

**BOARD OF STATE AND COMMUNITY CORRECTIONS
MINIMUM STANDARDS FOR LOCAL DETENTION FACILITIES
TITLE 15, DIVISION 1, CHAPTER 1, SUBCHAPTER 4**

FINAL STATEMENT OF REASONS

UPDATE TO INITIAL STATEMENT OF REASONS

Section 1029. The proposed regulation as originally noticed to the public in Section 1029(a)(3), requires policy on the use of force to prohibit use of carotid holds. The BSCC modified the original proposed language to clarify prohibition of carotid “restraint and choke” holds. This clarification is consistent with the initially proposed regulations’ intended meaning and with the statutory requirement in California Government Code section 7286.5(a) that became effective January 1, 2022. This modification ensures that the Title 15 language is up to date and consistent with State and Federal requirements.

The Proposed Text of Regulations noticed to the public on March 4, 2022, contained text erroneously shown in underline and strikeout. Brackets were placed around text where the errors occurred and explanations were provided in the Text of Modified Regulations document that was noticed to the public from June 29, 2022 to July 15, 2022.

LOCAL MANDATE DETERMINATION

Pursuant to Government Code Section 11346.9(a)(2), the Board of State and Community Corrections (BSCC) has determined that adoption, amendment, or repeal of these Title 15 regulations as proposed, do not impose a mandate on local agencies or school districts.

ALTERNATIVES DETERMINATION

Pursuant to Government Code section 11346.9, subdivision (a)(4), the BSCC has determined that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the regulation is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The 45-day written comment period began March 4, 2022, and ended April 18, 2022; a public hearing was held on May 2, 2022, from 4 p.m. to 6 p.m. via Zoom online meeting. Public comments received during the 45-day comment period and at the public hearing are addressed below.

The written comment period during the notice of modifications to text of proposed regulations began June 29, 2022, and ended July 15, 2022. BSCC received no written comments during this period. Therefore, no other alternatives were considered,

identified, or brought to the Board's attention that would be more effective in carrying out the purpose for which the regulation is proposed.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE 45-DAY COMMENT PERIOD

Commenter #1:

**Donny Youngblood, Sheriff-Coroner
Kern County Sheriff's Office
Received via email April 18, 2022**

Summary of Comment Part 1:

Regarding section 1027.5(e) Safety Checks, it would be placing agencies in a position of potential continuous violations due to the unpredictability of events in a facility. In addition, supervisors may not always be physically able to conduct reviews at regularly defined intervals. A language change stating that reviews of safety checks are often conducted to identify patterns of inconsistent documentation or untimely completion of safety checks may be a possibility to satisfy the intent while allowing supervisors and facility managers some flexibility.

BSCC Response:

Proposed changes to section 1027.5 require, among other things, that a facility administrator develop and implement policies and procedures for safety checks. The proposed adoption of subsection (e) requires that the facility's policy and procedure include a documented process of safety check reviews done at regular intervals to be defined by the facility. It is up to the facility administrator who develops the policy and procedure to define regular intervals. Many facilities already have a process to ensure accountability with policy, procedure, and regulation. The goal of this proposed change is not to place facilities in a continuous cycle of violation or implement punitive measures, but to ensure that supervisors or facility managers are regularly reviewing safety checks, so that patterns of noncompliance are identified and addressed at a facility level. The goal is to ensure incarcerated persons' safety and security through safety checks conducted in compliance with regulations. Best practices reflect that supervisors or facility managers should regularly review safety checks information.

There will be no modifications made to proposed text.

Summary of Comment Part 2:

Regarding section 1030(c) and (k) Suicide Prevention Program, what is the definition of screening? Would this screening be the same required screening as conducted during intake? This will negatively affect all agencies and behavioral health providers. In addition, this will prove to be staffing intensive and make it challenging to meet the needs of everyone for daily sessions and emergency crises that occur within the facilities, depending on the type of screening standard. What parameters will be set for establishing a need for a mental health consultation? For example, will this be dependent on specific

penal code charges? Media court coverage of any particular case? Further consideration should be given before implementation.

BSCC Response:

Facilities should build upon existing screening procedures and parameters, adding screening requirements and plans for a mental health consultation suitable for their operations; and considering national best practices. BSCC recognizes the potential challenges facilities may face in developing and implementing screening procedures and parameters for mental health consultations. However, facilities should take this opportunity to work with their health authority and mental health director to identify deficiencies and improve suicide prevention measures.

There will be no modifications made to proposed text.

Summary of Comment Part 3:

Regarding section 1058(10) and (11), there are two issues with the proposed changes for this section. The first is the maximum time limits following the manufacturer's recommendation. Each manufacturer may have a different time standard, thus, creating a varied time frame amongst agencies across the state. As a result, there will be no clear, definite order of a time standard.

Some of these time frames may be too short for rural agencies that do not have direct, immediate access to transport an individual that requires additional medical and or psychiatric intervention. Consideration must be made to allow a specific time frame so that the necessary intervention to the subject can be established. For example, medical assessment, mental health assessment, or intervention for an ongoing crisis episode are all events that take time and coordination.

The second concern is the addition of the video recorded requirement portion. Not all facilities are equipped with video equipment, and not all agencies have provided body-worn cameras for staff working inside the facilities. A change in language to request that video documentation be mentioned in subsequent report requirements should be considered instead of a mandatory video requirement.

BSCC Response:

Section 1058 requires that facility policies and procedures include information on the use of restraint devices. Subsection (b)(1) requires that the manufacturer's recommended maximum time limits for placement be used *where applicable*. BSCC does not recommend using restraint devices outside of manufacturers' recommended uses or time limits, specifically for the health and safety of the restrained person; many manufacturers warn that doing so could cause injury or death. The manufacturer's recommendations should be followed on any product regardless of its use and may be found in the manufacturer's specifications or instructions. Facilities should do their due diligence in learning how restraint devices are appropriately operated before placing an incarcerated person in the device. BSCC will not adopt a specific timeframe as doing so would be

inconsistent with the intended use of devices. Facility policies and procedures should include only required timeframes that are specific to the types of devices employed.

This rulemaking file does not propose changes to the hourly requirements of medical opinions and assessments following placement.

Subsection (b)(11) requires video documentation unless exigent circumstances prevent it. The proposed regulation does not require a specific device, e.g., body-worn cameras. Facilities can use the video recording method of their choice to document the use of restraint devices.

There will be no modifications made to proposed text.

Commenter 2:

**Bradley W. DeWall, Undersheriff
Solano County Sheriff's Office
Received via email April 18, 2022**

Summary of Comment Part 1:

Regarding section 1050(a) Classification Plan, the proposed definition of "Gender Identity" – to mean a person's sense of being male, female, some combination of male or female, or neither male nor female," changing term "sex" to "gender identity" may have significant operational impacts and raises many safety and security concerns.

If Title 15 changes to require classification plans and housing decisions, to categorize individuals by gender identity, rather than their biological sex, it could be interpreted that facilities are to house biological males who identify as female in female housing units and vice versa. Among other challenges, there are also questions about what this means for people who regularly change how they identify, or identify as some combination of male and female, or neither male nor female. We have had these situations already. There is not separate housing for these categories. If we were required to house as described above, we are also evaluating how this would comply with the PREA (Prison Rape Elimination Act) standards and current statute, 4002 (a) of the Penal Code which prohibits the housing of males and females together.

We have reviewed the initial statement of reasoning for this proposed change but believe the change of terminology has impacts that go far beyond simply making the regulation contemporary, people centered, gender neutral, non-punitive and consistent. As we understand it, many of these proposed changes were brought forward by others, not by the BSCC. There are reasons to believe that this is how the changes could be interpreted, even if it may not be the original intent of the BSCC. For example, SB132 and the addition of 2605 & 2606 of the penal code, specifically 2606 (a)(3) as it relates to this subject. To our knowledge, at least one lawsuit has been filed against CDCR for housing by gender identity. The Solano County Sheriff's Office respects individual's rights to identify by the gender of their choice. However, we need the ability to maintain the safety and security of our facilities, for everyone in custody and our staff.

BSCC Response:

BSCC disagrees that it would be difficult for facility staff to construe male and female under the definitions in section 4002 of the Penal Code. Gender, under the Penal Code definition in sections 422.57 and 422.56, means sex *and includes* a person's gender identity and gender expression. Gender expression means a person's gender-related appearance and behavior regardless of whether it is stereotypically associated with the person's assigned sex at birth. The above references, the proposed definition, and the term "gender identity" in sections 1050 and 1260 align with the Prison Rape Elimination Act (PREA) and do not conflict with Penal Code.

The existing language in section 1050 requires the administrator to develop and implement a classification plan to assign inmates to housing units. The replacement of "sex" with "gender identity" as a category of classification does not require or outline specific housing units for each gender identity; it simply requires that classification plans include gender identity as a category of consideration. Section 1050 also states that "such housing unit assignment shall be accomplished to the extent possible..." allowing facilities flexibility in placements.

There will be no modifications made to the proposed text.

Summary of Comment Part 2:

Regarding section 1065, upon initial review, we understood the change to mean that we would be required to provide incarcerated people with a total of seven hours of out of cell time - three hours of which must include the opportunity for exercise. This was based on our interpretation of the proposed language in the regulation and the proposed definition of "Out of cell time" (see below), which appeared to clarify that time not spent in the sleeping area (cell) is considered "Out of cell time."

"Out of cell time" means time spent outside of the sleeping area. where an individual has the opportunity to exercise or participate in recreation.

However, during a discussion with our Field Representative, we were informed that this was intended be a total of 10 hours of "Out of cell time", seven hours for recreation and three hours for exercise. Unfortunately, due to our current staffing plans and the facility's physical limitations, we don't see how we would be able to meet this standard for our entire incarcerated population. Most of our incarcerated population already receive out of cell time that exceeds the proposed standard. This change would require our agency to allow more out of cell time for people who are administratively separated for safety and security reasons and/or persons who by their own choice, simply refuse to house in the general population.

Most of our housing units contain one common indoor recreation area with up to seventeen cells. For units that house people who are administratively separated, there is not enough time in a day to provide for additional out of cell time and accomplish all other mandated activities that are required.

At our Stanton Correctional Facility, we have one yard per housing unit, so we could possibly extend the "Out of cell time" with some operational changes. However, at the Justice Center Detention Facility, some areas have up to six housing units and just one yard. At the Claybank Detention Facility, there are only two yards for 16 housing units. Due to the need to keep certain individuals separate from others (either groups or individuals) for a variety of reasons, our older facilities do not have enough space to allow for the 10 hours of "Out of cell time" for the entire incarcerated population. The only way we could achieve 10 hours would be by mixing classifications, security groups, and by letting people who are known to have conflicts (enemies, gangs, or just violent by nature) out together. This allowance would go against our current classification procedures and would put the incarcerated people and staff at risk.

If this change is adopted to the 10-hour benchmark we will be required to mix of classifications/groups (as mentioned above) and add several staff members for additional supervision and security. In addition, physical spaces would need to be modified at our older facilities, if that is even possible. We have been evaluating the cost of modifications and the cost of on-going staff increases, both would be significant.

BSCC Response:

BSCC's regulations provide *minimum standards*; they are not intended to serve as facility maximum standards. The existing requirement that three hours be distributed over seven days hasn't been updated in over forty-five years; and if applied as a maximum time allowance, only provides approximately 26 minutes per day when distributed over seven days. The requirement, when adopted initially, was not intended to be applied to facilities that would have the ability to hold incarcerated people for several years.

BSCC's regulation revisions are informed by best practices and the experiences of BSCC staff, facility staff, formerly incarcerated and justice-involved persons, other specific subject-matter experts, and members of the public. The Public Safety Realignment Act was passed over ten years ago; BSCC has learned and adapted, along with facilities, to different and sometimes changing aspects of detention. It is imperative that regulations are relevant, address current (contemporary) issues in facilities, and that they be changed when necessary.

It is necessary to update the three-hour minimum standard to ensure that incarcerated people, who are potentially spending years in detention, are getting more than just three hours outside of their sleeping area for exercise and recreation. The proposed regulation clarifies that the three-hours of exercise be in an area designed for exercise; and that recreation programs give *an opportunity* for seven hours of out of cell time, distributed over seven days. The out of cell time requirement doesn't define that the incarcerated person be in a specific area and the accompanying proposed definition of "out of cell time" clarifies that this time is to be spent outside of sleeping areas, where individuals have the *opportunity* to exercise or participate in recreation. The intent of this change is to ensure that incarcerated people are not confined to their cells or sleeping areas for excessive amounts of time. If a facility is constructed in such a way that housing and recreation are

one-in-the-same, that facility's policies and procedures should address how the recreation program is to be conducted to meet the minimum standards of 1065.

There will be no modifications made to the proposed text.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING PUBLIC HEARING HELD VIA ZOOM

Commenter 1:
Ray Scruggs
Orange County Sheriff's Department

Summary of Comment:

With regards to the changes of mattresses "free from holes and tears," we could possibly make the recommendation to change it to "free from extensive holes and tears." Most of the facilities have issue with inmates ripping or putting holes in the mattresses as soon as they get into custody, as soon as they receive their mattresses, they put a hole a in their mattresses to take out the foam and use them as earplugs within minutes of being in custody. We are already spending 300 to half a million dollars a year on mattresses in our county. For a change like this to occur, we will be out of compliance within minutes of an inmate being in custody. If I can recommend the language to say, "excessive holes and tears."

BSCC Response:

The proposed language in Section 1271, "Bedding and Linen Exchange," is intended to encourage facilities to improve individual hygiene of people incarcerated and provide facilities with minimum standards for the development of internal policies and procedures. The intent of the proposed language is not to bring facilities into a cycle of constant noncompliance; but to ensures that incarcerated people are provided with clean, serviceable mattresses.

BSCC does not intend to propose additional language to include the definition for "extensive" or "excessive" in the adult Title 15 regulations.

There will be no modifications made to the originally proposed text.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING 15-DAY COMMENT PERIOD

The modified text was made available to the public for comment from June 29, 2022 to July 15, 2022. The BSCC did not receive any comments on the modified text.

ALTERNATIVES THAT WOULD LESSEN THE ADVERSE ECONOMIC IMPACT ON SMALL BUSINESS

There have been no updates to the original Economic Impact Analysis published in the Notice of Proposed Action on March 4, 2022. No alternatives were proposed to the BSCC that would lessen any adverse economic impact on small business.