

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

UPDATED FINAL STATEMENT OF REASONS

UPDATE TO FINAL STATEMENT OF REASONS

Sections 1030 and 1065 were initially noticed to the public for a 45-day public comment period on March 4, 2022 and submitted to the Office of Administrative Law (OAL) for publishing in the California Code of Regulations on October 5, 2022. The OAL disapproved of the proposed changes to sections 1030 and 1065, which were withdrawn from the file to be modified and noticed for a 15-day public comment period on December 23, 2022.

The BSCC modified the original proposed language to ensure clarity in the interpretation of requirements and to meet the Administrative Procedures Act clarity standard for regulations.

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 in the incorporated rulemaking file.

The written comment period during the notice of modifications to text of proposed regulations began December 23, 2022 and ended January 8, 2023. BSCC received and considered the comments summarized below during this period. 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 15-DAY COMMENT PERIOD

Commenter #1:

**Melissa Camacho, Senior Staff Attorney
ACLU of Southern California
Received via email January 4, 2023**

Summary of Comment:

Regarding section 1065, the modifications proposed would require that all 10 hours of exercise and recreation time be distributed over a period of seven days. Therefore, the proposed changes can be read to require only a single day of exercise for a minimum of three hours, as long as recreation time is distributed over seven days. I recommend the following language: (a) The facility administrator of a Type II or III facility shall develop written policies and procedures for a minimum of 10 hours of out of cell time to include: (1) An opportunity for three hours of exercise distributed over a period of seven days and (2) An opportunity for seven hours of recreation distributed over a period of seven days.

BSCC Response:

The intent of section 1065 is to provide minimum standards for exercise and out of cell time in adult local detention facilities. Modifications to the regulation were explicitly made to clarify the requirement of time distribution and to ensure flexibility in facility operations. Changes clarify that a minimum of ten hours of out of cell time is required to be distributed over seven days and includes, at minimum, an opportunity for three hours of exercise and an opportunity for seven hours of recreation. Modifications proposed are in response to the Office of Administrative Law's (OAL) disapproval of section 1065 that the initially proposed language did not meet the clarity standard of the Administrative Procedures Act. BSCC collaborated with OAL on the modified language to ensure interpretation of the regulation was in line with BSCC's intent that the ten hours be distributed over seven

days and that those distributed hours include three hours of exercise and seven hours of recreation.

There will be no modifications made to the proposed text.

Commenter #2:

Yolanda Huang, Esq.

Received via email January 8, 2023

Summary of Comment:

The notice of modifications to proposed text to section 1030 and 1065 was sent out on Friday, December 23, 2022, which made it difficult to respond given the holiday season, long weekend, severe weather condition and Southwest Airline incident, I am requesting that the BSCC repost the notice and extend the public comment period.

The Legislative Analyst Office report published in February 2021 noted issues, failures and weakness in the standards and inspection programs that the BSCC should address as an agency. The report recommends the promotion of legal, humane, and safe conditions for youth, inmates, and staff in local detention facilities; maintenance of standards, facilitation of transparency and accountability, promotion of equitable provision and safe conditions, provision of technical assistance to facilitate systemic improvement in detention conditions, and balanced Board membership. The LAO report makes further recommendation for the BSCC to develop a detailed plan to align the inspection program with proposed mission and goals, outline how inspection standards will be revised, have high-quality, risk-based inspection strategies and more targeted inspections, set benchmarks to ensure inspection transparency, guidance on how to interpret the standards, quality assurance process, outline how the BSCC will improve the quality of its reporting, consider long term and more complex technical assistance.

Research has shown that excessive lock down, solitary confinement, denial of human contact, and enforced idleness contribute to deteriorating mental health of inmates. The public has expressed that the suicide rates in local jails are not acceptable. What investigation, research and assessment has the BSCC made to evaluate how much out of cell time, with access to large muscle group exercise and movement, is necessary and appropriate. Why is it just limited to 10 hours a week of out of cell time, which translates to 22.5 hours of lock down that could cause mental health deterioration. The proposed regulation of 10 hours a week out of cell time, that includes three hours week of exercise opportunity, is inadequate and insufficient.

BSCC's proposed text in Title 15 does not make outdoor recreation accessible while the language of Title 24 requires it. Jails routinely deny inmates access to sunlight which cause a myriad of serious health conditions and cognitive health dysfunctions. Three hours a week of exercise opportunity is insufficient. BSCC needs to hold hearings and

hear from parties other than corrections how much out of cell time is considered adequate and necessary to maintain human health.

BSCC Response:

BSCC will respond to comments relevant to sections 1030 and 1065.

The modifications to section 1065 were made to address clarity issues OAL identified in the initially proposed language. During the regulation revision process, BSCC held multiple workgroups made up of subject-matter experts, reviewed comments and supporting documents submitted by members of the public as well as facility staff, formerly incarcerated people, and justice-involved persons. BSCC's regulations provide minimum standards and are not intended to limit facilities' ability to provide additional out of cell time.

The modified language specifically states the 10 hours of out of cell time is a "minimum" requirement. BSCC modified the text to remove additional unnecessary language, which OAL found unclear, with the goal of making the requirements of ten hours of out of cell time, to include recreation and exercise time, distributed over a period of seven days easier to understand.

There will be no modifications made to the proposed text.

Commenter #3:

Dianne Golding/Lam

Received via email January 8, 2023

Summary of Comment:

Fresh healthy food is a good start. Outdoor time in chain-link overlay is depressing. Increase time outside of cell and provide treatment for mental illness.

BSCC Response:

BSCC will respond to comments relevant to sections 1030 and 1065.

The existing regulatory language in section 1065(a) states that "[...] facility shall develop written policies and procedures for an exercise and recreation program, in an area designed for recreation, which will allow a minimum of three hours of exercise distributed over a period of seven days." The proposed modification to the text will effectively require facilities to increase the minimum overall out of cell time, exercise and recreation included, from three hours to ten hours. The intent of this change in section 1065 is to ensure that incarcerated people are given the opportunity for adequate time out of their cells.

Local detention facilities' policies and procedures will address how the exercise time and recreation program are to be conducted to meet the minimum standards of section 1065.

There will be no modifications made to the proposed text.

Commenter #4:

Alison Monroe

FASMI (Families Advocating for the Seriously Mentally Ill)

Received via email January 8, 2023

Summary of Comment:

I have a family member with mental health condition who has been in the Santa Rita Jail. I am a member of Families Advocating for the Seriously Mentally Ill (FASMI). About a third of incarcerated people with mental illness belong in mental hospitals, and they should not be in jails. If they must be jailed, they should be treated humanely with more than two hours out of cell time every day and outdoor recreation, protected from suicide and punishment, or being locked up alone. I wish there were more opportunities to comment on the regulations and that the BSCC was a stronger state agency that was more responsive to incarcerated people and their family members.

BSCC Response:

The modifications in section 1065 were made to address clarity issues OAL identified in the initially proposed language which required a minimum of ten hours of out of cell time over a period of seven days; this was increased from three hours. These regulation requirements are minimum; they do not restrict a facility's ability to exceed standards and provide more than ten hours of out of cell time a week.

BSCC has complied with the APA rules and requirements by providing multiple opportunities for the public and communities to participate in the rulemaking activities during 2022 and 2023, as well as the regulations revision process which occurred

between 2019 and 2022. Please refer to the timeline and updates posted on our website at <https://www.bscc.ca.gov/adult-titles-15-and-24-regulations-revision/>.

The modification to the proposed text is intended to address OAL's request regarding clarity issues, and it is not intended to reduce the "minimum" ten hours of out of cells time initially proposed.

There will be no modifications made to the proposed text.

Commenter #5:

Melanie Klinkamon

Received via email January 8, 2023

Summary of Comment:

Regarding section 1030, develop regulations that represent interests of prisoners and their family members, monitor ADA rights specific to severe mental illness to provide meaningful rehabilitation, investigate and publish reports of the causes of jail suicides, and require staff training of severe mental illness experiences so they can recognize suicidal triggers and intervene.

Regarding section 1065, require more than just a few hours a week for outside cell time and develop more regulations for outdoor recreation or space to facilitate positive outcomes.

BSCC Response:

Section 1030 outlines minimum requirements for facilities to have a suicide prevention program in place to identify, monitor, and provide treatment to incarcerated persons who present a suicide risk. National Commission on Correctional Health Care standards, which are considered national best practices, were reviewed, and referred to when revising this regulation. The suicide prevention program is required to include annual suicide prevention training for all custodial staff and screening for suicide risk of all incarcerated persons. Further, it requires provisions for reporting suicides and suicide attempts. The BSCC does not have authority to investigate suicides or require suicide reports to be published.

Section 1065 provides minimum standards for out of cell time while ensuring flexibility in facility operations; they are not intended to limit a facility's ability to provide more than ten hours of out of cell time over a period of seven days. Modifications include increasing out of cell time from a minimum of three hours to a minimum of 10 hours distributed over

seven days and includes, at minimum, an opportunity for three hours of exercise and an opportunity for seven hours of recreation.

There will be no modifications made to the proposed text.

Commenter #6:

Nurit B.

Received via email January 8, 2023

Summary of Comment:

Regarding section 1030, jails need enforceable, specific standards for suicide prevention and the BSCC should enforce them. BSCC should investigate the causes of suicide in jail, why we have so many jail suicides, and mandate that county jail prisoners, especially those who are pretrial, not be punished, or held in solitary confinement or isolation.

Regarding section 1065, require jails to give prisoners more than ten hours a week outside their cells, provide access to outdoor recreation and sunshine, and have outdoor recreation space as required by Title 24.

BSCC Response:

BSCC conducts biennial and targeted inspections of all facilities to assess compliance with all applicable standards and requirements in Title 15 and Title 24 for Minimum Standards for Local Detention Facilities, including section 1030 Suicide Prevention Program. While BSCC has the authority to inspect facilities, it does not have authority to conduct enforcement activities, or investigate deaths in custody.

Section 1065 provides minimum standards for out of cell time while ensuring flexibility in facility operations; they are not intended to limit a facility's ability to provide more than ten hours of out of cell time over a period of seven days. The title of section 1065 has been amended from "Exercise and Recreation" to "Exercise and Out of Cell Time" to address the need to separate and redefine time for exercise and recreation, and to specify that such time provided needs be outside of a person's cell or sleeping area. The out of cell time requirement is not intended to define that the incarcerated person be in a specific area and the definition of "out of cell time" clarifies that this time is to be spent outside of sleeping areas or cells, where individuals have the opportunity to exercise or participate in recreation.

There will be no modifications made to the proposed 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.