitioners and physicians’ assistants, who fall under the umbrella of “qualified health professionals” in those facilities where a physician isn’t available around the clock.

This revision is consistent with medical hierarchy described by the National Commission on Correctional Health Care (NCCHC). Language in the second paragraph has been removed because it lacked clarity and could be interpreted to mean that a Physician is only required to be available to treat physical disorders when in fact a Physician should be available for oversight and several other duties and responsibilities.

The Workgroup identified and discussed the national best practice outlined by the NCCHC. It is considered a best practice and a commonly accepted practice that care is provided by licensed providers as outlined in the changes above.

- **Operational impact:** This proposed change may have a positive impact on facility’s ability to provide care and medical judgments using licensed medical providers when a physician is not immediately available.
- **Fiscal Impact:** None anticipated.

§ 1202. Health Service Audits.
The health authority shall develop and implement a written plan for annual statistical summaries of health care and pharmaceutical services that are provided. The responsible physician shall also establish a mechanism to assure that the quality and adequacy of these services are assessed annually. The plan shall include a means for the correction of identified deficiencies of the health care and pharmaceutical services delivered.

Based on information from these audits, the health authority shall provide the facility administrator with an annual written report on health care and pharmaceutical services delivered.

Note: Authority cited: Section 6030, Penal Code. Reference: Section 6030, Penal Code.

Discussion Notes

No changes recommended.

The Workgroup reviewed Section 1202 and the requirements for auditing health services provided in local detention facilities. They discussed the possibility of specifying that the audit be conducted either internally or by a third party, and whether these audits should be reported to the BSCC to analyze, provide oversight and information to the public. Ultimately the group chose to make no changes, as local health authorities are the entity that inspects for Title 15 medical and mental health regulations and they already provide BSCC with an inspection report containing compliance information.

During review of this regulation the Workgroup discussed national and state best practices and standards, including the NCCHC standards and Health and Safety Code Section 101045 which refers to county health officials.

§ 1203. Health Care Staff Qualifications.
State and/or local licensure and/or certification requirements and restrictions, including those defining the recognized scope of practice specific to the profession, apply to health care personnel working in the facility the same as to those working in the community. Copies of licensing and/or certification credentials shall be on file in the facility or at a central location where they are available for review.

Note: Authority cited: Sections 6024 and 6030, Penal Code. Reference: Section 6030, Penal Code.

Discussion Notes

No changes recommended.

Best practices dictate that the individuals responsible for providing health care services possess the minimum state or local licensure or certifications required to hold their specific position.

§ 1204. Health Care Staff Procedure.
Health care performed by personnel other than a physician shall be performed pursuant to written protocol or order of the responsible health care staff.

Note: Authority cited: Section 6030, Penal Code. Reference: Section 6030, Penal Code.

Discussion Notes

No changes recommended.

While there is no one single identified national best practice, current and best practices indicate that health care performed be pursuant to order of the responsible health care staff.

§ 1205. Health Care Records.

(a) The health authority shall maintain individual, complete and dated health records in compliance with state statute to include, but not be limited to:

(1) receiving screening form/history;
(2) health evaluation reports;
(3) complaints of illness or injury;
(4) names of personnel who treat, prescribe, and/or administer/deliver prescription medication;
(5) location where treated; and,
(6) medication records in conformance with section 1216.

(b) The physician/patient confidentiality privilege applies to the health care record. Access to the health record shall be controlled by the health authority or designee.

The health authority shall ensure the confidentiality of each inmate's health care record file (paper or electronic) and such files shall be maintained separately from and in no way be part of the inmate's other jail records. Within the provisions of HIPAA 45 C.F.R., Section 164.512(k)(5)(i), the responsible physician or designee shall communicate information obtained in the course of health screening and care to jail authorities when necessary for the protection of the welfare of the inmate or others, management of the jail, or maintenance of jail security and order.

(c) Written authorization by the inmate is necessary for transfer of health care record information unless otherwise provided by law or administrative regulations having the force and effect of law.

(d) Inmates shall not be used for health care recordkeeping.

Note: Authority cited: Sections 6024 and 6030, Penal Code. Reference: Section 6030, Penal Code.

Discussion Notes

No changes recommended.

The Workgroup reviewed Section 1205, discussing the BSCC staff recommendation that “and/or” be changed to either “and” or “or” for clarity, however the group felt that in this instance the use of “and/or” is appropriate.

National best practices considered and discussed during review of this section include the Health Insurance Portability and Accountability Act (HIPAA) which outlines the provisions of health care records handling and information confidentiality in law.

§ 1206. Health Care Procedures Manual.
The health authority shall, in cooperation with the facility administrator, set forth in writing, policies and procedures in conformance with applicable state and federal law, which are reviewed and updated at least every two years and include but are not limited to:

(a) summoning and application of proper medical aid;
(b) contact and consultation with other treating health care professionals;
(c) emergency and non-emergency medical and dental services, including transportation;
(d) provision for medically required dental and medical prostheses and eyeglasses;
(e) notification of next of kin or legal guardian in case of serious illness which may result in death;
(f) 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;
(g) screening, referral and care of mentally disordered and developmentally disabled inmates;
(h) implementation of special medical programs;
(i) management of inmates suspected of or confirmed to have communicable diseases;
(j) the procurement, storage, repackaging, labeling, dispensing, administration/delivery to inmates, and disposal of pharmaceuticals;
(k) use of non-physician personnel in providing medical care;
(l) provision of medical diets;
(m) patient confidentiality and its exceptions;
(n) the transfer of pertinent individualized health care information, or individual documentation that no health care information is available, to the health authority of another correctional system, medical facility, or mental health facility at the time each inmate is transferred and prior notification pursuant to Health and Safety Code Sections 121361 and 121362 for inmates with known or suspected active tuberculosis disease. Procedures for notification to the transferring health care staff shall allow sufficient time to prepare the summary. The summary information shall identify the sending facility and be in a consistent format that includes the need for follow-up care, diagnostic tests performed, medications prescribed, pending appointments, significant health problems, and other information that is necessary to provide for continuity of health care. Necessary inmate medication and health care information shall be provided to the transporting staff, together with precautions necessary to protect staff and inmate passengers from disease transmission during transport;
(o) forensic medical services, including drawing of blood alcohol samples, body cavity searches, and other functions for the purpose of prosecution shall not be performed by medical personnel responsible for providing ongoing care to the inmates;
(p) provisions for application and removal of restraints on pregnant inmates consistent with Penal Code Section 3407;
(q) other Services mandated by statute; and,
(r) provisions for timely and appropriate medical and mental health screenings, access to medical and mental health services, and no-cost access to contraception and STD treatment, for inmates who have reported sexual abuse or sexual harassment, regardless of the location where the incident(s) occurred.

Note: Authority cited: Sections 6030, Penal Code. Reference: Section 6030, Penal Code.

Discussion Notes

No changes recommended.

Workgroup members considered requirements in Penal Code and NCCHC standards, as consistent and current best practices.

§ 1206.5. Management of Communicable Diseases in a Custody Setting.

(a) The responsible physician, in conjunction with the facility administrator and the county health officer, shall develop a written plan to address the identification, treatment, control and follow-up management of tuberculosis and other communicable diseases. The plan shall cover the intake screening procedures, identification of relevant symptoms, referral for a medical evaluation, treatment responsibilities during incarceration and coordination with public health officials for follow-up treatment in the community. The plan shall reflect the current local incidence of communicable diseases which threaten the health of inmates and staff.

(b) Consistent with the above plan, the health authority shall, in cooperation with the facility administrator and the county health officer, set forth in writing, policies and procedures in conformance with applicable state and federal law, which include, but are not limited to:

(1) the types of communicable diseases to be reported;
(2) the persons who shall receive the medical reports;
(3) sharing of medical information with inmates and custody staff;
(4) medical procedures required to identify the presence of disease(s) and lessen the risk of exposure to others;
(5) medical confidentiality requirements;
(6) housing considerations based upon behavior, medical needs, and safety of the affected inmates;
(7) provisions for inmate consent that address the limits of confidentiality; and,
(8) reporting and appropriate action upon the possible exposure of custody staff to a communicable disease.

Note: Authority cited: Section 6030, Penal Code. Reference: Sections 6030, 7501, and 7552, Penal Code.

Note to ESC: *This review was completed at the beginning of the COVID-19 pandemic. The ESC may wish to revisit this regulation.*

Discussion Notes

No changes recommended to this section however, the workgroup did choose to insert a definition for the term “communicable disease,” in Section 1006, as it is defined by the Centers on Disease Control and Prevention (CDC).

Workgroup members considered current CDC standards and definitions as current best practices.

§ 1207. Medical Receiving Screening.
A screening shall be completed on all inmates at the time of intake. This screening shall be completed in accordance with written procedures and shall include but not be limited to medical and mental health problems, developmental disabilities, and communicable diseases. The screening shall be performed by licensed health personnel or trained facility staff, with documentation of staff training regarding site specific forms with appropriate disposition based on responses to questions and observations made at the time of screening. The training depends on the role staff are expected to play in the receiving screening process.

The facility administrator and responsible physician shall develop a written plan for complying with Penal Code Section 2656 (orthopedic or prosthetic appliance used by inmates).

There shall be a written plan to provide care for any inmate who appears at this screening to be in need of or who requests medical, mental health, or developmental disability treatment.

Written procedures and screening protocol shall be established by the responsible physician in cooperation with the facility administrator.

Note: Authority cited: Section 6030, Penal Code. Reference: Sections 2656 and 6030, Penal Code.

Discussion Notes

The regulation outlines the requirements and responsibilities of medical receiving screening that occurs when an inmate enters a facility.

Workgroup members discussed the regulation and the need to screen all inmates, regardless of whether they are new to intake or transferred from another facility. Members noted that a receiving facility shouldn't rely on a previous screening because important information may not be provided during transfer; such as the date of the original screening, if the inmate has had known contact with a communicable disease within the original facility, or if the inmate had presented medical or mental health issues at the time of initial screening. The group chose to eliminate the first requirement to ensure that all inmates are screened whenever they enter a facility.

While there is no one single identified national best practice, current and best practices indicate that medical receiving screening, especially those for communicable disease, be performed for the safety and security of inmates, staff, and public health.

- **Operational impact:** There will be an impact to the number of medical receiving screenings that occur due to the new requirement that transferring inmates receive screening also, however, most facilities are already doing screening as a safety precaution during the COVID-19 pandemic.

- **Fiscal impact:** There may be a minimal cost impact for transfer screening, however, most facilities are already conducting screenings of transfers due to the ongoing COVID-19 pandemic. Costs can be justified by the health and safety of inmates, staff, and the public.

§ 1207.5. Special Mental Disorder Assessment.

An additional mental health screening will be performed, according to written procedures, on women who have given birth within the past year and are charged with murder or attempted murder of their infants. Such screening will be performed at intake and if the assessment indicates postpartum psychosis a referral for further evaluation will be made.

Note: Authority cited: Section 6030, Penal Code. Reference: Section 6030, Penal Code.

Public Comment

Disability Rights California Memorandum, February 2, 2020, Page 8.

Discussion Notes

No changes recommended.

Best practice indicates that maternal health disorders, such as postpartum psychosis, require screening and referral for further evaluation and treatment. The requirements of this regulation and are in keeping with best practices and intent of the Legislature according to 123615.5 of the California Health and Safety Code, to provide treatment options for maternal health conditions including those related to postpartum psychosis.

§ 1208. Access to Treatment.
The health authority, in cooperation with the facility administrator, shall develop a written plan for identifying and referring any inmate who appears to be in need of medical, mental health, dental, or developmental disability treatment at any time during his/her incarceration subsequent to the receiving screening. The written plan shall also include the assessment and treatment of such inmates as described in Section 1207, Medical Receiving Screening. Assessment and treatment shall be performed by either licensed health personnel or by persons operating under the authority and direction of licensed health personnel.

Note: Authority cited: Sections 6024 and 6030, Penal Code. Reference: Section 6030, Penal Code.

Public Comment
Disability Rights California Memorandum, February 2, 2020, Page 8.

Discussion Notes

This regulation outlines the requirement for local detention facilities to have a plan for referring inmates to various health related treatments during their incarceration or subsequent to screening.

The Workgroup reviewed the regulation noting that while medical, mental health, and developmental disability treatments are listed as required referrals, dental is not. Dental health is an important and necessary part of an individual's physical wellbeing and therefore these types of services must be offered when an individual appears to need treatment. The group also chose to strike the word "/or" in favor of "and" to provide clarity to the requirements of the regulation; in the two instances the correct requirement is for both actions not either.

Best practices indicate that inmates have access to proper care and treatment, including those for dental health.

- **Operational impact:** There may be a minimal impact to the written plans for access of treatment however, most facilities already include dental as one of the treatments that inmates may be referred to.

- **Fiscal impact:** There is no fiscal impact anticipated because of this revision, dental services are already a requirement elsewhere in Title 15.

§ 1208.5. Health Care Maintenance.
For inmates undergoing prolonged incarceration, an age appropriate and risk factor-based health maintenance visit shall take place within the inmate's second year of incarceration. The specific components of the health maintenance examinations shall be determined by the responsible physician based on the age, gender, and health of the inmate. Thereafter, the health maintenance examinations shall be repeated at reasonable intervals, but not to exceed one year, as determined by the responsible physician.

Note: Authority cited: Sections 6024 and 6030, Penal Code. Reference: Section 6030, Penal Code.

Discussion Notes

This regulation outlines the types and frequency of health care maintenance that shall be provided in location detention facilities.

The Workgroup discussed the regulation noting that the language in some areas is unclear. the requirement that an inmate's health maintenance visit occur within the second "anniversary" of incarceration in confusing, and it was unclear to the group what exactly that requirement meant as an anniversary is a single point in time, not a period. The group chose to replace "anniversary" with "year" to ensure clarity and consistency of application.

The Workgroup also inserted language requiring that further health maintenance examinations occur at reasonable intervals, but not to exceed one year. The aging inmate population was of particular interest when choosing to make this change, as an inmate's length of stay in local detention facilities may be longer than in the past, and facilities are seeing increased numbers of older-aged inmates that require more frequent care. This new one-year requirement will ensure that inmates receive health care examinations more often and at a more consistent interval across the state.

Outside of a detention setting, regular health care examinations are a community best practice.

- **Operational impact:** There may be a minimal impact to facility operations in the scheduling of examination.

- **Fiscal impact:** There is no fiscal impact anticipated, health care maintenance examinations are already a requirement of these regulations.

§ 1209. Mental Health Services and Transfer to Treatment Facility.

(a) The health authority, in cooperation with the mental health director and facility administrator, shall establish policies and procedures to provide mental health services. These services shall include but not be limited to:

(1) Identification and referral of inmates with mental health needs;
(2) Mental health treatment programs provided by qualified staff, including the use of teleheath;
(3) Crisis intervention services;
(4) Basic mental health services provided to inmates as clinically indicated;
(5) Medication support services;
(6) The provision of health services sufficiently coordinated such that care is appropriately integrated, medical and mental health needs are met, and the impact of any of these conditions on each other is adequately addressed.

(b) Unless the county has elected to implement the provisions of Penal Code Section 1369.1, a mentally disordered inmate who appears to be a danger to himself or others, or to be gravely disabled, shall be transferred for further evaluation to a designated Lanterman Petris Short treatment facility designated by the county and approved by the State Department of Mental Health for diagnosis and treatment of such apparent mental disorder pursuant to Penal Code section 4011.6 or 4011.8 unless the jail contains a designated Lanterman Petris Short treatment facility. Prior to the transfer, the inmate may be evaluated by licensed health personnel to determine if treatment can be initiated at the correctional facility. Licensed health personnel may perform an onsite assessment to determine if the inmate meets the criteria for admission to an inpatient facility, or if treatment can be initiated in the correctional facility.

(c) If the county elects to implement the provisions of Penal Code Section 1369.1, the health authority, in cooperation with the facility administrator, shall establish policies and procedures for involuntary administration of medications. The procedures shall include, but not be limited to:

(1) Designation of licensed personnel, including psychiatrist and nursing staff, authorized to order and administer involuntary medication;
(2) Designation of an appropriate setting where the involuntary administration of medication will occur;
(3) Designation of restraint procedures and devices that may be used to maintain the safety of the inmate and facility staff;
(4) Development of a written plan to monitor the inmate's medical condition following the initial involuntary administration of a medication, until the inmate is cleared as a result of an evaluation by, or consultation with, a psychiatrist;
(5) Development of a written plan to provide a minimum level of ongoing monitoring of the inmate following return to facility housing. This monitoring may be performed by custody staff trained to recognize signs of possible medical problems and alert medical staff when indicated; and
(6) Documentation of the administration of involuntary medication in the inmate's medical record.

Note: Authority cited: Section 6030, Penal Code. Reference: Section 6030, Penal Code.

Public Comment
BSCC staff recommends the term “and/or” be revised to ensure regulation requirements can be reasonably and logically interpreted as having only one meaning.

Discussion Notes

This regulation details the requirements for mental health services and transfers to treatment facilities.

The Workgroup reviewed the regulation and decided that facilities should have a policy that includes information on both restraint procedures and devices. Current and best practice would indicate that the designation of restraints policy and procedure identify both procedures and devices for restraint.

- **Operational impact:** There may be a minimal operational change to make a one-time update to policy and procedure for facilities whose current policies or procedures do not address restraints or restraint devices.

- **Fiscal Impact:** There is no fiscal impact anticipated because of this revision.

§ 1210. Individualized Treatment Plans.
(a) For each inmate treated by a mental health service in a jail, the responsible mental health care provider shall develop a written treatment plan. The custody staff shall be informed of the treatment plan when necessary, to ensure coordination and cooperation in the ongoing care of the inmate. This treatment plan shall include referral to treatment after release from the facility when recommended by treatment staff.
(b) For each inmate treated for health conditions for which additional treatment, special accommodations and/or a schedule of follow-up care is/are needed during the period of incarceration, responsible health care staff shall develop a written treatment plan. The custody staff shall be informed of the treatment plan when necessary, to ensure coordination and cooperation in the ongoing care of the inmate. This treatment plan shall include referral to treatment after release from the facility when recommended by treatment staff.

Note: Authority cited: Section 6030, Penal Code. Reference: Section 6030, Penal Code.

Public Comment
Disability Rights California Memorandum, February 2, 2020, Page 8.

BSCC staff recommends the term “and/or” be revised to ensure regulation requirements can be reasonably and logically interpreted as having only one meaning.

Discussion Notes

This regulation details the requirements for local detention facilities to provide individualized treatment plans. The proposed change is simply a clarification of existing requirements.

The Workgroup reviewed the regulation and the public comments from Disability Rights California (DRC) and BSCC staff. The group felt that the regulation already addressed the concerns outlined by DRC; and, that the suggestion from BSCC staff to revise the “and/or” is unnecessary because the use of the term in this instance is appropriate. The group did, however, choose to insert clarifying language in section (a) to ensure that mental health care providers are the individuals providing mental health treatments in jails.

- **Operational impact:** There is no anticipated operation impact.

- **Fiscal Impact:** There is no fiscal impact anticipated because of this revision.

§ 1211. Sick Call.
The facility administrator, in cooperation with the health authority, shall develop written policies and procedures, which provide daily sick call for all inmates or provision made that any inmate requesting medical/mental health attention be given such attention.

Note: Authority cited: Section 6030, Penal Code. Reference: Section 6030, Penal Code.

Discussion Notes

This regulation details the requirements for facility administrators to develop written policies and procedures for the provision of a daily sick call.

The Workgroup reviewed Section 1211 and felt that the wording created confusion. The group reworded the requirement in a form that is more consistent with other sections of these regulations for clarity.

- **Operational impact:** There is no anticipated operation impact.

- **Fiscal Impact:** There is no fiscal impact anticipated because of this revision.

§ 1212. Vermin Control.

The responsible physician shall develop a written plan for the control and treatment of vermin-infested inmates. There shall be written, medical protocols, signed by the responsible physician, for the treatment of persons suspected of being infested or having contact with a vermin-infested inmate.

Note: Authority cited: Section 6030, Penal Code. Reference: Section 6030, Penal Code.

Discussion Notes

No changes recommended.

Best practice dictates that inmates be treated for suspected or confirmed infestations as to ensure the safety of the facility, inmates, staff and public.

§ 1213. Detoxification Treatment.
The responsible physician shall develop written medical policies on detoxification which shall include a statement as to whether detoxification will be provided within the facility or require transfer to a licensed medical facility. The facility detoxification protocol shall include procedures and symptoms necessitating immediate transfer to a hospital or other medical facility.

Facilities without medically licensed personnel in attendance shall not retain inmates undergoing withdrawal reactions judged or defined in policy, by the responsible physician, as not being readily controllable with available medical treatment. Such facilities shall arrange for immediate transfer to an appropriate medical facility.

Note: Authority cited: Section 6030, Penal Code. Reference: Section 6030, Penal Code.

Discussion Notes

No changes recommended.

Best practice dictates that inmates be provided with care and treatment for detoxification in the facility when appropriate or transferred to a hospital or medical facility when symptoms necessitate or when medically licensed personnel are not in attendance.

§ 1214. Informed Consent.
The health authority shall set forth in writing a plan for informed consent of inmates in a language understood by the inmate. Except for emergency treatment, as defined in Business and Professions Code Section 2397 and Title 15, Section 1217, all examinations, treatments and procedures affected by informed consent standards in the community are likewise observed for inmate care. In the case of minors, or conservatees, the informed consent of parent, guardian or legal custodian applies where required by law. Any inmate who has not been adjudicated to be incompetent may refuse non-emergency medical and mental health care. Absent informed consent in non-emergency situations, a court order is required before involuntary medical treatment can be administered to an inmate.

Note: Authority cited: Section 6030, Penal Code. Reference: Section 6030, Penal Code.

Discussion Notes

No changes recommended.

Workgroup members considered current regulation in conjunction with Business and Professions Code Section 2397 as current best practice.

§ 1215. Dental Care.
The facility administrator shall develop written policies and procedures to ensure emergency and medically required dental care is provided to each inmate, upon request, under the direction and supervision of a dentist, licensed in the state.

Note: Authority cited: Section 6030, Penal Code. Reference: Section 6030, Penal Code.

Discussion Notes

This regulation outlines the requirements for facility administers to develop policies and procedures ensuring that the emergency and medically required dental care be provided to inmates.

Workgroup members reviewed Section 1215 and felt the regulation to be sufficient; however, suggesting that a grammatical error be corrected by removing the comma following the word dentist. This is a nonsubstantive change and there are no operational or fiscal impacts anticipated.

§ 1216. Pharmaceutical Management.

(a) The health authority in consultation with a pharmacist and the facility administrator, shall develop written plans, establish procedures, and provide space and accessories for the secure storage, the controlled administration, and disposal of all legally obtained drugs. Such plans, procedures, space and accessories shall include, but not be limited to, the following:

(1) securely lockable cabinets, closets, and refrigeration units;
(2) a means for the positive identification of the recipient of the prescribed medication;
(3) procedures for administration/delivery of medicines to inmates as prescribed;
(4) confirming that the recipient has ingested the medication or accounting for medication under self-administration procedures outlined in Section 1216(d);
(5) that prescribed medications have or have not been administered, by whom, and if not, for what reason;
(6) prohibiting the delivery of drugs by inmates;
(7) limitation to the length of time medication may be administered without further medical evaluation; and,
(8) limitation to the length of time required for a physician's signature on verbal orders.
(9) A written report shall be prepared by a pharmacist, no less than annually, on the status of pharmacy services in the institution. The pharmacist shall provide the report to the health authority and the facility administrator.

(b) Consistent with pharmacy laws and regulations, the health authority shall establish written protocols that limit the following functions to being performed by the identified personnel:

(1) Procurement shall be done by a physician, dentist, pharmacist, or other persons authorized by law.
(2) Storage of medications shall assure that stock supplies of legend medications shall be accessed only by licensed health personnel. Supplies of legend medications that have been dispensed and supplies of over-the-counter medications may be accessed by either licensed or non-licensed personnel.
(3) Repackaging shall only be done by a physician, dentist, pharmacist, or other persons authorized by law.
(4) Preparation of labels can only be done by a physician, dentist, pharmacist or other persons, either licensed or non-licensed, provided the label is checked and affixed to the medication container by the physician, dentist, or pharmacist before administration or delivery to the inmate. Labels shall be prepared in accordance with section 4076, Business and Professions Code.
(5) Dispensing shall only be done by a physician, dentist, pharmacist, or persons authorized by law.
(6) Administration of medication shall only be done by licensed health personnel who are authorized to administer medication acting on the order of a prescriber.
(7) Delivery of medication may be done by either licensed or non-licensed personnel, e.g., custody staff, acting on the order of a prescriber.

(8) Disposal of legend medication shall be done in accordance with pharmacy laws and regulations and requires any combination of two of the following classifications: physician, dentist, pharmacist, or registered nurse. Controlled substances shall be disposed of in accordance with the Drug Enforcement Administration disposal procedures.

(c) Policy and procedures on “over-the-counter” medications shall include, but not be limited to, how they are made available, documentation when delivered by staff and precautions against hoarding large quantities.

(d) Policy and procedures may allow inmate self-administration of prescribed medications under limited circumstances. Policies and procedures shall include but are not limited to the following considerations:

(1) Medications permitted for self-administration are limited to those with no recognized abuse potential. Medications for treatment of tuberculosis, psychotropic medication, controlled substances, injectables and any medications for which documentation of ingestion is essential are excluded from self-administration.
(2) Inmates with histories of frequent rule violations of any type, or who are found to be in violation of rules regarding self-administration, are excluded from self-administration.
(3) Prescribing health care staff document that each inmate participating in self-administration is capable of understanding and following the rules of the program and instructions for medication use.
(4) Provisions are made for the secure storage of the prescribed medication when it is not on the inmate’s person.
(5) Provisions are made for the consistent enforcement of self-medication rules by both custody and health care staff, with systems of communication among them when either one finds that an inmate is in violation of rules regarding self-administration.
(6) Provisions are made for health care staff to perform documented assessments of inmate compliance with self-administration medication regimens. Compliance evaluations are done with sufficient frequency to guard against hoarding medication and deterioration of the inmate’s health.

Note: Authority cited: Section 6030, Penal Code. Reference: Section 6030, Penal Code.

Discussion Notes

No changes recommended.

Workgroup members reviewed section 1216 and found the regulation to be sufficient as is.

§ 1217. Psychotropic Medications.
The responsible physician, in cooperation with the facility administrator, shall develop written policies and procedures governing the use of psychotropic medications. An inmate found by a physician to be a danger to him/herself or others by reason of mental disorders may be involuntarily given psychotropic medication appropriate to the illness on an emergency basis. Psychotropic medication is any medication prescribed for the treatment of symptoms of psychoses and other mental and emotional disorders. An emergency is a situation in which action to impose treatment over the inmate's objection is immediately necessary for the preservation of life or the prevention of serious bodily harm to the inmate or others, and it is impracticable to first gain consent. It is not necessary for harm to take place prior to treatment.

If psychotropic medication is administered during an emergency, such medication shall be only that which is required to treat the emergency condition. The medication shall be prescribed by a physician following a clinical evaluation. The responsible physician shall develop a protocol for the supervision and monitoring of inmates involuntarily receiving psychotropic medication.

Psychotropic medication shall not be administered to an inmate absent an emergency unless the inmate has given his or her informed consent in accordance with Welfare and Institutions Code Section 5326.2, or has been found to lack the capacity to give informed consent consistent with the county's hearing procedures under the Lanterman-Petris-Short Act for handling capacity determinations and subsequent reviews.

There shall be a policy which limits the length of time both voluntary and involuntary psychotropic medications may be administered and a plan of monitoring and re-evaluating all inmates receiving psychotropic medications, including a review of all emergency situations.

The administration of psychotropic medication is not allowed for disciplinary reasons.

Note: Authority cited: Sections 6024 and 6030, Penal Code. Reference: Section 6030, Penal Code.

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Discussion Notes

No changes recommended.

Workgroup members reviewed section 1217 and the public comment provided by Disability Rights California and found the regulation to be sufficient as is.

§ 1220. First Aid Kit(s).

First aid kit(s) shall be available in all facilities. The responsible physician shall approve the contents, number, location and procedure for periodic inspection of the kit(s). In Court and Temporary Holding facilities, the facility administrator shall have the above approval authority, pursuant to Section 1200 of these regulations.

Note: Authority cited: Section 6030, Penal Code. Reference: Section 6030, Penal Code.

Discussion Notes

No changes recommended.

Workgroup members reviewed section 1220 and found the regulation to be sufficient as is.

§ 1230. Food Handlers.

The responsible physician, in cooperation with the food services manager and the facility administrator, shall develop written procedures for medical screening of inmate food service workers prior to working in the facility kitchen. Additionally, there shall be written procedures for education and ongoing monitoring and cleanliness of these workers in accordance with standards set forth in Health and Safety Code, California Retail Food Code.

Note: Authority cited: Section 6030, Penal Code. Reference: Section 6030, Penal Code.

Discussion Notes

No changes recommended.

Workgroup members reviewed section 1230 and found the regulation and requirements for food handlers to be sufficient and consistent with current best practices of food handling.