FINAL STATEMENT OF REASONS

PUBLIC COMMENT RECEIVED IN RESPONSE TO THE DEPARTMENT'S INITIAL NOTICE OF CHANGE TO DIRECTOR'S RULES (CLOSING MARCH 8, 2002) HAS BEEN SUMMARIZED BELOW, TOGETHER WITH THE DEPARTMENT'S RESPONSES AND ACCOMMODATIONS TO OBJECTIONS AND/OR RECOMMENDATIONS FOR CHANGING THE REGULATION AS ORIGINALLY PROPOSED:

The following comments are aggregated and summarily dismissed because they are made in the form of a general statement, unsubstantiated assertion or opinion and no reasonable accommodation on the part of the Department is possible:

GENERAL MISCELLANEOUS COMMENTS

You're not doing anything by instituting a policy that fails to address any of the issues for why people are being incarcerated at the rate that they are. Because of the parole policies and everything that's going we don't stand any chance at all of seeing our loved ones come out and be in the free world. All that's left is visiting. It is absolutely all that is left. If you don't give us a chance to reconnect with them, to nurture them, to try and make them want to come out and be part of this society and come into a home that was caring and supportive then all we do is breed more criminals. If you're going put in really unreasonable policy, you're just setting it up for people to fail. You're setting it up for people to lose their visitation rights. This policy makes recidivism utterly predictable. If your job is about seriously trying to rehabilitate inmates, don't implement these policies. Or you should say, just change my job title. My job title is "Enforcer of Interminable Detention," if that's all that we're going to accomplish here. Why do you want to make it more impossible than it already is? It's already legal to discriminate against them because they have felony records. They've already served their time. All that CDC is supposed to do is make sure they don't get away. Make sure they don't hurt each other, make sure they don't hurt the boss, and supposedly learn something; accomplish something, so when they get out they don't come back again. We're not looking for everyone to open up the gates and let out everybody going out there to hack our own heads off. We're not stupid. We know. We're the victims of crime. We live in the neighborhood where the most crime is. This is about adopting a simple, intelligent approach to visiting, which is not where the proposed changes are going. I never thought because you were incarcerated, it took away your humanity or your rights. They're still human beings. But like so many of the people said here, we've committed no crime, so why are we punished? It's painful and hard not to be angry and continue to be humiliated. This is not necessary. In one country, when the people are in prison they are able to rent or own property on prison grounds and the family can live together. I don't have the statistics, but I believe the rate of crime, riot, and violence is very low in these places. If you do something heinous enough to get a life sentence in America, you don't deserve anything. And yet again, this is not one of those countries where, if you steal they cut off your hand, or put you in jail and you never came out again. What I think is enraging so many of the people with these changes is the fact that it seems that these rules resemble those of another county. If you do this to the ones we love that are incarcerated, then you are denying us our pursuit of happiness. Just because they're incarcerated, then why is that synonymous with our unhappiness too? **[P-25, P-31]**

Have you ever visited a California State prison? The rules and regulations along with the location of most prisons making visiting very expensive, exhausting and many times humiliating. We are forced to drive for three to six hours out into the most desolate, godforsaken territories in the state, park great distances from the visitor's building, be inspected like animals being readied for slaughter, yelled at if we don't comprehend your complex, pointless, asinine rules, and forced to change clothes if two Correctional Officers happen to disagree about our attire. Most staff are respectful, helpful, and feeling, there are simply not enough of them. It should not take three hours to get into a visit, nor should families have to wait for a half-hour to leave when their visit is

over, or terminated due to overcrowding. More and better facilities and staff would sure be better. The inmate's security level should be more reflected in the security level and restrictions on visiting. At Pelican Bay, for example, to visit a lower security inmate requires the same process as visiting a level IV inmate who cannot even have contact visits. It is the same situation a San Quentin and Folsom. Does this encourage visiting? Facilities should be enlarged and improved. At places I've visited, the choices are always between a very noisy crowded room, with no real chance for private conversation, and the patios where visitors are subjected to the weather. I've seen grandmother sitting in the rain and small children in the broiling sun. Only the very lowest security facilities offer places to cook, or the chance to bring in heated lunch or coolers. I think these kinds of facilities could be made more available. **[Q-85]**

It is obvious that such a regulation was only considered as a fix to present time. There has been no analysis of how it will impact the future in terms of crime prevention. Also, there has been no concern on how this creates precedence for more government intrusions into our freedoms. Finally, this regulation change supposes that all prison staff members are completely perfect and ethical in administering this added power. **[W]**

A visitor friendly atmosphere keeps us calmer and this new rule will only aggravate an already stressful situation. **[O-6]**

Many inmates have visits only from friends. It seems to me that the current regulations are more than adequate. **[N-56]**

I can't imagine in my being how you were ever confused enough to be misled into believing these changes would help. I have faith you will change and not further these proposals, but rather go back into the community and work for positive change. **[P-29]**

In an era of fiscal constraint, a more humane approach to correctional practice will not just impact the health and safety of inmates, staff, their families and the community at large, but our tax dollars as well. **[Q-70]**

I am an inmate at the California State Prison in Delano. I am very concerned about the proposed changes to the visiting regulations. **[Q38]**

The families of the inmates have not committed a crime. We are only guilty of loving someone who is incarcerated. **[Q-70]**

The implementation of these proposed regulations will increase violence within prison walls and jeopardize the safety and security of inmates, staff and visitors. **[N-85]**

By making rules and regulations that are impossible to enforce, you will be putting Correctional Officers in a compromising position. Being human, they will enforce rules for inmates and visitors they do not like, and not on those they do like. **[Q-55]**

Overall the document outlines what is currently being done at each institution anyway. **[N-65]**

The only staff, inmates and visitors who will find it easier to follow the new article will be those who are new to the system. For those of us who have a significant amount of experience in dealing with the California Department of Corrections, we are quite familiar with it in its present state. **[N-19]**

Visits are already subject to limitations based on the conduct of the inmates. Visits are also under a great deal of control by prison authorities. **[Q-68]**

You're the one that says what we can and cannot do during visits. So unfortunately, you're the bad guy for a little while. Please see our side of things. The changes in your proposal don't

change things for the inmates; they will still be there. They are probably going to be a little harder to get along with; they will probably not like you much. **[O-49]**

Prisons are not created to foster insanity. Further, if family does not visit, how can the penal system be open to public scrutiny if no other visitors are allowed? **[U-14]**

We are now locking up people for crimes punishable in no other country, and destroying their families. **[Q-64]**

You had leverage and that leverage was visiting. You could get that inmate to do just about what he needed to do, to cooperate because you had visiting dangling over your head. The more you take away the less leverage you have. **[P-19]**

Laws need to be changed before rules. "Illegals" should be sent home, not housed in our prisons at our expense. Minor crimes do not deserve life sentences. I believe the voting public is not adequately informed about the 3-strikes law, which is misleading and grossly abused. **[N-29]**

We hear many times how this is for the institution's security. How about the security of the inmates and their rights that are going unmet, even rules passed by the courts that are specifically stated, and still the Correctional Officers control this as a ploy to harass them? Unless anyone listens to the real complaints they go un-dealt with. **[U-9]**

Maybe this is just to eventually cut off all visits. This is not going to happen. Cutting all visits is not a wise decision. **[U-7]**

The department is not sensitive to the lives of inmates or their families. My husband was sentenced to three years state prisons for a crime, which was committed under extreme mental and emotional stress. Was there any other way this could have been dealt with? **[O-14]**

What I see is my husband having an illness and instead of being treated for that illness, he serving time for it. **(P-40)**

Why create problems in the penal system than currently exist. The CDC doesn't want to take the time to treat inmates like humans; the department does all they can to stop contact with the outside world. What will that do to our society when they are released and unable to cope with the freedom they will have without the relationship of the ones that care about them? **[U-21]**

How far will this go? The department has already taken: family visits, weights, dates to go home, and there's talk of taking Quarterly Packages. **[Q-69]**

I understand the California Department of Corrections and the Director is scared shitless about public opinion, but what do they want: people on the outside who may or may not vote for you, or peace within the California prisons? **[Q-46]**

The whole point of these regulations is that they restrict visits, they make it harder, they make it more difficult, and they make it more embarrassing. There are searches, there are glasses you have to talk through, instead of having contact, or having someone watching how long you're holding your child, or whether you hold your child. It is all an embarrassment and what the general effect is going be is to cut down visits. **[P-5]**

Visits are to promote the well being of families. And then, he went on to say that if this is true, then the regulations should be relaxing regulations rather than restricting them further. **[P-3]**

The visiting rules should be relaxed as much as possible to allow for an optimum visiting experience for all concerned. **[N-53, Q-36, Q-44, Q-12]**

We applaud the CDC's efforts to clarify, simplify, and standardize the current visiting regulations. Based upon the varied interpretations and application of the regulations, visiting a loved one has sometimes been [a] difficult experience. **[N-23]**

GENERAL-OPPOSED TO ALL CHANGES

I (we are) am strongly opposed to the proposed changes. **[N-1, V-6, Q-30, Q-17, O-11, O-12, U-78]**

The entire body of these changes should be denied. **[C, N-73, Q-4, O-21]**

I am very much opposed to many of the proposed changes in the visiting policies. **[Q-67, Q-13, Q-9]**

Commenter(s) stated that they are opposed to the proposed visiting regulations. **[N-48, N-51, N-53, N-77, O-18, O-22, O-26, Q-75, V-6]**

I am completely opposed to all of the proposed changes in the visiting policies, and agree this will be a means of control over inmates and their families. **[N-3]**

The approval process is too strict. The design of the current proposal is use all sorts of reasons to deny personal visitors without reason. **[U-50]**

The correctional officers have authority to control the individual situations without making it more difficult for visitors who are taxpayers. **[V-4]**

I am protesting the proposed changes in visiting rules. Visiting Procedures are already difficult for families and friends of inmates. **[O-72]**

Visiting does not need all these new restrictions heaped on it. Leave them as they are.
[A, O-65, V-1, N-12, Q-10, Q-14, Q-16, U-40, Q-38]

I object from 3170 to 3179. There is no reason or value to changing such rules! The taking of things of value to prisoners in the past to the present have only increased and influenced more stress, fights, stabbings, and killings in CDC! Constantly the things for a prisoner to relieve his stress are being subtracted from his world. **[Q-9]**

The proposed changes to the existing visiting rules are extremely ill advised and should not be implemented. While they may possibly achieve the "primary objective" (i.e., to organize and streamline Article 7, Sections 3170-3179, and update the DOM and Penal Code), the far more important issues at hand are the problems they will cause within both prisons and prison visiting rooms statewide, as well as the devastating hardship they will inflict upon inmates and their loved ones. The existing visiting rules are already too restrictive, bordering on inhuman. **[N-53]**

After reading some of the new proposal for visitors, I am inclined to question some of these changes, for I foresee some potential problems, which puts me in a state of agitation and more stress. **[N-46]**

This is just one example of how ridiculous and discriminatory the proposed changes being considered are. The current rules are sufficient and should not be amended. The proposed changes are too broad and general, leaving too much room for abuse. **[N-38, A, N-31, U-48, O-12, O-18]**

I would strongly recommend that you reconsider this proposal and seek less repressive means to mitigate what security concerns may exist. **[Q-75]**

Opposed to the proposed visiting regulations! Theses changes will facilitate vindictive abuse by staff members inclined to such behavior. The proposed regulations do virtually nothing to make prisons more secure, yet would make visiting an even more stressful situation that it already is. The proposed regulations only serve to drive a wedge between prisoners and their loved ones. **[H]**

As someone who has been repeatedly subjected to the unjust, inhumane and illegal treatment of prison visitors by the correctional officer, I oppose the proposed amendments to Article 7 (Sections 3170 through 3179) in the CCR, Title 15, Division 3 relating to Visiting. **[O-22, Q-8]**

This letter is written in opposition to your decision to toughen restrictions of the visitor's rules at California State Prison. All will be affected by this decision. It is understandable [that] rules must be followed and from our observation they are followed by everyone. There will always be the exception. **[Q-65]**

These proposed changes, if implemented, would only create even more problems and confusion in a system already failing to meet the minimal needs of prisoner's family members and acquaintances. **[C]**

We urge the Regulations and Policy Management Branch to consider carefully these and any other proposed regulations to see if the benefits in respect to control or security are not counter-balanced by an erosion of good will and family love through arbitrary and sometimes downright silly over-regulation. **[Q-74]**

I want my letter to reflect intelligent argument against your changes. What possible benefit will these changes procure? **[O-40]**

Why should visitors be discouraged from visiting family and friends? Are we a threat to the administration? **[N-61]**

I found little or no representation of clarifying the current policy, however I constantly found changes to the current policy. These changes constitute policy in direct contradiction with stated correctional goals. By stating that your goal is to clarify is a misrepresentation of the Department's objectives. With these changes, so many rights that an inmate and visitor had as a human being are being taken away. **[N-30, O-51]**

These added restrictions should be reconsidered since the visiting process is frustrating with stringent routines. **[N-9]**

When you make regulations, they [directly] affect our lives. I would be very upset knowing that anybody can come up with any type of [rule] and have no way of fighting it. It takes too long for us to go through the proper channels by contacting the warden, after that we have to contact the Director, after that we are still told that it's not allowed. There has got to be a better system than what occurred in this case, I think. **[P-18]**

The State of California is going toward bad public policy. **[N-59]**

Most of these changes are not only arbitrary, but also draconian. **[Q-52]**

I am writing to express my concern and dismay at the proposed regulation changes to visiting at California State Prisons. **[Q-83]**

I object to the proposed rule changes of the visiting policy of inmates confined in California State Prisons and beg you carefully consider the mental and emotional well being of inmates housed in Pelican Bay SHU and that of their loved one's in the voting community. **[U-41]**

The proposed changes are petty and insignificant. **[O-22, Q-74]**

I am appalled at most of the proposed changes, as they do not make sense, other than to further alienate the public from their loved ones. **[O-26]**

I am extremely upset by the proposed changes. **[Q-21, Q-23, Q-27, Q-30]**

This is no asinine, how in the world do they think they can stop loved ones to follow such stupid rules as these. I am totally against this. **[Q-22]**

[This is] further evidence that whoever suggested and recommended the proposed changes are completely out of touch with reality, as well as daily operations at the prisons. It terrifies me to think the Department would completely rewrite the visiting rules at the suggestion of people such as this, people who will not be affected by the changes in the least. **[N-53]**

I write this letter with strong oppositions to the proposed changes to current visiting rules. As family members of inmates, we are already faced with extreme emotional, mental, and financial hardships, due to incarceration of a loved one. More importantly, these types of inhumane changes will create a large amount of unnecessary chaos inside the prison walls statewide. **[N-19]**

I know there are many issues involving prisons and maybe even prison visits but the ones mentioned on this proposal are just not worth taxpayer's time and money. I beseech you to reconsider these proposals and maybe even take a lunch break so that the brain can be fresh to come back and come up with ideas that might be useful. Remember that the families didn't commit the crimes, the inmate did. **[O-20]**

I am a model citizen and taxpayer. The time that my family spends together is very precious. Currently we are subjected to many indignities when we arrive for our visit. Please, do not add additional regulations that will continue to negatively impact our family. **[N-26]**

You are already doing everything in your power to make visiting expensive, exhausting, humiliating and confusing as possible. **[O-22, O-33, Q-8]**

The proposed changes in visiting rules are arbitrary to this goal. **[Q-71]**

GENERAL OPPOSITION BASED ON SUPPOSED REHABILITATION & FAMILY TIES DEFICIENCIES

Visitations are the cornerstone of rehabilitation. The high incident of recidivism cannot be reduced if contact with family members is restricted. CDC should be promoting family contact as a means of contributing to the mental stability of the inmate to reduce tension and nurture a support network for the future parolee. **[Q-19, O-31, N-21, F, O-15, Q-85, Q-74, M-11, M-10, Q-39, Q-68, N-1, Q-75, T, O-27, O-29, Q-56, Q-15, I, N-5, Q-70, Q-64, N-6, M-2, O-18, O-42, N-2, O-37, O-9, Q-52, N-32, O-19, N-21, N-59]**

A lot of these people are family of prisoners; I would like to respectfully submit that they do more for the rehabilitation of prisoners than the California Department of Corrections. One of the highest correlation's that we know of is that contact with loved ones and prisoners is what helps the prisoner go straight, to succeed at going straight when they get out. And, it is important for the families. When a family member is in prison, the family is separated and the children suffer.

And, many of the children of prisoners end up getting into drugs and trouble themselves. So, it is a very important thing that there be quality visitation throughout a prison term. In fact in research, the strongest correlation with recidivism rate is quality and continuity of visits. Additionally, one of the things we know is that people with substance abuse heal themselves and get over their substance abuse with the help of contact with loved ones. And, here's the CDC once again restricting that contact. **[P-5]**

All the studies overwhelmingly find continual, quality, regular visitation with an incarcerated person aids in his or her reentry into the community. The recidivism rate for prisoners who get regular, quality visitation with family and friends is extremely low. It's the contact with family and the community that keeps them on the straight and narrow so to speak. Florida statue says: "increasing the frequency and quality of visits is an under- utilized correctional resource that can improve the inmates behavior in the correctional facility and upon an inmates release from the correctional facility will help to reduce recidivism." **[P-13]**

One of the greatest spiritual influences is the manifestation of spirituality that is created between inmates and family. The supportive, nurturing potentiality that exists in relationships between husband and wife, parents and children, needs to be recognized and supported. Wherever the potential for good exists, we need to acknowledge, encourage, and celebrate it. It is in this context that I think visiting and similar efforts to exert a spiritual influence should be viewed and expounded upon. People who visit have a positive influence upon the prisoners. And from the importance of visiting, the importance of maintaining family ties and keeping alive all of our humanity, we can see the connection of us all doing what we can to heal the scars and help prepare each other for better futures. I can't see where making these proposed changes add to any to rehabilitation. I think that this is what the people who come to visit offer; this is one of the most rehabilitative things there are. **[P-31]**

Studies have shown that the quality of a prison visiting program and the education offered to inmates, are the two things that correlate most strongly with recidivism. Once I'm in there visiting my husband with this big glass between us, our phone conversations are recorded and then at the leisure or impulse of the people involved, they are analyzed. Further more, I am video taped. These security measures are exactly the same whether I'm his wife, daughter, mother, friend, fellow churchgoer, and business partner, whatever. So it does not matter who you are. The metal detector will detect metal. The tape recorder will record my voice. I don't see how the prison system can argue there's any different security concerns. It is inhumane to allow only 1-hour visits for someone that you care about. It is especially difficult when you consider the distance, which many families must drive. The department apparently does not take into consideration that the average family member who visits their loved one must drive a minimum of 7 hours. The families who reside in Southern California must drive even further. **[P-38]**

The current rules state that visiting is a means to establish and maintain meaningful family and community relationships. The proposed changes run contrary to this goal. These changes have no expressed value that will help to "maintain order, safety of persons or the security of the institution. **[Q-26, Q-67, N-53, Q-44, Q-56, Q-52, N-71, Q-83]**

These proposed sections do not aim to improve lower recidivism or take advantage of visiting hours to rehabilitate incarcerated persons. **[N-22]**

Yes, they did the crime, and yes there are victims, but we are their family and for us, we need to reassure them and ourselves that we love them no matter what crime they may have committed. **[N-17]**

Research has proven that one of the strongest predictors of inmates' post-release success is the quality of their ongoing contact with loved ones. **[Q-39, Q-26]**

The Department's purpose is to rehabilitate criminals and to correct criminal behavior, while maintaining public safety, not to impose punishment. To succeed at achieving their vision of making California communities safer and individual lives more secure, relationship building and reconciliation must be also viewed specific outcome objectives of a correctional practice, not just in visiting regulations. Rehabilitation is the way to go, not isolation. **[N-19, Q-70, O-40, N-53, U-41, Q-14, N-62]**

Affection, physical contact, and emotional support with our loved ones is an important part of what makes us human. Visits from family and friends allow many inmates to feel they are still connected to the world and are needed for mental well-being. It is the last refuge of sanity. **[O-7, O-17, O-27, N-48, N-35, O-43, Q-30, N-62, N-57, O-8, Q-16, Q-18, O-12, J-54]**

It gives loved ones satisfaction and comfort to spend time with a prisoner. **[O-5, O-50]**

Visiting should be encouraged, not discouraged. Removing a person from the streets merely eliminates a symptom. There need to be means to correct anti-social behavior. The money it takes to house individuals needs to be put to better use by creating future taxpayers, not future taxes with increased prison construction. **[N-63, V-2, Q-87]**

The proposed changes demonstrate more disregard for the families and friends of inmates who are already de-humanized by their lack of family contact. The rules seek to drive a wedge between inmates and their families. Maintenance of the family relationship is at stake. **[O-11, O-27, O-38, Q-75, N-85, Q-45, Q-53, Q-67, N-1, N-62, N-32]**

It is harmful to children to separate them from their parents. **[O-56, Q-52, Q-15]**

The proposed changes are highly detrimental to visiting as the primary form of prisoner-outsider contact and thus have serious negative implications for the maintenance of family ties, the potential for inmate rehabilitation, and therefore, the prospect of individual's successful reentry into the community following release from prison. **[N-30]**

Prisoners are doing the best they can to serve their time, and the Department of Corrections is forever trying to undermine their efforts. The prisoners have not, are not and it seems never will be afforded the opportunity for rehabilitation. Preventing prisoners from maintaining substantial communication with the outside world deters rehabilitation. **[O-30, M-13, Q-9, N-26, Q-53, T, N-19, N-3, U-12, Q-74, O-38, N-57, N-53, N-5, U-20, N-39b, O-53, N-26]**

The proposed rule changes serve no penological or rehabilitative interest and only serves to extends CDC's power and will over inmates and their families. This will cause much litigation and the spending of funds for such litigation. We ask the department to reconsider this policy move to avoid costly litigation for all parties concerned. **[Q-41, U-40]**

GENERAL OPPOSITION DUE TO ALLEGEDLY ADVERSE SOCIETAL IMPACT

It is a known fact that prisoners with strong family relationships and positive friendships are more likely to participate in programs, to be motivated, and to successfully re-integrate into society. It is apparent there is a direct link between hopelessness and acting out, which can be violent. Visits should be encouraged and facilitated in order to lessen the helplessness, motivate the inmate, and lessen the violence in the prison.
[U-8, U-4, U-5, U-33, U-42]

Correctional practices, including visiting regulations that do not promote the fostering of human relationships including reconciliation, will negatively impact, not just the inmates and their families, but the staff, the staff's families, and the health of the community in general. Former inmates attempt to live productive lives in society, but are hampered by not only their addictions, but also the negative behaviors learned behind the prison walls. It is my experience on both

sides of the bars which leads me to believe that it is not just the amount or nature of work associated with the job, but the culture in which the work is centered that is unhealthy. There needs to be a cultural transformation within the system.
[O-70, Q-70]

A majority of the prisoner's will someday be released back into society and having been subjected to the dehumanizing policies and practices carried out by CDC, such prisoner's will have the inability to interact or think rationally. **[Q-4, O-10, Q-30, Q-53, N-21]**

This type of policy is counter-productive in the sense that it wears away at the family love and support which helps to humanize the prisoner within society, and it engenders a resentment towards the prison authority by both the prisoners and their loved ones.
[Q-74] [Q-68]

Prisoners may disrupt social networks that are the foundation of informal social control. Because such high-incarceration neighborhoods are socially disorganized, their capacity to absorb these disruptions is limited. This may leave some communities in worse condition than before because of resulting disruptions in social organization. **[Q-39]**

If inmates are not allowed to have visits or serious restraints are placed on visiting, it would more than damage the visitor's mental health and the inmate's ability to re-enter society and be successful. **[O-37]**

All of society will have to deal with (or be harmed by) persons who only grow more anti-social while in prison. **[N-22]**

Proposed changes will affect all who visit. **[Q-13, Q-16]**

All should not suffer for the specified crimes of a few. **[Q-16]**

To allow the visiting experience to be undermined, will and can only contribute to social ills that contribute to prisoner's incarceration. **[Q-15]**

For CDC to state they support social contact and maintaining family contacts when I see these types of proposed rule changes that attack visiting. **[O-24]**

We need rules and laws to help us care for others, and ourselves in society and the world we live in. **[Q-38]**

Our state has over 160,000 people in prison with 95% of these people expected to rejoin society when their sentences are complete. They had problems to begin with; putting them in prison will only exaggerate these problems. Prison isn't a deterrent to crime. It is a college for crime. We are building a huge population of people who are being taught to hate society. Then we are returning them to society and expecting them to become better citizens. It's not working! The system needs to change. **[Q-64]**

CDC is committing genocide, promoting homosexuality and going against the laws of nature. People need to have a certain amount of physical contact in order to maintain their sanity. As a result of the proposed regulations, inmates will serve their time to be released into society unable to function due to their institutionalization. Or their families may abandon them and forget them. **[O-56]**

The bill serves no purpose that brings social development, but causes unrest and a pandemic of family disunity, lack of development and anti-social behavior America will witness in its totality. **[Q-15]**

The current regulations are harsh. The ordeal involved in the process, waiting for transportation to the visiting area and finally waiting for your loved one to arrive are rigid. The new guidelines will only make processing worse. **[O-6, Q-69]**

These proposed new regulations only affirm a stricter more stringent set of standards, which hinder the visiting process. **[F]**

Why does the CDC make visiting more difficult when it is currently a hardship for families to travel the long distance? Require you to walk a long distance to the area where the visit will take place and why are you forced to wait for long period of time before the inmate is actually released from his cell. **[Q-31]**

We the family members of incarcerated inmates are currently subjected to strict regulations, which we are held accountable. Why would you punish the families that did nothing wrong. **[O-49]**

GENERAL OPPOSITION BECAUSE RULES ARE ALLEGEDLY PUNITIVE

The United Nations and other human rights organizations have adopted standards that prohibit restricting prisoner visits as any form of punishment. That is, the removal of a person from their community is punishment enough; they are not to be sent to prison to be subjected to further punishment while there. The proposed changes will not only punish the prisoners, they will punish the families and visitors left outside. **[P-13, P-15]**

The regulations greatly impact those inmates who have been disciplinary free. Taking privileges away from the inmate's has not proven to reduce the violence within the institutions. **[N-71, Q-41, Q-16, Q-25]**

Implementation of these regulations will cause unnecessary hardship on the staff as well as the inmate families. **[N-19]**

CDC's purposed changes to place a greater burden on both the inmate and his loved one's. **[Q-75, O-14, O-53, 0-72, N-70, N-62, N-53, Q-70]**

This letter sets forth my strong objections to the proposed changes and to their tone. My. First question was, what is their purpose? I do not like the apparent answer: that their intention is to add alienation, separation, restriction, and punishment to lives already thus saturated. **[N-21]**

The CDC should immediately deal with any isolated problems, which occur in visiting and not implement regulations, which punish everyone. **[Q-53, Q-74, Q-44]**

Please consider why these changes are being proposed and determine if those who abuse the visitation rights should be the only ones held to these changes. **[N-9]**

I do not understand how the CDC can add more stringent regulations. **[Q-43]**

Understand that we who have loved ones in prison want and have been cooperating with the visiting regulations. However, we don't need the additional stress when we visit these places. **[N-46]**

Some institutions are operating in a way to discourage visiting therefore, if the existing regulations allow for the demoralization of the value of the visiting policy, as it does, then the proposed amendment to rewrite these provisions can and will do more harm than good. **[U-10]**

The proposals will have a negative effect on the inmate as well as their loved ones. We, the public, object to these changes. We are already harassed and inconvenienced by the current visiting procedures. **[Q-24]**

The proposed regulations will increase the hopelessness and exile of these inmates, many whom are forced to seek rehabilitation, education, spiritual growth and correspondence courses on their own. **[U-25]**

Punishment is not the answer; all this will bring about is more anger. I can only remind you of the hardship the visitors (mostly women and children) will endure if this regulation is passed). **[Q-65]**

The CDC should not punish the entire population for the sins of others. **[O-34, N-60]**

The new regulations are shortsighted, punitive, and serve no legitimate security purpose. The new regulations erect additional barriers to inmates and their families maintaining ties, a key to decreasing recidivism. The ultimate outcome: more people in CDC institutions equaling more money for CDC. Theses proposed regulations would heavily impact inmates of color. These kinds of regulations are reflective of the "abolished slave law", making all prisons similar to concentration camps. **[M-10, D]**

There is no legitimate penological purpose in punishing kids of inmates and parents, grandparents and friends of inmates who are trying against great odds to maintain family ties. **[M-8]**

Punitive punishments usually have an adverse affect. **[N-35]**

The current proposed regulations are unnecessary, unfair and punitive. **[Q-43]**

The proposed regulations serve to punish and target inmates. **[U-39, Y-40]**

It appears that we should be able to come to some sort of agreement on what changes we agree and disagree. It appears that we the CDC are punishing the families and the inmate. **[Q-28]**

These changes are both cruel and unusual punishment. **[N-53, O-26, J, O-9, Q-46]**

The use of visitation as punishment is cruel and unusual, as receiving mail and visitors are the only things that keep them sane [and] in touch with family and friends. [Such…] contacts are needed when they are released from prison. **[Q-80, Q-29]**

Based upon the cruel and unusual punishment inmates are subjected too, CDC has created an atmosphere were inmates are turning against one another. **[N-58]**

I believe being denied freedom is sufficient punishment; it is not necessary to overwhelm the human mind with excessive [additional] punishments. Such mental abuse can result in an individual more hateful of our social systems, thereby creating a continuing mentality toward criminal behavior. **[W]**

The rule changes are not in keeping with professional correction's philosophies (meaning sociologists, psychiatrists, criminologists and scholars, etc.) The CDC has tormented our children. While the Sheriff's Department enhances their programs (though the law says they do not need to), The CDC cuts everything for children of prisoners constantly. The prison system is a more stable environment that the jail system. If the Sheriff's Department can do a good job, the CDC should be able to do even better but you have not. **[N-4]**

Friends and family members will be punished. **[O-11, O-49, O-24, Q-10, Q-11, Q-66, 0-43, Q-65, Q-41]**

Keep in mind that when you consider changing the regulations you are punishing the families and friends of inmates. We are the voters who will not stop until our Legislatures have resolved our concerns. **[U-2]**

Let us not create an angry and violent society by adding the punitive measure of restricting the visits by loved ones and friends. **[U-1]**

It would not be right for the state to take further control of visiting and punish the families of these incarcerated inmates. **[0-76]**

I feel these proposed changes are a direct insult and attack on visitors, who are guests at your facilities…not criminals. **[N-42]**

As family members of inmates, we are faced with extreme emotional, mental, and financial hardships, due to the incarceration of a loved one. More importantly, these types of inhumane changes will create a large insurmountable amount of unnecessary chaos within the prison walls. **[O-49, N-19, N-74, N-10]**

The more restrictive the environment in which these visits take place, the more difficult to achieve the stated objective; namely close family ties. **[N-16]**

This change in your regulations will only serve to create additional hostility and anger from both the inmate and his visitor. This change contradicts your earlier message to the inmates to have a more "friendly visitor environment". **[O-11]**

Every person in prison is not incorrigible, nor should these changes be implemented that would in essence treat families like criminals. **[N-36]**

I believe there are other ways to address the issues without putting such strict guidelines in place that punish everyone. **[N-67]**

Take in consideration the fact that visitor's coming to visit within a prison are primarily tax paying, law abiding citizens that should be afforded via right to interact with inmate's of their choice without having to be subjected to variation of stress and degenerative visiting policies. **[Q-4]**

The CDC needs to get with the program and treat inmates and their families humanly. **[N-55]**

If positive results, in the form of productivity, less violence and drug trade by inmates are truly the Department's ultimate goal, then the first step is to change it's prevailing mentality and attitude of "everyone is guilty until proven innocent". The department should adopt a more enlightened stance [rather] than to deprive inmates and their loved ones. **[N-53]**

I have a metal implant in my leg and forced to volunteer to a trip search in order to visit my husband. Even though I had provided a medical notice regarding the implant I was told that if the visitor cannot clear the detector for any reason, a search would be conducted with the consent of the visitor. If I had not consented to the search, I would not have been permitted to visit my husband. After the search I was never given documentation as to why I was searched nor did the institution have this rule posted. I volunteered to be searched, however, my agreement was made under duress. The experience was very humiliating. **[N-55]**

These proposals imply that visitors are the main source of the introduction of illegal drugs into the institutions. However, judging from the enormous amounts of drugs behind prison walls. It seems unlikely that the drugs are smuggled in on visitor's persons. How much contraband can a woman secret on body?? Certainly not the amount of drugs inside indicates. Yes, some contraband is

taken in by visitors, but hardly in massive amounts. It seems to me that this is punitive to all visitors and not just to the few who take that chance. **[N-8]**

These regulation changes will cause great depression, misery, loneliness, hope for the humans in the SHU. This may result in great danger for everyone. **[U-7]**

The proposed regulations will have an impact upon the self worth of inmates. **[N-71]**

The continued elimination of the departments prior inmate/family programs may result in a rooted form of "dehumanization". **[Q-4]**

I doubt that visitor's opinion count since we are treated like criminals ourselves but I am not one to sit back and just complain. **[N-72]**

Isolating and censoring contact between the inmate and the visitor will only resort in the inmate's open display of hostility toward correctional staff. **[Q-30, Q-1]**

Just as the criminal suspects are given the benefit of a "reasonable doubt" relative to their guilt, allow prisoners be given the "benefit of the doubt" when determining the visitation rules. **[Q-36]**

We think the quality and number of visits would decline under the proposed regulation, to the detriment of the institutions, families of prisoners, and the community. **[M-14]**

These men and women made mistakes; most are not bad people. The family members and friends are not the inmates, yet we are all lumped together. **[N-1, N-55]**

PHILOSOPHICAL OPPOSITION TO THE DEPARTMENT OF CORRECTIONS AND/OR IT'S PERSONNEL AS THE BASIS FOR OPPOSING THE ADOPTION OF THE RULES

Commenter states that she encountered an officer that was "malicious with fore-intent". In fact the entire visiting setup projects the callousness of inhuman treatment of visitors and prisoners. Our visits can be thwarted by anyone with no motive. It appears that inmates and their families are under the mercy of correctional staff. They continue to feel free to violate my civil rights. Forcing visitors to three different compounds sets them up to confront three different biased personalities. My husband and I traveled over 350 miles and were denied the right to visit. I feel that we were discriminated against and were at the whims of the visiting officer who has the ability to approve or disapprove our visits. I've addressed this issue via a letter to the Sierra Conservation Center, now we have become the targets of retaliation. Families are being discouraged from visiting their loved ones by being turned away; this is surely the case of officers abusing their power. Presently based upon a new regulation that states inmates cannot have visitation on their workdays, I am limited to visiting my son on Fridays. I wonder if this new regulation was only implemented after the arrival of my son, if so he has been targeted for malicious abuse and he is no longer safe at SCC. **[N-83]**

CDC says that they believe in keeping a strong family tie and that it's very important, but your actions don't follow your words. With these new rules, the exact opposite is true. I don't feel that you promote good family relations. You've taken away family visits from a majority of inmates. You don't do anything to curb the high cost of phone calls. You continually place the inmates in prisons that are hundreds of miles away from their families and on many occasions visiting is terminated or suspended on a whim. **[P-22]**

Changing visiting from a right to a privilege, how long is it going to take for CDC to realize it is their job to keep the family in the community strong, to maintain that contact? How many years is it going to take of not having that family contact, for you to realize what it has done? **[P-7]**

Mental health professionals are clear that contact with families is a key component in the success of prisoner's transition out of prison and back into the outside community. Mental health providers who work with children also agree that children need meaningful time with their parents inside. And kids who are separated from their parents through incarceration are much more likely to end up in prison themselves. So you are creating the very problem that you are purporting to solve. **[P-15]**

Commenter indicates that they have encountered many excellent officers that were able to apply common sense to rules and regulations and treat all visitors with courtesy and professionalism. However, there were just as many rude, obnoxious and unprofessional officers who take great pleasure in using their authority over visitors and/or inmates. **[N-74, N-79, N-19]**

Commenters indicate that CDC Officers have power or are intimidating persons and some of them abuse this power with little, or most times, no repercussions. **[N-55, Q-69]**

Oppose the visiting regulations, and the revised visiting section should include protection from those officers that harm visitors, not only visitors that harm your rules. **[N-74]**

But, really what this is about is job security for CDC employees because job security for CDC means keeping as many people locked behind bars as possible. **[O-15, P-1]**

Commenter indicates that Prison Guards do not deserve pay raises. **[Q-43]**

It was never intended for the CDC to be judge and jury. These changes will have an impact upon the inmates and their loved ones. Family and loved ones should never suffer or be punished by the CDC. **[0-9]**

Opposed to the proposed visiting regulations. Taking the right to visit and making it a privilege, means staff will be able to use visiting as a means of control over visitors and inmates. **[N-20, N-56, D, N-43, Q-35]**

Corrections spokesman Russ Hemerich is quoted as saying "Visiting privileges are a very affective tool for us to use as both a carrot and a stick to get inmates to behave." This statement suggests the CDC using psychological torture on both inmates and their families. These changes are merely the latest in a series of increasingly restrictive changes that have been instituted over the years. The cumulative effect of these changes is to make it difficult for the inmates and their families to have contact. **[Q-83]**

We refer to prisons as "correctional institutions" however; California's stated purpose is to punish those who are convicted by the courts. Being incarcerated in such a place that can only be referred to in term of harsh, dangerous and lonely can barely be considered a forum for improvement. [**N-21]**

To those of us affected, these changes will produce negative effects to not only prisoners and their families and friends, but to the correctional officers and institutions as well. How tightly can you hold the hands of humans and not expect negative behavior? **[O-40]**

Inmates would remain in society longer if the CDC cared about preserving the family unit and helped inmates instead of treating not only the inmate but also the families as if they were not an important piece to the inmate's rehabilitation. **[N-15]**

The department is attempting to make visiting less friendly, less frequent, and more burdensome to the visitors. I do not appreciate the department's attempt to limit my rights even further. **[N-68, U-1, O-41]**

But, really what this is about is job security for CDC employees because job security for CDC means keeping as many people locked behind bars as possible. **[O-15, P-1]**

We have regulations drilled into us everyday that we visit, and the CDC is aware that we will not complain. **[N-62]**

Commenter indicates that they can not understand why CDC's very well paid officers can't sit and watch visitors give their loved ones love. No good can come from depriving normal, needed human contact. **[N-62, Q-32]**

It is a well-known fact that over 90% of contraband is introduced into prisons by CDC staff that are neither drug-tested nor checked for contraband. Why are we the tax-paying citizens who pay the salaries of CDC employees, being punished for loving someone who is incarcerated? What is wrong with this picture? **[N-19]**

The fact that the majority of the people held in the prisons are Mexican and African adds to the continued aggression of the government to commit genocide against a people, according to Resolution 260 (III) A of the United Nations General Assembly. **[R-1]**

Commenter states that there is racism even behind prison walls. Consider the psychological ramifications on a series of men who are harassed constantly. **[V-5]**

Commenter states opposition to visiting regulations. Also, asks the question, "Who gives CDC the right to humiliate the families of inmates in the State of California?" **[N-58, N-1, O-39]**

It has been determined that "a nation's level of decline can be measured by the way it treats its prisoners." Based upon that truth, it is not wise to increase punitive aspects of prison life. To do so is to contribute to the decline. **[Q-53]**

Prisons were built to rehabilitate people and have been turned into [the means for] the control of some people just to show their power; violating the Constitutional rights of the people that are already paying for their mistakes. **[N-64]**

Visiting is a necessity for the inmates and their families/friends. Visiting helps maintain a bond that will assist the inmates when they are released. The prison system cannot provide the support visiting does. **[M-5, M-7, M-9, M-13, M-15, N-5, N-8, N-9, N-20, N-35, N-41, N-50, N-55, N-63, Q-56, Q-74, Q-79, V-2, W]**

Will the proposed regulations result in less crime? Will this result in transformation of those who come to prison (most of whom will return to society) being less prone committing crimes? Will these changes make a person less prone to using drugs? Will these increase their education and thus their sense of greater possibilities in their lives? These should be the focus any effort to change the modus operandi of the CDC. **[Q-87]**

Inversely restricting their visits is the best way to cause prisoners to despair and resort to acting out or indulging in drugs. The very inmates that will be affected by the proposed regulations are the inmates who should not have their visits restricted. Denying visitation is a fundamental attack to the human rights of prisoners and reflects the Department's contempt which they have for the incarcerated poor and the financially poor citizens of California **[N-39]**

My question and concern is how can the CDC say their commitment to the value of visiting for establishing and maintaining meaningful family and community relationships is retained, when they want to strip these inmates from [the] moral support that they receive from non-immediate family members and other community members. This is not upholding CDC's commitment to retain so-called Community and Family Relationships. **[G]**

GENERAL THREATS

Visitors are going to start thinking about how they can organize themselves in such a way that they have a voice in the visiting issues; maybe [with] a community correctional act that will give visitors this right. I can remember working in front of San Quentin and watching people arrive as early as 4:00 in the morning. I know the importance of a visit. I used to be the person getting the visit. So when you shook the woman down at the gate and made her squat over the mirror, that happened to be my mom. I thought the act was objectionable. It's probably not going to result in any meaningful change but I think we've been guided to feel that punishment is more important than compassion. You release tens of thousands of people every year that are not "lifers," they too are going to be subject to these changes. Family members who have loved ones in prison better develop a different approach to fighting the Department of Corrections. **[P-26]**

You guys are trying to restrict us from the time that is very important to us to be with our family members. I can see that it's CDC's way to fuel the fire of frustration. It's tightening the noose around the prisoner's neck. We should look at Attica. It wasn't the violence of the prisoners themselves that brought this about. It was the restrictions that were put on them by those of in control of them. They were brought down on their knees to fight for human rights. **[P-7]**

I don't like it to sound like that when we're displeased, we're threatening, or if they don't get what they want, the inmates will riot. But look at when people go postal. Now these are not criminals, not convicted felons. These are people who just have their back up against the wall and they become loose cannons—or whatever you call them–and blow people away. What do you hear on the news? That I never thought he'd do that! You never know when you neighbors are this crazy or not. Now what do you expect when someone has a life sentence? What is there to make them care? They're going to say, well if I shoot or strangle this guard, what are you going do to me! Give me another life sentence? That's not the mentality we want to foster. A lot of the people we visit may have that potential but because they want to see us and not have whatever goodness they get taken away, they behave. Now there are a lot of men in these prisons who think like the inmates at Attica, that if we keep killing all or enough guards, then they'll give us our rights back. **[P-31]**

The following general comments are aggregated and summarily dismissed because they pertain to procedures not addressed in this proposed action:

Arbitrariness and pettiness, NOT consistency, is the name of the game at most prisons. For example, currently at least two prisons, the California Men's Colony and the California State Prison in Sacramento (SAC), have implemented a "No tobacco" policy for inmates only (at SAC, only level IV inmates), beginning on March 31. This is not only discriminatory, but is also clearly in violation of the California Code of Regulations, Title 15, Section 3188(2)(e), yet it is being permitted to happen. **[N-53]**

Smoking in the designated areas in visiting should also apply to inmates as well as the visitor and staff. Inmates are humans too and should be allowed to smoke in visiting, at all institutions that allow smoking in designated areas. **[V-8]**

Your contract with MCI is much too expensive. The California Department of Corrections could make it much less expensive. Everything costs 50% more when it involves inmates. So now you want to burden families and loved ones even more. **[O-9]**

If the CDC is operating their prisons humanely why do they not permit journalist access? Requests for access are routinely denied or so conditioned that it allows staff to assume a publicly acceptable attitude and to exclude the press from the actual conditions within. **[Q-75]**

Something is wrong with a system that punishes an inmate who has a health problem that causes pain, if they insist he work, to keep his A1-A status. Healthcare for inmates is inadequate. **[N-89]**

Inmates should not be pressured to change their grooming standards. My second issue is the inmate who follows the rules and stays out of trouble are accused of manipulating the system when it is time for them to parole or to appear before the courts. **[P-34]**

Commenter indicates that Prison Guards do not deserve pay raises. **[Q-43]**

The following miscellaneous general comments are not accommodated for the reasons given:

If the Director is truly interested in finding an efficient and productive department, he should not only meet regularly with the California Department of Corrections employees, but with ACTUAL inmate families, friends, attorneys and religious/spiritual advisors, not some secret panel of alleged visitors, who were supposedly instrumental in creating the proposed changes. In over four years of visiting California State prisons, and being extremely active in prison reform, I have never met anyone who would suggest—much less endorse–any of the proposed changes. **[N-53, P-6]**

If there are changes that are perceived as being needed, a slight change to the language of the pre-existing regulations could be undertaken by a task force of CDC personnel and the visiting public instead of the complete revamping of the current rules and regulations by a CDC supporters of CCPOA. **[N-43]**

I strongly oppose the proposed changes and urge CDC not to go forward with their implementation, but rather to work with the appropriate organizations and consulting bodies to create new revisions that better address the combined correctional goals of institutional security and inmate preparation for successful re-entry to the community. **[N-30]**

RESPONSE: The process of developing the regulatory changes contained in the proposed action involved consultation with a variety of individuals, groups, and CDC personnel familiar with the issues involved. Revisions to the initial proposal made in response to public comment involved additional personnel with specialized expertise in a variety of areas, including that of inmate visiting. The Department feels this approach has been adequate and sufficient to satisfy the requirements of the Administrative Procedures Act (APA).

I feel that we, the families and friends of inmates, should be allowed to vote on the proposed changes prior to their implementation. **[Q-28]**

RESPONSE: Neither statutory nor case law supports such an option.

The proposed Director's Rules change CCR, Title 15, Division 3, Sections 3170 through 3179 consistently contradicts itself through out the proposal, and violates existing laws governing such changes. **[U-10]**

Since we have overwhelming evidence that the notice was not posted as directed at many prisons is there any chance of getting an extension on to this deadline? If we got the information from inmates, will that be considered credible by CDC or are they all considered liars? **[P-38, P-39]**

The front page of the Notice of Proposed Changes indicates they are supposed to be posted and made available not only to staff but to inmates as well. I can tell you that at both Corcoran and at New Folsom, at least on A and C yards, they didn't know [about these changes], so we wrote and told them about it. So, something needs to happen about that. **[P-16]**

Not aware of the proposed regulation changes. **[Q-85]**

Complains that the regulations were not published until January 4th and posted until February at CSP-Solano. Also, not properly posted at PBSP/CCI. **[N-32, Q-85, Q-86]**

The fact that I was able to have my parents visit made all the difference to me in my own recovery. For you to even write such rules shows that you do not feel that prisoners or our families are human beings. And that's why I think it's important for all of us to register our strong opposition to all the changes that you have recommended. I register my strongest opposition to these changes. The fact that you have not even complied with your own regulations and posted the proposed changes in the visiting rooms and for the prisoners shows that you don't consider prisoners to be human beings or part of the public comment process. Any implementation of these regulations must be postponed until prisoners also have the opportunity to make comments **[P-28]**

RESPONSE: The proposed rules change was published in the California Regulatory Notice Register, mailed by first class-mail to individuals and organizations who have expressed interest in being notified of such changes, posted on the Department's public Internet site as well as mailed to institutions/facilities for posting. The Department feels that receipt of over 2000 individual responses and an entire day devoted to public testimony is prima facie evidence of sufficient notice concerning such changes.

Commenter asserts that the NCDR does not give the public and prisoners enough information upon which to make comments. Because of this deficiency the Department must publish a new NCDR, containing the legislative history for the Penal Code (PC) sections [upon which the] visiting [rules are based] and which [should be] include[d in] the Rulemaking File for §§ 3170-3179. **[Q-40]**

RESPONSE: As noted in the previous response, the Department's NCDR generated a volume of comment in excess of 2000 individuals, which would seem to be ample enough evidence of the fact that the information contained therein was sufficient for the public to base their comments. Appending PC legislative history would not notably assist the public in understanding or commenting upon the proposed action. Moreover, there have no been significant changes in the statutory basis of the regulations at issue, the provisions of which were adopted well over a decade ago and are not at issue at the present time.

Has the Office of Administrative Law reviewed the proposed changes? **[U-78]**

RESPONSE: The Office of Administrative Law (OAL) conducts a final review of rule changes to be adopted by a state agency following all public comment periods and subsequent to textual revisions the Department makes in response to any public comment received. It is not standard practice to seek OAL preapproval of proposed regulatory changes prior to public comment.

Commenter requests a copy of the regulations CDC intends to submit to the office of administrative law in the "rulemaking file" prior to submitting them to that office. **[Q-20]**

RESPONSE: A copy of the Department's Renotice was sent to this and all other Commenters in accordance with the requirements of the Administrative Procedure Act.

I ask the current policy board not to pass this proposal as written, unless it can be fair to all segments of the inmate population. **[U-50]** Please reconsider this regulation change. **[N-27]**

The draft regulations do not adequately protect the substantial value of visits from the perspective of the institutions and the community. Many of the regulations take a restrictive approach.

Suggesting that staff can make the process difficult for visitors, and placing unneeded limits on discretion to facilitate positive visiting experience. These restrictions should be replaced with those that are calculated to make the visiting process convenient and respectful of the visitor. **[M-14]**

CDC is not looking at our rights. We need changes that will be positive for us. Right now everything is so negative at Corcoran [that] we don't stand a chance. **[P-41]**

These proposed regulations will take away from the quality of visits with our loved ones. **[Q-3]**

Please take into consideration the effect this will have on visitors. We truly have had a very hard time as it is and changes for the worse just make it harder. We are important to the peaceful running of the prison.
[N-42]

RESPONSE: Regulations governing inmate visitation will not be promulgated as originally proposed in the January 4, 2002 Notice of Change to Director's Rules. The Department has made textual changes that it feels help dispel the notion that the rules were "unfair" or detract from the quality of visits.

If these regulations are approved it will open the door for the California Department of Corrections (CDC) employees to commit Hate Crimes against our citizens, their civil rights and privacy will be violated at the time they put a single foot in any California facility. These regulations will give absolute power to the CDC's employees to discriminate against citizens and prisoners. **[D]**

Millions of dollars are being paid out in mismanagement and lack of foresight. That money could be put into better medical care, better conditions in visiting, more rehabilitation, because people are going to come back out into the community in much worse condition. These are hateful regulations. They're about hate. None of these people have committed a crime. They are the innocent victims of a crime. The union would like to see mandatory cavity searches for guards before and after each shift. Guards bring in 97% of the drugs into our prisons. The strip searches and the cavity searches are intimidation tactics. Our web site has all of the articles in different guard run drug rings that have been busted up over the years. We have all these cases where this has actually happened. If they were subjected to cavity searches, it might clean it up. Families don't need to be penalized. So it's a consideration. Dogs are another consideration. **[P-30]**

Commenter indicates that Prison Guards do not deserve pay raises. **[Q-43]**

The female staff/Correctional Officers wear tight fitting clothes back where our husbands are. These new guidelines and no family visiting provoke relations between female staff and inmates. I sincerely hope those responsible for making the final decision on the proposed rule changes come out of the Draconian days and into the 21st century. They need to follow the lead of President Bush in changing the focus to the importance of the family and children. Please be reminded that he specifically included the children of the incarcerated. **[N-39b]**

Women guards should only work at women prisons and should have dress guidelines. **[Q-69]**

When you go in you are treated with shame and harassed, you're intimidated, you're humiliated, and you're degraded. I have seen correctional female officers flirting with inmates. Taking them to the bathroom when, they're undressing, telling another wife, well "you can't go back there, but I can". That is a quote and I have witnessed that. **[P-10]**
Commenter indicated that to give prison staff any more rules would be giving them the right and a license to sell visits of their choosing. **[Q-38]**

Moreover, the correctional officers inside the visitor's lounge should not abuse their authority. **[N-83]**

The only reason I'm opposed to the proposed changes is because we just need to teach rules that are in favor of the family. I think that you should take into consideration building institutions for the family. Make changes that will help us, and just let me enjoy the little that I have. At one time we had an officer harassing people. I had my arm around my husband and they said, well, that's attempted contact. The Sgt. or the Lt. pointed to a memo that said embracing and holding your husband is allowable, if it's nothing illegal. He said, Lady, if it happens again, just call. And you know it's so beautiful to work together rather than against each other. Make sure that families will stay together. Don't punish by transferring the inmate to another prison that is miles, and miles away. I'm sure next time you have a meeting like this you will have a more positive people coming here and saying, you know, thank you, thank you, for allowing my loved one to be close to my house. Thank you for saving me the time required to travel 600 hundred miles or whatever. People would come here with a different attitude. I think you would be wise to discourage officers from harassing people for petty things like leaning your head on your husband, scratching him or touching him. I think officers should be trained in being sensitive to real life settings. Because I love my husband and I want to be treated with respect I'm not going to jeopardize my reputation and visiting privileges by doing something stupid. But when officers start worrying about me putting my arm around him or he putting his arm around me, well, I begin to wonder what's the worry? Is it about me loving my husband and my husband loving me, or this child being kind to his dad or embracing or whatever? Right in front of your face, the moment you take your eyes off, plenty of others are doing something illegal. Should the priority really be busting someone who is being a family? This is the type of training that they need. You're job is to pay attention to illegal activity. Don't worry about petty stuff. **[P-23]**

Now you want to change the rules so you can bring us further under submission and I wonder why. I feel like I've been victimized enough already. Once an officer at Tehachapi made me feel like a whore the way he looked at me up and down and stared at what I was wearing. Another officer at Tehachapi made sure my husband was delivered five hundred miles away from me because my family did not approve of me visiting an inmate. The officer happened to be a close friend of the family and he said he would take care of it, and he did. He tried to stop my marriage to this man. An officer at High Desert reprimanded me because my arm happened to be resting on the back of my husband's chair and I really didn't know where I was touching my husband. However, I have never, ever been so humiliated and abused in my whole life now that my husband is incarcerated at Corcoran. It has been a nightmare. Here is the model of man's inhumanity to man. The rules change all of a sudden I can't wear my button-down dresses. And I don't even get a warning and I have to go change and wear some crappy clothing with holes and dirty. My husband put in for ETO time because his dad was coming out. I walked in to visit and everything is fine. I tried to get into the visiting room but the officers (who has been assigned there since 1988) told me, oh I couldn't have a visit. The ETO time was for my father in law. And so I had to leave and wait two hours until the Sgt. came out of a meeting and then she says, oh, no you can go back in. [Plainly] the officers make up their own rules. I think it is just to show their power. **[P-22]**

Many visitors suffer excessive scrutiny and inconsistencies with Correctional Officers. As a consequence, you cannot imagine the emotional stress we have experienced. Recently I applied to become a part of the Sierra Family Council. Sierra honestly wants to correct unwarranted or overzealous treatment by some C/Os. **[N-46]**

The way that I am degraded when I go into a prison is ridiculous. I teach my children to respect others. But when my children walk into the prison, while the inmates respect us, the guards do not, despite our expectation of the correctional officers to set a good example and be role models in society **[P-17]**

My final statement I think is going to be the fact that there are some officers who take actual glee in enforcing rules. I went to visit my husband last night and the officer that was the bus driver took great pleasure in telling my husband and myself that from now on we would only get to have five seconds to hug and kiss. And he was so joyful that he could impose this on us. It's bad enough to have the rules, but to have them sit there and gloat and be gleeful? **[P-21]**

I had one officer tell me, don't come back the next day, and that would make his day easier. This hearing isn't going to be able to address how individual employee's function. Some companies, most of the people are great, and in some organizations you have [expletive deleted]. They're everywhere. **[P-31]**

Visiting staff at the California State Prison at Corcoran made every effort to ensure visitors did not want to come back. **[U-3]**

Commenter indicates that supervisors within the prisons should be allowed to do their jobs without officers influencing the administrative staff and making problems for supervisors doing their jobs. **[Q-38]**

Commenter indicates that as a taxpayer they expect Correctional Officers to do their jobs, not be rude, anti-social, or treat visitors like they are criminals. **[O-54]**

Commenter indicates that this proposal is another tool of "harassment" that can be easily abused by biased, racist, or over-belligerent Correctional Officers. CDC's presentation implies some bogus, or exaggerated reasons for wanting to make visiting a privilege. This is another attempt to impose more "control" over the few rights of prisoners and also gives CDC the ability to abuse inmates' and hide the physical evidence from the visitor while the inmate is in such a state. It also gives CDC the ability to turn back an inmate's family who may have driven over 300 miles. In some cases this can cause an inmate to enact with violent retaliation on an officer or take out their frustration on another inmate. Most of all violence is provoked by systematic harassment. **[V-5]**

From a host of recent prison exposures and our own experience with jail, accountability is already a serious problem among guards. Instead of giving them one more way to manipulate and humiliate inmates, you should be implementing a rigorous system of accountability. **[M-9]**

It's really, really scary that our lives are in your hands. I think that these guards need background checks and psychological evaluations. There are stories of guards instigating fights and just laughing. They also need people training in order to be more customer service oriented. I wouldn't disrespect or punish anybody because of his or her mistakes, but that's exactly what you guys are proposing. You're not just hurting the inmate; children need their fathers. Just because my children's father is incarcerated doesn't mean that he cannot give them valuable information. It doesn't mean that he cannot guide them, share lessons that he has learned and that he could pass on. And you guys are taking that away from him and from my kids. Prison officials need to know we are watching over our family members. They don't care about them. All they're about is making it work. **[P-20]**

<u>RESPONSE: The Department dismisses any and all blanket or unsubstantiated accusations of misconduct on the part of correctional personnel. Specific instances of disrespect should be reported to superiors. This affords the Department the opportunity to more completely assess the nature and scope of the problem, as the complainant perceives it.</u>

Gay domestic partners should be afforded the same rights as married couples. Just as it is beneficial in the terms of reducing recidivism rates for married couples to maintain ties, so it is beneficial for gay domestic partners. No one is asking for special rights, just equal rights. **[U-62]**

RESPONSE: While there is a limited statutory basis for affording the rights requested, the Department will strive to accommodate such concerns within the constraints of safety and security.

Visiting should be friendly; there is no cause, other than to prevent children from injuring themselves, for a staff member to interact with a visiting child. **[M-2]**

RESPONSE: There is no practicable alternative to correctional personnel interaction with children brought into the visiting facility by a parent or guardian.

The California Department of Corrections should establish a back-up plan for times when the vending machines stop working. **[U-3]** I also have concern that the vending machines which visitors are expected to purchase food items from are not consistently stocked. **[N-41]**

RESPONSE: It is more appropriate to bring such concerns to the attention of visiting officials at the institution/facility in question.

The California Department of Corrections should allow all inmates a single, State-paid, telephone call to their families within six hours of their arrival at an institution following a transfer, in order to advise their families of their new location. **[M-2]**

RESPONSE: Each inmate is assigned a correctional counselor who can assist the inmate in accomplishing such notifications.

The following general comments are accommodated as noted:

The Director asserts that the proposed changes will not impact the economy, jobs, expansion of business, and small business. The director is clearly mistaken; small businesses in Crescent City depend on the capital generated by the visitors of inmates. These visitors spend large amounts on money in hotel expenses, gas, food etc. since they spend the weekend visiting. **[U-13]**

ACCOMMODATION: The rule linked by the Commenter to the presumed impact has been dropped.

GENERAL ISSUES, CDC

The following general comments regarding the Department are not accommodated for the reasons given:

Under delegation of authority by the Director, the visiting official should be responsible for incorporating into the orientation and training of new CDC employees training segments. The visiting official should meet regularly with the family council to ensure adequate input, discussion and review of current issues relating to visiting and any proposed changes to the rules prior to final implementation. The CDC should, over time, expand the concept of family council meetings to all 33 prisons. Members would meeting with the warden and designated staff on a regular basis to discuss family issues and concerns regarding visiting at the local institution. CDC should create a high-level agency position to be responsible for statewide visiting programs and policies. This CDC official should be responsible for administering all aspects of the visiting program, providing coordination and oversight of all policies related to visiting and making final recommendations to the Director on all proposed changes to visiting rules. **[M-2]**

If the Director is truly interested in finding an efficient and productive department, he should not only meet regularly with the California Department of Corrections employees, but with ACTUAL

inmate families, friends, attorneys and religious/spiritual advisors, not some secret panel of alleged visitors, who were supposedly instrumental in creating the proposed changes. In over four years of visiting California State prisons, and being extremely active in prison reform, I have never met anyone who would suggest—much less endorse–any of the proposed changes. **[N-53, P-6]**

All staff assigned to positions within the visiting programs should be specially trained to understand the importance of visiting. Also, the officers should be advised that their job performance evaluation, including his eligibility for merit increases in salary, would include an assessment of visitor's satisfaction in interacting with the officer. **[M-2]**

Commenter feels that CDC should implement the following policies: new officers should be required to have at least an AA degree with coursework in psychology, customer service, mediation, and conflict resolution. Staff should be checked for contraband employing drug-sniffing dogs. There should be more educational and rehab programs. More correctional counselors would make for smaller and more manageable caseloads. **[N-53, O-37, N-54]**

Commenter concedes that administering a prison is difficult. Guards working with wards are either tough or become tough through experience. **[N-21]**

RESPONSE: The Department appreciates that some Commenters have made sincere suggestions/observations respecting organizational and internal "improvements" they believe should be adopted with respect to visiting and related matters. However, complexities implicit in such suggestions have not always been thought out thoroughly. In addition, the Department has received contradictory advice about some issues. For example, one segment of the public would like the Director to meet with a select group of concerned individuals, while another segment is deeply offended by the very idea! Likewise, those valuing the autonomy, accessibility, and sensitivity of Wardens to the concerns of the community where institutions are located would undoubtedly oppose the concept of a higher-level executive in charge of visiting on a statewide basis. Other suggestions, such as those about professional development, performance evaluation or personnel hiring and training priorities either parallel initiatives that the Department has already begun or are affected by external matters such as collective bargaining agreements or legislative funding, over which the Department does not have sole control or final say. Finally, suggestions concerning training will be separately considered; see response below.

GENERAL VISITING CONDITIONS AND PROCESSES

The following specific comments and suggestions regarding general visiting conditions and processes are not accommodated at this time for the reasons given:

The CDC should explore implementing processing controls to reduce or eliminate the time visitors are required to wait in line before processing begins, including instituting visiting by appointment such as PVSP has done when practicable. The department should consider having convenient waiting areas for visitors prior to the beginning of the visiting process. Often times the elderly, disabled and the very young must wait; often times standing for hours in inclement weather before visiting is actually open to begin the process. [Often times upon arriving there is a significant amount of time waiting, often in discomfort, sometimes in precarious safety]. By the time the visitor is actually processed they are often exhausted and frayed form the experience. Once in the processing center visitors and staff experience chaotic conditions; there are large numbers present at once, who are tired and uncomfortable and in moods that are less than pleasant. Visitors then rush to ask staff questions, which delays the staff's ability to begin the visiting process. In order to assist in the delay time it currently takes for the inmate to arrive for his visit, the visiting staff should consider immediately notifying the inmates housing unit upon the visitors' arrival in the visiting-room, thereby allowing the inmate to immediately depart the unit from his visit. The visiting room is often stark, crowded, noisy and often intolerably hot or cold.

Many prisons have no outside area to allow the inmate and their visitor to walk around or sit in the fresh air. Often the visiting tables are standard height, which requires constant bending at the waist to eat, play a game or even be close enough to each other to be heard. The furniture in the visiting room should be consistent with reasonable comfort. Therefore, when designing visiting areas the department should construct an outside area, which should be available to all inmates and their visitors. If this is impossible the visitors should be allowed to walk around the perimeter of the visiting room. As in most prisons the inmate must be seated at all times and the visitor is only permitted from their seat when standing in line for the microwave or the vending machines. Prisoners should be allowed to wait in the vending/microwave lines with their visitor. Parents, whether incarcerated or not, interact with their children primarily through activities; therefore, in order to assist the child with boredom the visiting room should have a play area stocked with appropriate toys and activities for children of all ages. The inmate should also be allowed to enter this area with their children. Bathrooms are not easily accessible for visitors' use without intimidation. It is usually necessary to have an officer unlock the restroom before use. At some prisons only one person is permitted to enter the restroom. At some institutions visitors are required to sign an intimidating log. Restrooms can be thoroughly searched before any prisoner has access to them, but can be searched directly after a visitor's use only if there is reasonable cause to believe that particular visitor has left contraband in the restroom. At the end of visiting, visitors should be allowed to promptly leave. Visitors should not be required to wait until all inmates have been searched. Visitors should be allowed to return to visiting processing or the parking lot whenever possible, so they do not have to wait for vans and/or buses. This would alleviate the long waits to be transported. Inmates should be housed at institutions, which are nearest to the homes to their homes, which are consistent with reasonable security concerns supported by evidence. The visiting process at most California's prisons is extremely burdensome and financially difficult for families and visitors. **[M-2]**

Where I visit, you are placed in a cage approx. 4 x 6 in size. It's bad enough to have him locked up in a vault. It doesn't make any sense that you guys now have created a coed bathroom because you don't want to fix the-the woman's bathroom. The conditions are poor, the regulations and the rules that you are trying to set here today, they are unjust, they are cruel, and they are inhumane. I oppose the prison having me on a 2-hour visit without the ability to get up and stretch my legs or use the restroom facilities. That doesn't make any sense. I can't even go to the bathroom unless I terminate my visit. That's horrible because I'm a female. Lets talk about the broken microwave. There is only one microwave and you have 20 people visiting in one visiting room. **[P-32]**

Based upon my health challenges, I am unable to eat the poor quality of food, which the institution provides. The food items are very expensive; it costs $6.00 to purchase inside the institution, for that price I can purchase a whole chicken from the local market! **[N-41]**

The department needs to implement changes that would benefit visiting accommodations. With 4,000 plus prisoners and a visiting room with a capacity of less than 300, that supports less than 10% of the population. Tax papers are paying 20 million dollars to make prisoners more comfortable by providing amenities such as air conditioners. However, the visitors at RJD are lucky to have adequate toilet paper and paper towels. **[N-26, O-26]**

A lot of us have come from Corcoran, because the situation in Corcoran is really, really getting bad. We had the best Lieutenant in Corcoran that you ever can imagine. His thing was, 'why is it, he'd tell the people, why aren't these people back there visiting with their lover? I do not want to see these people.' That was his attitude, so he got us in, he got us processed, and we were happy. And he was happy. You know why? Cause he didn't have to look at us. And we didn't have to look at him. So everybody was happy. Then we had what we call the reign of the "new regime." He/she came in and he/she does not like visiting. He/she does not like us at all. My question to you is why can't we get it back to the way it was? Why isn't it when visiting starts at eight o'clock that we can't get in at eight and be processing? Do you know your guards take their fifteen-minute break during our processing time? As we're processing in, when it's their break

time? Guess what? Processing stops. We physically have to wait. We have to wait for them to do whatever it is that they want to do. We have to wait for them to go to the bathroom, which we know because the bathroom is right there. We can see them go in there, close the door. And instead of having somebody come behind and just keep us rolling and get us out, we have to wait. A lot of us are facing that close custody curfew. If we're not in by that close-custody count-time, then that's where your problems come in. Then you'll get all these letters and these fighting people. That's it. Because the only thing we want do is get through that door, sit down, and promise you, we are out of your hair. We're the happiest people. And your guys are very happy. **[P-42]**

Inmates should be housed at the institutions that are closest to their homes and consistent with reasonable security concerns supported by evidence. **[M-2]**

The department is not sensitive to the lives of inmates or their families. My husband was sentenced to three years state prison for a crime committed under extreme mental and emotional stress. Was there any other way this could have been dealt with? **[O-14]**

Prisons are not created to foster insanity. Further, if family does not visit, how can the penal system be open to public scrutiny if no other visitors are allowed? **[U-14]**

Why create problems in the penal system than currently exist. The CDC doesn't want to take the time to treat inmates like humans, the department does all they can to stop contact with the outside world. What will that do to our society when they are released and unable to cope with the freedom they will have without the relationship of the ones that care about them? **[U-21]**

There is no shortage of visiting space at PBSP, the institution should consider extending visiting to D Facility. **[U-39]**

Not all prisons are the same, so a uniform policy unduly penalizes those visiting inmates in remote locations. The lack of visiting space at PBSP is due to the second facility being use as a law library. Why would CDC construct a SHU without a law library? **[U-29]**

PBSP's 2 visiting facilities were built from the SHU. Only one is being used as a visiting area, the other is currently used as a law library for the inmates--something that is of critical importance to them. Can I publicly ask, "Why wasn't that included in the original design of the SHU? Why was it necessary to pick a visiting room and make it into a law library? Wouldn't you think that they would know that a prison needs a law library"? **[P-38]**

There's a really big difference when you go into a visiting room in a women's prison. It's empty. It is almost always empty. It clearly appears that it is the woman who keeps the family together. Men often have other problems, the families fall apart, and kids go into foster care. The restrictions that you are putting on visitors will impact women prisoners far more severely than male prisoners because it will be that much harder to hold families together. **[P-12]**

RESPONSE: The Department appreciates the fact that certain Commenters have strong feelings about the physical accommodations devoted to visiting at its institutions and facilities. However, the Department also feels quite strongly that the regulatory adoption process is not the most logical or appropriate context within which to address these concerns. Therefore, at the conclusion of the comment and adoption period, the concerns and suggestions expressed above will be brought to the attention of the Director and those managers with the authority and responsibility to consider such matters. In addition, those comments with implications for training will be separately considered; see response below.

§ 3170
GENERAL VISITING POLICY

The following specific comments and suggestions regarding general visiting policy are accommodated in the manner noted:

This section dealing with general visiting policy should expressly state that it is the intent of the regulation to establish a visiting program that, while maintaining order and security, provides the maximum opportunity for visiting. Start the proposed regulations off with a comment that would give the impression that visiting is a value to be encouraged. Only a statement of that type will convey to institutional staff that in situations where they have discretion, it should be exercised in favor of maximizing and enhancing visiting. **[M-2]**

Even if it is accepted that visiting is a privilege, I believe it is imperative that nothing be done that would compromise the preservation and enhancement of visitation as a vital element of carefully balanced public policy and prison regulations. **[Q-33]**

RESPONSE: The paragraph of the text in question has been edited so as to give greater emphasis to the Department's recognition and encouragement of visiting as a means for meaningful relationships. Retained text states that visiting will be "conducted in as accommodating a manner as possible." No further accommodation is possible due to the Department's obligation to carry out required prison activities and operations so as to maintain order, ensure the safety of persons and the security of the institution/facility. Any different balance of public policy and prison regulations would have to be legally mandated.

Visiting is not a privilege; it's a human right. Human beings have a right to be with their families. **[P-28, Q-4]**

The California Department of Corrections cannot change visiting from a right to a privilege because inmates have a 'right' guaranteed by the California State Constitution, the California Penal Code, Case Law and the United States Constitution to visit. **[D-32, M-6, M-7, M-9, N-2, N-39b, N-45, N-52, N-54, N-75, N-76, O-25, O-29, O-33, O-39, O-53, Q-15, Q-40, Q-41, Q-52, Q-55, Q-75, Q-78, Q-80, Q-82, V-6, W]**

The California Department of Corrections cannot change visiting from a right to a privilege because inmate's friends and families have a Constitutional Right to visit with inmates. Visitors have rights as taxpayers to visit inmates. **[H, N-19, N-39, N-42, N-54, N-57, N-72, O-25, O-31, O-39, O-44, O-48, O-53, Q-14, Q-15, Q-17, Q-63, Q-78, R-1, U-36]**

To change visiting from a right to a privilege appears to a conflict with the implied meaning of the statement, "the value of visiting is recognized and encouraged." **[A, D, I, M-1, M-14, N-3, N-50, N-51, N-67, Q-67, U-8]** Stop punishing the visitors of inmates, leave visiting a right. **[N-32, O-45, Q-24]]**

I'm writing because I heard some bad things might happen to our limited visiting. I'm asking that visiting remains a right. **[Q-12]**

It is my understanding that inmate visits are to be voted on, to decide whether visiting should be a right instead of a privilege, and all opinions/input are welcome. Since the beginnings of time people have had the right to visit anyone they wanted to. It is the only right that has survived all politics. **[V-5]**

I take issue with the new wording that [suggests] visiting is a privilege vs. the existing regulations [§ 3170(b)] stating inmates have a right to personal visits. Changing the wording from right to privilege is a first step to completely denying any and all visitations. For any reason this privilege could be taken away. This wording is very dangerous. This change would conflict with the next sentence of 3170 that states, "The value of visiting is recognized and encouraged as a means for

an inmate to establish and maintain meaningful family and community relationships". I feel the word right should remain. **[P-11]**

Changing visiting from a right to a privilege amounts to cruel and unusual punishment to the inmates and their families. **[M-9, N-61, N-87, Q-13, Q-18, Q-82a, U-1, U-20, W]**

RESPONSE: The following phrase has been deleted: "Visiting is a privilege." This accommodation helps dispel the mistaken impression that a preexisting "right" has been reduced to the status of a "privilege." See response below, this section.

The following specific comments and suggestions regarding general visiting policy are not accommodated at this time for the reasons given:

"Visiting is a privilege" opens visiting rights up to a whole new scope of circumstances under which visits may be taken from the prisoner and their friends and family. In fact, this is incorporated into the language in stating that any infraction under CCR 3315 may be cause for suspension of visiting, as opposed to visits only being taken in the event of a visiting or a drug related offense, as the old regulation stipulates. **[T]**

Changing visiting from a right to a privilege would give prison employees too much power over the inmates; it allows [authorities] to take visiting without sufficient justification or cause. **[M-9, M-14, N-6, N-8, N-9, N-14, N-31, N-33, N-35, N-36, N-45, N-46, N-53, N-57, N-61, N-67, N-70, N-78, N-81, O-27, O-28, O-30, O-38, O-44, O-54 through 61, Q-2, Q-3, Q-39, Q-43, Q-48, Q-57, Q-63, Q-74, Q-76, T, U-4, U-16, U-17, U-18, U-19, U-20, U-37, U-38, U-39, U-40, U-41, V-1, W, X-1]**

Visitors spend a great deal of time and money to visit, making visiting a privilege may allow many to be turned away without sufficient cause or notification. **[N-44, N-57]**

RESPONSE: As explained in pages 14 and 15 of the ISOR, existing provisions relating to restrictions, revocations and suspension of an inmate's visiting privileges—§§ 3173(o), 3177(c)(9)(B) & (C) & 3177(c)(11), (12) and (13)–*and* referenced material incorporated from § 3315 have been placed in (new section) 3176.3 for easier reference. Therefore, it is clearly an interpretive error on the part of the Commenter to link such changes to the "visiting is a privilege" statement contained in the 12/21/01 rules draft. Moreover, because § 3176.3 spells out in greater detail reasons for restricting, revocating or suspending an inmate's visits, *greater, not less* protection from unjustified or causeless action is afforded inmates by the proposed rules, assertions to the contrary notwithstanding. Finally, the presence or absence of the word privilege is not intended to be an added factor affecting whether or not prospective visitors are turned away, particularly if visitors feel they are already being turned away without sufficient cause or notification. The Department intends no change in existing practice and, besides, the offending phrase has been deleted.

The comment regarding Privileges should be placed in the section with violations of the rules. **[M-2]**

RESPONSE: Such language is already contained in § 3176.3 subsections (b) through (e).

The intent of making visiting a privilege is not adequately represented in this proposal. **[O-51]**

I request a copy of the information regarding the original comment and debate making visiting a right. What are the safety and security issues/reason for this change? **[N-82]**

Visiting should be granted based upon each inmate's established ability/inability to program, not the inmates sentence. **[N-71, N-75]**

Will an inmate have to be A1-A to be allowed visiting? **[N-80]**

Please don't change our right to visit; children need their fathers in their lives. **[D-36]**

Under current policy [established by the Legislature] visiting is seen as being a privilege, not a right. It should be a right. It should be a right of human beings to have a visit from their family members. **[P-6]**

I am appalled by the proposal to change visiting from a right to a privilege. **[N-16, N-18, O-40]**

I am opposed to the proposal to change visiting from a right to a privilege. **[N-21, N-40, N-48, N-49, N-55, N-64, N-79, O-28, O-44, Q-1, Q-37, Q-73, Q-76, V-4, X-1]**

RESPONSE: The text of the visiting regulations being repealed by this action were last amended to their present language in 1983. At that time, visiting was one of a number of "programs" for which inmates had the "right" to participate, subject to denial "as is necessary for the reasonable security of the institution and the safety of persons." In the nearly twenty-year interval following, visiting rules as published in Title 15 of the California Code of Regulations have not kept up with changes in statutory mandate and correctional standards. Instead, individual institutions have maintained separate procedures ["Local Rules/Plans of Operation] for inmate visiting at their respective settings. As stated on pages 1 and 4 of the ISOR, the reason for the present action is adoption of updated statewide standardizing rules. Henceforth, local visiting procedures will augment and not (as they do presently) supplant or substitute for the statewide regulations.

The repeal of visiting as an inmate "right" by the Legislature in 1996 is one of the statutory changes not reflected in the obsolete visiting regulations. In addition, changes in correctional practice have altered the field of programming. Specifically, visiting is no longer viewed as an inmate program, but rather a privilege, subject to a number of limitations as addressed in specific detail in §3176.3. Regrettably, the ISOR did not contain background sufficient for the commenting public to understand the circumstances of the so-called substitution of "privilege" for "right". Consequently, a number of Commenters drew erroneous conclusions, including: The Department is infringing on the human rights of the prospective visitor [in violation of natural law, treaty, constitutions and/or case law]; The Department is infringing on the rights of the inmate; and The Department is changing visiting from a right to a privilege.

The accommodation previously noted—deletion of the phrase "visiting is a privilege"–helps dispel the mistaken impression that a preexisting "right" has been reduced to the status of a "privilege." Moreover, the Department is not deliberately attempting to curtail inmate visiting with their families. Nor are any programming eligibility changes contemplated other than those otherwise discussed in this FSOR. However, it should be stressed that, in fact, inmates retain only those rights expressly noted in Penal Code §§ 2600 and 2601. The "right to visit" has, as noted above, been eliminated by the Legislature.

3170 (a)
NO VISITING DURING WORK ASSIGNMENT

The following specific comments and suggestions regarding visiting during work assignments are partially accommodated in the manner noted:

Several of the proposed regulation changes directly or indirectly discourage the establishing and maintenance of meaningful family and community relationships. The proposed regulation precludes inmates from visiting during their assigned work/training/education hours. Often,

however, an inmate is not participating in these programs through no fault of their own (the work supervisor/instructor/teacher is out sick, or in training themselves). Inmates should be allowed to visit in these circumstances. **[M-2, N-49, N-70, O-60]**

Inmates have minimal options regarding work assignments. It is unwise to refuse to work. However, if this work assignment conflicts with visiting hours, visits are denied as long as the inmate is assigned to the job. It does not seem unreasonable to allow an inmate a few hours out of their work assignment for a visit. No inmate work assignment can be that critical to the operation of a facility. **[N-33]**

If there were to be any amendment to this section 3044 should also be amended to create incentive for inmates to "program." This is too restrictive, considering some assignments do not afford inmates days off conducive to visiting. This in turn is counterproductive to the programming inmates. **[N-50]**

Some work assignments are indispensable to the institution, as are the inmates assigned to them. For some inmates their assignments are their only means of support. However, to deny an inmate visits due to their assignment seems inhumane, especially to their families. Inmates should be allowed at least one weekend a month for visits. Many visitors travel great distances and although inmates are responsible for advising their families of the visiting schedule, allowances should be made for special circumstances. **[N-46]**

Some inmate's work assignments are scheduled for all the same times as visiting; for instance, the visiting porter. Consideration should be given to those inmates, possibly allowing one day per week for weekend visiting. To rectify this problem, all institutions should provide a minimum of four days of visiting per week. **[N-45, N-49, N-71]**

Inmates should be allowed to visit anytime a visitor shows up for a visit, regardless of the inmate's work schedule or other programs. Inmates should be allowed to visit even if they don't work or go to school, visits are very important. Visitors have to rearrange their schedules to visit. We have to work for more money to survive, so we don't always have the opportunity to visit at the facilities' convenience. **[V-8]**

RESPONSE: The Department proposes two changes in § 3045.2 in order to address the issue of the loss of visiting opportunities because of work assignment conflicts. Added to the allowed uses of Excused Time Off (ETO) by Work Groups A and B is a new subsection (e)(2)(H). This rule permits inmates who have not had a visit in the past 30 days to use ETO during their regular work, training or education assignment in order to participate in regular visiting opportunities. In addition, the text of subsection (e)(2)(F) is expanded so as to allow inmates to visit with anyone who unexpectedly arrives and has not visited in the last six months. However, the Department is unable at the present time, largely because of budgetary, personnel and physical plant limitations to provide for unlimited, on demand visiting or make any other changes in programming limitations in visiting opportunities. Existing (and unchanged) rule 3045.2(e) allows approved work/training supervisors to authorize ETO time for visiting, including for family emergencies, authorized absences, and the arrival of out-of-state visitors. Finally, subsection 3170(a) has been repositioned to subsection 3170.1(b) for improved clarity and content consistency.

3170 (b)
VIDEO RECORDING DEVICES

The following specific comments and suggestions regarding video recording devices are not accommodated at this time for the reasons given:

We got in trouble one time cause he had a seizure. Thank God for your cameras, because I had an officer say that I was having sex with my husband and I lost my visit. I tried to tell that officer

that I didn't. She wouldn't listen to me and I had to fight for 3 months to get my visiting back. There was a Lieutenant who actually listened to me, he pulled that tape and said to me I'm sorry, you're right—you weren't having sex. **[P-36]**

The use of video recording equipment in visiting areas would serve a legitimate, non-intrusive security function. Yet as proposed the concept is extremely vague as to its mechanics. There are no rules described, no details of the operating guidelines, and no indication who will maintain and for how long videotapes will be stored. Will the tapes be available for viewing by Correctional Officers seeking to make a case against an inmate? This proposal would not be objectionable if proper controls were put in place. **[Q-75]**

Cameras being put into the visiting rooms are to stop the flow of contraband. You can count the ridges on somebody's fingernails; those cameras aren't being used to stop drugs. They're being used as voyagers to make sure that a man doesn't touch his wife's face; that she doesn't put her hands on his hair **[P-6]**

A video camera is to be used for surveillance. Correctional Officers patrol the visiting area. Inmates are always searched when they leave the visiting room. These procedures appear to be sufficient to protect public safety. **[M-5, M-15]**

This subsection deals with privacy of inmates and visitors as it relates to the visiting process. Although it states a general rule, with which we agree, (privacy shall be respected subject to the need to validate identity and enforce rules), it gives no guidance as to particular privacy-related issues that routinely occur. We have previously set forth our concerns, in writing, regarding these privacy issues, noting recurring unnecessary violations of privacy. We hope these concerns regarding particular privacy issues can be expressed to staff, and direction and limitations given. Unfortunately there are staff that believe visitors have no privacy rights when entering a prison. **[M-2]**

Several of the proposed regulations, including 3170 (b), directly or indirectly discourage the maintenance of "meaningful family and community relationships." **[N-49]**

Should exclude video recording in Family Visiting Units, Search Rooms, and Attorney consultation rooms. **[N-39, N-48, N-61]**

The proposed changes also diminish the possibility of meaningful communication during visits by using video surveillance equipment. **[N-30]**

At California State Prison, Sacramento, the visiting rooms are full of cameras to monitor the activities of visitors and inmates. **[O-24]**

I am aware that several institutions have video equipment in their visiting areas and routinely use them as devices to monitor sexual conduct. I don't believe this is the intended use of the equipment. **[N-78]**

Videotaping in the search room or strip-out area, is not justified because the Correctional Officers are present during the search. Stories already circulate about female Correctional Officers watching the video after visiting, as state-engineered pornography. **[Q-62]**

The video cameras were installed in the visiting area to stop the flow of contraband; instead they are now used to make voyeurs (considered perverts in our society) of the Correctional Officers and inmates out of the visitors. I believe that hundreds of thousands of taxpayer dollars will be spent by the department the first year of this rule just processing CDC 620s, Inmate/Parolee Appeal Forms, alone, and this is discounting the lawsuits that will be brought by visitors. **[N-70]**

RESPONSE: Consistent with contemporary penological interest and standard correctional practice, visiting areas are and have been monitored with video-recording devices for some time now. By this regulation the Department merely means to inform the public that this particular practice *MAY* take place at the facility at which their visit takes place. Commenters clearly hold opposing views or have leapt to unsubstantiated conclusions about the propriety or intent of the practice. Aside from the exclusions contained expressly in the subsection in question, controls and limits on the use of such devices are options operationally exercised by the Department. Finally, privacy "rights" are of necessity curtailed in correctional settings, for a variety of legitimate reasons, and quite often this is despite the wishes or desires of individuals visiting inmates. The Department is mindful of the contradiction.

3170 (c)
APPROVAL BETWEEN INSTITUTIONS

The following specific comment and suggestion regarding approval between institutions is accommodated in the manner noted:

We appreciate the Department's response to our concern that people had to reapply for approval to visit each time an inmate was transferred, but our experience tells us that the regulation needs to be more explicit. We suggest the approval should be without a new application. **[M-2]**

RESPONSE: The comment has been accommodated with the addition of the words: "provided the visitor's approval status remains unchanged." In addition, subsection 3170(c) has been repositioned to subsection 3172.1(g) for improved clarity and content consistency.

3170 (d)
TERMINATION, DUE TO EMERGENCIES

The following specific comments and suggestions regarding terminating visits due to emergencies are partially accommodated in the manner noted:

This section is too vague and would allow staff to cancel the visiting program at the drop of a hat by claiming an emergency, without sufficient justification. What constitutes an emergency? **[A, D, M-2, N-31, N-39, N-39b, N-41, N-48, N-51, N-68, N-69, N-72, N-81, Q-12]**

This would remove the ability of an inmate to have visits during periods of "lockdown" where visiting is authorized for those inmates not directly involved in the reason(s) for the lockdown. Individuals and groups should not be punished for the actions of other individuals and or groups. **[A, N-39, N-39b, N-48, N-69]**

Why are "lockdown" visits allowed at California State Prison at Corcoran and not at the Substance Abuse Treatment Facility at Corcoran? **[N-53]**

I am also concerned with the Department's policy to cancel or revoke visits at any given time and without warning. Again, families spend a lot of money and travel long distances to visit loved ones. It is unfair and inconsiderate for the Department to then turn away those families at its own discretion. Certainly the Department is aware of the implications of allowing its officers to hold visitation rights over inmates. Undoubtedly officers will abuse this policy and use it to their own advantage. **[Q-11]**

Often during lock-downs, there won't be visiting for any of the groups. We've been told repeatedly that the lockdowns are not to punish the entire group of people, that it's for safety and security of the institution. When Mule Creek inmates are on lock down, if their families have traveled over 250 miles they're entitled to behind glass visits and that's not happening. **[P-14]**

There should be an 800 number with a regularly updated message regarding visiting. [In] that way the visitor can receive up-to-date information regarding lockdown and similar situations. **[M-1]**

RESPONSE: Emergencies arising at Departmental institutions/facilities do necessitate the complete or partial modification of visiting schedules usually for limited periods of time (see further §3383—State of Emergency). The Department appreciates that such occurrences may significantly inconvenience prospective visitors, particularly those who may be in route at the time. For that reason, each institution/facility maintains an automated messaging system to advise of such circumstances. The message is updated and physical postings of emergency modifications are made "as soon as practical." Textual changes have been made in the proposed rule to make this procedure more understandable to readers. However, statewide budgetary constraints preclude consideration of a state-wide toll-free number for such purposes. In addition, to address the concern that staff might simply declare an emergency at whim, the rule has been modified to clarify that only the institution head or designee will determine that such emergency conditions prevail. Alleged irregularities or inconsistencies in the "lockdown" practices at a specific institution/facility are not germane to the adoption of regulations.

3170 (e)
NUMBER OF VISITORS

The following specific comments and suggestions regarding the number of visitor allowed at one time are not accommodated at this time for the reasons given:

Seeks to eliminate the discretion of the supervisor of visiting to allow more than 5 visitors at one time for any reason. Current policy allows for "special" situations like weddings and visitors who may be from another country on a temporary visa. There have not been any complaints to the Men's Advisory Committee regarding more than 5 people seeing an inmate at one time. The ability of the supervisor to make the allowance on a case-by-case basis is necessary. The quoted reason of "fair allocation of visiting resources" as the basis for denial should not be allowed. "Fair allocation of visiting resources" only applies where the inmate's non-work/training hours and/or days do not coincide with the facility-visiting schedule. **[A, N-39, N-39b, N-48, N-69, N-74]**

Regarding limiting prisoner's visitors to a maximum of five persons including children at one time: is there's any way that we could change that to read, "unless there is special permission granted from the warden or another person that he authorizes?" We do have families where this rule would subject a parent to having to choose which child they can take in or not, on a regular basis. Perhaps the norm would be no more than five persons. However, under unusual circumstances maybe they could allow for special permission from the warden or the warden's office. **[P-18]**

Does the limit of five visitors include infants? **[N-80]**

We have four children but I have to decide which two are going to come in with us. Will it be the boys today or will it be the girls? Where am I going to put the other children while I have the other children inside with me? **[P-17]**

The logical approach to relieving the overcrowding problem would seem to be to reduce the population. It would appear that a program designed in cooperation with the Board of Prison Terms to identify inmates with likely for successful reintegration into society and put them on the fast track to parole. **[Q-75]**

RESPONSE: As stated on page 2 of the ISOR, these rules are intended to reflect long-standing policy limiting the number of visitors as at any one time and to continue the "fair allocation of resources" clause in superceded § 3170(e), irrespective of Commenters statements to the

contrary. Careful consideration has been given to the idea of warden-level special exceptions, but the Department is not at the present time able to accommodate the suggestion due to operational limitations. In that infants are minors, yes, the five-person limit will apply. The Department is mindful of the fact that visitors may have to make potentially difficult personal decisions regarding which individuals actually accompany them on a particular trip. However, visiting is a voluntary act and such limitations do, in fact, have an operational basis. Reduction of the population incarcerated under the custody of the Department is a matter over which it has no control. On the other hand, subsection 3170(e) has been repositioned to subsection 3170.1(c) for improved clarity and content consistency.

3170 (f)
VISITING MORE THAN ONE INMATE

The following specific comment and suggestion regarding visiting more than one inmate is accommodated in the manner noted:

Suggested language for visiting with more than one inmate at the same time; (1) The visitor and the inmates are immediate family members and (2) the visitors have prior written approval from the institution/facility head or designee. **[N-74]**

RESPONSE: The Department acknowledges that the wording of this subsection as originally proposed was flawed and has accordingly revised it so as to specify that visiting more than one inmate at the same time requires that both are approved to visit in the same visiting room. In addition, subsection 3170(f) as refined has been repositioned to subsection 3170.1(d) for improved clarity and content consistency.

3170 (g)
DEVICES THAT DO NOT ALLOW CONTACT

The following specific comments regarding devices that do not allow contact are partially accommodated for the reason given:

I am concerned with the proposed language that leaves wiggle-room. For example: Existing language states in part… "Devices which do not allow physical contact between inmates and visitors *will not* be used except as necessary…" The proposed text stating in part… "Devices that do not allow physical contact between inmates and visitors *shall not normally*…" is open [to excessive] interpretation. **[Q-56]**

Seeks to change the criteria used to place an inmate on non-contact visiting status.
[A, N-37, N-39, N-39b, N-48, N-64, N-65]

RESPONSE: ISOR page 3 stresses that the revisions of this section are intended to retain former language "essentially verbatim," notwithstanding contrary interpretations as expressed by the noted Commenters. Although there are no hidden motives to be found in this subsection's textual revisions, the phrase "as punishment" is deleted from 3170(d)(2).

3170 (h)
VISITORS AND INMATES WITH DISABILITIES

The following specific comment regarding visitors and inmates with disabilities are not accommodated for the reason given:

Compliance with the requirements of the Federal Americans with Disabilities Act (ADA) is mandatory. Certain furniture (i.e.: high tables accessible to wheelchairs shall be available at all

institutions, wheelchair ramps shall be installed at every institution, etc.) and accommodations need to be made mandatory for all institutions and similarly situated inmates/visitors. **[A, N-31, N-32, N-39, N-39b, N-48, N-69]**

The Department agrees with the statement that ADA compliance is mandatory. However, certain design characteristics of visiting areas must also satisfy "the need to maintain order, the safety of persons, the security of the institution/facility, and required prison activities and operations." §3170(a) clearly states that it is the intent of the Department to establish a visiting process as accommodating as possible, *subject* to such needs.

3170.1(b)
RECEPTION CENTER VISITING

The following specific comments regarding reception center visiting are partially accommodated for the reason given:

The statement "all reception center visiting shall be limited to non-contact visiting" is a sentence that cannot be understood as written. **[N-37, N-65]**

Proposed text would allow only for decreased visiting time for reception center inmates, does not follow provisions of proposed 3170(e) or the current 3179(a). **[A, N-38, N-39b, N-69]**

Are there reasons why *any* prisoner who remains at the reception center more than 60 days should not receive regular visitation? **[M-2]**

RESPONSE: Significant rewording of the proposed text has been made in order to eliminate the confusion noted. However, the proposed rule does not conflict with other proposed or deleted rules because it's provisions apply only to reception center stays. Inmates are temporarily housed at reception centers before permanent assignment to a regular institution/facility. During this assessment and orientation period, limited opportunities for non-contact visiting are provided. In the case of disabled inmates—whose placement may be delayed because of their special needs–regular visiting opportunities will be provided. Because other inmates are not likely to encounter excessive (in excesses of 60 days) delays in placement and because of the operational and physical plant limitations of reception centers, able-bodied inmates cannot presently be afforded regular visitation opportunities.

3170.1 (c)
AD/SEG SHU, IMMEDIATE FAMILY

The following specific comments regarding Administrative Segregation and Security Housing Unit limitations on contact and immediate family visiting are accommodated for the reason given:

Allowing SHU inmates only immediate family visits is outrageous, ill natured, cruel and inhumane, a human rights abuse and/or punitive and/or lacks merit, a rational basis and/or is unfair and a constitutional infringement. **[M-10, O-23, O-38, N-19, N-53, N-76, N-84, U-1, U-2, U-4, U-5, U-7, U-14, U-19, U-21, U-29, U-30, U-34, U-37, U-45, U-46, U-51, U-54, U-62, U-66, U-67, V#6]**

To limit visits to immediate family members penalizes/needlessly burdens those prisoners who do not have immediate family members or have family members living far away. To deny SHU prisoners' visits from individuals other than immediate family and attorneys has grave consequences for those who do not have immediate family and/or an attorney, including leaving such inmates with no visitors. The wording should not be "immediate family only." **[A, K, M-1, M-6, M-13, N-69, N-76, N-82, Q-12, U-1, U-5, U-8, U-9, U-12, U-16, U-19, U-21, U-23, U-28, U-31, U-33, U-42, U-52, U-61, U-67, V#6]**

Cutting SHU-visiting to one hour is punishment. Each visit to my brother involves a 14-hour round trip drive and hundreds of dollars in travel expenses for both my mother and myself. And now, you propose to cut our visits by more than half. You say your reasoning for this is to fairly allocate visiting resources. Yet, every single time I visit my brother, including holidays, the 30 or so non-contact visiting booths are never filled to capacity. Restricting visitors to immediate family members and attorneys. This appears to me to be blatant discrimination against one class of prisoner. At the very least, it is a very gross assumption that all -prisoners again "pose a serious safety or security threat to the institution". This type of regulation is - first of all – in direct contradiction to your statement visiting is a means to maintain family and community relationships, because you are simply cutting prisoners off from their families and communities by doing this. You are also dramatically increasing the likelihood that when these prisoners are released—which they will be, because every year 110 thousand prisoners in the State of California are released–they are going to go out there and re-offend. This really doesn't say very much about your effort to improve any kind of public safety. And, it doesn't say anything about fostering family and community ties. **[N-39, N-39b, N-44, P-1, P-4, P-11, P-38, U-22, U-44, U-47, U-50, U-54, U-65, U-70]**

CCR §3000 describes immediate family members but it leaves out some vital family members such as uncles, aunts, cousins, nephews and nieces. There are many inmates who will have no family visits without extending this definition of family. It is prejudicial for the department to single out inmates who do not have immediate family as so defined. **[L, U-25, U-26, U-32, U-38, U-39]**

To limit such visits to non-contact and to one hour only places a great hardship on the family and friends of prisoners. Because SHU units are in remote areas of the state many hours are consumed each way for travel time for visits of extremely limited duration. The amount of intimacy and human contact achievable in one hour as opposed to two or three is minimal. **[M-1, N-76, N-82, Q-29, U-1, U-3, U-4, U-5, U-12, U-21, U-29, U-32, U-33, U-37, U-42, U-49, U-55, U-62, U-65, V#6, X-1]**

Despite existing rules allowing 1-hour visits, when I visit I have had only 30 minutes or less. 1-hour time slots for non-contact visits are inhumanely short. I would hate to see a one-hour visit become policy. **[P-9, U-3, U-29, U-31]**

It is common knowledge that many SHU-status individuals have burnt all their family bridges; all they have left are a friend or two. Many individuals in prison have a disruptive or dysfunctional family life that prevents them from creating and sustaining healthy relationships with blood relatives. A large percentage of inmates have no family—they are, in fact, former foster children who have never had much love or nurturing. Their "friends" are considered to be their family. **[M-7, M-13, O-23, O-38, U-2, U-11, U-21, U-22, U-67]**

Godparents, godchildren, spiritual counselors and advisors, in-laws, ex-spouses, life-time companions, mentors, members of support groups, school friends, family fiends, friends of the relatives of inmates, and non-immediate or extended family can mean a great deal to the inmate or may be the only reasonably close-by prospective visitor. These proposed changes would eliminate visits with these important individuals who are not defined by CDC as "immediate" family. If a SHU prisoner has a friend, a lover, or a domestic partner that fosters a loving relationship that connection should be celebrated, not severed. The more, the better, if other family members get involved in encouraging positive and constructive attitudes. If someone cares enough to travel a long distance to visit for a few hours behind glass, why not allow them to do so (assuming they are otherwise approved)? **[L, M-1, M-2, M-8, M-13, N-19, N-53, N-69, N-82, O-12, O-38, P-3, P-13, Q-12, U-2, U-3, U-4, U-5, U-7, U-8, U-12, U-16, U-19, U-22, U-25, U-26, U-29, U-30, U-31, U-32, U-33, U-35, U-36, U-37, U-40, U-41, U-42, U-49, U-55, U-57, U-58, U-61, U-62, U-63, U-64, U-67, U-68, U-70, U-71, U-72, U-74, U-77]**

I don't get to visit my husband that much as it is and now you want to take it away from husband, children and me. It's not fair that you are trying to play god. **[U-76]**

The new regulations are based on concerns of safety and security for visitors, inmates, and the institution. Limiting whom visits and the duration does not equate to safety and security. The PBSP was designed as a maximum-security prison. Therefore, to impose an elevated degree of punishment is unconscionable. **[U-8]**

If the mothers of the inmate's children and the inmates have never been married or are divorced and they have minor children, this regulation would not allow this mother to bring in her children. This will eliminate visits from the children thereby breaking down the family structure. **[U-25]**

There must be no restrictions imposed on who can visit, as long as those visitors have not violated any visiting regulations **[N-44, U-61, V-6]**

There is no need to have a written rule that imposes shorter visiting increments than are already provided at certain institutions and allowed by the existing regulatory language. **[M-1, M-16, N-48, N-69, U-31]**

This rule would further isolate inmates from the best and/or cheapest form of rehabilitative tool/aid for mental health available. The stronger the contact with the outside world, the lower the recidivism rate. **[A, K, M-1, M-6, M-8, M-13, N- 39, N-39b, N-48, N-69, N- 82, U-8, U-14, U-31, U-58, U-61, U-62, U-65, U-66]**

Longer visits would be beneficial to inmate, children and friends alike. It would help loved ones mentally and financially and be a better form of positive reinforcement. **[U-7, U-29]**

These proposed SHU visit changes do not stand up to the "legitimate penological interest" standard the department must show in order to demonstrate the need for their adoption. In contrast, they appear to work against the interest of an institution charged with, among other things, working to help sustain the incarcerated person's positive connections with the rest of society. **[U-31]**

CDC has safeguards in place already through the Visiting Application process to approve or deny any person wishing to visit an inmate. To arbitrarily deny all visits of non-family members will punish the innocent free person who may be a fiancé, a childhood friend, a priest or preacher, wreck already fragile relationships and, in effect, deny SHU inmates' relationships with friends. **[B, E, K, N-44, U-4, U-29, U-54, U-66, V#3, V#6]**

It is punitive for those who care for the prisoner because they can no longer visit ASU and SHU inmates. **[I, K, N-39b, O-13, U-1, U-12, U-19, U-37, U-76]**

The justification offered for limiting SHU visits to family members only is specious because all SHU visits are non-contact/glass-only. Visits take place in pristinely secure circumstances. If these measures aren't sufficient to ensure secure visits, a mother, wife or brother should no more be allowed to visit than a friend or former teacher? **[C, D, K, M-5, M-15, N-51, N-73, U-33, U-42, U-44, U-50, U-66, U-70]**

What drastic threat to institutional security provokes the prohibition of non-family members from visiting SHU inmates? How much more security can be put on a SHU inmate? All visitors must go through exactly the same security checks to enter a prison for a visit. The argument that other visitors present a security threat does not make sense, because all visitors must fill out a visiting application and clear a background check. **[N-77, U-9, U-29, U-31, U-66]**

The restrictions of this provision ignore the visiting rights of same-sex partners/relationships that are recognized under state law. Also, this policy is very unfair to gay people because they don't have the option of marriage. **[M-8, M-10, M-11, N-39, P-12, P-15, Q-39, U-62]**

This rule discriminates against "common law" couples and their children or prospective stepchildren. The children have no control over their parent's martial status, yet this rule makes it impossible for a child to see its parent with the other parent. Only if another "immediate" family member is willing to bring the child will visiting be possible. The provision is contrary to the department's claim to value visiting as a means for establishing and maintaining meaningful family and community relationships. **[J, K, L, N-39b, N-74, U-8, U-13, U-25, U-26]**

Any sanctions against these visits will simply impede a prisoner's right to build and maintain meaningful outside relationships, which have been proven to assist in parolee re-introduction into society. Since such inmates are held in virtual isolation or "patently inhumane" confinement (AKA: SHU "syndrome") the value of community contact would be of special import to successful reentry. **[A, K, L, M-1, M-2, M-5, M-8, M-13, M-15, N-39, N-39b, N-69, N-73, N-82, O-23, U-51, U-61, U-65, U-66]**

Absent human contact and communication inmates will become depressed and the chance to change positively will be diminished. Many SHU prisoners' relationship to the outside world and understanding of reality results from ongoing visits from friends and lovers. Visits are perhaps all that is left to tether inmates to the outside world in real-time, teach them how to relate to women, and share an emotional bond, among other things. **[J, M-6, M-13, N-44, O-23, P-9, P-15, Q-12, Q-77, U-7, U-31, U-61, U-62, U-65, U-66]**

Not only do visits assist in a prisoner's reintegration back into society, but for those prisoners housed in isolations units at Pelican Bay, visits can often times constitute the only human interaction they will have, and lend support to a prisoners delicate balance of sanity. **[N-82]**

Although there may on occasion be an isolated incident with a SHU prisoner's visiting etiquette, these haven't in any way been so threatening to safety and security as to warrant limiting visits to immediate family only as a blanket rule. **[U-22, U-31]**

Not only are these visits essential to the inmates, they are also a means by which the state can have leverage to influence the inmate to obey the rules, consequently the limitations of the new rules are absurd! **[U-21]**

The argument that all SHU inmates should be treated alike with respect to fair allocation of visiting resources fails to take into account the length of the drive made by the visitor or the "design flaw" that failed to provide sufficient non-contact visiting booths in the first place. There can be no justification for the lack of sufficient visiting space in such far-away sites. Visits twice the length currently allotted or twice the number of inmates could be visiting if the situation was otherwise. Moreover, at prisons where there is higher demand for visiting, visiting hours could be extended or another visiting day added. In addition more money could be budgeted for this program, which has been proved an effective way to keep incarcerated people connected to the rest of society positive ways. **[G, N-82, U-29, U-30, U-31, U-32]**

Was travel time taken into account when crafting this provision? **[N-69]**

The department attempts to assert and justify these proposed changes by alleging that there is some type of visiting space shortage, but this is a deliberate misstatement of the facts, as least pertaining to Pelican Bay, the SHU inmates of which will be most affected by these changes. There are many days when visitation is light. One visiting area is not being used for visitation. Therefore, the limit to one-hour visiting periods is not necessary and the prison has the ability to extend visits to several hours. **[J, U-4, U-8, U-20]**

To be turned away, after only one hour after traveling a great distance at great cost when there is plenty of room, is not right. **[U-32]**

There should be wording added to specify that if there is no over-crowding; the one-hour visit will automatically be extended to 2 hours. On light visitation days the length of time should be automatically extended to 2 or 2 ½ hours and so the wording should be changed to *will be* extended instead of *may be* extended. **[U-8, U-32]**

The discretionary element implicit in the clause "…may be extended depending upon availability and scheduling…" does not "comport" with the department's penological discretion under PC §2600. **[N-79]**

To unnecessarily limit inmate visits with loved ones to one hour and/or denying visits by other than immediate family, can only be construed as an added punitive measure/punishment when they have done nothing further to warrant it. **[O-38, U-31, U-50, U-54]**

I am strongly opposed to §3170.1(c). These changes only worsen matters for the inmate and visitor. **[N-2, O-10, U-25, U-26, U-43, U-53, U-73]**

You should make visits easier, not more difficult. You can do that without compromising security. **[P-30, U-62]**

If visits were limited to immediate family then it would mean that close friends of the opposite gender would have to get married to see them. Is that the message the state is trying to convey? **[U-21]**

By limiting SHU prisoners to non-contact visits we teach children anti-social messages and prevents the child from bonding in a loving way with their parent. **[U-1]**

At Pelican Bay State Prison, in the Segregated Housing Unit, the inmate's only means of communication is through visiting. Please consider this. **[U-75]**

PBSP has no shortage of visiting space. **[U-40]**

The provision for extension of visiting time is worded in such a way that invites abuse of discretion by visiting room staff. **[X-1]**

It would be very unfair to ask a person to go that far while providing transportation for the parent of an SHU inmate knowing you cannot even say "hello." **[U-67]**

I understand that you are considering stopping visiting with friends for inmates in the SHU program at Pelican Bay. When I visit my son I have to travel with friends, therefore, if you stop visiting from friends and inasmuch as I am 67 years old, I may never get to see my son again. **[U-56, U-59, U-60]**

To visit and be personally able to see that the well being, health and safety of a non-immediate family member is being met is a citizen's right. **[U-34]**

The limitations of this provision would be for no set period of disciplinary time, as indeterminate SHU status would mean, in effect, "forever." These inmates are being deliberately targeted. As a life prisoner serving an indeterminate SHU term with a chronic illness it is possible that I will never live to see or visit my non-immediate family thanks to these new limitations. **[J, U-22, U-40]**

I find it outrageous for the department to suggest that SHU inmates pose such a safety or security threat as to justify the changes proposed. I see no threats posed to the guard or institutional security when processing inmates for visiting, all I see is administration and guards not wanting to do their jobs escorting inmates to see family and friends. **[U-52]**

By implementation of rules that would cut down on visitation, the department would adversely impact local businesses that would otherwise sell services and/or provide commerce to transient individuals. Precluding visits from clergy contravenes constitutional provisions upholding freedom of religious belief and exercise. **[U-13]**

It seems that these guidelines are trying to discourage visiting/dissuade even larger numbers of people from attempting to spend time with prisoners. **[M-6, N-30, N-44, P-36, U-4, U-33, U-42]**

This rule is but another example of the department's "deliberate indifference" to those confined within SHU and is being used as a draconian tactic to send a message to [set an example for] those in the general population where the real problems occur. To use SHU inmates to maneuver the general population is totally wrong and a low blow. **[K]**

I am in agreement that inmates who have not obeyed the rules and been sent to ASU should have limited non-contact visits. However, I also feel that ASU is not always used in the manner for which it was designed. **[N-72, U-7]**

Not everyone in SHU is there for "violence or weapons possession", as the department would have everyone believe. There are plenty of assessed SHU terms for non-violent acts. I believe the stated security concerns are baseless. **[A, J, K, N-39b, N-44, N-48, N-69, U-31, U-33]**

The purpose of this rule is to treat inmates inhumanely and eventually completely end inmate visiting or close off the prison/ "gulag" from outside scrutiny. **[D, O-23, O-38, U-7, U-14]**

The fact that you could even consider cutting visiting hours, when people drive up to a thousand miles to visit their family, is unbelievable to me. It's hard for me to believe that human beings are capable of such cruel actions. For many people inside the SHU and also inside other prisons, their [immediate] family members cannot come to visit them. So, if you deny them the right to have non-family members visit them, you will in fact, isolate them from all of society for years and years and years. This is unconscionable and inhumane. I think that the sole purpose for this kind of restriction must be the collective punishment of people who are in prison and our families. And that's unacceptable. You're supposed to be innocent until proven guilty. No rule of law that says that an entire class of people, entire population of people should be punished for the transgressions of one or two. If there is indeed a problem with visiting room resources at Security Housing Units, staff should be expanded so that people can come and visit and have longer visits, not ones that are cut to 20 minutes or an hour. **[P-28]**

The proposed change will further act to increase the "hopelessness and exile" of these inmates, many of whom are forced to seek rehabilitation, education, spiritual growth and correspondence courses on their own from outside groups because the department does not offer nor encourage such opportunities for SHU inmates/there is nothing offered SHU inmates for social rehabilitation. **[J, U-66]**

Since Christ commanded everyone to visit those in prisons and hospitals to facilitate healing, secular law and regulations in violation of this commandment blocks the public from doing their required service to humanity. There can be no morally or legally understandable or acceptable justification and the provision amounts to an outrage. Isn't the real intent to block priests, preachers, and advocates from having inmate contact so they cannot report back to the media on the horrors of the SHU? **[M-7]**

I would like for visiting, for all visitors, to continue for inmates housed in the Pelican Bay State Prison, Security Housing Unit. **[U-69]**

Penal Code §2600 guarantees the right of prisoners to receive personal visits that may be "restricted" only as "necessary" for the reasonable security of the institution. CCR §3170.1(c) does not meet this reasonable necessity requirement because SHU inmates are already

restricted behind glass and secured. Inmates subjected to such conditions do not impose security risks, especially is a visitor is willing to submit to a strip search. **[K]**

Proposal is in direct conflict with CCR §3343(f). **[U-50]**

This rule removes the statewide "standardization" which the department claims to be achieving with adoption of these changes. The term "local procedures governing visits" is contrary to the entire alleged intent of this policy change. **[N-39b]**

The warden should have the discretion to allow visitation by such persons. **[M-2]**

This rule remains open for discussion. If a prisoner has been assigned to a SHU program, then it probably has been for a good reason, and some privileges should be suspended. On the other hand, I feel the question of denying access to the media and friends should be decided at the discretion of the person in charge. **[N-41]**

Subsection (c) should read in part that inmates assessed a SHU Term will be permitted to visit with immediate family members and attorneys only provided prior "verification and documentation" is completed. **[N-47]**

Will the language "Inmates assessed a SHU term will be permitted to visit with immediate family members and attorneys only, regardless of housing;" apply to prisoners confined in SHU who are classified "Indeterminate" without disciplinary charges—SHU assessment for rules violations? **[U-78]**

RESPONSE: The Department clarifies and changes certain provisions of this rule relating to inmates assigned to Administrative Segregation and Security Housing Units (SHU). Emphasis has been placed on *eligibility* for non-contact visits, as opposed to *ineligibility* for contact visits. While requiring visitors, in accordance with established practice, to make appointments to schedule such visits has been added; limiting inmates with SHU terms to visiting with immediate family and attorneys only has been dropped completely. The one-hour increment-scheduling basis for non-contact visiting has been deleted from this subsection. It reappears significantly clarified, in subsection 3172.2(d) where there had been a textual redundancy, now eliminated.

3170.1 (d)
DRUG RELATED OFFENSES

The following specific comments regarding limitations on contact visiting are accommodated for the reason given:

If the department's rationale for this rule is to deter inmates with drug trafficking propensities, why then ever allow inmates with that conviction to have a contact visit? What will change in that first year that would lessen the propensity? It seems that that a less restrictive means of dealing with those suspected of drug trafficking would be closer monitoring, more thorough searching after the visit, or a trial period of less than one year for non-contact visits. **[M-1]**

Aside from the questionable legality of such a regulation, there is no evidence to suggest that visitors of those with such commitment offenses are more likely to bring in drugs than any other visitors, or even that prisoners with such commitment offenses are more likely than others to traffic in drugs inside prison. Therefore, there is no justification for excluding this group of prisoners from contact visitation for any period of time. **[M-2, M-10, N-50, N-78, O-29]**

PC §2600 states that prisoners are entitled to all privileges and liberty interests unless there is a legitimate penological interest for their denial. These are our "guaranteed rights." If a prisoner commits a criminal act while in departmental custody, it is then justifiable to take visits away [as

punishment]. But to presume a class of offenders will do something and to take away a liberty interest constitutes a Bill of Attainder (i.e. punishment of an easily identifiable class for the status of their offense without benefit of a trial). **[N-45]**

Also, it constitutes a 14th amendment due process violation by imposing deprivation without benefit of due process for a specific offense that merits such deprivation. **[N-45]**

Inmates convicted of drug-related crimes should also be allowed to have physical-contact visits as long as they are enrolled in a drug rehabilitation program. **[V-8]**

Proposed rule is in conflict with §3044(a)(5) and there is no valid penological interest served by such a limitation. **[N-75]**

Any proposal to reduce the non-contact visiting time to less than a year would be inconsistent with existing disciplinary rules. **[M-16]**

This provision should be expanded to include inmate guilt for the specific act of refusal to provide a urine specimen as documented on a Rules Violation Report. **[N-88]**

The rule that does not allow former inmates to visit already covers any potential problem well enough. **[M-7]**

I am sure the department's current screening process is capable of preventing infractions. **[Q-43]**

At no time should prisoners be denied visits. Very few visitors cause problems and it is wrong to punish the all for the bad deeds of a few. All prisoners should have the right to contact visits once housed on a mainline unit until their actions cause them to lose said right. **[N-35, N-75]**

With respect to calculating the first twelve months of incarceration, it can be anticipated that the department will seek to disallow the amount of time that an inmate may have been incarcerated by local authorities prior to CDC commitment, in a manner consistent with their practices for other privilege and program access. This provision will also preempt other, separate Title 15 provisions respecting drug offenses committed while in the custody of the department—hence, inmates may be denied contact visits for a year after drug-related rules violation after incarceration. While the department might be congratulated at attempting to block the introduction of drugs into the institutional environment, they are ignoring some of the fundamental tenants of treatment for drug addiction, that being family support and reconciliation. Moreover, denying such opportunities does not deter substance abuse. **[M-13, N-82, O-23, U-14]**

A large majority of prisoners do not actually use drugs or alcohol while incarcerated. Visitors bring a very small percent of the illicit substances smuggled into prisons. Moreover, a prisoner with a substance abuse history who does not undergo any serious treatment for the problem in prison is likely to relapse after release. Yet, nationally, the percentage of those provided with substance abuse treatment while imprisoned dropped from 17 to 10 % during the 1990s. So obviously, a large number of prisoners who would benefit from such treatment do not receive it. It would be a more productive and rehabilitative use of imprisonment to enroll a drug convict in a substance abuse program, rather than denying them contact with the outside world based on a slim and hypothetical chance of smuggling illicit substances. **[M-13, P-4]**

This new regulation is also in direct contradiction to the wishes of the California electorate as evidenced by the passage of the Substance Abuse Act (Proposition 36) providing for treatment rather than imprisonment for certain drug offenses. Clearly Californians recognize that substance abuse is a disease not a crime and should be treated accordingly. The new regulation metes out punishment with no regard to the will of the voters of California. **[M-8, M-10, N-82, O-28, O-41, P-15]**

I am extremely concerned and distressed to learn that the department has plans to restrict visiting rights of citizens convicted of certain drug offenses, when statistics show that the majority of our prison population is incarcerated precisely for that reason—offenses related to addiction. **[N-26]**

Non-contact visits are extremely inconvenient for visitors because the offenders are normally housed at a distance from their families. The family has to travel and incur expenses for visits of only an hour behind glass. The solution to such substance abuse problems is not to further criminalize addiction, but to mandate treatment. **[N-68]**

Since the department has admitted there is insufficient space for non-contact visits throughout the system, it seems contradictory to further overburden existing facilities with yet another limitation on contact visitation such as this. The department has not taken into account the fiscal impact of adding booths, phone lines and court costs for the challenges to these provisions. **[A, N-6, N-39b, N-48, N-69, N-74, N-76, N-85]**

The Courts have already imposed the punishment for this type of crime, and now CDC is attempting to pose yet another punishment. If the department's rationale for this rule is to deter inmates with drug trafficking propensities, why then ever allow inmates with that conviction to have a contact visit? What will change in that first year that would lessen the propensity? It seems that that a lesser restrictive means of dealing with those suspected of drug trafficking would be closer monitoring, more thorough searching after the visit, or a trial period of less than one year for non-contact visits. **[P-1]**

If a prisoner comes into the system as addict and receives no immediate treatment to conquer their addiction, they will continue to require their drug of choice just to control the pain and be able to more about in their institutionalized environment. Preventing the consolation of contact visits with family and friends is not going to cure their need for drugs. Without help and motivation to overcome addition their need will continue and this need will, you can be sure, be satisfied by others who have access to the inmate Instead of providing rehabilitation, a first-time drug offender receives no contact visits for the first year of incarceration, [proving that the department] wants inmates to dive deeper into their addiction to cope with the limited contact with their families and to cope with the psychological torture of prison alone. **[O-23, O-41, P-4, U-14]**

In addition to invoking cruel and unusual punishment on both inmates and family members, this is a highly prejudicial and unsubstantiated regulation implying that only drug addicts or accomplices would visit an inmate convicted of drug use or that all inmates with drug-related convictions are going to engage in such enterprises while in prison. **[D-37, M-7, N-45, N-73]**

I object because this does not help maintain meaningful family and friend relationships and, moreover, nor a court or the Legislature has mandated such a rule. **[C, D, M-10, N-73, O-29]**

The department claims that it will "prevent these individuals from immediately continuing their enterprise," but how could they start manufacturing drugs in a prison? The department, by virtue of its own approval screening process should reasonably be able to prevent these individuals from continuing their enterprise. **[A, N-6, N-9, N-39b, N-48, N-50, N-69, T]**

Inmates who are determined to continue any drug enterprises will achieve it, regardless of limitations set on them. Non-contact visits will not staunch the supply of drugs reaching drug-addicted inmates. **[B-22, N-45, O-23, U-14]**

It is the department's own statistic that only 3% of all contraband, non-permitted items, commodities and substances come through the visiting area, quarterly packages and the mail. **[N-78]**

Non-contact visiting is inhumane and seems extraordinarily cruel in cases of clinical depression/suicidal ideation, because of the deprivation of physical and potentially healing touch.

Taking away the physical contact needed to sustain oneself and nourishment of the body and soul serve no purpose to the safety and security of the institution/facilities but rather increases suffering. **[N-73, N-78, O-23, Q-53, U-14]**

Discriminating against a certain type of inmate by withholding contact visits with their loved ones can only be called callous! Here you are implying that only persons sentenced to a prison term for drug-related offenses are suspect to having their visitors supply them with drugs, while on the other hand you suspect EVERY visitor of doing so by virtue of previous and current changes to visiting rules like: a) taking family visits from most families regarding of the commitment offense; b) subjecting all visitors to contraband searches by alternative methods. **[N-39b, N-74, P-1]**

The department has made no finding that all drug-sales/manufacturing offenders intend to sell drugs in prison. Using such logic, a murderer should not have contact visits due to the likelihood of murdering a visitor. A reasonable alternative would be to deprive those with a record of sales/possession in prison from such visits. **[N-28, N-35]**

The proposed change would have a devastating effect on prisoner's chances of rehabilitating themselves and would cause tremendous hardship. **[T, Q-39]**

The proposed regulation is too broadly written to serve a narrow purpose, the ratio of drug-sales convict to drug seller/possessor is highly disproportionate. Is a known drug user presumed to be a dealer, even without a conviction for such on his/her record? How can the department categorize all drug user inmates as dealers? **[N-28, N-69, O-29]**

The aim of this change appears punitive, further punishing an individual for his or her crime once in prison or for being a certain class of prisoner and moreover violates international human rights standards **[M-8, M-10, M-13, N-46, O-29]**

The department cannot impose more punishment for a crime than that already imposed by the court unless a new offense occurs while incarcerated with the department. To do so constitutes double jeopardy. Being in prison is already punishing the inmate. Drug trafficking should be a separate safety and security issue. The department is implying that only drug suppliers will visit drug offenders. The families have not been convicted; therefore the department is discriminating against them by making an unsubstantiated assumption. **[B, E, N-70, N-73, P-28, V-3]**

It constitutes an "ex post facto" violation, increasing a person's punishment by taking away a liberty interest beyond the court-imposed punishment and by aggravating the seriousness of the past offense and extending to impact of punishment for it after the fact. **[N-45]**

Once someone is in the prison system, the primary purpose should be how to make this person better able to live as a productive citizen once released, not adding an extraordinary form of punishment, as this rule appears to be doing. **[Q-23]**

The inmates subjected to the limitations of this provision are in dire need of human and physical support and contact by family and friends, particularly in the first year of incarceration. The rule is counter-productive to the recovery and rehabilitative process. They need extended, not restricted visits to heal and rehabilitate. Reduce this 1-year prohibition. **[M-6, N-6, N-9, N-19, N-21, N-22, N-46, N-53, N-78, N-82, O-28, Q-43, T]**

This is one of three proposed changes that diminish the possibility of meaningful communication during visits, by inhibiting discussions between inmates and their visitors and thereby impeding realistic future planning and rehabilitation. **[N-30]**

This is a liberty interest, and all inmates have an "entitlement" to all liberty interests unless there can be a just cause for taking it. Otherwise, it is "wanton infliction" and "oppression" in violation of the "cruel and unusual punishment" prohibition clause of the Eighth Amendment. By so restricting

visitation rights isn't the department really encouraging the use of visitation as punishment—not only for the inmate but also for their family? **[N-45, Q-82]**

One of the comforting factors to anyone who has lost a family member to prison for this reason might be that drug dependency problems would at least be eliminated during incarceration. The family often hopes that with their continued love and support and rehabilitation, the inmate might emerge from prison drug-free. Is the purpose of this regulation to psychologically torment and alienate recovering addicts and their families? They were sent to prison as punishment, not FOR mental cruelty. **[M-7]**

Prohibiting contact visits for the first year of incarceration appears problematic because such a rule punishes or will have a negative effect on the family members and friends who visit their loved ones. **[M-11, N-27, N-67, O-31, Q-82]**

Nearly 47% of women prisoners in the California system are serving sentences for drug-related offenses. These women have already been removed from their children by their imprisonment. Restricting them to non-contact visits only for the first 12 months will only increase their physical separation and make reunification more difficult. A key to successful reunification is quality visitation throughout the parent's incarceration. Quality visitation implies physical contact, especially with a child visitor, which can't take place if the parent is forced to visit with their child behind glass in a non-contact booth. **[M-11, P-13]**

We request that is provision be softened, or a provision allowing discretionary relaxation or wavier be added, with respect to mothers who are imprisoned. Denying a mother and child the possibility of simple touch for such an extended period seems excessively harsh. **[N-23]**

Over 43% of women and over 27% of men are imprisoned for drug offenses. Most of these women and many of these men are parents of minor children. This rule would prohibit physical contact between parents and their children and would be particularly detrimental to the mother/child relationship. **[M-5, M-15, N-51, O-20, O-43]**

What affect will this limitation have on children? Clearly this is not in the best interest of the children. Many addicts are also fathers and husbands. Children do not understand why they cannot see their father and in that amount of time would tend to forget him. This directly affects the children of these offenders who will again be victimized by substance abuse. **[D, M-5, M-7, M-15, N-23, N-41, N-51, N-67, N-68]**

Is the inmate and family members really prepared to explain to a child the reason why only non-contact visits permitted? Will the children be lied to and be given a story which only encourages negative thoughts [and attitudes] about laws governing society? This issue needs to be discussed in great detail before a final decision is made. **[N-41]**

To subject <u>all</u> inmates to such restrictive rules is [an] …unnecessary provocation [upon] …their current status. Just as some [inmates] need more punishment and restrictions, some [others] need more correction and rehabilitation [opportunities]. **[N-29]**

Being denied freedom is sufficient punishment, and it is not necessary to overwhelm the human mind with excessive punishments. Such mental abuse can only result in an individual more hateful of our social system, thereby creating a continuing mentality toward criminal behavior. **[W]**

Childhood friends, fiancés, foster parents would all be prohibited from visiting prisoners who desperately need social contact and support for survival. Denying drug-related offenders visits from their mother or wives does not seem reasonable or beneficial to rehabilitation. Mental breakdown will worsen and is already at shameful levels. **[M-7, N-22]**

Prohibiting contact visits is not the least restrictive means to prevent drug smuggling. Visitor searches, monitoring personal phone calls and correspondence and now cameras in visiting areas would be a better means. **[N-76]**

Just by proposing such change indicates that department is not using common sense; it has ample authority to control the situation without making it tougher than it is for visitors. Correctional officers can do their jobs and identify these people as they are caught dealing and punish them accordingly. **[N-44, V-4]**

I am writing to express concern with the measure of not allowing visitors to see their loved ones that have been imprisoned as a result of their drug use. It is not clear to me how any kind of rehabilitation would be more effective than the nurturing support and positive reinforcement [received by visiting]. If there is anything that helps drug "offenders" recover, it is the love of family and friends who can re-enforce important lessons in life and encourage them to reflect upon what they have been forced to give up by making bad decisions in life. **[Q-82a]**

Commitment offenses should be verified prior to scheduling the visit and documented on a visiting Chrono that can be maintained in the inmate's visiting file and AVIS system. Ineligibility for contact visits for the first year will be verified and documented and forwarded to the visiting department. **[N-47]**

One supposes that newly confined drug dealers might try to pressure their family into smuggling drugs in to them on a visit, it might happen, but it might just as likely not. Yet all such prisoners and their families would be pre-punished on the grounds that it may happen. Why not catch the prisoner and family member in the act and punish just them? Isn't that the way the law is supposed to work? Aren't there enough cameras and monitors to see within the visiting room? **[Q-74]**

Current rules are already in place for the prevention of visitors bringing contraband and/or drugs inside prisons. This rule is singling out certain visitors, not convicted of any crime, for special and discriminatory treatment with respect to visitation. **[N-44, N-74]**

Families of prisoners are not to be judged criminals. Why do you need more ways of ultimately punishing the family? **[M-7, N-67, O-31]**

This change probably should apply only to those who have priors for bringing drugs into an institution. **[N-80]**

Twelve months is a long time to separate people. A twelve-month wait is ludicrous. A year of separation is an unreasonable time frame and we recommend you strike this one entirely. Separating anyone from his/her family for an entire year (especially when phone call costs are phone call costs are prohibitive as well) is horribly cruel. Letters don't work for those who are illiterate or barely literate. Puts an extreme mental and emotional hardship on the family. **[M-7, N-14, N-35, N-67, O-28, O-33, Q-33]**

If the department is presuming inmates will continue drug activities immediately following incarceration, nothing in this section prevents them from trying to do so; it will just deny the majority from establishing and maintaining meaningful family relationships. **[N-45]**

I ask you to put yourself in the place of someone sent to prison and then completely isolated from direct contact with family for an entire year. Then think about how it would be if you were the prisoner's family member and could not have direct contact with the inmate for a year. If the reasoning behind this punitive restriction is to "prevent crime" as a deterrent, please be more realistic. Don't err by making unsubstantiated assumptions about what is an effective deterrent. If you want to prevent, work on what is being taught about moral values in grades K-8. Take a long hard look at the current course curricula. **[Q-53]**

The proposed regulatory change is a disgrace and insult to the American Constitution and, more specifically, to the Eighth Amendment because this change intends to inflict "cruel and unusual punishment." In addition to being illegal, the proposal is immoral and lacking any intelligent analysis of future consequences. I am concerned in any regulation that gives too much power over our freedoms to government officials. Already lacking a foolproof system, why accept a change that adds exponentially to the faults of the present system? Studies demonstrate abuses by prison guards and other staff. In addition, psychological studies show that the mere context of the prison makes staff susceptible to corruption. These studies should be referenced before enacting such changes. **[N-70, N-75, O-41, W]**

We adamantly oppose this provision on the grounds that this measure is about further punishing and controlling prisoners. It goes too far, it makes you the perpetrators of a crime far worse than most committed by the prisoners you're trying to affect: The crime of utter inhumanity and cruelty. It is unconstitutional and should not be approved. **[M-9, N-75]**

I'm opposed to people who go to prison for sales of drugs and not being allowed a contact visit especially when others have committed more serious offenses. **[P-26]**

There is no validity for this restriction because there are extensive security measures already in place that deter most acts of misconduct and contraband introduction. This rule is discriminatory and "lumps" everyone in the same category by saying there is the propensity to continue his or her enterprise. Given the extensive measures already in place, and the fact that the inmate is under direct and constant supervision by custodial staff, this amendment appears to be excessive and extreme and another veiled attempt by the department to create an additional "sub-class" of inmates. **[N-50]**

Visiting is a tool to help insure good behavior and removing this tool from the staff will not aid the already uneasy relations between staff and prisoners. What it will accomplish is added stress and anxiety on families, loved ones of the prisoner and most importantly, the prisoner. With heightened tensions there will be more prisoner/staff and staff/ prisoner assaults. Prisoners come back from visiting with a better attitude, calmer and more controlled in their actions; thus making the C/O's job safer. Remove physical contact with their own species and the mammal becomes unpredictable, psychotic, often violent or withdrawn and suicidal. Is this going to be the new excuse for using "Prisoners for Target Practice?" I see this as another extreme control device born of vengeance and ignorance of what makes a human being want to try to conform to the laws and rules of society. **[N-70, T]**

In implementing this procedure the door is opened for the department to implement the same ridiculous guidelines for incarcerated inmates convicted of an abuse charge for the safety of a potential visitor(s) or implementing this guideline for all incarcerated inmates for the safety of the institution/facility and/or its visitors. **[N-50, N-78]**

A silly and pointless rule; similar to those enforced in Texas. **[N-25]**

But, the reality is that year after year CDC takes steps to erode the only contacts that we have with our loved ones in prison. **[P-1]**

Given the potential for misuse of power by correctional officers, this provision empowers them with yet another means [by] which to hold us emotional hostage to the visiting room rules and regulations. **[N-78]**

The media has reported many abuses of guards supplying inmates with drugs and very few incidences of families bringing in drugs. The search process is thorough for families but not for guards. We suggest cavity searches for all guards before and after each shift as a solution to this problem, as opposed to non-contact visitation. **[M-7, N-46]**

These people need to be touched. You are going take people who have drug problems, put them in the first time and give them no contact visits. Well, giraffes, hippopotami, dolphins, primates; any mammal has to be touched or they lose what little mind they have. They become far more aggressive, and they become meaner. **[P-6]**

RESPONSE: The Department deletes the provision.

This is a logical change and will hopefully prevent some of the unfortunate drug smuggling. **[O-50]**

RESPONSE: The comment is acknowledged, however, the provision has been deleted.

3170.1(f)
EXCHANGING ITEMS

The following comments regarding item exchange are accommodated [or irrelevant]:

Visitors should be allowed to take out any food items bought at the prison if they are not consumed during visiting. The food items sold at the prisons tend to be very costly, and many families cannot afford to simply throw away such items. Yet it is not always possible to accurately predict how much food the prisoner and visitor(s) may consume during the visit. Waiting to purchase food until when ready to eat risks empty vending machines and no food at all. Purchasing early in anticipation of eating later runs the risk of several uneaten food items, especially it the visit is terminated due to unforeseen circumstances such as overcrowding or "eyes were bigger than stomach" at the time. What justification is there for demanding that such food items be thrown away instead of taken home with the visitor? **[M-2]**

It is beyond my understanding why I cannot take the leftover bag of popcorn or candy bar that I purchased in the visiting room to finish while driving back home in case I start to get sleepy. This rule makes no sense at all. **[N-67]**

There should be added: "…and also, purchased photos can be retained by either visitor or inmate." **[N-45]**

There was a lot to be said about attorney contacts. One of the things we're working on right now is the habeas corpus, and the only way we can help our son do this because there are no more monies to support an attorney is that we help him by commenting on his written work and it goes back and forth in the mail. Sometimes, it takes as long as two weeks for a packet of materials to get to an inmate inside and then to come back. Families who are helping inmates with their habeas corpus should be allowed to bring their documents into the visiting room and work on them. **[P-3]**

The proposed text is unnecessary and vague; the current text of § 3173(j) is very specific. **[A, N-39b, N-48, N-69]**

RESPONSE: The text of the rule prohibiting visitors from removing food purchased in the visiting area at the conclusion of the visit must be retained for security reasons. While this rule will not permit a visitor to bring in and the inmate to examine a legal pleading, the Commenter may wish to seek the pro bono services of a legal service organization. To help dispel the confusion some Commenters have expressed regarding food and the related issue of the removal of photographs taken in the visiting area, selected portions of the text of this subsection have been repositioned or added to for clarification. Finally, the superceded language of § 3173(j) pertains solely Attorney Visits, which is not relevant to the subsection presently under consideration.

3171(a)
PROCEDURES FOR EACH INSTITUTION

The following specific comments regarding procedures for each institution are not accommodated for the reason given:

Since [the] subsection instructs warden to maintain visiting procedures, this is an appropriate place for inserting the Dept. mandate as to visiting. Warden should be instructed to maintain procedures that: 1) emphasize value of visiting program; 2) promote efficiency in visitor processing including sufficient staffing; 3) strive to improve visiting conditions, 4) accommodate visitors with special needs, 5) address the training needs of visiting staff; 6) allow for visiting during lock downs whenever consistent with safety & security, 7) minimize the cancellations or termination of visiting including for overcrowding, 8) encourage staff to treat visitors with respect. **[M-2]** *and* 9) attempts to mitigate circumstances that result in denial of visiting for a given day. **[M-16]**

The general policy should expressly state that these regulations govern all institutions; any deviation requires approval of the Director. **[M-2]**

Rules should be kept to a minimum and should be fairly enforced. No new rule should be enforced without at least four weeks notice (to prisoners via memo and to visitors via posted signs that are conspicuous to all visitors) of intent to change or add existing rules. **[M-2]**

Opposed to rules made up on the spot to agitate inmates or their visitor, which then becomes a "current practice". This often leads to an institution procedure or policy, which has not been reviewed by the Director's office and submitted to the Office of Administrative Law, in compliance with the Administrative Procedures Act. **[N-48]**

The current inconsistencies of the regulations already pose obstacles to visiting, but are not addressed in the proposed changes, which are suppose to standardize everything system-wide. Please standardize the visiting regulations —there should be conformity of regulations for visitors in writing. It appears these regulations vary from each institution. **[N-53, N-55, N-83]**

I do think there does need to be some regulation and standardization of the rules, because there is a lot of arbitrary discretion specifically relating to the guards implementing changes. **[P-35]**

Although the stated purpose of these revisions is to standardize and make uniform the visiting rules at all institutions, the proposed regulations will not accomplish that. In many areas they list actions and/or items that are prohibited but then expressly state that the list is non-conclusive (prohibited items/actions "shall include *but not limited to*"). That allows the continuation of the current practice, which is that each institution has its own list (often unwritten) of items/actions that are prohibited. **[M-2]** *And*—merely reinforces confusion encountered when inmates go from one prison to another & allows each prison to circumvent the requirements of APA. **[A, N-39, N-39a, N-48, N-69]**

Does not standardize visiting procedures statewide. Currently, in the 33 prisons that we have here in California State system, we also have 33 different rules. So that means if I go and visit my brother on-in one prison, my husband in another, and maybe a friend in another, I'm going to have to try to remember three different rules on how to get in there because each one of them has their own. Now you claim that you want to standardize all these rules, and my question is: "what are you doing to standardize?" My question to you is how do you expect us to follow your rules, when you don't follow your own rules? There is something wrong here when and you're asking us to do certain things, yet the very first rule on the paper, on the pink cover paper says it is suppose to be posted. It has not been posted in most prisons. Not for the inmates, nor the staff. Will people who do not know the rules and regulations that will be send people back for

unauthorized items? There's nothing that's been changed directly. The information does not go out to the visitors. Visitors come from far away for the very first time. They might have been visitors from another prison, but if you don't know what that prison is going to require you've got to start all over again. It's just very, very frustrating to family members trying to please the staff so we can go in there and have a normal visit. **[P-18]**

No mention of bilingual written summaries of visiting rules. They would be very helpful for non-English speakers to better ensure understanding of and compliance. **[M-1]**

RESPONSE: As has already been pointed out on page 28 above, the text of the visiting regulations being repealed by this action was last amended to their present language in 1983. In the nearly twenty-year interval following, visiting rules as published in Title 15 of the California Code of Regulations have not been revised. Instead, separate procedures ["Local Rules/Plans of Operation] for inmate visiting enforced at the respective settings have gradually supplanted uniform rules with statewide applicability. As pages 1 and 4 of the ISOR point out, the reason for the present action is reimposition of updated statewide standardizing rules. Henceforth, local visiting procedures will augment and not (as they do presently) supplant or substitute for the statewide regulations. Accordingly, the existing regulatory language mandating "conformity" of local plans to the statewide rules is retained in this subsection. In addition, the phrase "not conflict with" has been added to replace the superceded text of §3171(a) that required the Director's approval of local plans of operation. This revision permits local procedure or practice in conflict with the readopted and revised statewide visiting rules to be appealed by the public or inmates in accordance with the provisions of proposed §3179.

Regrettably, the ISOR did not contain background sufficient for the commenting public to fully understand the motive behind restoring the primacy of statewide visiting rules. Consequently, a number of Commenters drew erroneous conclusions, such as: The Department is incapable of establishing standardization because of differences in local operation plans; Local rules are adopted and enforced in violation of APA requirements; and the existence of non-inclusive phrases are intentional loopholes in order to allow the continuation of current unacceptable practices including made-up rules on the spot.

In addition, the Department feels it would be confusing to impose on institutional heads a separate Departmental mandate on visiting, the dictates of which would be for the most part beyond the immediate control or decision-making responsibility of the official in question. Finally, a Spanish language version of the Director's Rules, which incorporates the visiting regulations, are made available to Spanish-speaking inmates who cannot read English accordance with §3002(a). Budgetary limitations constrain the possibly of translation for publication in other languages.

3171(b)
INMATES INFORMED OF LOCAL PROCEDURES

The following specific comments regarding informing inmates of local procedures are not accommodated for the reason given:

Subsection (b) provisions have never been enforced at any institution. Visiting information comes by word-of-month, after the inmate reaches his/her destination. At one institution, the advisory council has had to resort to having a visitor mail a copy of the handbook back into the prison in order to make the necessary copies for distribution to new arrivals. Generally, it takes violating a rule to find out that there is a rule prohibiting the conduct. **[A, N-39b, N-48, N-69]**

First part of sentence concerning inmates shall be informed of local visiting procedures, in addition to provisions of Article 15, prior to leaving reception or placement in general population.

Currently exists—inmate signs CDC 128-0, orientation explains visiting procedures, should be addressed in DOM, not Title 15. **[M-16]**

RESPONSE: The Department notes the assertion regarding non-enforcement of this subsection, and directs Commenters to the appeal process set forth in § 3179, whereby such matters can be investigated and corrected, if circumstances so dictate. CCR subsections 3002(a)(2) and (b) do specify that the inmate shall be informed of local visiting procedures. However, the language contained in the subsection under consideration, while admittedly somewhat redundant, does serve to remind the public and inmates of the Department's commitment with respect to this particular aspect of the visiting process. As suggested, similar text will be included in a revision of the operational instructions to staff contained in the Department Operations Manual promulgated along these regulations. Therefore, the language is retained as proposed, but with minor non-substantive textual changes.

3171 (c)
TERMINATION OF VISITS

The following specific comments regarding conduct responsibility are not accommodated for the reason given:

Proposed text is another rule which removes the statewide "standardization" which the dept. claims to be achieving. Term "local procedures governing visits" is contrary to intent of policy change. **[A, N-39, N-48, N-69]**

Visitors can be "excluded". This sanction is permanent in nature and does not seem fair or necessary. Situations that require special circumstances and sanctions should be treated on a case-by-case basis.
N-68]

This rule is also in the gray area. A visitor can be "excluded" but a valid reason should be given. If a person is denied the right to visit, but will be permitted to do so at a future date, then this should be specified. Exclusion should be for cause and so explained, if not it may imply a permanent sanction. I feel a committee of officers, citizens and inmates should decide if an applicant should be denied or approved. This would give all parties involved a clear view of denials with good, sound explanation. **[D, N-41]**

RESPONSE: As ISOR page 4 stresses, this subsection is adopted in order to retain superceded rules that establish inmate and visitor responsibility for their conduct during visits, cross-referencing penalties that can be imposed. Commenters have been distracted by the subsidiary content of this subsection, rather than focusing on the key idea: Conduct responsibility. Exempting "local procedures" from this regulation would create an undesirable loophole in the sanctioning objective of this rule. "Exclusion" as a sanction is spelled out in another subsection (as cited), as is the case-by-case circumstances by which this sanction can be imposed. Sanctions other than exclusion, including temporary suspension, are also already provided for and require no further accommodation. Causes for an exclusion order are also already provided for as is attorney representation and an appeal process. The Department believes the Director is the public official which should be responsible for the exclusion decision. Any individual who feels that the Director's reasons for exclusion are unsound can seek redress through the courts or other means consistent with existing statute. Accordingly, this subsection is retained with minor textual clarifications. However, in order to improve the overall clarity of the regulation as a whole, it has been repositioned to subsection 3170(e).

3172 (a)
INMATES FORWARDING VISITING APPLICATIONS

The following specific comments regarding inmate forwarding of visiting applications are partially accommodated for the reasons given:

It would be helpful if there were some type of timeline for application processing noted on the application, possibly indicating the application would be reviewed within 30 days. **[M-1]**

This puts the responsibility on the inmate to send the CDC 106, Visiting Application, to the prospective visitors. Indigent inmates should be provided stamps and envelopes for this purpose. **[M-2, M-16]**

This does not provide the inmate any greater control over whom they invite to visit. The CDC 106, Visiting Questionnaire, is not always available in the housing units. They should be made available in the contracted Visitor Centers and the Visitor Processing area. **[A, N-39b, N-48, N-69]**

RESPONSE: The Department recognizes that a questionnaire processing timeframe was omitted from the proposal. Because this is primarily an operational issue, text similar to that found in superceded §3173(m)—stating that there may be up to a 30-day delay in such processing–has been relocated to the Departmental Operations Manual and will be promulgated as a policy instruction to staff at the same time these rules are adopted. This accommodation is preferred over placing more text on the form in question, as suggested, because the Department desires to keep the form in it's present 8½ by 12 size. This avoids incurring new costs associated with form enlargement (to 8 x 14) and burdening the public with "increased paperwork."

Existing §3134 already indicates that indigent inmates will be provided, upon request, envelopes and stamps for up to five first class letters per week. The decision to mail visiting questionnaires is one the inmate must make, as pointed out on page 4 of the ISOR. Placing the "responsibility on the inmate" to mail the questionnaire is intended to provide the inmate control over who they are inviting to visit, as is also clearly stated in the ISOR. This approach reflects generally well-received departmental practices that have evolved at individual institutions and facilities. Because visiting officials process only those questionnaires that have been sent by the inmate to prospective visitors, the Department has positive assurance that the individual(s) named on the received questionnaire are, indeed, individual(s) that the inmate wants to see. This operational refinement not only affords the inmate with greater privacy protection, it replaces the "Inmate Application" process set forth in superceded § 3173(m) and allows paperwork previously required of the inmate (CDC Form 105) to be eliminated entirely. Any difficulty in obtaining the visiting questionnaire must be reported by the inmate to housing unit officials and/or their correctional counselor in order for such problems to be addressed. Inmates may also avail themselves of the inmate appeal process, if necessary. However, for the reason stated above, the questionnaire in question should not be freely available in any visiting area, in that to do so could undermine the very protection(s) afforded by the rule at issue.

Finally, consistent with the "improvement in clarity" and "removal of procedural material" objectives stated on page one of the ISOR, the Department voluntarily withdraws two proposed changes first appearing in this subsection. Wherever "application" appeared, "questionnaire" (the term used in the superceded rules) is substituted at this point and throughout the remainder of the visiting rules. This amounts to a restoration of what the Department intended to repeal and upon further reflection has decided otherwise. The Department has also, upon further reflection, realized that form citations, as they appear in this article of the rules, constitute a redundancy in text. Consequently, such references also have been removed from this point and throughout the remainder of the rules being adopted at this time. For staff guidance, Form names, numbers and processing procedures are specified in the Departmental Operations Manual (DOM). As previously indicated, changes in policy instruction to staff respecting visiting procedures will be promulgated in the DOM at the same time these rules are adopted.

3172 (b)
ALL VISITORS SUBMIT APPLICATIONS

The following specific comments regarding applications are accommodated for the reason given:

This requires minors to provide a CDC 106, Visiting Application, for approval. This is a substantial change in the process and has the potential for causing confusion and disruption in visiting. This would require that minor visitors present proof of identity when visiting. Approved adults should be able to continue to bring in minors with proper paperwork (Birth Certificate and, if necessary, Notarized consent from the parents) while the application is pending. **[N-45, N-47, M-2, M-11, V]**

…[as above] *and* Why are innocent children being penalized and included in this requirement? **[O-50, M-10, Q-85]**

Visitors that have a child and have joint custody with someone else, they have to have a notarized statement from the other parent as well, so that that child can come into visit. I've been visiting with my son from another marriage for 8 years. I can guarantee you at no time would his father ever have allowed me to do that. **[P-2, P-6]**

Moreover, grandmothers will be required to fill out form 106 for each one of the grandchildren before they can be approved to visit knowing that those grandchildren will now be subjected to a criminal background check. Why do you need to check the background of a kid? **[P-13]**

There is no justifiable penological interest to force a minor under the age of 12 or 14 to have to apply to visit. This would require the State to spend even more money and time running Criminal History checks on minors. Is it really necessary to run a background check on a six-month-old baby? The turnaround time for processing applications is too long already. **[A, B, E, N-39, N-39b, N-47, N-48, N-67, N-77, O-39, O-42, Q-56, V-3]**

…[as above] *and* The current process is already cumbersome. **[O-39, X-1]**

…[as above] *and* does this mean the parent with sole custody of their children must obtain the signature of the non-custody parent to visit with their stepfather? **[N-47]**

To require a CDC 106, Visiting Application, from minors will double the workload of processing staff, and because they are minors the Criminal History report will be incomplete. As a result, minors will be required to obtain and provide Minute Orders from the court. This section should be deleted. **[N-40, N-47, N-80]**

…[as above] *and* Minors would not understand the application and cannot enter into a binding contract.
[N-75]

Filling out a CDC 106, Visiting Application, to review a minors arrest history, this is obviously an attempt to discourage those with custody of their children. **[Q-61]**

Even if a minor has an arrest history, he/she should be allowed to see their inmate parent. Minors arrest records can be sealed to prevent the CDC from reviewing them, so this rule accomplishes nothing. **[N-44]**

What provisions can be made for the first-time visitor who is not familiar with the requirements, will other forms of ID be accepted? Acceptable means of establishing proof of identity apply mostly to those sixteen-years and older. **[M-14]**

The CDC whines constantly and wastes money, makes excuses for medical neglect, claiming there are staff shortages, yet proposes to worsen that situation. What is a DOJ or CLETS search on a child supposed to do except maybe "marking" the child for life in your database? Will you ever find a record on a seven-year-old? The answer can only be No! We want this one deleted and suggest 14 years of age is more appropriate. **[M-7, N-50, N-74, Q-51, Q-58, V-3]**

Children should never be questioned by Correctional Officers! **[N-59]**

My children are 15 months and five-years-old. The youngest was brought to visit in California State Prison-Solano a few weeks ago. The opportunity to see, touch and hold a newborn is quite rare for these men. If I had to apply for the baby to visit the baby would have been several months older at the visit.
[O-50]

RESPONSE: The Department deletes the provision requiring minors to submit separate visiting questionnaires, accommodating the comments above.

The following specific comment regarding applications is not accommodated:

§(2): We understand the need for a minor spouse to produce a Marriage License, but that should be necessary only once (with application). **[M-2]**

RESPONSE: The rule in question does not specify that the marriage license must be presented each visit. Individuals concerned about being challenged, however, may wish to carry a copy of the license for greater peace of mind.

The biggest dilemma for the individual and family of inmates dying in infirmaries and in outside hospitals is that, their family member can't get in there to visit. There is nothing in the regulations stating under what sort of emergency conditions allows family members to visit a critically ill member of their family incarcerated by the department. There is no reason to have such restrictions. They amount to torture and human rights abuse of family members. God forbid that family member who is coming however many hundreds of miles away should have a criminal record, some ancient felony dating back 20 years, they will not be allowed to visit their loved one who is dying. There are times when prisoners are moved to the hospital and in such cases there needs to be expanded visitation so that family members can get out to the hospitals and be with their loved one. This will be a growing problem based on the number of inmates with very critical medical conditions, warranting an expansion of visiting rights. **[P-12]**

In your vague rule here you don't cover anything about when an inmate is dying or whether a likely visitor is going to die. Joe and Henry over here, they stab each other, cause they got a race war going on, meanwhile, Robert over here, he's sick. Should he be punished because of what these guys have done? **[P-36]**

RESPONSE: These regulations do not address the above-mentioned emergency conditions because such matters are covered, as discussed below, by other rules or operational procedures that are not being changed. While it is true that family members with criminal records will have to obtain prior approval to visit from the institution head or designee as provided under repositioned and rewritten subsection 3172(d) [see discussion, page 55 below]; there is no reason to assume, as has one Commenter, that the request would be automatically denied. Moreover, as chief executive officer of the institution in question, the officials indicated have the option of granting extraordinary or compassionate visits at their respective operations. This could take place under the existing authority of §3380 insofar as such action does not otherwise conflict with statewide rules or policies and is done in a manner consistent with the local plan of operation.

Upon transfer into the custody of the Department, inmates identify who should be notified in case of death, injury or serious illness. By law (Penal Code §5022) the Department is required to use all reasonable means to contact the individuals the inmate have so identified. While not legally obligated to provide these individuals or family members with special visitation opportunities—consistent with the privacy rights of the inmate–the Department does attempt to facilitate such visits in a number of ways. Under existing Department procedures, inmates with chronic or acute illnesses are assigned exceptional work-training designations that convey Special Work Group Assignment status and the accumulation of "Excused Time Off (ETO)" credits. Under the ETO provisions of § 3045.2, the Department affords "extraordinary" opportunities for visits, including "family emergencies." Using ETO for any other reason, such as upon prognosis of the pending death of an inmate, requires approval of the Director. Granting such an exemption for the compassionate purpose of facilitating a visit with a dying inmate would be well within the statutory and regulatory discretion of the Director.

Finally, in addition to the above-noted rules, the Department has an established process for formally granting furloughs and temporary leave for a variety of reasons, including visits to critically ill members of the inmate's immediate family (§§ 3080-3083).

3172 (d)
UPDATED APPLICATIONS

The following specific comments regarding application updates are accommodated as follows:

Updating should be necessary only when there has been a change in name, address, telephone number or arrest history. A sign should be posted in the processing centers advising visitors of their obligation to update applications. If the CDC considers it necessary to run law enforcement checks on already approved visitors they can do so without any involvement of the visitor. **[M-2]**

The CDC should automatically run an existing application through requisite checks every year, and require visitors resubmit an application only when the information has changed. **[M-1]**

Upon receipt of the CDC Form 106 by the institution, the visitor shall be allowed to continue to visit pending the review and approval/disapproval of the updated visiting application. **[N-50]**

I personally do not see a problem with this proposed amendment as long as CDC is courteous in submitting some form of a reminder notice when certain individuals need to renew their CDC 106 Forms within the two-year period. The only other obstacle I could envision is the potential for creating a "mountain of paperwork," thus "bottlenecking" the processing time for the CDC 106 forms. **[N-33, N-50, Q-43]**

Creates more unnecessary paperwork. Currently the staff is overloaded just putting first time applications in the computer. Having to update the information would require more staff or delays in being able to visit with loved ones. If someone were to put an incorrect address and/or phone number on an application to visit no one would double check, so this would defeat the purpose of this additional paperwork. **[A, N-44, N-48, N-66, Q-51, Q-58]**

This will bog down the system-creating over-kill in order to possible find someone with a warrant. I can understand for address changes in case the CDC needs to contact them in the event of an emergency.**[N-67]**

Delete the 2-year requirement by requiring updated information only as needed. No increase from one to two. This allows us to ensure that no new arrests have occurred since last check. **[M-16]**

This hardship will serve no real security purpose, since the information is currently stored in the institution's computer, allowing staff to make periodic checks as to current arrests without requiring visitors to complete new forms. **[Q-56]**

Both of these proposed changes will add time frustration on visiting days. There are bound to be many problems as large numbers of visitors who have visited before and who therefore, assume they're approved, discover they're now being denied a visit because they submitted a CDC Form 106 over two years ago, or because they completed the form for their children. **[Q-56]**

RESPONSE: The Department has accommodated the majority of the comments above with a rewrite of the proposed regulation. While previously approved visitors will still be required to submit a new visiting questionnaire every two years (under superceded local rules, the standard was one year), the Department intends this process to consist of little more than an updating of information already on file, while changes in name, address, telephone or arrest history must be reported as they occur in order to retain the existing status of approved visitor. Visitors will be expected to voluntarily report such changes as they occur, or when requested to do so by visiting room staff, which will be no frequently than once very two years. While this updated information is processed, visitors will be allowed to continue their visit, unless "disqualifying" information (such as a criminal conviction or probation status) is immediately divulged or becomes known from other sources. As many Commenters pointed out, to proceed otherwise creates a burden for visitor and staff alike and the amended approach is a conscious effort to balance the Department's needs and the public's desires. The suggestion of a sign will be passed on when the statewide orientation on the new rules and policies is conducted for visiting room personnel. Finally, a redesignation in the numeration of this subsection is necessary in order to accurately reflect the repositioning of other text in the article.

The following specific comment regarding applications is not accommodated:

3172 (e)
APPLICATIONS FOR RE-COMMITTED INMATES

Tracking returning parolees will require documentation from the Central File and forwarding to the visiting staff for a determination of visiting privileges. Suggestion: the visitor should not be allowed to visit prior to obtaining approval of the institution/facility head. **[N-47]**

RESPONSE: The Department accepts that staff will have to perform the documentation noted. The suggestion is rejected because it provides no improvement over the text as written. However, other minor/non-substantive changes and redesignation in numeration are made for improved textual clarity.

3172(f)
APPLICATIONS FOR MORE THAN ONE INMATE

The following specific comments regarding applications are accommodated:

It is impossible for a visitor to be approved for numerous inmates on only one application, especially regarding more than one institution. The current AVIS does not have the capability and the information on each individual CDC 106, Visiting Application, is crucial for every individual inmate. **[N-47]**

Would never be followed at any institution. Each institution would require a separate CDC 106, Visiting Application, for each inmate housed there so that they have direct control over whom they allow to visit. **[A, N-39b, N-48, N-69]**

RESPONSE: The Department acknowledges that the text of this rule as originally drafted was flawed in the manner Commenters observed. Accordingly, the language at issue has been rewritten to clarify that there are no restrictions on the number of inmates that a visitor may be approved to visit at one or more institutions or facilities. In addition, this subsection is repositioned to § 3172.1(f) in order to improve the logical sequence of topics appearing in this article.

The following specific comment regarding applications is not accommodated:

It seems appropriate to clarify that no new approval will be needed when an inmate transfers to a new facility. In fact, why not word it exactly that way? The way the subdivision is proposed leaves it open for interpretation, and a visitor may have to be re-approved by the new facility. **[M-1]**

RESPONSE: Inasmuch as it was not the intention of the Department to have this rule interpreted in the manner noted by the Commenter, it has been rewritten as discussed immediately above.

3172 (g)
SUBMITTING APPLICATIONS

The following specific comments regarding application submission are not accommodated:

Prohibits prospective visitors from sending the CDC 106, Visiting Application, in a letter addressed to the inmate, where the mailroom could remove it for processing, and requires additional postage for the application itself. **[A, N-48, N-69]**

Personal delivery and on the spot approval is not realistic regarding further information needed on the majority of applicants. We cannot allow prospective visitors to drive to the institution with the expectation of immediate approval. **[N-47]**

RESPONSE: Requiring the prospective visitor to mail the questionnaire directly to the attention of visiting room staff is intended to provide the inmate control over who they are inviting to visit, in a manner complementing the FSOR discussion on page 50 above. Because visiting officials process only those questionnaires that have been sent by the inmate to prospective visitors, the Department has positive assurance that the individual(s) named on the received questionnaire are, indeed, individual(s) that the inmate wants to see. This operational refinement not only affords the inmate with greater privacy protection, it replaces the “Inmate Application” process set forth in superceded § 3173(m) and allows paperwork previously required of the inmate (CDC Form 105) to be eliminated entirely. Inasmuch as prospective visitors already incur the cost of mailing the questionnaire to the institution, continuing this requirement does not constitute an added financial burden, as one Commenter implies. Another Commenter has provided additional rationale for the process set forth in this subsection, and requires no accommodation. Finally, nonsubstantive changes in text have been made to maintain consistency with other changes in the section.

3172 (h)
ARREST HISTORY

The following specific comments regarding arrest history inquiry are accommodated:

Is there a uniform standard by which designated staff will approve or disapprove an application? The current wording seems to be very discretionary and subjective. **[M-1]**

You want to run background checks on children. And what about those that may be in trouble with the law? They got a little problem. They need to see their dad but you're going to deny their visit because they went to juvenile hall? **[P-4, P-19]**

I feel that doing a background check on a 7 year old is getting a little bit too personal. **[P-27]**

Running background checks on children. That's not cost saving? The prisons are saying that they are short on staff but they are generating additional paperwork. **[P-30]**

RESPONSE: The Department agrees that the originally proposed text of this subsection was excessively imprecise, lending credence to the interpretation that the standards for approving or disapproving an application to visit would be discretionary and subjective. Accordingly, the text has been significantly reworked. Greater emphasis has been placed on the fact that the information acquired from the prospective visitor (personal and identifying as well as arrest history) is for a criminal records clearance, the information provided must be sufficient to complete such a clearance and that the decision to approve or disapprove a prospective visitor shall be based solely on the information provided. Furthermore, minors will not be required to complete visiting questionnaires as originally proposed, accommodating the objections of other Commenters above.

The following specific comment regarding arrest history inquiry is not accommodated:

The proposed text is already covered in the current CCR 3173 (d) and does not need to be changed. **[A, N-39, N-48, N-69]**

RESPONSE: Superceded subsection 3173 (d), as pointed out on page 6 of the ISOR, has been replaced by subsection 3172(i), not subsection (h), as Commenters incorrectly assert.

3172 (i)
FINGERPRINTING

The following specific comments regarding fingerprinting are accommodated:

The department will not retain fingerprint records on-file. This is an unconscionable expansion of power, which wholly violates the visitor's privacy. **[C, D, N-73]**

…[as above] *and* adds an exception to destroying documents that are unnecessary. **[A, N-39, N-69]**

…[as above] *and* also eliminates the prohibition against placing these undestroyed documents in the inmate's Central File. Must not be approved. **[N-48]**

…[as above] *and* the department has not identified a specific legitimate penological reason to further intrude on prospective visitors privacy. **[N-49]**

Fingerprinting of visitors to obtain visiting approval is not necessary. We already get fingerprinted at the DMV to obtain drivers licenses and Ids. Fingerprinting would be messy, visitors would have to clean up afterwards. This would take time away from visiting, as it stands we do not get enough time to visit. **[N-49, U-2, V-8]**

Would allow the taking of fingerprints to verify identities of visitors smack of Big Brotherism. What could possibly be gained by this? It only increases paperwork, may discourage potential visitors from applying and puts the onus on the visitor. It is not necessary. **[N-8, Q-43]**

Just because our family is incarcerated does not give the institution or our government the right to treat me as if I was the offender. I do not give you the right to take my fingerprints and keep them on file. This is an injustice and a violation of my civil rights as a citizen. This should not be allowed. **[N-41]**

RESPONSE: This subsection has been deleted from the Director's Rules. If any textual discussion of fingerprints taken in conjunction with the criminal records check is retained, it will appear in the Department Operations Manual as a staff instruction. Moreover, it is the Department's intention to do no more than advise prospective visitors that they may want to be fingerprinted by local law enforcement authorities if they wish to clear up an uncertainty regarding their identity arising from an electronically-generated check of an existing criminal records data-base maintained by other agencies.

3172 (j)

FELON AND RELATED APPLICATIONS TO VISIT AN INMATE

The following specific comments regarding former inmates are not accommodated:

Currently no one is allowed on the prison grounds without prior approval. This statement is unnecessary, since it exists in the Penal Code. (As a cross-reference refer to P.C. Section 4571). **[M-1]**

Seeks to eliminate the 30-day limit on delaying a decision to approve/deny former felons from entering the grounds for the purpose of visiting. This would also allow Correctional Sergeants to make this decision. [**A, N-8, N-23, N-69]**

We ask that when the exception mode of processing is applied, that factors such as martial status, good behavior during incarceration, level etc. be given full consideration. **[N-23]**

There are a number of positive impacts that visits from former prisoners could have. The Prisoner Mother and Infant Programs and Family Foundation Programs create an extended family for its residents. Children bond with their biological mothers and other nurturing women prisoners in the same facilities. If parolees are not allowed to return to these facilities with their children, the children experience the traumas of separation and abandonment. **[M-5, M-15]**

In their quest to obtain some sort of written consent for a CDC visit, the only place those on informal probation can go is the sentencing court judge, who has no interest in such individuals unless they commit a new offense. Therefore, this puts a burden on the court system.**[N-7]**

RESPONSE: As page 6 of the ISOR states, the purpose of this subsection is to retain and streamline superceded subsection 3173(m). Former inmates, parolees, probationers and civil addict outpatients can receive permission to visit individuals currently incarcerated, but to do so, they must apply and receive prior approval from the relevant institutional head. The special application procedures for such approvals help in deterring socially undesirable, coercive or extralegal activities or connections often associated with incarceration, and as one Commenter observed, relates specially to the statutory prohibition against inmates returning to the prison absent consent to do so. Deletion of text concerning 30-day delay and correctional lieutenant delegation is justified because these are procedural considerations that have been, as the ISOR promised would be, removed from regulatory language.

On the basis of the above comments, this subsection has been further revised in an effort to achieve even greater content clarity and it has been repositioned to improve the logical sequence of topics appearing in the article. However, restatement of the statutory prohibition is not removed because the Department deliberately wishes to emphasize this particular law; delegation of authority is intentionally generalized in order to maximize administrative options available to the Department; "mitigating" considerations are not added because they aren't factors

considered in such instances by the relevant official when issuing visiting approvals; and, finally, informal probation does not entail supervision, and hence places—with respect to this rule–no added burden on the courts or the individual involved.

3172.1 (a)
AUTHORITY/DELEGATION FOR APPROVING/DISAPPROVING AN APPLICATION

The following specific comments regarding approval of visiting requests are not accommodated:

Make it clear the approval or denial of a visiting request shall be based on criteria set forth in Title 15. As written it leaves room for interpretation that any person to whom authority has been delegated has full discretion to approve or deny. **[M-1]**

No staff below the level of a Captain should deny/approve applications. **[M-2]**

Change the proposal to reflect Correctional Sergeant to Visiting Lieutenant. This is and has been at the lowest supervisory level possible to ensure the most expedient approval process. **[M-16]**

The proposal seeks to reduce the rank of staff who has the authority to deny visiting to a mere Sergeant's level. Do Sergeants have adequate training? This should not be delegated below the rank of Lieutenant, Parole Agent. **[A, D, N-39, N-41, N-48, N-69]**

Sergeants will be able to disapprove visiting applications. The decision to deny an application could have a devastating affect on a family and should be handled by an officer experienced and trained in making these decisions. **[N-68]**

Just imagine if the Sergeant does not like how that visitor looks or speaks on that day and finds a reason not to allow a visit or they punish the visitor with a thirty, sixty-day suspension. This power should not be given to a Sergeant; it should go to a committee with a detailed explanation for the denial of a visit. **[N-41, Q-2]**

RESPONSE: The Department specifically disagrees with the assertion that the proposed rule leaves room for interpretation that any person with delegated authority has "full discretion to approve or deny." Subsection (a) is followed by subsections (b) through (e) in the original proposal which clearly specified the reasons for disapproving visiting requests, how such decisions will be documented, point out related rules by which the decisions may be appealed and caution that visiting approvals will be conditioned upon the visitor's compliance with all applicable laws, regulations and procedures. Criteria set forth in Title 15 of the California Code of Regulations that constitute the Department of Corrections Director's Rules are "regulations" such as those specifically encompassed in subsection (e) above.

Careful consideration has been given to the comments received regarding the staff delegation specifics contained in this subsection. The most likely alternative—reinstatement of the superceded text of current § 3177(a)–which provided that the approval authority could be delegated to "designated staff members," is rejected as too broad. On the other hand, Commenter objections to specifying that the delegation shall not be below the level of correctional sergeant are not convincing. Visiting sergeants are under the immediate supervision of superior officers (lieutenants and captains). All their decisions should be consistent with the instructions and guidance received from these superiors and any momentary lapse in good judgment can and will be corrected or countermanded as circumstances dictate. Moreover, as pointed out elsewhere in the ISOR and FSOR, these rules (§ 3179) provide for an appeal process whereby prospective visitors may request in writing to overturn staff decisions relating to visiting, including suspensions of any length in time. While the appeal process does not entail a "committee" process, the Department feels the process that is provided affords adequate due process and

ample opportunity for the reasons for grievance to be fully aired. Accordingly, the remainder of the comments noted above are afforded no specific accommodation.

3172.1 (b)
REASONS FOR DISAPPROVING AN APPLICATION TO VISIT AN INMATE

The following specific comments regarding disapproving requests are not accommodated:

Approval/Disapproval of an application to visit an inmate should end at subsection (b)(6) with "except social security number is optional". For the same reason as the entire Article being readopted into a new reorganized Article that has been rewritten for clarity and easier reference, nothing has changed here and the primary objective of this action is and has been standardize[d] in the visiting procedures system-wide already. **[N-45]**

Seeks to broaden the criteria for denial of applications to visit **[A, N-48]**

In listing the reasons to disapprove visiting applications, the words "but are not limited to" are too vague thereby leaving this open to abuse. **[D, M-1, M-2, N-41, N-51, N-68, U-10]**

The proposal states that an application may be denied if the applicant has outstanding arrests/warrants including a DMV Failure to Appear notice. Are you attempting to accumulate additional paperwork? **[Q-43]**

RESPONSE: While the Department agrees that there have been few significant changes in the overall visiting process and that there is a need for greater standardization, giving rise for these rule changes, it disagrees with the assertion that text content subsequent to the specified subsection has already been standardized on a statewide basis and accordingly rejects the deletion suggestion. The rationale for "broadening the criteria for denial" is provided on pages 6 and 7 of the ISOR and repeated below with reference to other comments. Likewise, the clause "not limited to" is retained. While admittedly general in nature, it is meant to operate in conjunction with the text of subsection (e) in the same §3172.1, whereby evidence of non-compliance with law, regulations and procedures governing visitor conduct can be a legitimate reason for disapproval. Moreover, the appeal process of § 3179 directly tempers the "vagueness" of the clause as pointed out in the discussion appearing immediately above. Prospective visitors may appeal in writing any staff decisions relating to visiting, including any disapproval based on reasons other than those specified in subsection (b) and purportedly linked to the clause "not limited to." Finally, as pointed out on page 6 of the ISOR, requiring clearance of outstanding warrants and failures to appear is a legitimate matter for the Department, as a law enforcement agency, to pursue. It additionally helps avoid creating situations whereby the Department would be obligated to arrest an individual with outstanding charges when they make a visiting appearance. The Department is accumulating no additional paperwork inasmuch as such information is obtained from a centralized computerized data bank.

The following specific comments regarding disapproving felon requests are not accommodated:

You have already made it clear that it is a felony for a former inmate to come onto prison grounds without permission. Why does the CDC have this requirement about former felony convictions? **[M-1, N-75]**

This proposed section seeks to deny ex-felons from visiting incarcerated family members or friends if they have been convicted of felonies within specified periods of time. Current CDC practice is sufficient in determining whether or not a practice is sufficient in determining whether or not a person is currently involved in criminal activities. **[N-69, N-82]**

This section states that the reasons for disapproving a person's application among other things are felony convictions. The department's stated reason for this subsection is absurd, and does not coincide with the proposed regulation. The department's doublespeak relative to allowing a "recently" paroled/discharged inmate with the institution to visit has no rational relationship to excluding former inmates from visiting. The word recent seems to be a relative term for the department. Is 3,6, or 10 years considered 'recent' as that term is generally understood. The proposed regulation has not identified any rational relationship to a legitimate penological reason why an inmate's family member or loved one who has been convicted of any felony should not be allowed to visit for 3,6,10 years. Furthermore, this proposed regulation would have a disparate adverse impact on African-American and Hispanic inmates who currently are approx. 65% of the department's population. **[N-49, N-50]**

For the CDC to have the ability to deny an ex-offender to come onto state prison grounds without just cause or due process is a civil rights violation**. [N-75]**

Limiting visitors with a criminal history will prohibit or dissuade even larger numbers of people from attempting to spend time with prisoners. **[N-30]**

The CDC is acknowledging that their attempt is to DENY ALL FORMER FELONS ACCESS. These felons would then be put them in a special line (i.e.: exception mode) which would, in effect, discriminate against those people who have legitimately completed their sentences given them by the courts, punishing them further by disallowing a visit with loved ones. A non-contact provision would be more appropriate than a blanket denial. **[A, N-48]**

RESPONSE: An extensive explanation for the changes commented upon above is found on pages 6 and 7 of the ISOR. The text at issue specifically replaces and augments superceded subsections 3177(c)(5), (6) and (7).

The rules that the Department intends to delete allowed rejection of the visiting request of individuals with "an extensive and recent history of criminal activity for offenses which are of particular sensitivity to institution security." Such disapprovals would be reconsidered at a time "in keeping with the circumstances and seriousness of the offenses involved." The prior rules further allowed the rejection of visiting requests made by felons, parolees, probationers and civil addict outpatients, *provided* the prior approval of the institution head had not been obtained. All visiting applications of recent felons are automatically denied, absent such approval from the institution head. On the other hand, permission to visit *can* be granted individuals with such status *provided* factors that are spelled in the rule have been weighed and no evidence exists of a conviction particularly sensitive to institution security.

For the most part, these provisions have been continued in the proposed regulatory language with what the Department intends to be clarifications and improvements from the standpoint of individuals involved. For example, the interpretive vagueness and indefinite open-endedness of "extensive and recent history" has been replaced with specific numbers of convictions in specific numbers of years. What had been an indefinite prohibition has been voluntarily altered by the Department into a fixed and known time frame, affording anyone within this category *increased,* **not** *decreased* opportunity for future visits, as some Commenters have incorrectly concluded!

Similarly, Commenters have also incorrectly concluded that the Department is adding more burdensome restrictions on former inmates and others as identified in this section on the basis of a misinterpretation of the ISOR text. The text in question points out that, because of their unique status, such applicants should be in "an exception mode" outside the routine visiting process. The reason for this is *not* because the Department is creating a blanket denial of access for former felons and others. Rather, it is because such individuals require, as explained above, special permission in order to visit that they are singled out and discussed "collectively" in the rules at issue. As the ISOR explains: "This approach reflects a practical consideration that all of these applicants require special processing and special approval."

Finally, it should also be pointed out that because the Department is replacing the excessively vague language of "offenses sensitive to institution security" with the specifics of convictions spelled out in subsection 3172.1(b)(3)(A) through (D), it may have appeared to Commenters that the Department is imposing greater as opposed to less stringency, as is the case in this instance. Again, by eliminating and replacing a vague existing basis for prohibition it is the Department's intention to afford those individuals within this category *increased,* **not** *decreased* opportunity for future visits.

Therefore, for the reasons stated, the Department concludes none of the comments above require any specific accommodation. Additionally, the Department does not agree that the rules will significantly deter inmate visitation or has a disparate impact on the population as a whole. Non-contact visiting is not an alternative to the specified restrictions, because the Department has stated reasons (page 7 of the ISOR) and statutory authority (see page 58 above) for the limitations imposed on felons and others with respect to visiting inmates. On the other hand, the concerns expressed have guided the Department in making textual revisions and improvements in the regulatory language particular to this section.

3172.1 (b)(6)
OMISSIONS OR FALSIFICATIONS

The following specific comment regarding omissions or falsifications is accommodated:

Allows a six-month period of disqualification for providing false omitted information on the application. This is ambiguous. Falsifying information is one thing but omitting information is another. Omitting information could have been a mistake and therefore should not be penalized. **[N-44]**

RESPONSE: The text of paragraphs (A), (B) and (C) of this subsection has been rewritten to remove this ambiguity. A prospective visitor will not be disqualified for any period longer than it takes to supply inadvertently omitted information or positively establish their identity. A six-month disqualification will apply only if the applicant has deliberately falsified information.

The following specific comments concerning the denial period are not accommodated:

Seeks a minimum 6-month penalty for another opportunity to apply. **[A, N-48]**

The denial period should begin with a 3-months instead of the proposed 6-month period. **[N-88]**

RESPONSE: As stated on page 7 of the ISOR, added to this section is a six-month period of disqualification for providing false information on the application. This rule is meant to establish a prudent and reasonable standard throughout CDC for this purpose. The Department believes that a six-month period is sufficient to act as a deterrent.

3172.1 (c)
NOTICE OF DISAPPROVAL

The following specific comment concerning disapproval notice is accommodated:

Need clarification about what the definite policy entails. **[M-1]**

RESPONSE: As explained on page 7 of the ISOR, this section is adopted to retain former subsection 3173(l) regarding the approval or disapproval of visiting requests. However, the superceded rule provided no method for notifying prospective visitors of approval or denial of their

application. Moreover, the inmate's Central file (C-file) contained the documentation of denials, restrictions, suspension or termination of previously approved visits. While the reasons for action, length of time the action would apply and the circumstances under which the action would be reconsidered was to be clearly set forth, the former rule lacked specificity as to how the visitor would be informed of such matters. Accordingly, all of these matters are addressed in the new subsection.

Inmates will receive written notification of the visitor's approval and will be responsible for notifying the applicant of the decision. The inmate will also receive written notification of a denial, while—consistent with privacy concerns–only the prospective visitor will receive an explanation of the specific reasons for the disapproval of their request. Moreover, this documentation will no longer reside in the Inmate's C-file. In response to the comment above, the section has been significantly rewritten so as to provide greater clarity regarding the intent and scope of the regulation. In addition, the "Form-specificity" of this rule has been deleted. This and similar procedural details have been relocated to the Department's Operations Manual for the reasons previously discussed above.

The following specific comments concerning disapproval notice are not accommodated:

Within 3 weeks from the date of receipt, the prisoners and the visitor(s) should receive notification relative to the approval of the application. A courtesy visit should be allowed when the prospective visitor has adequate identification, has traveled more than 250 miles to the prison and has submitted an application. **[M-2]**

This proposal seeks to standardize the CDC form 887 (Notice to Visitor Approval/Denial). This form is already a part of the Automated Visitor Information System (AVIS). The reasons for the denial of an application to visit being omitted from the notice given to the inmate are wrong! This information is placed in the C-file of the inmate to be used against the inmate at a later time, yet they won't divulge this information to the inmate. **[A, N-39, N-48, N-69]**

All visitors including children would have to undergo criminal background checks before being approved. **[Q-39]**

RESPONSE: These rules do not specify a time frame for approving prospective visitors because there are many operational variables, including the possible insufficiency of information contained on the questionnaire as submitted, which could delay or slow the processing of applications for longer than a three-week period. The scenario of individuals who are from out-of-state or traveling 250 miles or more to visit an inmate is considered "regular visiting under extraordinary circumstances." §3045.2(e)(2) already permits inmate use of Excused Time Off for just such purposes, as requested by the Commenter. As discussed immediately above, changes in process and notification will eliminate the inconsistency of placing reasons for denying a prospective visitor in the inmate's central file, and therefore such information cannot be "used against" inmates. Reasons for visitor denial and the relevant form will be audited to ensure that the alleged content disconformities do not exist. The Department has concluded that a background check for minors over seven years old is not necessary. However, all other visitors will undergo "criminal background" checks. This practice continues long-standing practice and is directly relevant to maintaining institutional safety and security.

3172.2 (a)
MINIMUM VISITING DAYS AND HOURS

The following specific comments concerning visiting days and hours are not accommodated:

Every prisoner should have access to at least ten hours of visitation a week. The CDC should explore weekday and/or evening visitation at all prisons in order to allow prisoners currently

restricted by work/school schedules, custody status, or overcrowding conditions more access to visitation. Several prisons have the most minimal visiting days and hours, with only six hours on Saturday and six on Sunday. This gives no flexibility to visitors and puts enormous pressure on the visiting program on the weekend; often leading to routine terminations for overcrowding. We suggest that the regulation include a directive to the wardens expressly encouraging them to expand visiting days and hours whenever possible. **[M-2]**

In light of CDC's recognition of the importance of visiting, it seems appropriate to add that "additional hours of visiting are encouraged to be added as staffing becomes available hours of visiting," or something similar. **[M-1]**

Each institution/facility shall provide visiting for no less than 12 hours per week and is also encouraged to expand visiting days and hours where possible. No institution can do so. Is it based upon the numbers of visitors and what the most cost effective, budgetary issues represent? **[M-16]**

Changes that are not encouraging visiting and are really discouraging visiting: I guess what I want to impress on you is the reduction of visiting hours and days. At the moment all we have is 12 hours assured to us, and as I see it the Department has gone from 7 days a week, 12 hours a day to 12 hours a week. I just see that soon you're just going to totally phase families out, eliminating contact with inmates completely. All you are doing it taking away and giving us more regulations, so I asked the Department to get creative and try to make visiting a priority. If you say it is, let's see it. Public safety issue, I think we would all benefit as a society from making sure that families stay connected. I don't think you're helping anybody by keeping the families away from the inmates and not letting them have family contact, and making it more difficult so that you're releasing people back into society that have no ties what-so-ever. It just perpetuates more crime. **[P-2]**

Shortening the minimum of twelve hours that visiting must be provided, it is my hope that the number will remain a minimum and not a standard. Our visiting rooms are already so full that visitors are terminated on Sundays. Shortening the visiting hours would be in direct conflict with your considerations of meaningful family contact. **[Q-59]**

An institution must provide visiting for no less than 12 hours per week. This number of hours is sufficient if there are only 2 visiting days but say that is spread over three or four days, it does not leave many hours to visit with. Many visitors must travel for hours to visit and then the visitor processing is never less than 2 hours at most institutions. The time might be sufficient if visitor processing took less time. **[N-72]**

Expand the visiting hours for the families of the inmates. Families are affected by the incarcerations of their loved ones. Prisons are in remote areas. **[N-64]**

Visiting has been proven in studies to be correlated with the people having a better life after they get out of prison. Given that fact, perhaps the money could be allocated to establishing longer visiting hours, additional visiting days. **[P-38]**

As Ernie Van Sant, Deputy Director for Facility Management was recently quoted as saying in the *LA Times*: "We certainly see the benefit when inmates maintain ties with their families." Most prisons are in remote areas and the hardship on families would be great, to make matters worse, the visits are limited to one hour. This is fundamentally unfair and in violation of equal protection. **[N-76]**

RESPONSE: Dismay over the shrinkage of hours available for visiting or a demand for more than the 12-hour stated minimum is a common theme expressed above. In an era of acute statewide fiscal constraint coupled with inmate populations at nearly twice the design capacity of

the institutions/facilities involved, the Department has been forced to balance the general public and inmate's desire for time to visit against other factors. Such factors (to mention only a few) include having sufficient numbers of trained staff present and available, addressing other (and often more critical or pressing) programming demands, and coping with unforeseen events, such as institutional emergencies. Shortfalls in officer recruitment coupled with such constraints have significantly narrowed the Department's options with respect to the possibility of expanding visiting hours or directing institution heads to make doing so a local priority. The Department regrets that beyond standardizing and clarifying when visiting is available statewide (on consecutive days and weekends) and making some other minor clarifying adjustments in the text of this section, no further accommodation is possible at this time.

3172.2 (b)
VISITING SCHEDULES

The following specific comment concerning visiting schedules is not accommodated:

This proposal seeks to create non-uniform days and hours for visiting, contrary to the "Initial Statement of Reasons" assertion that these changes are necessary to provide statewide "standardization". All institutions should have Thursday through Sunday visiting program. This would allow the most "fair allocation if visiting resources" possible without resuming the 7-days-a-week visiting that was in place when I entered the CDC in 1983. Holiday visiting should include all holidays officially recognized by the state of California. **[A, M-2, N-39, N-48, N-69]**

RESPONSE: The intent of the provision in question is creation of standardized four, three or two-day "regular visiting day" schedules statewide by having the time frames specified included in the operational supplements on a institution-by-institution basis. In other words, some institutions will adopt the four-day "regular visiting" schedule, while others will adopt the three-day and others still, the two-day. It is a mistake, therefore, to interpret this rule as a loophole creating "non-uniform days and hours" for visiting. In addition, for the reasons discussed immediately above, imposition of a four-day visiting schedule on all institutions would irresponsibly override local constraints and seriously unbalance existing resource allocations. Likewise, for the same reasons, the Department is at this time unable to further expand the standardized "holiday visiting day" schedule. However, for the purpose of correlating this regulation with §3170.1, a new provision—(b)(3)–is added to this subsection directing the inclusion of procedures and criteria for non-contact appointments in local operating supplements.

3172.2 (d)
NON-CONTACT VISITING

The following specific comments concerning non-contact scheduling are accommodated:

This proposal seeks to limit non-contact visits to just one hour, where previously it was a "minimum of one hour." **[A, N-39]**

On light visitation days the length of time should be automatically extended to 2 or 2½ hours and so the wording should be changed to *will be* extended instead of *may be* extended. **[U-8, U-32]**

There should be wording such that if there is not an over-crowding problem one-hour visit will automatically be extended to 2-hours. The wording now says may be extended! As you are aware, there are many people that travel great distances, at substantial cost to visit. To be turned away, after one hour when there is plenty of room, is not right. **[L]**

I understand the overcrowding problem but it seems that the burden of that problem should fall to the state, not to my fiancé and myself. My fiancé is trying to do her time and improve herself so she can secure her release, and I work diligently to provide for her and to keep the relationship

going through difficult times. The benefit of our efforts inheres to the community and to the state, as well as to us and thus our efforts should be encouraged. **[Q-75]**

The matter of 1 hour visits: The time is too limited because they never get you to your visit on time and half the time the inmate isn't there either so if visiting with their loved ones creates a positive, how can it be limited? **[U-9]**

RESPONSE: As stated on page 8 of the ISOR, this rule is adopted to add a new scheduling standard when non-contact visits are required and it is the Department's intent that the one-hour time limit may be exceeded if space is available. Based on the comments received, further textual refinements have been made in order to make the Department's intent clearer.

3173 (a)
PROCESSING OF APPROVED INMATE VISITORS
GENERAL PROCESSING COMMENTS

The following comments concerning general processing are not accommodated:

The greatest frustration has been the varying degrees of interpretations from each officer working at the same institution. **[O-15]**

Some prisons process 100 visitors within an hour; others only process 40 visitors. The CDC should provide sufficient staff and resources to ensure the visitors are processed at a minimum rate of 80 visitors per hour. **[M-2, N-9]**

Based upon the prisons being understaffed it currently takes approximately 3 hours for the entire processing time to be completed. With the change in regulations visitor processing will be prolonged. If visiting regulations are changed it will only make it harder on the families who have not committed any crimes. **[N-18]**

I've had many cold nights sleeping in my car. At 6:30 I am allowed to enter the parking lot. Processing begins at 8:30 although visiting is scheduled to begin at 8:30 and end at 03:00 p.m. I'm lucky if he gets out there by 10:00 a.m. **[P-35]**

We deal with the extra expense of the phone calls and the long wait for the mail. Last week I received two letters from my husband that were postmarked in March that he wrote and dated in December. I have become angry over the frustration that we go through every weekend just to visit. I live 50 miles from where I visit my husband. I get up at 4:00 a.m. to drive 50 miles to get in a car line. I then wait 2 hours to go into the prison grounds I then wait an additional 2 hours to get into the visiting room. I then wait maybe an hour for him to come and visit three or four hours. How can you make all these rules and regulations, when it takes so long to get in and see someone that you love? There should be some kind of way to make it a little bit faster at least, so that it wouldn't be so frustrating and hard on everybody. **[P-8]**

Many visitors must travel for hours to visit and then the visitor processing is never less than 2 hours at most institutions. The time might be sufficient if visitor processing took less time. **[N-72]**

Based upon a complaint to Sacramento regarding correctional officers not being allowed to question children in the presence of other visitors, the visiting processing was delayed. It appears that if new regulations are implemented this will have a tremendous impact on processing visitor. [**N-83]**

In order to begin the visitor processing the elderly, handicapped and mothers with several children are all forced to walk approximately one quarter of a mile. **[Q-8, Q-22]**

Correctional officers are not verifying the status of the inmate's current lock down status. The officer's disregard for the public's visits with their loved one causes unnecessary despair. **[N-83]**

The department should be considerate of those visitors who are forced to stand outside without regard for pregnant women, infants, small children, and the elderly. **[N-83]**

In visitor processing staff should call visitor by the inmate's name and or the visitors pass number. Verification to support medical condition should only be required once a year. The verification should be provided to the Visiting Sergeant, who would take responsibility for determining validity and noting the condition in the computer. The processing officer should then note the need for accommodation on the visitor pass. Questions regarding a visitor's personal issues should be handled in a manner that will prevent other visitors from hearing the questions and responses. Personal information such as: Drivers License Number, Birth Certificates etc. should be protected from viewing by other visitors. Staff should not discuss visitor's personal information where other visitors may hear it. Birth Certificates should only be shown to the processing officer, there should be no need to show them to anyone else. A Birth Certificate should be shown only once, with the Department of Motor Vehicles Identification Card (ID) for verification, the ID card alone should suffice after that. Children should not be questioned by Uniformed Correctional Officers who are intimidating, because they carry handcuffs and Side Handle. Parents should not have to accompany their teenage children around the visiting area and to the restroom. Visiting should be friendly; there is no cause, other than to prevent children from injuring themselves, for a staff member to interact with a visiting child. **[M-2]**

All prisons should have Spanish Interpreters available to assist those in the visiting processing area. Each visitor should be allowed to bring in $30.00; a visitor bringing in minor children be allowed to bring in an additional $10.00 per minor. Visiting hours should commence at an hour that would give the visitors an opportunity to be processed prior to count. The buses necessary to transport visitors from the processing center to the visiting rooms are inadequate, unreliable, and sometimes unavailable. Visitors should be allowed to walk from the parking lot to the processing center or from the processing center to the visiting room whenever practical; they should not be required to wait for buses, vans to transport them unless necessary. Buses and vans are sometimes required when walking would be quicker. Visitors then must wait for the trip between the processing center and the visiting room, at other institutions with the same design; visitors are allowed to walk to their route. If it does become necessary, the vehicles should be kept in proper working order with available drivers. The vehicles should be large enough to accommodate the usual number of visitors without requiring long waits. Visiting should be permitted to Close Custody inmates in institutions, which allow evening visiting. There is a concern that during institutional counts; inmates in the units, which have not arrived in the visiting area, are not permitted entry until the institutional count has cleared. **[M-2]**

RESPONSE: The Department appreciates sincere suggestions/observations respecting processing "improvements" Commenters believe should be adopted. Some of these, and particularly those comments which focus on the operational details of processing, are best addressed in local visiting procedures or practices adopted in conjunction with these rules at the local, institution-specific level in accordance with §3171. Similarly, those comments that are specific to conditions at one or a limited number of institutions are best directed to the officials in charge of the setting where the complaint or problem originates. It is anticipated that such issues will receive some attention at the time the Department conducts a statewide orientation for personnel in conjunction with the adoption of these rules and new statewide operational directives contained in the Operations Manual. In general, all institutions strive to expedite visiting processing and provide as many optional "amenities" (such as food vending and transportation) as possible, subject to programming and fiscal constraints. Since frequently the visitor is focused on—and frustrated by–what they perceive to be needless obstacles to their visit, it is easy to forget that Department personnel in general and visiting staff in particular operate in the context of broader constrains, not the least of which is the need to ensure the safety of themselves, the

inmate and the facility as a whole. Finally, comments alleging staff insensitivity, disconformities in policy and or practices and similar matters have been answered in conjunction to responses found on pages 21, 22 and 25 above.

3173 (b)
PICTURE PROOF OF IDENTITY FOR VISITORS OLDER THAN SEVEN

The following specific comments concerning picture proof of identity for visitors older than seven are accommodated:

The[re is a] cost impact on families, who often have one wage-earner instead of two, travel long distances, … are low income, [and incur] food and phone bills cost[s] in visiting. Now you want to add the cost of a DMV ID for children. Visitors may have 3 or 4 children in that age range. I think they're trying to run background checks on children, which is absurd. I think it's invasive of privacy. I don't think that there are too many people that want to walk into the DMV with their 7, 8 and 9 year olds, it's pretty much admitting that you are visiting someone in prison. **[P-2, P-4, P-18, Q-61, U-5]**

ID cards for 7 years old, 8 year olds, 9 year olds, 10 year olds, 11 year olds, 12 years old, what's the purpose with this? Do you honestly think that they are going find outstanding warrants? Do you think they are going to find a felon that you can restrict from visiting? Or, is this a way to create more money for the general fund to pull the State of California out of the financial crisis that we are in? **[P-7]**

You're saying okay to requiring my child to get an ID and have a criminal background check? What are you going to check–the child's school record? Or to check to see if he's fighting and getting suspended in school and he'll be deprived of contact with his father based on that? That's when his father needs him there to talk to and educate him. **[P-17]**

Now you are requiring my 7-year old and my 6-year old niece to have ID's. Why isn't the birth certificate any longer considered a valid form of ID? **[P-32, P-37]**

Where is the C/O suppose to store all of this documentation while these individuals are visiting? Currently they appear to have a hard time with sorting and storing the adult information. **[Q-58]**

Visitors 7 years and older need picture ID. Is the department going to pay for this ID? The department's rational is that this has been policy for all minors, regardless of age. This is false. If the department is lying about this, what else is next? **[D]**

Requiring legal ID cards for minors' aged 7 or older due to security reasons it would be understandable if the age limit were raised to 12 and older. **[B, E, V-3, N-40, N-74**, **N-11]**

Contrary to the statement in the Notice of Proposed Regulations, the fiscal impact will be substantial for all of the proposed changes, which would require the department to reprocess literally thousands of visiting applications and related information every two years. The cost of form reproduction and computer time in conjunction with the high salaries paid to employees could exceed a cost on one million dollars to taxpayers. Therefore, the statement of the proposed changes having no financial impact is completely untrue. **[X-1]**

Minor children age 7 years should not be required to present a picture ID to visit their father, brother, mother or sister. **[N-18]**

The imposition of a requirement for minor visitors over the age to have a picture proof of identity is the imposition of an "identification regulation" not required by State Law. There is no mechanism defined within the proposed change to these regulations, which would provide a

minor with an approved form of picture ID. The arbitrary determination of the 'age 7" as a regulatory time line for the abandonment of birth certificate identification is arbitrary and capricious. There is substantial financial impact involving the minor visit and additional document processing. There is no demonstrated, legitimate penological concern affecting the safety and security of the institution. **[X-1]**

This is often the step in visiting that is the most arbitrary and the longest, thus the most difficult and frustrating for the visitors to traverse. We suggest an introductory statement specifying that staff shall work to ensure delays in processing are avoided, that transportation necessary to transport visitors is in working order and promptly available, and that only approved visiting rules are enforced in a courteous and fair manner. [**M-2]**

Since minors over the age of 6 are required to present a picture ID, the rule should specify that birth certificates are not required (other than at time of completing the application) for minors over six. **[M-2]**

The reason for this rule is unclear. Obtaining a picture ID for children is one more inconvenience for families, which are already in crisis. The impact on immigrant families, with an undocumented member in prison with an INS hold, is unclear. There does not appear to be a public safety issue. **[M-15, M-5]**

Minors should not be required to present an ID due to [their] rapid growth and [the] excessive costs [to the visitor]. **[N-15, N-17, N-44, N-78, Q-7, Q-10, Q-11, Q-43, N-78, N-75, Q-85]**

This will be an added hassle for our families to see us. **[N-80]**

Requiring a grandmother who is caring for her daughter's children to go to DMV and pay the cost to obtain a pictured ID for her grandchildren to visit their mother in prison may place a burden on the family unit. The grandmother will also be required to complete a CDC 106 for each grandchild knowing that she and they will be subject to a criminal background check before they will be approved to visit. Why is it necessary to conduct a criminal background check on a 7 year- old? This will only add to the family's sense of isolation and feeling that they too are incarcerated. **[M-11, N-14, P-13, V-8]**

Adults who bring children less than 7 year of age should only have to present the birth certificate once. The information should be entered into the computer, including identifying information (brown hair, blue eyes, freckles etc), which, can then be entered into the computer for future visits. This information should be regularly updated. **[M-1]**

I find that the requirement that children 7 years present a picture ID ludicrous. It is already a hardship to meet…the [existing] clearance and proof requirements of the CDC [in order] to allow a minor to visit their parent without this additional burden. **[T, U-13, N-6]**

Please don't tax the parent and other just so you can see a picture of the child. Take the two dollars charged for a photo ducat and utilize it to take a picture of the minor. **[O-49]**

This would be the first time that the DMV would be asked to give a photo ID or driver's license to a 7 year- old. I don't know if it is even possible for a seven-year old to obtain an ID from DMV. **[U-13, N-56]**

Processing for Approved Inmate Visitors, paragraph (b), should state, ' All visitors 14 years and older…." [so as] to coincide with 3172(b) ... for the same reasons. The parent or legal guardian is the responsible adult to the minor up until the age of 14. It is this age that the minors should be responsible for their own arrest history [and] ID and thus be responsible to provide a CDC form 106. Keeping with 3172(b) and 3173(b), the requirement to present a picture ID should apply only to visitors' 14 years and older. The CDC has already acknowledged that the facial features

of young children rapidly change. Therefore, in order to insure that the ID was current in appearance, the parent would have to incur the cost prior to the 5-year expiration of the ID. In the same subsection there should be an added paragraph stating, "School ID's" are acceptable for children 14 years and older. **[N-45]**

What provisions will be included to assist with first time visitors who are not familiar with the ID requirement, i.e. on a one-time basis will other means of identification suffice for children 7 years an older? Clarify other means of ID? **[M-16]**

PhD's in correctional science all agree that when a minor child is accompanied by a parent/guardian they should not be required to present to visiting personnel any form of identification of that child, this includes birth certificates, or notarized letters. **[N-4]**

Children's facial features change constantly, you're requiring a larger expense to the families of all inmates. This is in addition to the expense of driving 300 miles to see them every 2 weeks. What type of alienation are you imposing on these children? I do agree that any birth certificate should be acceptable as long as it is embossed with the state seal. SCC does not allow my 11-year-old son to see his father because his birth certificate is a copy, which hurts my son since his other siblings are allowed to visit. **[N-15, Q-7]**

Most children age 7 years have no form of ID. What would be considered proper proof of ID? Would a school ID be considered proper? Isn't there [identification] enough with having a child's birth certificate, which is State certified? **[N-10, N-35]**

I do not understand the need for a child age 7 years to have an ID. This adds an additional burden to the already difficult requirements for a minor to visit his/her parent. **[N-9, N-51, N-68]**

In everyday life, our children are not required until the teen years to have a photo ID. [Moreover,] when visiting, each child is in the immediate care and responsibility of the parent. To have our children fingerprinted and photograph[ed] at such a young age [makes]…a negative impression. How many officers have their children over 7 years obtain an ID? Our children, and we as visitors, should not be treated like criminals. Children under 16 are required to present a birth certificate prior to visit. **[N-36]**

A picture ID should only be applied to those minors who are 14 years or older. This is the age where a minor can go into a court of law and make his or her own decisions. Children's facial features change. So are you trying to require a picture once a year? Think of the cost. A suggestion would be to have a camera in the visiting processing room and CDC take the picture ID, or use an ID process already in place. **[N-41, P-18]**

This is absurd! I know lots of parents that will object with having this as a process. A minor is not an adult and it's wrong to require this as a procedure. This opens up information that puts a child's safety at risk. **[0-39, Q-7]**

I do not understand, nor can I think of any reason for requiring a minor to produce proof. Why did the CDC choose age 7? **[D-34]**

This is unnecessary. It is highly unlikely for a child 12 or under to create a problem or have any kind of felonies. This would cause more time for the processing period. It seems to us that you are making visiting more difficult in hopes of discouraging us from visiting. On the contrary, it makes us determined and fuels the outrage! **[U-2]**

A child is entitled to their rights. To have the parents/guardians obtain an ID may be too difficult for some of us to take the time off our jobs. **[O-4]**

Drivers license perhaps? What kind of picture proof ID exists for 7- year old children? What possible benefit to the prison is this regulation? **[Q-72]**

This change is unnecessary and poses a hardship on families attempting to even obtain a required form of ID for a young child. The section should remain unchanged. **[N-40]**

As the present proposal does not specify what forms of ID would be acceptable for minors we are left with little choice but to assume that the same forms of ID acceptable for adults would be required for minors. The section is unacceptably vague. Specifically, what is acceptable ID? Who will decide if a form of ID is acceptable, and will visitors be subject to the subjective reasoning of individual correctional officers? This is truly thoughtless, undue burden supported by no compelling security interests. The only logical motivation for the promulgation of this regulation is to provide the Department with additional grounds to reject potential visitors. **[Q-75]**

Aren't the birth certificates we bring on every visit sufficient? **[N-21, Q-8]**

The justification is not honest. **[N-51]**

What is CDC's clear interest in positively identifying minors seven years of age and older by means of a picture identification card? Is CDC indicating that they are afraid an inmate will try and escape by posing as a ten-year-old? Or if they don't have an ID card, you might mistake a child as an inmate? Your initial reasons for wanting these amendments are outrageous, not to mention the burden that is placed upon family and friends to obtain a photo ID card and the additional costs associated with it. Further, compelling preteen minors to posses photo ID is devoid of penological or security interest and is clearly intended to be punitive. **[N-50]**

In addition to the CDC creating an ID card for minor children, they should also fingerprint the minor child, inputting the information within the computer system that can be read by a magnetic code bar. This system would perhaps confirm a minor's identity.
[N-75]

To force yet another expense on these families by making ID cards for minors aged 7 and over mandatory, will cause each to choose between paying for the ID's or use these monies for other necessities; which would force one to forgo the contact with their loved one. **[N-74]**

In everyday life, our children are not required until the teen years to have a photo ID. **[N-71, Q-22, Q-83, N-12]**

If it were the norm for children to carry an ID other than school ID, then this may have been reasonable a reasonable requirement. However, this is not the case therefore, an alternate should be arranged. **[N-71]**

Such requirements subject all inmates to unnecessary provocation to their current status. Just as some need more punishment and restrictions, others require additional rehabilitation. **[N-29]**

Children over seven being required to have a photo ID is just another loop for a single mother to jump through! These proposals and others like them are in conflict to the department's statement "strengthening community ties" and "help to preserve family bonds". **[N-19]**

These children will be punished by not allowing them to visit their relatives in prison. Why punish an innocent child, who cannot understand the crime, let alone punishment? This is ridiculous. **[N-11]**

Have ID's for our kids? I know they're my kids. Birth certificates should be enough. I've been going through this for many years, and they know who I am. Now I have to get proof? **[P-37]**

Will there be a plan with the DMV to lower the cost for low-income families with several children? **[N-67, O-8]**

Do you even stop to think that the parents cannot afford the cost? **[0-8]**

If this is adopted, will student ID cards be acceptable? **[N-67]**

I can already see the countless times a visitor will be denied visitation due to this unfair proposal. Many will be told, "No, you cannot visit." Some may have traveled hundreds of miles. Do not change your current policy. **[N-46]**

The proposed section should read: "All adults accompanying minor visitors must have possession of birth certificates to verify legal guardianship. Those minors seven years and older shall present picture proof of identify before being permitted to visit." **[N-47]**

Except as provided in Section 3173.1, "Visiting Restrictions with Minors," proposal 3173(b) requires minors seven years and older to present picture proof of identification. Proposal 3172(c) indicates that if the accompanying adult is not the parent or legal guardian, a notarized written consent shall be required. These proposals are in conflict. **[M-16]**

Where and why do children 7 get acceptable picture identification? Do we have trouble with 8-years olds who visit parents, what drastic threat provokes this change? **[N-61, N-77]**

What will waiting in line for a slip of paper that says you'll get your ID in maybe 60 days or 90 days do to family members? What would this do to family members who show up at the gate not knowing about the regulations? Will they be told, oh come back in 90 days, after you've secured your California ID for your 7-year-old? **[P-12]**

Be aware that you are also evoking bitterness in children, by making them go through criminal background checks, assuming that someone that is 7 years old has a criminal background. Forcing parents to go through the costly procedure of getting photo IDs for children, and for kids to have to carry that ID and show that ID and register to come and visit their family, makes them feel like a criminal. Do you want children to feel that like they already have nothing to gain from participating in our society and from participating in the system? **[P-28]**

It's unfair, it's inhumane, and I urge you to not let these rules pass with the children. **[P-10]**

Trying to keep our family together is hard enough. Now I have to go and get ID in order to have them go see their father, it's the most stupid thing I've heard. **[P-37]**

RESPONSE: The picture proof of identification requirement for minor visitors seven years and older has been deleted. Moreover, the wording of the subsection has been revised in the interest of improving the clarity of the content thereof. These changes are not intended to alter the original intent or meaning of the rule.

3173(c)
NOTARIZED CONSENT

The following specific comment concerning notarized consent is accommodated :

Except as provided in Section 3173.1, "Visiting Restrictions with Minors," proposal 3173(b) requires minors seven years and older to present picture proof of identification. Proposal 3173(c) indicates that if the accompanying adult is not the parent or legal guardian, a notarized written consent shall be required. These proposals are in conflict. **[M-16]**

RESPONSE: The requirement that both parents have to sign the notarized consent has been deleted. The conflicts in subsections (b) and (c) have been eliminated with the deletion of the minor picture proof of identity requirement. In addition, the content of this subsection has been revised slightly to improve text clarity. A change in letter redesignation is necessitated by the insertion of a new letter designation to a portion of the previous subdivision.

3173.1
VISITING RESTRICTIONS WITH MINORS

The following specific comment concerning restrictions on visits with minors is accommodated:

Regarding limitations on inmate visits with minors victimized by sexual abuse: By way of expressing support of the proposed changes commenter read a letter recalling the many forms of physical and mental trauma this abuse entails for the individual as well as the family involved in such victimization. Children are often blinded by their love for their parents. Its another unconditional love, which is exactly what God intended it to be. We need to have the same kind of love for children by protecting them. It's my goal, and I sincerely hope it'd be your goal also, to prevent any minor from visiting any incarcerated sex offender. You don't dangle a child in front of a child molester. But if their father's been convicted of any kind of sex crime, 90% of the time, he's going to do it again. 90% of the time if you're molested as a kid, you're going be a molester as an adult. And that's what we've got to protect our kids from. **[P-33]**

RESPONSE: As explained on page 9 of the ISOR, this section retains former §3173.1 implementing child victim visiting restrictions contained in and recently added to the Penal Code. Other provisions have been newly added to prohibit or restrict inmate visits with children when there is "substantial" evidence of inmate misconduct of a violent or sexual nature as identified in other Penal Code sections. The Department agrees with the sentiment that "dangling children" in front of known or suspected child molesters and individuals with a similar propensity to violence against family members is undesirable. Accordingly, the rule expansion is retained as a tool for visiting staff to facilitate restrictions in visiting as needed to keep people safe in accordance with the general provisions of § 3170. It is anticipated that this option will give visiting staff the ability to protect visiting children when necessary and appropriate.

The following comments concerning restrictions on visits with minors are not accommodated:

There are already rules in effect for pedophiles. So if they're not working, why not look at those rules and make them more effective? I do know that involving all the families about something that has only to do with a very small percentage makes no sense at all. **[P-18]**

RE: Prohibiting visiting with minors for all inmates with sex-crimes/domestic violence in their file. I do not see the logic in this as visits are fully supervised. **[N-80]**

I strongly encourage you to NOT eliminate the visitation of minors to inmates with sex offences. The family unit is a strong motivator for inmates to get their life on the right track. Don't take this away! They need this contact to encourage them to be remorseful and to change their wrongdoing. Let the FAMILY decide if the minors should see the inmate, not an ordinance. The families will no what's best for the minors themselves as well as the inmate. **[O-3, O-5]**

This is absurd, only criminal conviction for child sex-crimes should be used to restrict these visits, and then only to non-contact status. This would restrict an inmate from visiting his or her own children if a child was injured or killed during the commission of their crime. The word shall "mandates" these restrictions, contrary to the Initial Statement of Reasons, which say it is optional. **[A, N-39b, N-41, N-69, Q-73]**

…[as above] *and* it is not only illegal, it is unconscionable. Furthermore, it would be putting those inmates not allowed to visit with minors in jeopardy. **[N-52]**

Our society dictates that if a person is suspected of being a sex offender, it is that person's obligation to prove their innocence. I feel that this should not be allowed if this is so. In the case of a convicted sex offender towards women or children, that person should not be allowed to visit with women or children. Sex offences can occur in many different ways. If the inmate does not have a conviction, closely monitored visits would be appropriate. This is a very sensitive issue open to discussion as to disposition of visiting. **[N-41]**

The Department plans to prohibit contact visits with minors for all sex offenders. While this may appeal to the punitive natures, and the desire of all people to protect children, there is a clause that these sanctions can be imposed on inmates without conviction. This is the kind of rule that should never be allowed to be implemented. It sets a bad and dangerous precedent. **[D, N-50, N-68]**

It would be difficult if not impossible to obtain authorization from a court to allow a non-involved minor to visit with an inmate convicted of a sex crime. **[N-66]**

I object to the proposed changes because it would not allow me to see my daughter. Child molesters are surrounded by violent criminals, who would think nothing of killing them, and CDC does not try to take [away] their visits. **[O-46, O-47, O-48]**

…[as above] *and* the Board of Prison Terms seems to want the men to rehabilitate themselves and reintegrate successfully into society if released. With that in mind, restricting them unnecessarily from the children in their lives will not assist in the reintegration process. **[O-50]**

Although I have not seen the proposed changes, it is my understanding that the department intends to disallow inmates convicted of sex-crimes from visiting with anyone. **[O-5]**

I oppose this change because it does not specify child victims, but encompasses all minors. This change assumes all minors are victims/potential victims. This change also assumes all child molesters will target all children. The restriction of visiting with minors when substantial evidence of misconduct described in section 3177 (b)(1) exists, with or without conviction, leaves much room for interpretation. This sentence should be changed to read as follows; "inmates may be prohibited from having contact or non-contact visits with minors where substantial evidence of misconduct described in Section 3177 (b)(1) exists, with or without conviction. **[N-51, O-1, O-35, O-48, Q-73]**

This section is ambiguous and should be clarified as in the previous regulations to specify child victim. **[N-76]**

Inmates sentenced to prison under penal codes 261, 264.1, 266c, 273d, 285, 286, 288, 288a, 288.5, 289 should be allowed to visit with minors, with the warden's approval. **[N-88]**

The use of "Substantial Evidence" does not indicate there will be an "Evidentiary Burden" or due process rights afforded. **[N-50, O-35]**

Please register my opposition to Section 3173.1 (eliminating visits with minors). **[O-1]**

It is as though inmates convicted of sex-crimes are being convicted over and over again during their incarceration. **[N-50]**

RESPONSE: The Department does not have the option of exempting inmates from the statutory prohibitions noted in the response immediately above and cannot accommodate requests to do so. On the other hand, the decision to expand upon explicit statutory limitations has been made

by the Director as explained above and on page 9 of the ISOR. Unfortunately, monitored and/or supervised visiting rooms and/or the presence of a non-incarcerated parent or relative has not always sufficiently deterred sexual impropriety, including that of alleged molestation of minors. Accordingly, the Director's decision to prohibit such visits is prudently preventative, and not punitive, as some Commenters feel. Finally, some Commenters allude to the possibility of child molesters being deliberately singled out and harmed by other inmates. Inmates with documented enemies may be afforded special housing under other provisions of these rules. Therefore, with the exception of minor nonsubstantive changes in text, none of the comments above will be accommodated.

3173.2

SEARCHES OF INMATES' VISITORS

The following specific comments concerning searches are partly accommodated:

What are the circumstances that a visitor may be required to submit to an unclothed body search? This subsection states that visitors are required to submit "to contraband and/or metal detection devices" but gives no listing as to what those may be. At present the only contraband or metal detection "devices" employed are the metal detector and hand wand. If others are contemplated, they should be specified. If, in the future, the Department seeks to add devices, new regulations should be promulgated governing their use. The regulation on the routine searches of visitors (those made without reasonable cause and occurring with any and all visitors) should be specified. They should state 1) that all items brought in must be handed to staff for searching. 2) That visitors must remove their shoes, outer clothing (coat, sweater, hat, gloves), and any item likely to set off the metal detector (jewelry, belt, etc.) and 3) that a visitor must clear the metal detector. Visitors with implants or mobility impairments should only have to provide verification at the time of application and any time there is a change in condition. Visitors restricted to wheelchairs should not have to transfer from their wheelchair to another; this is uncomfortable and inconvenient. Does this verification have to be on a doctor's personal letterhead? **[M-2, N-49, N-61, N-72, V-8]**

Given the courts ruling in *Estes V. Rowland*, 14 Cal. App. 4th 508, why is the California Department of Corrections proposing to use dogs to search people? They may be used to search things, but to use them on people is inappropriate. There are many other methods of search available. Also, clarify what the standard is, what does "reasonable cause" modify in this sentence? The privacy of visitors with chronic conditions, medical implants, restriction to a wheelchair should be honored. Additionally, these individuals should only be required to provide verification at the time of application and anytime a change in condition occurs. **[M-1]**

The percentage is high that drugs go into prison through CDC employees. Therefore, bring back the drug-sniffing dogs and have them check visitors and staff alike. **[P-16]**

Right now there's a case in the courts about the x-ray machines and I don't think that this is the time to put that inside the wording of these proposed changes. I think that dogs would be a wonderful idea because drug sniffing-dogs will not only get the inmates, the visitors and the staff. **[P-21]**

The California Department of Corrections proposes to x-ray visitors with a body scanner, Rapiscan-Secure 1000 to halt drug smuggling. This would permit officers to see through visitor's clothes without seeing beneath the skin. Some critics are concerned about the potential for sexual harassment. **[N-19, N-53, Q-39]**

The introduction of x-ray equipment is in violation of the agreement between the California Department of Corrections (CDC) and the courts to discontinue their use. "Reasonable cause" to the CDC means anyone and everyone who wants to visit an inmate is suspect, and therefore will

be searched using this x-ray machine. For many visitors this would mean being x-rayed several times a week. **[A, N-31, N-32, N-39, N-39b, N-42, N-48, N-69, Q-56]**

A search of a visitor and or their property is unclear in that "Probable Cause" is not clearly defined. Does this mean it is left to the subjective interpretation of staff, are there sound guidelines for the implementation of this proposed language? Such a decision should never be left to one person. These rules and guidelines should be very clear in order to protect a visitor's civil rights. **[N-8, N-44, N-50, N-72, X-1]**

The department attempts to assert the right to submit visitors to humiliating searches, in particular, unclothed body searches in the name of "reasonable cause". The Department attempt to violate visitors right to privacy and avoid obtaining a Search Warrant if reasonable cause actually exists. The Department refuses to invoke similar requirements on its employees. These requirements advocate further humiliation and stigmatization of inmate visitors. Requiring mobility impaired visitors to submit Medical Verification BI-annually places an undue financial hardship on them, violating their rights under the Americans with disabilities Act. **[N-46, Q-52, X-1]**

Verification to support medical condition should only be required once a year. The verification should be provided to the Visiting Sergeant, who would take responsibility for determining validity and noting the condition in the computer. The processing officer should then note the need for accommodation on the visitor pass. **[M-2]**

This is a budgetary consideration, these visiting changes. We know how to play the Republican games now; we know how to do it. Our lawyers told us these regulations are a violation of search and seizure, the 4th amendment, unreasonable search and seizure. **[P-30]**

Visitors should not be subjected to the same rules for searching that inmates are. **[Q-52]**

Visitors should be advised they do have the right to leave prison grounds rather than submit to a search. Some visitors are not aware of this. **[M-13, N-72]**

Visitors who refuse to submit to a search should be denied visiting for the entire weekend. **[N-88]**

Probable cause cannot be established by a visitor's refusal to submit to a search. **[N-45]**

RE: Limits on visitors with criminal history. All visitors are required to pass through a metal detector. Visitors may bring only limited items into the visiting room (small amounts of money, car keys, pictures, IDs, etc.). A video camera is used for surveillance. Correctional Officers patrol the visiting area. Prisoners are always searched when the leave the visiting room. These procedures appear to be sufficient to protect the public safety. **[M-5, M-15]**

The CDC 888, Consent to Search, should include the Institution Head or designee approving the search. **[N-47]**

RESPONSE: Accommodating the comments above, the Department has revised subsections (a), (c), (d), (e) and (g) as follows: Visitors are subject to *inspection* (as opposed to "search") and such inspections may include a "search" of the visitor's person, property and vehicles (as opposed to spelling out search devices or methods) when there is *probable* (as opposed to "reasonable") cause. Visitors shall be further required to submit to detection devices and inspections of personal items and assistive devices prior to being allowed to visit. Wheelchair users will be exempt from transferring from their personal wheelchair, but not from submitting to a hand held detection device, upon presentation of appropriate documentation. The manner of notifying inmates and visitors refusing to be searched and denied visiting for that day has been

rewritten so as to use plain in place of operationally descriptive language (which has been relocated to the Operations Manual (DOM), as indicated). Other less significant wording changes have been made in (b) and (f), a portion of (c) has been redesignated (d), the original (d) redesignated (e), and the original (e) relocated to the DOM.

However, procedures that operationalize inspections authorized by these regulations (such as how personal items shall be presented for inspection, or what and how items of outer clothing will be removed) are not rules as legally defined and, therefore, should not be addressed in these regulations. In addition, since physician authorizations as required by subsections (d) and (e) should be supplied at the time of initial application and any time there is a change in physical condition or renewal/update of visiting status in accordance with other provisions of these rules, the Department doesn't consider this provision overly burdensome for the subset of the visiting public so affected. Besides, as pointed out on page 9 of the ISOR, the requirement is being relaxed, not tightened from one to two years. Finally, the content and use of CDC Form 888 is purely operational. Comments and suggestions regarding its content are inappropriate here, and the form has never been a part of this rulemaking proposal. Accordingly, none of the comments associated with such matters are accommodated.

In general, the regulations at issue do not represent a significant departure from current practice set forth in local rules of operation. It is important to remember that the existing text of the current rules is outdated. Therefore, the revisions being considered at present and as reflected in the original notice may appear more dramatic than they are in actuality. As pages 9 and 10 of the ISOR explained, the changes in §3173.2(a) through (f) are adopted to retain and updated the existing provisions of superceded §§ 3173(e), 3177(c)(3)(C), 3173(p), 3173(q), and 3173(f).

The following specific comments concerning searches are not accommodated:

When they were using the scanners at Lancaster, they claimed that they could see something, I have no idea what it was and I was pulled into the backroom and yelled at by the Sergeant, "Come on now you know you've got something on you. Why don't you just admit it right now." To this day I have no idea what they saw, but that's the commonest "crime" [visitors commit]. You see it all the time. My point is that I [agree] there needs to be come regularization of the rules, because there is a lot of arbitrary discretion as far as the guards [are concerned]. The way that the rules changes are written will give [guards more arbitrary power]. **[P-35]**

It's ludicrous, this idea that we can maintain these families intact with no family contact. I'm going back to the visiting room where you're written up if your shoulders touch or you can only sit across the table from each other, hands holding. If your knees touch, you get a write up and for each write up, if your family member has fifteen to life, you know that means another fifteen years. Because maybe it looked like, when your elbow was on the chair, it might have been around your wife. Or your knees touched under the table. This is true. I've seen it happen. I'm a victim of it. I'm a victim of the strip searches. Exiting the prison, for no reason, cavity searches, with no reasonable cause. No criminal record, no drug record, no suspicion of anything, except, "she thinks she's miss goodie two shoes. We'll just knock her down a peg. Pull off your clothes. Sign this." I said, or what? They said, "or you won't be able to visit your husband again." **[P-43]**

Nobody has really spoken about [the] handicapped. And I am doing this for a fellow woman that visited at Corcoran State Prison who has been visiting her son there for at least nine years. For the first time in her life, she was forced to strip first. Not because they got any kind of word that her son was bringing in drugs, not because they had any implication of drugs, but because she had a metal plate in her knee and she could not pass the metal detector. This woman has never walked through the metal detector it is on record she has a thick metal plate in her knee and she's going to set it off. The California Department of Corrections should be responsible for notifying visitors with disabilities of these requirements. It should not be left to the inmate's who are often illiterate, or do not speak/understand English. **[P-19, U-13]**

I have a metal implant in my leg and forced to volunteer to a strip search in order to visit my husband. Even though I had provided a medical notice regarding the implant I was told that if the visitor cannot clear the detector for any reason, a search would be conducted with the consent of the visitor. If I had not consented to the search, I would not have been permitted to visit my husband. After the search I was never given documentation as to why I was searched nor did the institution have this rule posted. I volunteered to be searched, however, my agreement was made under duress. The experience was very humiliating. **[N-55]**

RESPONSE: As previously stressed, the Department does not condone acts of deliberate harassment on the part of its personnel. One option is to complain in writing to the head of the Institution/Facility in question in the manner set forth in the appeals section of these rules (existing §3178 and proposed §3179). In accordance with §3391, allegations by non-inmates of peace officer misconduct may also be made in written complaints. However, it will continue to be Departmental policy to subject individuals seeking to visit to *inspections* as necessary to ensure security and the prevention of contraband. It may be that such inspections will entail a search and processing through or use of metal detection devices. The relevant subsections have been revised as discussed above with the intention of making the rules clearer with respect to "search" practices.

3174:
STANDARDS OF DRESS-GENERAL

The following specific comments concerning dress standards are not accommodated:

The rules regarding clothing, property and required identification/paperwork are not clear, and are often not in writing and or not posted. Rules should be in writing and posted in both the Visitor Processing Center and Centerforce/Friends Outside. The rules should be mailed to visitors upon request. 800 numbers should advise visitors they may request visiting rules from the institution they intend to visit by writing, calling or in person. All inmates should be provided a copy of the rules upon arrival at the institution so they may send them to their perspective visitors. **[M-2]**

The imposition of clothing standards for inmate visitors, particularly female visitors, is discriminatory. It is inconsistent with the dress standards for female staff members. Past practice has shown that visiting staff will continue to use their interpretation of dress standards to delay and or deny visits. **[N-72]**

Staff should also have to abide by these dress standards. **[N-80]**

I was married in Corcoran visiting room. It took me three months to find acceptable clothing that would meet the prison's standards. I wore a light pink dress with lace and a slip underneath. When it was my turn to be processed the woman said you cannot wear the dress, it's sheer. I was forced to change. **[P-24]**

The current proposal gives the officials in charge the power to deny visiting if the visitor is not appropriately dressed (or he does not like what I am wearing). Many times I have been required to change my outfits that I have previously worn. **[P-35]**

Almost every weekend I've had to go to the trailer and change, because the thing that I wore last weekend was okay, and this weekend is not okay. So I go change. And it's just not right. **[P-41]**

Most women have breasts, and that fact cannot be hidden. Yet unless I wear blouses that are two sizes too big, so big that it hangs on me, I am forced to change because an inmate may be able to see my breasts. **[N-72]**

I go into visit; I have on purple pants. Now, purple is not blue – purple is purple. They tell me, oh that looks too much like a prisoner's pants. And, I said these are purple. Well, you are going to have to change. A sleeveless blouse – have any of you visited anywhere in Blythe? It can get to 126 degrees, and you have at least two city blocks to walk out of the check-in before you get to the yard you're visiting. In Vacaville it's 110 – it's hot. We're hot, yet we can't have a sleeveless blouse? I have been made to bend over in front of mirror—this was at Ironwood–with a male officer behind me and a female Lieutenant present. My skirt was the legal length but I was made to do this to see the cleavage down the front of my shirt, and to see if my skirt was too short in the back. However, the rules say you will be measuring it from the front. This happens to us constantly, absolutely constantly, and then you put in sleeveless garments! What's with that? **[P-6]**

I can say in my 12 years of visiting in California that I don't think there has been one visit where I have not witnessed what I thought to be a human rights abuse against a family member who came to visit their loved one. I have witnessed the shame and humiliation and embarrassment that family members have had to bear while being put under the scrutiny of guards that tell them, "oh your shirt is too white" or "your pants are too blue" or "your clothing is too tight." Of course it's very arbitrary and it depends on who the officer is that day. **[P-12]**

The visitors experience the most arbitrariness with staff [in the arena of]…attire. The list of clothing should be exclusive and exhaustive. **[M-2]**

What you fail to realize is you are sending your guys as well as my husband into a war zone. There is a power struggle between visitors and guards. Guards have the power to manipulate our lives. They have the power at any given time to take visiting away from us. They have the power to force us to change clothes four and five times. You see a beautiful woman; you're going to take notice. Let's be real. Do not let her visit because she's beautiful, meaning you're going to harass her four and five times going back and forth. "You need to take that off because of the way it looks." **[P-19]**

Staff should have to articulate their reasoning for disallowing clothing. Staff should also be required to articulate in writing behavioral issues as enumerated in this proposal. **[D, M-16, N-51, N-68]**

It would also be helpful if staff were provided swatches of allowable fabrics to compare color and or translucency. **[M-1]**

The proposed regulations require institutions to develop local procedures, which will not require a uniform standard of attire. **[M-2]**

Why aren't relevant issues like clothing colors...[or] the type of shoes and jewelry addressed? At Corcoran and SAC [certain items are acceptable], but [the very same items aren't] at Lancaster. Why are leggings okay at Sac and Lancaster but not at Corcoran? Why are open back shoes okay at several prisons, but not at Corcoran? Why [are] multiple jewelry [items] okay at most prisons, but not at Corcoran? At Corcoran you can only wear one pair of earrings, one bracelet, one ring (or a wedding set), one watch, one necklace, and no toe rings, because they're considered fingers, apparently, when you go into prison. A toe ring is like a finger ring so you can't wear those. And an anklet is a like a bracelet, you can't wear those. **[P-16]**

What is allowed at one institution is prohibited at another (even another of the same classification level and design). The department has never been able to explain discrepancies such as; why a paperback book brought in by a visitor at Salinas Valley State Prison is not allowed at Lancaster. Why sunglasses are allowed at over half of the institutions but only prescription sunglasses are allowed at the Correctional Treatment Facility and are prohibited at North Kern State Prison. And why shoes without back-straps are allowed at most institutions but prohibited at Pleasant Valley State Prison and the Substance Abuse Treatment Facility in Corcoran. The vastly different rules

at each institution are not only confusing to visitors, they are unfair and allow for arbitrary action on the part of staff. **[M-2]**

Some prisons have long, often unwritten, lists of colors, styles and items that are not permitted, i.e. white, gray, beige, brown and orange clothing, sweats, hats and gloves, and clothing with athletic logos, and sleeveless dresses/blouses/shirts. The proposed regulations do not clarify or rectify this issue. **[M-2]**

Why no mention of highly relevant issues such as visitor clothing, colors, shoes, and jewelry, or what type of currency is acceptable—coins or paper–all of these vary between institutions. **[N-53]**

RESPONSE: As pointed out on pages 49 and 50 above, visiting rules will be in writing, provided inmates and readily available to the visiting public in accordance with §3171(a) and (b) and other unchanged provisions of these regulations. Henceforth local visiting procedures will augment; and not supplant or substitute for (as they do presently), the statewide regulations. Revisions as previously explained permits local procedure or practice in conflict with the readopted and revised statewide visiting rules to be appealed by the public or inmates in accordance with the provisions of proposed §3179. Due to budgetary constraints the Department is unable to provide such added amenities as toll-free numbers.

With the exception of undergarments (brassieres and slips) that are normally specific to one sex, these rules are not otherwise gender specific, and therefore are not discriminatory in content or intent. Moreover, standard uniforms matching or exceeding the standards expected of the public in these regulations are worn by visiting room staff. As explained elsewhere, visitors have several options with respect to seeking redress of any staff action perceived to be selective, unfair or punitive.

Page 10 of the ISOR points out that the revised §3174 clothing standards reflect long-standing practices at most institutions—as contained in their local visiting procedures–that are being superceded by these regulations. The comments above further reveal that presently visitors are readily permitted a workable option whenever staff articulates an objection to apparel: changing attire. The Department does not intend to remove this option and has not proposed regulatory text that would do so. While §3176(a)(5) will permit "inappropriate dress" as a reason for denying visits §3176.1(g) further stipulates that such a reason for denying a visit will be "clearly stated" in writing provided the visitor at the time of the action or subsequently by mail. Because fabrics vary widely and change so frequently, the suggestion that swatches of allowable samples be provided (and by implication, regularly updated) on a statewide basis is impractical and excessively labor-intensive.

Finally, institutions are not being newly required to develop non-conforming local procedures, they have had the authority to do so in accordance with existing §3171. As explained above, these local visiting procedures will henceforth augment—and not supplant–the statewide rules. This means there will continue to be some institution-by-institution variation in permitted items and apparel, depending on conditions specific to the setting in question and so long as such variations do not otherwise conflict with the statewide standards established by these regulations. Differences in the physical setting of institutions/facilities, intensity or type of contraband problem and normal human variation in the degree of diligence by which dress standards are applied further account for contradictions noted by Commenters. The Department does not have the ability to fully accommodate these objections other than in the manner specifically provided below and elsewhere.

3174(a)
STANDARDS OF DRESS-OBJECTIVE/GOALS

The following comment concerning the goal of adopting dress standards is accommodated:

It would be helpful to set forth a general goal about and a specific standard for, attire that can be used as a "fallback" for visitors and staff. For example, "Visitors are expected to use good judgment and dress appropriately at all times, in order to maintain a visiting environment that is suitable for people of all ages. Visitors are expected to dress modestly and maintain a standard of conduct during visiting that is not offensive to others." This way, if someone is turned away for inappropriate attire or behavior, the conduct can be identified as inconsistent with the California Department of Corrections goals in allowing visiting, i.e. positive influence, and maintaining connections with loved ones. Following the introduction, the section could read, "Consistent with making visiting safe, a positive, constructive time for families and staff, the following restrictions shall be in effect: […]" **[M-1]**

RESPONSE: The Department agrees with the commenter. Accordingly, the text of the subsection has been written in the manner suggested.

3174(b)
BRASSIERES

The following specific comments concerning brassieres are not accommodated:

Regarding dress standards as they apply to female visitors. Female visitors are scrutinized in three areas. In the Visitor Processing Center we are scrutinized by male staff while being processed into the facility. Female visitors are further scrutinized because they have difficulty clearing metal detectors due to the underwires in many brassieres. Once inside the facility, we are again scrutinized, generally by male staff who uses their interpretation[s of what is acceptable], which is based upon each individual's perception of provocative attire. **[N-46, N-49]**

How many weapons have actually been made from the underwires of a bra? Underwire bras are essential for many women. There absolutely must be an alternative for them. I understand the Friendship Houses no longer carry sports bras as a substitute. What are these women to do? Some women have physical illnesses that prohibit them from wearing a bra. What are those of us who cannot wear a bra supposed to do? The basic standard of modesty does not necessarily require a bra, but is determined by the clothing. Don't bras make the breast look better anyway? **[M-1, N-42, N-86]**

Aren't there enough guidelines to follow? Everything I attempt to wear into visiting is rejected (has to do with my large breasts, which is something I cannot control). So stop with the stupid stuff and get back to the basics of the 1970s. **[Q-77]**

How nice, pre-pubescent females aren't required to wear a bra. **[N-61]**

RESPONSE: As page 10 of the ISOR explains, this subsection is adopted to add new requirements common to local visiting procedures reflecting current practice for female visitors. Requiring pubescent and adult females to wear a brassiere attempts to minimize titillation in the visiting environment. Brassieres with metal underwires cannot be worn because they will not clear metal detection devices and can pose a security issue. Metal obtained from this source can be used to manufacture weapons or escape paraphernalia. Nevertheless, the subsection is redesignated (a)(3) instead of subsection (b) in an effort to improve the internal ordering of topics within the section as a whole.

3174 (c)
LIST OF PROHIBITED CLOTHING

The following specific comments concerning prohibited clothing are accommodated:

We understand clothing resembling inmates, blue denim and blue chambray clothing, and staff, olive green, may present a problem within the prison, but no one can seem to explain the other exclusions. The only restriction on style should be to disallow any item shorter than mid-thigh, any bare-midriff, bare-shoulder or bareback item, or any item displaying obscene language or messages. **[M-2]**

The dress standards are too vague again. Is there a requirement that sandals have a heel strap? Are all shades of green and blue disallowed? Are all colors of denim clothing disallowed? Some shades do not resemble inmate or staff clothing at all. What is the purpose of not allowing sleeveless shirts/blouses? Shouldn't there be some discretion in areas of higher temperatures. **[N-39b, N-74, Q-51]**

The dress code should be very detailed and to the point. We as citizens should be allowed to dress in the manner that is conservative and tasteful. Our clothing should be well fitting and not too revealing, let us not forget the inmates we are visiting are deprived of sex. If we as visitors choose clothing that is enticing, what will it do to these men? It is already difficult to sit next to your husband/boyfriend and not touch in a manner that will excite each of you; lets not add clothing to the situation. Spandex and Lycra are very revealing, causing arousal unintentionally. I do not agree with rigid rules, but I do agree with careful monitoring of women's clothing. Being sexually deprived can make a person do many strange things. I agree that revealing clothing, Spandex, Lycra and similar clothing should be disallowed. **[N-41]**

The phrase "including but not limited to" should be clarified. This essentially authorizes any clothing restriction; it makes the section too broad. **[D, M-1]**

What's the difference between a non-see through and a see through rain poncho/jacket? Staff screen visitor's attire prior to allowing them to visit anyway. **[N-50]**

More stupid clothing restrictions! What is wrong with sleeveless tops, spandex and Lycra? **[D, N-49, N-51, N-41, N-68, N-74, N-78]**

I am asking that the restrictions on women's clothing be lightened. Some of my visitors have been turned away or forced to change because of the current requirements. **[Q-12]**

What is the definition of excessively tight clothing? Clothing that exposes the breasts; does a V-neck shirt do this just because of the shape? No! But institutions read into the description that it does. I have been forced to change because my panty line could be seen even though I was wearing loose fitting pants. Most women have breasts, and that fact cannot be hidden. Yet unless I wear blouses that are two sizes too big, so big that it hangs on me, I am forced to change because an inmate may be able to see my breasts. This is the biggest issue for visitors. Two inches above the knee needs to be defined. **[N-72]**

I am sick and tired of my six-year-old daughter being treated as a sexual object by your staff. If I have to hear, one more time, about some male officer being able to see the outline of her underwear through her skirt—[the very skirt] that she wears without problem to her very conservative Christian school (with their own dress code)–I shall scream! And I am sick of being treated the exact same way! **[N-4]**

I am opposed to the proposed section restricting hair-extensions. This would discriminate against African Americans. **[O-16]**

<u>RESPONSE: Subsection (c) is rewritten as follows in accommodation of the comments above: Items are redesignated throughout to account for additions, subtractions and redesignation(s) outside and within the subsection; The clause "not limited to" is deleted and subsection (b)(6) added in order to close what may be perceived as a restriction on "any" clothing; Redundant text on clothing resembling that worn by law enforcement officers has been dropped; The words</u>

"sheer," "transparent," and "midriff" are repositioned and deleted as appropriate to improve clarity about such issues; The words "sleeveless garments, Spandex, Lycra, dresses, shirts, pants and shorts" are deleted and "object" added; The phrase "hair extensions" is deleted and the provisions of subsection (d) are repositioned—to redesignated subsection (b)(5)–and subsection (d) is deleted as required for internal textual consistency.

The Department intends, by these and other changes in directly related subsections as noted above, to shift the regulatory emphasis away from "prohibiting" particular types or kinds or brands of clothing and instead emphasizing "inappropriateness" of wearing clothing that by design, manner worn or content of messages displayed, undermine the safety, decorum and constructive atmosphere of the visiting area.

3175 (b)
CONTROL AND SUPERVISION OF MINORS

The following specific comments concerning searches are not accommodated:

Parents should not have to accompany their teenage children around the visiting area and to the restroom.

RESPONSE: The provision is required to ensure that the accompanying adult exercises appropriate supervision over minor visitors.

3175 (c)
NURSING MOTHERS

The following specific comments nursing mothers are accommodated:

It is appropriate to specify that mothers may nurse their babies in the visiting room, but we are concerned about the threat of "termination" if the mothers are deemed not to be "discreet". Nursing children is not a sexual activity, it is not done in order to expose oneself. The mandate that women be "discreet" not only suggests some inappropriate behavior, it also allows for arbitrary and harassing action by staff. (What is "discreet" enough? What is covered up at all time?) Consider, "Nursing mother should be discreet and the breast should remain covered at all times." **[M-2, N-37, N-65]**

Under the circumstances, a nursing mother should go to the restroom, and there should be 1-2 chairs for any necessary use. **[0-39]**

RESPONSE: Accommodating the comments above, the Department has rewritten the text of this subsection along the lines suggested. This revision obviates the need for restroom chairs.

3175 (e)
FIVE SECOND EMBRACE AND/OR KISS

The following specific comments regarding a timed embrace/kiss are accommodated:

On three different dates I timed the embrace of inmates and their visitors. I observed that out of the 37 hugs, one lasted approx. eight seconds, one lasted two seconds and the remaining 35 averaged three to four seconds. **[Q-49]**

The 5-second rule for greeting set up by the department is set up to fail. It does not pass the common sense rule. Fundamentally different CO's will enforce it differently on different inmates. It will either be ignored or arbitrarily enforced, neither is ultimately good. **[P-4]**

A five-second hug and kiss: I have a 25-year-old daughter. She holds me for 3 or 4 minutes when she visits, just to hold her mother. You've taken the family visits away from termed lifers. They had families. People cannot exist without being touched and loved by those they love. You rip the family apart that's what you did, because you were afraid that they would have babies that would be on welfare. Somebody brought up the question who's going to interpret this? I can tell you that at CMC you had a Lieutenant with stopwatch and termination papers in her hand. If you went over that 5 seconds, you got your visits terminated for anywhere from 30 days to 3 months. A 5-second kiss is a ludicrous, a minute and a half, that's reasonable. **[P-6]**

Five-second kisses—absolutely ridiculous. He is my son. I don't need to have [a] five-second passionate kiss with my son. I want to hug him. I want to kiss him. I want him to know that I love him. Five seconds isn't enough. [**P-7]**

I strongly oppose the five second kiss, because that's – as many speakers have said before me – that is just not enough time and if it includes the hug, it is definitely not enough time. **[P-8]**

Some of these laws that I'm hearing about, and some of the things that these women have to go though in order to see their family members, remind me of the Talliban. However, there's a lot more discrimination going on in this country, and especially against prisoners, than probably anywhere. They need their human rights upheld. They are still human beings, they still have families, and they still are entitled to love and affection. A five second hug or a kiss is ridiculous. Can you live without affection or touch or love for a whole day? Twenty-four hours? Much less, you know, for years? It's cruel and unusual punishment.
[P-20]

Unnecessarily detracts from whatever our joys and our pain and emotions are for the day, not to mention just that we're happy to see each other. I want five seconds to at least to hug, and I want to have a kiss on top of that. It was brought up that there are guards that time you and they harass you. They write you up. We had a seven to ten second rule at Solano for a while. An inmate went eleven seconds. The guard that spoke to him afterwards, said, you went eleven seconds and he said to the Lt., well what's one second? And she said: "I don't care if you spent one second or twenty minutes." The interesting thing is that when he got his 115 it was for 2 minutes. **[P-21]**

It's probably a weekly occurrence that people have their visits terminated for having their arms around each other. It's referred to as excessive contact. I want to be touched, I get upset, and ask my husband to please touch my hair but he replies that he can't. I object to the five-second rule at the end of the visit, you've got officers that aren't fair; they stand with a stopwatch and terminate your visit because they don't like you. I don't know why they work there if they are so unhappy. **[P-24]**

I consider the visiting room to be part of my house on the weekends. That is where I go to see my loved one. And I will do nothing to terminate my visits. And I don't feel that giving my husband a hug or a kiss, which I don't get to do every day, is too much to expect. I don't feel that it's appropriate for you to judge how much time should be placed on an emotion. **[P-27]**

Why create extra paperwork for the stopwatch idea, 5 seconds. **[P-30]**

I don't like these changes, especially the kissing one, because that's what I live and breathe for, to see him. If he's in prison, I'm in prison. My whole life is on hold. Now, again that's not your fault. **[P-31]**

The 5-second "hug" hello kiss…is wrong as well. When my husband tells me that he's had 15 seizures, I just want to have him hold me. That's all. **[P-36]**

The language in these proposed changes needs to be written for more clarity, specificity to accomplish the goal of standardization. I hope you have heard these people today about this 5-second rule. I cannot imagine how that's going to be enforced without infringing on my privacy and making the process at the end of visiting, which you know there's probably 40, 50 people in the visiting room, how are these guards going to stand there. I have never once seen anything inappropriate happen during that kiss and embrace. **[P-35]**

Now they want to take away our right to a 5 second kiss? And that's not right. We need that touch. Sometimes he's feeling bad and sometimes he just needs that little touch. It might be nothing more than a stroke on the cheek. That's all I need. And so this 5-second hugging and kissing, is not enough. **[P-41]**

I don't think I could be locked in a box. Not to be able to answer the parole board's questions about the crime, I couldn't have survived. This could happen to anybody. And you'll want to do more than hug your mother or your children for 5 seconds. **[P-43]**

Consider revising your proposal to read: "There may be no inappropriate sexual behavior during the hug/kiss when arriving or leaving the visitor. Any inappropriate sexual behavior will be cause for termination: (1st offense 3-months) , (2nd offense 6-months), and the (3rd offense termination for 1 year). Save the punitive measures for those who do not abide by the rules. **[Q-53]**

In the department's Statement of Reasons, standardization was the only justification offered for this regulation. There is no statement alleging a legitimate penological reason or interest; nor is there a rational or reasonable relationship to any penological objective. I suggest that this section read as follows: "reasonable display of affection [is permitted] between consenting adults, as well as between parent and child, such as: hugs, embraces, holding hands and kisses (either on lips or cheeks). **[N-49]**

How are you planning to enforce this regulation so that it is fair to everyone, are you going to provide your correctional staff with stopwatches? This regulation will be yet another area which officers will abuse. The current regulation utilizes the description of "brief," however; each officer's interpretation of brief continues to vary. The current description of "brief" is just as broad as the interpretation by visiting staff. May I suggest your wording be changed to: "at the beginning and end of each visit, inmates and their visitors may embrace and/or kiss, for a short period not to exceed customary greeting". **[N-39, N-74]**

Not only is such a regulation entirely unnecessary, it is insulting and offensive. What is threatening or inappropriate about a prison needing several hugs from family members in the weeks following the death if his mother or a wife needing her husband's arm around her as they sit and discuss the crisis of their teenage son. The rules should allow non-sexual physical contact. **[M-2, M-6]**

The CDC states that the value of visiting is recognized and encouraged as a means to establish and maintain meaningful family and community relationships, in as accommodating a manner as possible subject to the need to maintain order, the safety of persons, and security of the institution. However, the proposed regulation directly or indirectly discourages act. **[N-49]**

There is no need to impose such a [specific] standard, [the] current standard was vague and ambiguous. **[M-16, N-16]**

This absurd rule is extremely overboard and only correctional officers with extremely poor supervisory/communication skills are having difficulty with excessive greeting and/or saying good-byes. **[N-43]**

It would be impossible for visiting staff to accurately time each person's greeting, especially when multiple family and friends are present. This would only lead to guesses by staff, leading staff to make false actuation's thereby leading to complaints. After a long absence from a loved one, allowing 5 seconds for a kiss and or hug is inhumane. **[B, C, D, E, V-3]**

Please advise us of the type of threats which have occurred to provoke the 5-second rule? **[N-77]**

I cannot understand how timing a hug and kiss is for the safety and security of the institution. **[O-15]**

In what ways will this proposal make our visits safer, more pleasant and result in cooperative inmates?
[N-54]

This is an unreasonable allotment of time to for the inmate and visitor to embrace …[when they] have not seen one another for a period of time. **[N-42, N-60, N-62]**

I do not feel that the CDC should be dictating how many seconds visitors can kiss/embrace their loved ones. I urge the department to take a second look at the rule you are proposing to adopt and consider that the taxpayers that visit inmates also pay for the construction and operation of these prisons. **[O-47, O-45]**

Was this meant to read 5 minutes? This is not realistic. This regulation should reflect what you are trying to achieve. As written it is enforceable and will only lead to confrontational conflicts, which are preventable. **[N-65, Q-55]**

The proposed rule is made with the justification that it would standardize this rule at all institutions however, this is currently common practice at most institutions. I question how the standard was set and on what basis was it standard established. **[N-22, N-78]**

This is not realistic. This regulation should reflect what you want to achieve. As written it is not enforceable and will create conflict, which can be avoided. The department should take a proactive approach. **[N-37]**

This is difficult to enforce without infringing on the privacy right of visitors. [At present,] it is not common practice to time the length of the kiss and embrace nor should it be. It is difficult to visit your loved ones in a high security environment therefore, it should not be made any more difficult than your regulation currently allows. **[N-68, Q-81]**

Past experience demonstrates that by establishing such a distinct limitation, visiting staff who are less than supportive of the purported departmental policy will utilize their enforcement of that time limit as still another reason to interfere with the visiting experience. There is no demonstrated legitimate penological concern affecting the safety and security of the institution. **[X-1]**

As long as there is nothing sexual about a touch, the inmate should be permitted to place his arm around the shoulders of his mother, wife or child. I believe that correctional officers are intelligent enough to distinguish between a hug, which is sexual in nature and one that displays a caring touch of affection. **[N-44]**

Many staff, as an excuse to harass or intimidate inmates and their visitors, will [strictly] interpret the five-second limit. The major problem is that this rule will not be uniformly administrated and, therefore, will become a means of targeting and harassing certain inmates and their visitors. **[X-1, M-2]**

It is my understanding that it has been proven that hugs are beneficial to a person's well being. If an officer thinks the prisoner and guest are being too passionate they can end it. No stopwatch is needed, only good judgment for which the officer is paid for. **[Q-28]**

This represents too great a temptation for staff retaliation against inmates and their visitors. Physical contact should not be restricted to timed kisses and hand holding in order to maintain decency and decorum. **[N-39]**

Local staff have always done pretty good of a job of ignoring the occasional innocent and/or affectionate touch. While it would be reasonable to assume that present conditions would continue, given the proposed use of video recording equipment in visiting areas, once can only wonder if those tapes will be reviewed to time kisses or look for minor touches that can be built into an infraction. This proposal can lead to abuse by the department. [**Q-75]**

I believe this will put a lot of unnecessary pressure on the staff. How do you fairly time 6 couples saying hello or goodbye at the same time? **[N-67]**

Why limit hugs and kisses? If someone is going to be watching that closely they can watch for a few more seconds to ensure no contraband is being passed. The CDC is going to destroy the family unit. **[O-43]**

Inevitably visitors and inmates alike will subconsciously begin counting the seconds, knowing that they may be reprimanded if their hugs and kisses exceed the 5-second rule. **[O-7]**

We are already being monitored. [Moreover…], it is crucial for visitors and inmates to show affection. It's part of rehabilitation. We need to comfort one another during those difficult times. This is a family time for, bonding with all family and friends. As long as the touching is not deemed inappropriate then physical contact should be allowed to exist. **[V-8, N-10]**

I ask that we be allowed to be affectionate with one another for a reasonable amount of time. **[Q-12]**

I am opposed to the 5-second time limit on an embrace and/or kiss. **[N-57, N-20, M-9, O-6, O-7, O-33,O-9, O-12, O-19, O-20, O-22, O-26, O-28, V-4]**

This proposal is arbitrary and too rigid. It is extremely insensitive to normal human needs. **[D, N-73, N-13, O-11, O-21, O-30]**

It serves no purpose to subject all inmates to such restrictions. **[N-29]**

The 5-second limit is cruel and unusual punishment. **[O-38]**

Are you trying to tell the public that you are going to hire additional correctional officers to time the hug and kisses between loved ones? **[O-18]**

It should be left to the discretion of the correctional officer. Currently, we only get 5 minutes now. To place a 5-second ban on hugs and kisses is unjustified. Currently we are harassed and gawked at enough during our visit, this is just icing on the cake. **[O-41]**

We currently receive 10 seconds to hug and kiss our love ones. Why has this changed occurred? **[O-42, Q-61]**

Time yourself and see if five seconds would be enough time to express yourself. **[N-62]**

A brief hug and kiss is not indecent, however, timing a hug and kiss is degrading and does not promote strong family ties. **[O-44]**

This is ridiculous, no wonder the divorce rate is so high. Privacy is completely disturbed by the correctional officers staring, counting and waiting to terminate the visit if the time exceeds the 5-second limit. Based on the varying interpretations, I have concerns regarding some of the definition used. **[N-72]**

Many times I have witnessed and experienced children rush to greet their incarcerated parents. I cannot fathom a correctional officer shouting "time!" and the parent having to pry the child away from their arms. **[N-82, Q-53]**

This regulation also has an impact on the families of these inmates. **[Q-83]**

We as visitors and citizens need to protect our rights as well and those of the inmates. The five-second rule is a violation of our rights. Be compassionate enough to allow for more time. **[N-41]**

It appears that CDC does not want any type of interaction between loved ones. This is against the department's beliefs of strengthening the family unit. **[N-13]**

Hug and kiss your family for 5 seconds. Tell them that you are unable to see them for one year. **[O-40]**

Imagine if you had to have physical contact with your child or wife for only 5 seconds. **[0-51]**

The children will not be permitted to spend quality time with their parents on a consistent basis. **[N-85]**

To impose such a rule will instill frustration upon the family members, who along with the inmates who are in need of an embrace. Studies have shown that to place a time limit on human contact may lead to higher rates of recidivism. **[Q-61]**

As a mother with six children I don't understand how you could make such a suggestion. **[N-62]**

This is mean-spirited. A child hugs his dad at the beginning and end of a visit, and is not sensitive to the vagaries of CDC prudery. Are you going to callously force a prisoner to physically throw off his child who only seeks to hug or kiss him, but does not know how to tell time. Better to limit the adult kisses to no more than 30-seconds, and leave the children alone. **[N-66]**

How do I tell my children that their 5 seconds is up? **[Q-58]**

We are not asking to "make out", but the department is aware of sensory deprivation of or between families will cause the family unit to vanish. Many of the "lifer" inmates, who have lost their family visits will be stripped of their last piece of adulthood. Don't we want to keep intact what we can salvage? **[N-36]**

Many inmates rely on this brief contact with their family members and taking away what is left of this contact is ridiculous. You will make the inmates angry and hurt the family unit. The contact that the department currently allows is limited to a hello kiss or hug, which exceeds the current proposal time. **[O-14]**

As long as it is reasonable and not intrusive or vulgar, hugs and kisses should be allowed for longer than the proposed 5 seconds. A child or an elderly person does not understand they must count the seconds. **[O-39]**

I personally need a longer embrace. The person that I am visiting is not groping my body in the presence of others. **[N-86]**

Now that I no longer have family visits with my husband, the department is now attempting to place a time limit on hug and kisses! **[0-13]**

Over the years I have observed how the rules of this particular rule has continually decreased in the amount of contact two people may demonstrate. Originally the rule was phrased to read "a kiss and/or embrace" to "a brief kiss and/or embrace" to "embrace and/or kiss, not to exceed five seconds". **[Q-51]**

I am aware of the sexual activity in the visiting room after the initial hug and kiss. But to limit a man and his wife to five seconds only invites additional, illegal sexual activity later. **[O-50]**

I travel from Arizona to visit with my husband. I should be able to hug and kiss my husband as long as we are not being sexual. If this proposal is approved the department will be punishing the families of these inmates, it will also add to the frustration that we experience by having a loved one confined in prison. **[O-27]**

This proposal seeks to further alienate the spouse by limiting their greeting and parting time to a mere 5 seconds! It is impossible to establish or maintain any type of "meaningful relationship" when the officer is standing by hoping that they will be 1/10th of a second over the "time limit" so they can make their "quota" of reports for the month. This proposal represents too great of a temptation for staff retaliation. **[A, N-39, N-48]**

If you have not seen someone for a few weeks or months…would you be satisfied with a kiss or hug for 5-seconds. **[U-2]**

The department is sending the message that our families and marriages are disposable. This is the only time we have with our loved ones. The courts have sentenced the inmates for their crimes. It is not unfair to punish the families for the crimes of the inmates. **[O-24**

It is almost like meeting with a business associate as it is! Spending the day with your spouse is supposed to bring you closer, but how can it when it is conducted like a corporate board meeting? Is not only ridiculous and insulting. When you can quantify the degree of how we miss one another and our desire to be together, only then can you set an arbitrary time limit to our embrace. Until then, [the] limit should remain the one dictated by propriety and decorum. **[N-19]**

As long as it is not taken to the extreme, there is not harm or foul in kissing them for a little while longer. **[O-8]**

I recently observed a couple visiting their son hug and kiss several times throughout their visit. If my husband and I briefly kissed and hugged throughout our visit, we would be warned of excessive contact. So it is not what you do but whom you are that counts. During our visits with my husband we all need to hug longer than 5-seconds. **[N-57]**

For those who might be passing items such as drugs, they are more often caught than not. Guards have been known to pass drugs and have more opportunity. With the opportunity to embrace and hug longer than the 5-second limit, inmates and their families depart their visits with a feeling of humanness. **[N-35]**

Prohibiting the most innocent of contact between the inmate and his visitor, makes this a "punitive device". Is it disturbing for the department to see that we love and need to hug and kiss our loved ones? The five-second rule is overbearing especially for those who the department has already taken away family visits. Implementing this rule will allow staff too much latitude to write disciplinary reports on people that they dislike. We, the visitors, have [long] suffered the abuse of staff that dislikes inmates and/or their visitors. I have watched many correctional officers smile when handing out termination papers for minor infractions. **[N-70]**

This would open the door for too much guesswork on the part of the officer and may lead to abuse. **[D-32, D-37]**

Are the correctional officers actually going to time the hugs and kisses or are bells and whistles going to sound off when the time has exceeded the maximum 5 second- rule? Is the 5 second-rule per family, or per visitor? Would you explain to my minor child that they are only limited to hug and kiss daddy for five- seconds? **[O-49]**

Will these officers have in-service training? **[Q-52]**

What harm is it in a long kiss? Since we are spending the money, our time and energy in visiting our loved ones, the department can at least help us out on the 5-second limit rule. **[O-25]**

We already lack a foolproof system, then why should the citizens of California accept a change that may only add exponentially to the fault of the present system? I believe that being denied freedom is sufficient punishment, and it is not necessary to overwhelm the human mind with excessive punishments. Your propositions are not only illegal—they are immoral any lacking any intelligent analysis of future consequences. **[W]**

The time limit on the hug and kiss is uncalled for. What kind of companionship can I give? Remain sitting at the table for 7-hours? I get very upset to knowing that my husband and I share a home together, however, we are not allowed to visit overnight. **[U-2]**

The proposed regulation would put a stopwatch in some guard's hand. What kind of a guard would have that streak of meanness? Bureaucratic pettiness! You can't regulate love with a stopwatch. **[Q-72]**

This only oppresses an inmate's confinement. **[Q-9, N-58]**

This is set up to fail. It does not pass the common sense rule. Someone travels hundreds of miles for an occasional visit and do you expect a peck on the cheek or a handshake? The rule will not be enforced uniformly. **[O-29]**

The taxpayers of California should not need to pay for inmates, their wives and children to be psychologically intimidated. **[M-7]**

This proposed change is another example of false standardization. If you are concerned visitors bring in contraband then address that issue directly, do not hide behind the 5-second hug in attempts to address this issue. **[Q-56]**

Next year you will propose a new regulation prohibiting French Kissing. If we the people have the right to pursue happiness why should this not include taking our children to visit their fathers and grandfathers? Yes they have committed a crime, but this teaches them that you will pay for your mistakes. Do you want to instill in their minds that if you are convicted of a crime the state will punish you further by making you an animal. **[O-45]**

I was told the 5 second embrace and kiss was one of the ways that drugs were passed. I take issue with the 5 seconds for an embrace, especially if there's something very disturbing going it just isn't that long of a time. The overall scheme of using regulations should be to encourage visiting. I think by encouraging visiting it will reduce the recidivism and it will also reduce violence within the prison and also after they get out of the prison. **[P-14]**

And for these reasons the regulations really punish families. Another inmate said to me, and I met him in the visiting room, said in regard to the embracing of loved ones in the visiting room 5 seconds – he said that was so unfair to the people who traveled such long distances, and who wait just to have that kind of contact with the people they love. His point was that it shows

ingratitude on his part. It is the only way that he could acknowledge his gratitude to the person who came to visit him. Five seconds was very difficult for him to imagine how that could even be enforced, or whether it was even humane. **[P-3]**

Because of the close custody status of my husband, if I don't get to see him by 11:30, I have to wait till after 1:30. Now I may get there at 7:00 and stand in line, sign in at 8:00, but I may not get back there until a quarter to twelve. Meaning that I can't see my husband until 1:30 or later. Visiting is over at 2:50, because they want to make sure at 3:00 everyone's gone. Now you're talking about a 5-second embrace? **[P-17]**

So you got somebody who's on a power trip today to say if you touch, that's a six months suspension. If you kiss longer than what they feel necessary, that could be a year. **[P-19]**

There is no need to impose such a standard. The current standard was [appropriately] vague and ambiguous. **[M-16, N-16]**

The 5-second thing, how would you like to be told you had to kiss your husband or your wife for 5 seconds. I haven't been able to really touch my husband in over 5 years. I'm sorry, that's wrong. **[P-37]**

RESPONSE: This rule was intended by the Department to expand upon existing §3170(g), which allows an embrace and kiss of unspecified duration at the beginning and end of each visit and prohibits any other bodily contact other than holding hands. The new rule, as proposed, specified that the previously undesignated duration of this particular type of physical contact could be up to five seconds or less. Page 11 of the ISOR explains that five seconds had been arrived at to standardize what is common practice at most institutions. In fact, the number represents a rough approximation of the statewide average reflected in local visiting procedures. At least one of the comments summarized above appears to confirm that five seconds is indeed a pretty close approximation of the duration of the average embrace and kiss.

As attested by the number and intensity of the comments summarized above, this new specificity generated—quite unexpectedly–a great deal of visitor and inmate concern, most of which is more emotional than objectively based. For example, many Commenters are actually objecting to other, unchanged provisions of the existing rule which are being relocated to subsections (d) and (g): Inmates and visitors may hold hands, and no other bodily contact is permitted other than the exceptions specified in the proposed §3175. Other Commenter frustrations are more directly associated with Family Visiting limitations (§3177), the core complaint being that—absent the opportunity to participate in this program–the limitations on physical contact contained in §3175 are "oppressive and excessive."

After careful consideration, the Department has decided to eliminate the duration specificity of the rule, substituting instead the word "briefly." The Department recognizes that substituting this word, which occurs in local visiting procedures, does not really clarify how long this particular type of contact will be tolerated. However, as revised, the rule will allow flexibility at the institutional level where it currently resides. Therefore, this option represents no change in existing practice, which seems to be the outcome preferred by the commenting public.

3175 (f)
CHILDREN ON LAPS

The following specific comments regarding children on laps are partially accommodated:

I agree with the importance of father/child bonding, it is equally important with mother/child. I agree that children over seven should not sit on their father/brother/uncle/cousin/grandfather/nephew's lap. Sitting on the lap does not constitute bonding. You can bond by talking, holding

hands, playing, or the child can sit in a chair next to the inmate with the inmate's arm around them. I feel this rule applies more to female children than males. In all visiting rooms you see more female children sitting in the inmate's laps than males. Prayer is a good way to bond, and the child does not have to sit in the inmate's lap. **[N-41]**

Children need to sit on their father's laps and to be held. By making this rule for everyone, you imply they are all pedophiles? You will drive a wedge between the family members. I don't want them out in my society coming out angry, do you? Over-zealous application of these rules and regulations that do not meet the constitutionality criteria will take years to correct and the damage they create may never be undone. The family of the inmate committed no crime, and what you will do must pass common sense and the Constitution of the United States, which says there are inalienable rights. **[P-4]**

Children need to sit on their fathers' laps. **[P-6]**

It is absolutely cold and ridiculous to put a restriction on a 7-year-old that cannot sit on daddy's lap. **[P-7]**

I have an 8 year-old granddaughter that I bring to visit. If the rules go into effect about children 7 or older not being able to sit on the prisoner's lap, then she wouldn't be able to sit on his lap, and they have created a bond that has become very healing for both of them. **[P-8]**

How do you explain to your 6 year old today, that he or she can sit on daddy's lap and get a hug and talk to dad about home and school and next week when she has a birthday, or he has a birthday and turns 7, sorry no more lap sitting? Being able to hold a child on your lap and talk with the child about school and home and family. None of this can take place if the parent is forced to visit from behind glass. **[P-13]**

And the implication that male prisoners are potential child molesters is outrageous and offensive. Given how few male prison are locked up to anything related to violence against children, this restriction is clearly a pretense for nothing other for punitive measures for their own sake, not for some greater good or institutional safety. **[P-15]**

I cannot see my husband having to push my 7-year-old son away, because you have said that he cannot sit on his lap. My 7-year-old son will not be able to understand that he cannot sit on his father's knee and tell him how his week went at school and at home while they were apart. But based on what you're saying, his son and daughter are not going to be able to get in to see their father. He is the only role model, male role model that they have in their lives. **[P-17]**

I've been bringing my child to her daddy since the day she came to this earth. She was visiting the year the guard told her she cannot sit on her fathers lap—by the way she wasn't seven at that time either. She was only five. [Was this] because he felt like he didn't want her to sit on his lap? Where was his mind? What was on his mind? **[P-19]**

Seven years is too young to be taken away from your father or grandfathers lap. … The children are allowed to give the inmates the love that the wife can't give. They're allowed to hang onto daddy and, and to play with him and do things. I can't imagine trying to explain it to our seven-year-old granddaughter that she can't do that anymore. **[P-21]**

You have to realize that for people who are in prison, the visits that we have are the only time that we have any tenderness. [It is] the only time that we have any affection or compassion [or]…share those emotions with people that make us human. So take those away, to refuse to let people have contact visits, to refuse to let children sit on their parents laps, is a way that you will ensure that the people coming out of prison will be bitter, angry, and ready to wreak havoc in our community. **[P-28]**

I was very disgusted with the decision pertaining to the children who can no longer sit on her father's lap. **[P-32]**

This subsection now allows for inmates to hold children in their laps but provides that male inmates cannot hold children over six years old. What is the justification for distinguishing between male and female inmates, or between children six and under and those that are older? While this measure is to guard against sexual contact between inmates and children, there is no sexual contact permitted between inmate and anyone. We are certainly opposed to sexual contact between inmates and children of either gender. This proposal is indicative of the department's hostility towards inmates. **[M-2, N-51, N-68, O-38, X-1]**

Prohibiting children 7 years and older from sitting on a male inmate's lap. The current age is 12. Children of all ages occasionally need to sit on dad's lap; they need that physical contact to maintain healthy relationships. This punishes the child, the visitor and assumes that all male inmates are pedophiles. Children who are denied contact with their fathers are far more likely to experience developmental difficulties possibly leading to incarceration. **[B, E, N-5, N-17, N-32, N-40, N-41, N-42, N-62, N-74, N-81, O-28, O-31, O-33, O-34, O-45, Q-16, Q-22, Q-64, X-1]**

There may be an age of appropriateness where a child becomes too old to sit on a father's lap; we don't feel it is seven years old. The proposed regulation is trying to regulate love, and in doing so, is pre-punishing male inmates and children for actions which, outside the prison walls, are looked upon as wholesome expressions of love. **[O-50, Q-74, V-8]**

The contact inmates have with visitors is monitored by officers…denying the opportunity to hold a child is wrong. **[O-14]**

The idea that male inmates may not hold minor children in their laps is a tear at the already strained [family] dynamic. **[N-19]**

You know this thing about 6, 7 years old; you can't sit on your father's lap. What if something happened to that child and they needed their dad's hug? **[P-37]**

Inmates should be allowed to hold children up to 12 years old on their laps. There are rules in place regarding pedophiles. Each family should decide what is appropriate for them. You shouldn't punish innocent children or families. **[O-39]**

Allows children of all ages to sit on female inmate's laps because of "the relative desirability of mother/child bonding and a very low propensity for child molestation." However, as to male inmates, children 7 years or older cannot sit on their laps so as to guard, "against the potential for child molestation." This will only serve to create further tension with male inmates. The California Department of Corrections has already proposed to take visitation with minors from all child molesters. **[M-1, N-82, X-1]**

We would like to be informed what drastic threat there has been in the prisons to provoke disallowing male inmates from holding minors in their laps. **[N-77]**

Restricting physical contact between prisoners and children is unjustified. Perhaps it actually does happen, but how many parents do you think really look at using their children to smuggle drugs into prison? Who would take that chance? This is unrealistic, and won't reduce the availability of drugs a bit, but it will make visiting much less rewarding. **[Q-85]**

I would like to protest the proposed regulation changes including 3175(f), prohibiting children seven years and older from sitting on their father's lap. **[N-21, N-30, V-3, W]**

Although the percentage is very low, you are treating all male inmates as child molesters. The number of wrongfully convicted inmates increases all the time. This sends the message to our

children that love is bad and emotional distance is good. This is not the message we need to send to our children who are already confused about their dads have men/women with guns standing by ready to shoot. The prison setting is frightening enough for adults, let alone children. **[M-7, M-8, M-9, N-6, O-51, Q-53]**

Please explain why all inmates should be punished for the stupid actions of a few. **[N-89, Q-5]**

Male inmates, regardless of their crimes, would be forbidden from holding children over 7 years old in their laps. Children need to bond with their father/brother/uncle/cousin/grandfather/ nephews, in most cases. There is no restriction on female inmates. This also opens the door to excluding children from family visiting. Unless a prior offense exists, sex crimes, this seems unreasonable. Put yourself in our shoes and think about it. **[C, D, M-10, M-11, N-13, N-25, N-39, N-39b, N-67, N-73, N-78, N-79, O-21, O-52, Q-39, Q-56, Q-61]**

Is there specific data showing the number of inmates that have shown problem behavior with children sitting on their laps? What percentage of the population has shown this behavior, and what has been done to address the problem inmates? Inferring that all inmates have pedophilic tendencies is degradation to their self-esteem and their character, and may tend to encourage other types of disruptive behavior, and/or increase recidivism rates. **[N-19, N-22, N-53, O-29, V-3]**

Inmate fathers/grandfathers that cannot hold their children/grandchildren would have nothing to look forward to. **[N-12]**

Tell your young children and grandchildren [that] they cannot sit in your lap while you read them a story! **[O-40]**

How would you feel if you, as a child, had not seen your parent in a long time? Wouldn't you want to sit on their lap just to feel close to them? How could you want to deprive a child of this feeling, isn't it hard enough on them anyway? **[N-35, O-8, Q-10]**

Please don't take my child's dream by not allowing them to be embraced by their daddy. **[N-12]**

How do you explain to a child, because today is your birthday, daddy cannot hold you in his lap anymore? **[M-6, N-5, N-69, O-34]**

If a parent has two children under the age restriction and one who is not, how do we deal with the emotional issues arising from that? **[N-52]**

My daughter occasionally sits on my lap to watch TV, what complex are you going to place on these innocent children? **[N-15]**

Less than 2% of the inmates visiting in most visiting rooms have sexually oriented crimes. Wouldn't it be easier to warn perspective visitors of the inmate's commitment offense by having each inmate obtain visiting forms from their counselor, and require a counselor's signature on the visiting form, identifying the reason the inmate is incarcerated? Some institutions have the counselor sign the Quarterly Package form, why not the visiting form as well? **[N-36]**

I'm opposed to the regulation change that does not allow a child to sit on his father's lap. **[P-26]**

It's unfair, it's inhumane, and I urge you to not let these rules pass with the children. **[P-10]**

Now we're going have to take longer time just to get inside [to visit]. I guess you're just trying to make it harder on us. You know I have to explain to my kids that it's hard enough already to go inside. Now they have to go through this extra work to go see their dad. Moreover, I will have to tell my kids they can't sit on their dad's lap. They won't understand that. They barely understand enough why their dad's not home with them. **[P-37]**

RESPONSE: As page 11 of the ISOR explains, it is the intention of this rule to facilitate young children bonding with their parent by permitting yet another exemption to existing contact prohibitions enforced in the visiting room: Inmates would be permitted to hold minor children on their laps. Currently, other than holding hands throughout and embracing and kissing at the beginning and end of the visit, existing statewide regulations permit no other bodily contact. Therefore, the regulation as proposed significantly relaxed an existing limitation: Inmates could not hold their children under the existing rules despite anecdotal evidence indicating that the contrary regularly occurred and despite the Department's conscious desire to facilitate bonding.

However, as originally proposed, the rule went somewhat further. With respect to male inmates only, the lap holding exception would be tempered by age: Only children younger than seven could be held on their lap. The reason for this was also explained on page 11 of the ISOR. The restriction was the Department's attempt to balance the competing needs of facilitating male bonding with young children while guarding against the potential for child molestation. Unfortunately, monitored and/or supervised visiting rooms and/or the presence of a non-incarcerated parent, relative or girlfriend has not always sufficient deterred sexual impropriety, including that of alleged molestation of minors.

As with subsection (e) above, this rule generated considerable comment, much based on the erroneous assumption that the regulations are *more* restrictive, whereas the exact opposite is true. In an effort to salvage the original intent of this regulation, significant revisions have been made: Age and gender specificity has been dropped and the categories of minor children expanded to include immediate family as defined elsewhere in these regulations. The Department believes these changes address the majority of the concerns expressed without creating an inadvertent opening for sexual misconduct between inmates and visitors, and in particular, the sexual exploitation of pubescent, adolescent and/or minor children of whichever gender. Being prudently preventative is a legitimate penological interest and these revisions are all prudently preventative in nature.

3175(g)
NO OTHER BODILY CONTACT PERMITTED

The following specific comments regarding bodily contact are not accommodated:

The phrase "Except as provided in this section" is unnecessary. The ability to express innocent and natural responses will cause the opposite of correctional goals that uses visiting as a "tool" for good inmate behavior and encourages inmate visiting. **[M-1]**

Would prohibit even the wiping of a tear from the eyes of a visitor who may be crying for a variety of emotional circumstances. Will you tell me that I should not be affectionate towards my husband or child if they are hurting, I need to console him? This is too restrictive. **[A, N-48, N-69, N-82, P-17]**

Time spent together in visiting is only contact most families are able to have. It seems cruel and unusual punishment for inmates and their families to limit contact to strictly holding hands. To allow such innocent signs of caring and affection as cause to have one's visit terminated is punitive. To expect everybody to suppress even the most innocent and natural responses is unreasonable and impossible. **[N-39b, N-40, N-71, N-74, N-70]**

This proposed rule is directly responsible for creating…despair and depression for families, as well as, prisoners. It is a total lack of regard for the psychological needs of men and women and it accelerates the divorce rate between prisoners and their mates. Allowing only "holding hands" puts a strain of such unimaginable magnitude on an already "at risk" marriage. It's a miracle that any survive, yet CDC insists that family support and visits are important to CDC. This rule is

counterproductive to keeping families together and marriages strong enough to withstand the prison experience. The only reason for these rules is the need of the CDC to take a pound of flesh from visitors and prisoners. **[N-70]**

RESPONSE: Page 11 of the ISOR explains that this subsection retains the existing provisions of §3170(g) regarding bodily contact limitations during visiting. As discussed above, only those exceptions expressly listed are allowed. While the existing rule may be viewed by some as "counterproductive," or "punitive" or "cruel and unusual," or "restrictive," it is in fact not a departure from existing policy nor is it a regulatory change. On the other hand, it is not the Department's intent to punish "innocent and natural" impulses with visit terminations. The perspective expressed will be shared with visiting personnel during the orientation accompanying the promulgation of these regulations.

3176
DENIAL, RESTRICTION, SUSPENSION OR TERMINATION OF VISITING

The following specific comment regarding visiting sanctions is not accommodated:

The regulation does not explain itself. The regulation is subject to debate and it is not clear what the regulation truly means. CDC officers may abuse their authority. Visitors are civilians that have rights. **[V]**

RESPONSE: While the Department disagrees with the comment that the regulation is not self explanatory, the text as originally submitted did appear confusing in that certain words were originally jumbled in order of appearance. This has been corrected. Moreover, visitors have ample opportunities under these regulations to address and resolve problems, complaints and/or perceived injustices both informally and formally as discussed in numerous responses above.

3176 (a)
DENY, APPROVE, SUSPEND OR TERMINATE REASONS

The following specific comments regarding reasons for visiting sanctions are accommodated:

In the authority to deny restrict and suspend visiting, another "but not limited to" clause is included. This open-ended granting of authority is only used in restrictive rules. Why not use them in family friendly programs? **[D, N-51, N-68]**

This section deals with the consequences (warnings, terminations, suspensions and revocations) of violations by a visitor. What actions are considered violations should be listed and specified in Section 3176(a)(4) and then should be referenced in this section in lieu of general, subject-to-vastly-differing-interpretations phrases such as "serious violations". **[M-2]**

This subsection further allows for termination of visits when the visitors conduct amounts to a "serious rules violation under section 3315 (a)." 3315 (a), of course, controls the conduct of inmates, not visitors, and, as such, covers entirely lawful and appropriate actions (such as possession of money or refusal to submit to a drug test). There is already a tendency among staff to treat visitors as if they were inmates; this section encourages that. **[M-2]**

Applies to disciplinary rules against inmates and visitors. This is both too vague and too restrictive. Visitors are not inmates! It is clear that the department views visitors as inmates, but this is not reality. **[N-51]**

The language suspending visiting for violations of 3315 should be clarified to indicate "drug related" violations. **[T]**

This section also allows for termination of visiting if the visitor refuses to submit to a search. It should specify that refusal to submit to a search "authorized under section 3173.2." A visitor has a right to refuse any search not authorized, and should not be penalized for so refusing. **[M-2]**

The officer requesting a search should have to articulate the "reasonable cause" to the visitor before claiming the visitor refused to submit to the search. **[M-1]**

RESPONSE: The comments above are accommodated with three changes. The phrase "not limited to" has been deleted, and all reference to §3315 has been eliminated. Instead, new text has been added which clarifies with greater specificity reasons for denying, terminating or restricting a visit in progress and removes any "inmate" analogy. In addition, the text concerning searches has been significantly revised, the word "reasonable" replaced with "probable" and existing text reworded so as to clarify that such searches are based only on probable cause. These changes correspond to revisions made in conjunction with §3176 as discussed above.

The following specific comments regarding reasons for visiting sanctions are not accommodated:

GENERAL INTRODUCTORY

The official in charge of visiting should make every effort to make a fair and impartial determination to take any of the above actions. This should not be regulatory, provide staff instruction/training. **[M-16]**

INFLUENCE

There are circumstances that a person may appear to be [intoxicated], such as a person on prescription medication or some medical disability. The rule should [only] exclude persons actually under the influence of alcohol. **[M-2]**

Will visiting staff receive formal certifiable training to be able to determine when someone is under the influence? **[N-80]**

SEARCH

The department attempts to assert the right to submit visitors to humiliating searches, in particular, unclothed body searches in the name of "reasonable cause". The Department is attempting to violate visitors right to privacy and avoid obtaining a Search Warrant if reasonable cause actually exists. **[N-46]**

The Department refuses to invoke similar requirements on its employees. These requirements advocate further humiliation and stigmatization of inmate visitors. **[N-46]**

Visitors who refuse to submit to a search should have their visits denied for that weekend. **[N-88]**

CONDUCT

Consider revising your proposal to read: "There may be no inappropriate sexual behavior during the hug/kiss when arriving or leaving the visitor. Any inappropriate sexual behavior will be cause for termination: (1st offense 3-months), (2nd offense 6-months), and the (3rd offense termination for 1 year). Save the punitive measures for those who do not abide by the rules. **[Q-53]**

Prohibiting individuals who abuse the privilege [of allowed bodily contact], deserve to lose the privilege. However, it should be on an individual basis. **[N-71]**

MOBILITY IMPAIRMENT

Visitors requiring medical verification of medical implant, illness or restriction to a wheelchair should not be denied visiting if they have previously provided the information and it is on-file. **[M-1, N-37, N-65]**

Requiring mobility impaired visitors to submit Medical Verification biannually places an undue financial hardship on them, violating their rights under the Americans with disabilities Act. **[N-46]**

OVERCROWDING

This subsection allows for termination of visiting for overcrowding. This is routine at many prisons and works an incredible hardship on many visitors who have driven hundreds of miles and spent a significant amount of money and time for a 90-minute visit. Inadequate visiting space and staff results in early termination of visits and a reduction in access to visiting. At some institutions, weekend visitation is divided such that only half the inmates have access to visiting on any particular day. Visits should not be terminated until the room capacity has been reached, as posted by the Fire Marshall. Outside areas, placing extra chairs around the perimeter of the room and allowing inmates and their visitors to "double-up" (share a table with other inmates and visitors) should be used as alternatives to terminating for overcrowding. **[M-2]**

I have visited other institutions that have only three non-contact windows for an entire yard. This is distressing when your visit is terminated based on the prison's lack of space. The CDC approved these major designs for their prison structures, which appear to be inadequate to accommodate the visiting capacity. **[P-38]**

My ex-wife was turned away from visiting after traveling from Portland, Oregon because the Whites were on lockdown. There were no safety and/or security concerns as the White critical workers were being allowed to work, and the visiting room was opened to all other races. **[N-52]**

The proposed change to give the right to an officer to terminate my visit after traveling 2500 miles with no reason is again unjustified. **[N-60]**

Redefine excessive distance to between 100 and 150 miles. **[N-33, N-46]**

Not all prisons have an overcrowded visitor problem all the time. Subsection 3176 (9)(A) and (10) do not address this situation either. **[U-32]**

REVOKE/SUSPEND: Subsection (b)

Should the words "either of" be inserted before "following reasons"? **[M-1]**

WRITTEN NOTIFICATION: Subsection (c)

I agree with the concept that discipline should be documented and written explanation given. **[N-41]**

OTHER

This subsection is another example of the department making visiting a privilege rather than a right. **[N-55, X-1]**

There are no family friendly programs/games for visitors/children. **[N-41]**

RESPONSE: As explained on pages 11-13 of the ISOR, the provisions of this subsection retain, update and/or reorganize superceded §3177, whereby the circumstances specific to certain actions that are taken by visiting officials against visitors are identified and listed. Most of the reasons for these actions are based upon the provisions of earlier sections of this article. For example, a visit in progress may be restricted on the basis of: the absence of identification required by §3173, or refusal to be searched in accordance with §3173.2, or refusal to temporarily transfer from a wheelchair or present an exemption letter required by §§ 3173.2(d) and (e), or inappropriate dress in violation of §3174. Additionally, visits may also be restricted when visitors appear to be intoxicated, or when the maximum capacity of the visiting area has been reached and it becomes necessary to terminate the visits of those who have been visiting for the longest time period. While these latter reasons are less directly connected to other rules appearing earlier

in this article, they retain and elaborate existing rules and therefore represent no significant change in Departmental policy or practice.

That every effort should be made to make a "fair and impartial determination" before deciding to terminate or restrict a visit in progress is already Departmental policy and, moreover, must have a regulatory basis in order to place into motion the ten listed actions that subsequently appear in the text immediately following. Therefore, although the Department does intend to provide staff guidance regarding such matters, the regulatory text is necessary and retained with only minor content changes. Visitors who appear sufficiently impaired so as to pose a threat to self or others cannot, under any reasonable standard, be allowed to visit and therefore the Department declines to alter this particular rule. The matter of searches has been addressed more fully on pages 76-78 above and it has been explained that the word "reasonable" has been replaced with "probable." In any case, no visitor will be forced to submit to any search, unless the individual in question insists upon visiting or a search warrant has been obtained. The rule at issue also clearly specifies that refusing a search request will result only in having a visit on that day being denied. It is the Department's position that further visiting *may be* conditioned on the visitor's willingness to submit to a search (as the rule further states); and it is incorrect to construe this provision as an attempt to assert "the right to submit visitors to humiliating searches." Likewise, the Department is disinclined to make the proposed rule more stringent by lengthening the time frame of the visiting denial.

Issues associated with allowable physical contact in the visiting room have been discussed in detail on pages 90-95 above. The accommodations portion of this response also explains a textual revision whereby an inappropriate reference to the rules violation provisions of these regulations (§3315) has been eliminated. Included in newly substituted text for this subsection is the phrase "excessive physical contact," which already encompasses the concept of "inappropriate sexual behavior" in the manner requested by Commenters. Abuse/violation of contact prohibitions will be determined and addressed on an individual-by-individual basis as requested (sanctions will be addressed in the section of this FSOR pertaining to §3176.1 below). If documentation of impairment is provided as required by these regulations, then the Department sees no reason for denying a visit to any visitor to which these provisions would apply. That the biannual verification of such impairment should not be an undue financial hardship has already been stated above.

The Department regrets that overcrowding can necessitate the termination of visits in progress. In an effort to alleviate some of the "hardship" imposed and as the ISOR explains, the revised regulations set forth a number of non-inclusive exceptions to the automatic termination of in-progress visits based on the amount of elapsed time. Visitors who have traveled in excess of 250 miles are among those who specifically exempted, excepting when the overcrowding condition persists; whereupon all visits will be terminated in order of most to least time elapsed. The determination of when overcrowding exists has to be left operationally open to the institution/facility in question because of the localized and site-specific nature of visiting settings. Likewise, the frequency of such terminations is also going to be entirely dependent on local conditions (such as physical plant) and demand (the number of people seeking to visit on any particular day). The Department has no control over demand and, because of budgetary constraints and unanticipated operational considerations (such as lockdowns), has little immediate latitude with respect to altering local conditions. The suggestion of doubling up should be left as an operational option available to those institutions that can do so under the "not limited to" exception already provided in the rules. However, the Department is not prepared to change the excessive distance mileage in the manner requested and advises that visitors turned away under the circumstances described above should appeal the decision in order to alert local authorities to an as-yet unidentified problem.

There is no perceived need to amend the text of subsection (b) and Commenter has expressed agreement with the provisions of subsection (c); however, these provisions are rearranged in order of appearance for purposes of content improvement. That visiting is not a right has already

been explained on page 28 above, and, regrettably, more family-friend amenities are beyond the present capacity of the Department to provide under present budgetary constraints.

3176(c)
WRITTEN NOTIFICATION TO THE VISITOR

The following specific comment regarding written notification is accommodated:

Visitors are supposed to receive written notice on a CDC form telling them why they are suspended from entering institutional grounds, and for how long; on the day the suspension occurs. In this particular instance, the visitor was suspended and informed the suspension was indefinite for suspicion of introduction of contraband for a letter found on her the son prior to his visit. **[Q-66]**

RESPONSE: The Department agrees that written notification should be provided the visitor when a visit-in-progress is suspended and informed as to the length of time this and other sanctions are being imposed; accordingly subsections (b) and (c) are reworded and reordered in order to clarify this process. In addition, these regulations provide an appeal process in §3179 whereby an incident such as the one described above may be brought to the attention of the appropriate authorities and, if necessary, addressed so as to prevent any rule future misinterpretation or clear up any misunderstanding surrounding any particular incident in the past.

3176(d)
THE RANKING CUSTODY OFFICER, RESTRICT BUT NOT DENY

The following specific comment regarding ranking official is not accommodated:

Proposed text seeks to deny visits for anyone awaiting a disciplinary hearing, even for rule infractions, which have nothing to do with visiting. Again, there is too much room for abuse. Only violation of visiting rules of a serious nature should be considered for restrictions. The statement, “no change in policy is intended: is superficial. Should be written similar to current CCR 3176 (a) through (d). **[A, N-39, N-39b, N-48, N-66, N-69]**

RESPONSE: As explained on page 13 of the ISOR, this particular provision is a verbatim retention of superceded §3177(c)(13) and therefore clearly represents no change in existing policy or practice. Existing §§3176 (a) through (d) is content-specific to the exclusion of visitors from Departmental institutions/facilities and therefore the suggestion that the provision at issue be written to resemble another entirely different topic seems inappropriate. As written, the rule allows custody or visiting officials to restrict an inmate visits as a *temporary* security measure when: the inmate is scheduled for a serious rules violation hearing (which does not include rule infractions) or pending reclassification for placement in administrative segregation. While not necessarily directly related to visiting, administrative segregation does occur in accordance with the unchanged provisions of §3335. Inmates are immediately removed from the general population and placed in such settings whenever their presence would pose an immediate threat, jeopardize the integrity of an investigation or they are themselves endangered. Therefore, administrative segregation is not a visiting rules violation punishment (as Commenters believe); however, a ”violation of visiting rules of a serious nature” may be a contributing factor in either: (A) the issuance of a serious rule violation report in accordance with §3315; or: (B) administrative segregation placement in accordance with §3335. Moreover, if such matters are pending, under the provisions of this rule, the inmate ‘s visits “may be” restricted (but not denied).

3176.1
VISITOR VIOLATION PROCESS

The following specific comments regarding visitor violation process are accommodated:

The "Visitor Violation Process" is a new process introduced into visitor regulations. It applies the provisions of Title 15, Section 3315, specifically written to govern the conduct of inmates, to non-incarcerated visitors of an institution. Administrative Law makes no provision for this application, and, existing, state law already governs visitor access and conduct on institutional grounds. The creation of a pseudo-legal process where there is no hearing or review process violates visitor's rights to due process under, existing, state law. That intent is amplified by the provision of 3176.2 wherein the regulation asserts that "regardless of the outcome of any referral to prosecuting authorities, future visits are subject to restrictions as provided in Section 3176.1." **[X-1, N-43]**

Language should be added which reads, "The Visitor Violation Process is intended to be progressive and not unnecessarily punitive. Not necessarily depends on the offense." **[M-16]**

The Visitor Violation Process is left up to scapegoating and if properly issued is subject (usually) often to an inappropriate length of time. There is no impartial person or process offered to the visitor and is often slanted against the inmate and visitor. The term "guilty until proven innocent" is often applied, not vice versa. **[O-39]**

There seems to be provision for only a process of appeal and not an administrative hearing. There is no provision within the regulation for a visitor to obtain information from witnesses to combat the allegations against them. Clear articulation of fact-finding is absent. There is no mention of visitors being provided the same rights to a due process hearing as is provided to inmate discipline. **[N-39, N-43]**

Subsection 3176.1 (e)(3) allows visiting staff to exclude a visitor when it is believed they have been involved in a crime. The subsection is not clear. This subsection presumes that a person is guilty until proven innocent. **[N-80]**

Subsection 3176.1(g): [It] seems reasonable that if someone is convicted of a felony based on activity on prison grounds, it would be reasonable to ban that person from coming onto prison grounds for as long as CDC wishes, beyond 24 months. **[M-1, N-88]**

Consider revising your proposal to read: "Any inappropriate sexual behavior will be cause for termination: (1st offense 3-months), (2nd offense 6-months), and the (3rd offense termination for 1 year)." Save the punitive measures for those who do not abide by the rules. **[Q-53]**

Visitor Violation Process, paragraph (i) should state, "A copy will be given to the inmate once it is placed in the inmate's central file. **[N-45]**

The proposed text seeks mandatory punishment periods ranging from one (1) day to two (2) years and/or complete revocation. The mandatory language "shall" is opposite the Department of Corrections assertions that these punishment periods are "for the most part optional", yeah right! One can plainly see that this entire section encourages punishment, and they are not optional. Excessive punishment for non-related offenses in a specified "time period" is just too broad and vague. CCR Section 3315 contains more than fifty (50) paragraphs of rules violations. The twelve (12) and twenty-four (24) month suspension are merely "rubber stamp approval" sections that do not require any in-depth investigation to satisfy the due process that is currently required. **[A, N-39b, N-48, N-49, N-69, M-2]**

RESPONSE: As explained on pages 13 and 14 of the ISOR, proposed §§3167.1(a) through (i) was meant to retain, update and expand upon the existing provisions of former §§3172, 3177(c)(10) and 3177(c)(12), whereby the general responsibilities of the inmate and visitor to comply with prison rules, local visiting procedures and laws governing association with inmates are set forth and the rescission of approval and documentation of denial or termination of a visit

provided for. While broadly retaining this revision as originally outlined and discussed in the proposed text and ISOR, the Department—on the basis of the comments above–agrees to significantly amend specifics of the "Visitor Violation Process" regulation as summarized below.

Greater clarity is provided in the undesignated portion of the regulation with the addition of a variety of words and phrases—such as "applicable," " while visiting," and "as described"–and the deletion of words which had contributed to making this material appear stiff and excessively "punitive" in tone. Subsections (a) through (h) as originally designated are similarly treated, making the text less "rule-violation-like" in appearance and more readable overall. In addition, operational text has been deleted here and elsewhere throughout the section. Such material, as explained elsewhere in the FSOR, belongs in the Department Operations Manual and will be relocated to that document as appropriate. Moreover, thanks to deletions to be explained below, subsection (e) is redesignated (c), and all subsequent subsection designations are appropriately adjusted throughout.

Beginning with subsection (b), there are significant adjustments including substitutions and deletions. The phrase "serious violations as stated in §3315" is replaced with "conduct by a visitor that if committed by an inmate would constitute a serious rules violation." This change addresses and corrects the misperception that the Department intended to enforce regulations applicable only upon inmates on the general public as a whole. In that visit "terminations" can only logically be for the day in question, redundant text stating this has been deleted. The following two subsections of the original proposal—(c) and (d)–have been withdrawn entirely for reasons consistent with those stated with respect to original subsection (b). Redesignated subsection (c) provides for the suspension of a visitor from access to the visiting program for up to six months, instead of "or less, as specified". Instead of determining such suspensions on the basis of offense or frequency of rule violation reoccurrence, suspension length shall be "commensurate with the seriousness of the violation." Finally, "belief of the visitor's involvement in a criminal act pending investigation" has been relocated from subsection (e)(3) and placed in the body of the rewritten subsection together with new text in order to make more clear the reasons for which suspension can be based. Such editing allows subsections (e)(1) – (3) to be deleted.

Redesigned subsections (d) and (e) merely reorder the text originally proposed with the exception that the phrase "results in" has been replaced with the word "constitutes." This change more appropriately emphasizes the severity as opposed to the result or outcome of the matter in question. Redesignated subsections (f) and (g) are rewritten to more succinctly capture the same content as contained in the initial proposal. The sentence describing the processing of file copies is deleted because such text is actually intended for the Department's Operation Manual.

Assertions to the contrary, there is no evidence that the Department intends to deliberately "scapegoat" or presume "guilt" as opposed to the "innocence" of those involved in the violation process. By deleting parallels with and references to the inmate discipline process contained in the original proposal, the Department believes it has cleared up many of the Commenter assumptions made along these lines. For example, as a consequence of the changes outlined above, there is no need for an administrative hearing process or fact-finding procedure. To clarify remaining comments: visitors accused of crimes are excluded pending the outcome of an investigation and this is done not because their guilt is presumed, but because safety and security demand caution be exercised by the Department consistent with its status as a law enforcement agency; §§3176.2 and 3178.1 address felony charges and convictions more fully than does §3176.1, and therefore the banning of such individuals for longer than 24 months is provided for under other provisions of these regulations; Serious and repetitive violations of rules such as those limiting physical contact in the visiting room can result in suspension for up to six months under the rewritten provisions of subsection (c), therefore the suggestion that such misconduct be "punished" with progressive "terminations" is unnecessary; Inmates and visitors are both provided written notification of actions as described, operational text having been deleted for the reasons explained above; §3179(d) specially provides that visiting privileges shall

be restored when an investigation substantiates such an outcome, and this provision stands in direct contradiction to the allegation made above that these regulations are only "rubber stamp" approval sections that do not require investigation to satisfy existing due process requirements. Finally, the operative language used throughout §3176.1 is "may," not "shall" as otherwise asserted, thereby fully substantiating the ISOR text on page 13: "Care has been taken to devise a system that encourages compliance, not punishment, and the decision to apply sanctions is for the most part optional depending upon the circumstance—once gain emphasizing corrective action."

3176.2
VIOLATION OF STATE LAW ON PRISON GROUNDS

The following specific comments regarding state law violations are not accommodated:

3176.2 (a) provides only for reinstatement of visitor approval if the individual is found not guilty of a violation of law on prison grounds. It does not provide for any other outcome, e.g., the charge was dismissed. **[N-79]**

The creation of a pseudo-legal process where there is no hearing or review process violates visitor's rights to due process under, existing, state law. That intent is amplified by the provision of 3176.2(b) wherein the regulation asserts "regardless of the outcome of any referral to prosecuting authorities, future visits are subject to restrictions as provided in Section 3176.1." **[X-1, N-43]**

RESPONSE: As page 14 of the ISOR points out, this section retains former subsection 3177(c)(4) whereby visiting requests may be denied on the basis of the occurrence of a illegal act on institution/facility property. However, while making no change in existing policy, the section has been "reorganized." Included in these reorganizations: Actions to be taken following various dispositions are highlighted; That the visitor may be referred for prosecution is clarified; The existing cross-reference to a separate rule permitting visiting restrictions has been maintained while the correct section reference corresponding to other changes made elsewhere in the visiting article has been supplied. Dismissal of charges, which had not been directly addressed previously in this rule, is now encompassed within the scope of subsection (a)(1) whereby visiting approvals will be reconsidered upon written request if the individual in question is not prosecuted (which could, of course, include charge dismissal). The Department's response to §3176.1 indicates changes in the proposed regulatory text which somewhat obviate the necessity for a hearing or review process. Moreover, since this is not a new provision, it is incorrect to assert that it is intended to "amplify" a new "pseudo-legal process." Nevertheless, certain minor textual additions have been made in this section in an effort to improve clarity throughout.

3176.3
RESTRICTION, REVOCATION OR SUSPENSION OF INMATE'S VISITS

The following specific comments regarding sanctions on inmate visits are not accommodated:

Provides for restriction, revocation or suspension of an inmate's visits. Several of the subsections of 3176.3 are contradictory. It would allow multiple time frames against the inmate to restrict an inmate's visiting privileges for serious or repeated violations of visiting regulations. These sanctions are too harsh, are equivalent to the current sanctions for drug possession and trafficking contained in Subsection 3315(f)(h) & (i). Such severe sanctions for much lesser offenses has no rational relationship to legitimate penological interest, and ultimately blurs the lines between lesser infractions of the rules and much more serious violations of the rules. This violates an inmate's due process rights. **[N-49]**

CDC 115 hearings take time. When the infraction involves the visitor, it takes at least another month for the visitor's privileges to be reinstated after the inmate has been found not guilty. **[O-65]**

3176.3(d)(2): It is not clear and would be subject to difference interpretations at different institutions. It should be specifically stated that inmates who refuse to submit to mandatory random drug testing might have their visits and/or contact visiting suspended. **[Q-6]**

3176.3(e) should document what are the "Substantial reasons". There need to be standards and a timeline for how long an inmate can be administratively suspended without a finding. **[M-1]**

RESPONSE: Pages 14 and 15 of the ISOR explain in detail that §3176.3 gathers together a variety of restriction, revocation and suspension rules pertaining to inmates visiting privileges into a new visiting section of the regulations for easy reference. The provisions of existing superceded rules—and namely §§3177(c)(9)(C), 3177(c)(11)(G) and 3173(l)(3)–have been retained, the provisions of 3177(c)(9)(C) amended and those provisions of 3314, 3315, and 3323 relevant to this subject have been *duplicated* or cross-referenced in this particular regulation. The result of having placed different rules in closer proximity for user convenience may make them appear contradictory or harsh, but this is incorrect because the sanctions described therein simply repeat the unchanged provisions of other rules found elsewhere in the Director's rules. While the Department acknowledges that rules violation hearings take time, it should be stressed that the provisions of this section do not apply to visitors and they may request prompt "restoration" their authorization to visit by writing in accordance with other provisions of these regulations. Refusal to submit to a test for controlled substances is an existing "serious rules violation" as defined in §3315(a)(3)(R). The provisions of proposed §3176.3(a) are already meant to be applicable to this circumstance and in order to make this clearer, minor wording changes in the text of subsection (a) are made. Subsections (d)(2) and (e) are retained as written. "Threats," "substantial reason(s)," and "timelines for administrative suspension" are less ambiguous or vague in the fuller context of the entire text of the explicit and implicitly cross-referenced sections in question, namely §§3312, 3314, 3315, 3323 and 3335. Finally, the undesignated text appearing at the beginning of the section has been assigned the designation of subsection (g) and relocated to the end of the section.

3177
FAMILY VISITING
UNDESIGNATED SUBDIVISIONS

The following specific comments regarding the undesignated subdivisions of the family visiting section are not accommodated:

This is America! Family visits have been ongoing as long as I can remember. There has to be a balance between justice and punishment, to deny Family Visiting would be asking for prison unrest at best. **[Q-14]**

It is very important for John and his family to have our Family Visits, that's what keeps them going. **[N-89]**

I too am an advocate for family visits. **[P-34]**

This section seems to leave Family Visiting policy up to each Warden. This is inconsistent with the attempt to establish statewide regulations. **[M-1]**

Suggested language: The department will undertake periodic reviews to ensure that policies and procedures governing Family Visiting are maintained, updated as necessary and are administered in a fair and uniform manner through staff training and instruction. **[M-16]**

Poor families should not have to purchase food from the institution. It is particularly punitive not to allow the families to take any un-eaten food items home. **[M-6, N-79, N-80]**

Girlfriends of four years or more should be considered as being in Common Law marriages, as though there is a piece of paper binding the relationship, and granted Family Visiting. Being sexually satisfied, even if it is only every three to six months, would work wonders for our incarcerated loved ones. **[N-41]**

RESPONSE: Pages 15, 16 and 17 of the ISOR explain that §3177 is intended to retain and amend the superceded provisions of existing §3174 which provides for family overnight visits in small apartment style units maintained at each institution for this purpose. While discontinuance of this practice is not nor has it ever been contemplated, to help dispel any misunderstanding the word "Overnight" has been added in parenthesis for added clarity. Consistent with changes which have been discussed elsewhere in this FSOR with respect to §3171(a), existing text has been rewritten so as to reflect that institution heads have the responsibility to maintain policies and procedures particular to their institution, consistent with statewide visiting procedures. However, this rewording should not be misconstrued—as it has above–to mean that family visiting policy is left to each warden. Existing Departmental practice already provides for the maintenance, review and periodic revision of policies and regulations. Likewise, the Department already provides staff training and instruction and anticipates a statewide orientation to the changes anticipated by this regulatory revision. Page 16 of the ISOR has provided reasons for mandating all that food will be purchased through the institutions: The labor-intensity of searching all items that are brought into the overnight unit was measurably increased by the requirement of searching food brought in for the visit; The rules already required all food to be purchased from the institution if visiting occurred within the security perimeter and virtually all family visiting occurred under such circumstances; The mandatory purchase from the institution was extended system-wide to standardize what visitors may expect at all institutions. There are, unfortunately, no practical means by which the Department can determine the poverty-linked limitations of individual families for whom this rule allegedly burdens, wholly unintentionally. While removing un-eaten food items is not specifically prohibited by these regulations, local policies and procedures may do so. This is in order to deter the possible secretion and removal of prohibited items or communications from the correctional setting along with the leftovers. The family visiting coordinator at each institution may be able to assist families in making estimations that would minimize leftover food. Finally, existing regulations specify that persons with only a common-law relationship to the inmate are not recognized as immediate family for the purpose of family visiting. However, the marriage of inmates and non-inmates is allowed by §3216 and once this occurs the inmate and former "common-law spouse" may then be eligible for family visiting privileges.

3177(b)
FAMILY VISITING PRIVILEGE

The following specific comments regarding the family visiting privilege are not accommodated:

Why would the California Department of Corrections remove Family visits for Lifers and inmates convicted of certain crimes that are not clearly outlined in the California Code of Regulations, Title 15, as being preclusive commitment offenses? **[N-19]**

If this regulation passes it will give exclusive power over the inmates and their visitors to people who will surely abuse it. Since 1994 inmates have lost Family Visits for Lifers, Close Custody and inmates with various Penal Code violations. **[O-13, O-24, Q-49, Q-74, V-5]**

No conjugal visit for lifers is definitely cruel. **[P-3]**

The California Department of Corrections (CDC) current visiting policy does not promote, or give visits and family visits to an inmate because of individual achievement. Instead it denies certain inmates based upon a sentence. This is contrary to the concept of rewarding good behavior; the CDC should seriously change the visiting policy back to a privilege for those who earn it. **[N-44, N-71]**

RESPONSE: The Department has proposed no changes in the general eligibility provisions of this rule. Page 16 of the ISOR explains: "Subsection 3177(b) is adopted to retain former subsection 3174(e) *verbatim* (emphasis added)." In addition, inmates have never had a right to "conjugal visits." Under previous administrations, up to 1994, the Department granted family overnight visits as an earned privilege. In 1994, that year's budget bill restricted monies in the 1995 budget from being expended on overnights visits for prisoners who committed several specific sex crimes. While this particular legislative action was stayed and later overturned by the courts, the Department promulgated emergency regulations intended to satisfy legal deficiencies identified by the court and these are the rules currently in effect. Surviving court challenges and prior Administrative Procedure Act petitions, these "readopted" regulations continue to specify that family visits will not be permitted for inmates who are convicted of various violent offenses, have been sentenced to life, designated Close A or B custody, condemned, assigned to a reception center, assigned to an administrative segregation or security housing unit, designated "C" status, found guilty of one or more Division A or B offenses within the last twelve months or guilty of narcotics trafficking while incarcerated. In addition, as previously noted on page 28 above, the Legislature in 1996 deleted "personal visits" from the statutory listing of civil rights of state prisoners. Consequently, "changing the policy back to a privilege for those who earn it" is not an option available to the department absent statutory changes by the Legislature.

3177(b)(1) and (1)(A): Participation restrictions/Sexual Offenders

Another reference to "with or without conviction" in regards to Family Visiting and violent offenses involving a minor or family member or any sex offense. This is a violation of due process. Temporary suspension pending a judicial verdict may be appropriate. **[D, N-49, N-51, N-68, N-70, N-80]**

This section violates visitor and inmates' due process rights. Specifically, subsection (b) seeks to prohibit inmates from being eligible for family visiting privileges for simply being accused of a crime. **[N-49]**

Family Visiting: should include, inmates may be prohibited from family visiting where substantiated evidence of the misconduct described in Subsection 3173 (b)(1) exist, with or without criminal conviction, should be subject to case review. **[N-88]**

RESPONSE: Section 3177(b)(1) retains, as page l6 of the ISOR explains, former subsection 3174(e)(1) verbatim—with the exception of adding sexual battery–as a listing of offenses disqualifying inmate participation in the program. Subsection (b)(1)(A) has been newly added to prohibit or restrict inmate family visits when there is "substantial" evidence—even thought there is no criminal conviction–of the criminal activity prohibited by the listed penal code (PC) sections cited in the immediately preceding text. For instance, the ISOR goes on to explain, a parolee could have had their parole revoked for child molestation or could have had their visit terminated for molesting a minor child, yet was not prosecuted and hence is "un-convicted" of the crime in question. The evidentiary burden chosen is "substantial evidence" because this same evidentiary burden exists for denial of good time credits for disciplinary infractions under PC §2932(c)(5) and subsection 3320(l) of these regulations. The Department is responsible for the safety of the visitors. Since family visiting takes place in an unsupervised area, it is of the utmost importance that family visiting opportunities are approved for only those inmates that have absolutely no record of the offenses specified.

3177(b)(2): Participation restrictions/Other specified categories

The Regulations and Policy Management Branch should review the visiting system as a whole, including the reinstatement of Family Visits for inmates serving Life sentences and Life Without Parole. This is the main component of an inmate's fundamental right to procreate and maintain the family structure, strengthening the relationship of inmates with their spouse/children. **[C, N-73, X-1]**

On behalf of mothers, fathers, siblings and families, I ask that you amend this section to allow Family Visits for Lifers, Close Custody and condemned inmates. **[M-6]**

Inmates serving Life sentences are the inmates who need Family Visits the most. As long as they are not in trouble, all lifers should be granted Family Visits. Lifers are often the most influential inmates; therefore, granting them Family Visits may have a positive impact on the safety and security of the institution. Family Visits may assist inmates in reintegrating into society if and or when they parole. These rules punish the family members as much if not more than the inmates. **[N-10, N-55, O-38, O-39, Q-45, Q-46, Q-64, Q-75, V-8]**

…[as above] *and* Repeat offenders don't deserve Family Visits, but others such as Lifers and Close Custody do. How is it OK to marry an inmate and not be able to have Family Visits with them? It's not fair, if you are going to take Family Visits from some inmates, **"take them from the all!" [R-2, Q-44]**

There are inmates in prison doing Life Without Parole, who have no contact with spouses, no conjugal visits, no quality time with their children. Before 1995, they could at least go and play handball with their kids, share some time of affection with their wives. The California Department of Corrections is promoting homosexuality. Isn't touching someone a major part of humanity? Who is there, to give better advise to our children than someone who is locked-up and away from the real thing? **[O-17, O-52]**

These regulations incorporate identified program need and the security need for each program. Indicating [that] inmates assigned to Administrative/Segregated Housing Units will be the most restricted. Further indicating, those involved in Work Incentive/Academic Programs with no disciplinary infractions are the least restricted. This is obviously untrue. I am a programming inmate with level one points. However, I am excluded from participation in the Family Visiting program because of my life sentence. I have taken advantage of every possible education opportunity, and have participated in the Reaching Out Convicts and Kids (ROCK) program; yet I am not able to receive Family Visits with my wife and family. **[N-71]**

It is hereby requested that the language that denies family visits for inmates sentenced to Life Without Parole and Life without an established parole date, and designated Close B inmates be removed. I request they give Family Visits back to inmates serving Life sentences. **[N-81, O-26, O-30, Q-12, Q-47, Q-59]**

I have a Maximum Eligible Parole Date, who set this date, the Board of Prison Terms? Doesn't this make me eligible for Family Visits? My situation should have been judged/determined on an individual basis, not as a group with all other lifers. **[Q-84]**

As far as family visits go, I was one of the victims of that. My husband is not a child molester, he is disciplinary free, he is a fifteen to lifer who used to consider the MEPD [Maximum Expected Parole Date] as being that date, since it is established by the Board of Prison Terms. **[P-43]**

Regarding restoring family visitation to lifers. We don't like being nor do we want to be a burden to anyone. So don't punish us. You know it's not our fault or our husband's fault that they can't get out, the Board of Prison Terms has been told by the governor to not award parole. **[P-23]**

My weekends are for my family and that's true because it is the only time I get to have my family together. My husband doesn't get family visits because he's a lifer. He's not in this for a violent thing, but he got struck out because of the fact he had priors. But not having a family visit is bad enough, now we have to go through all this. **[P-37]**

RESPONSE: The penological basis of the rules being readopted have been upheld by an appellate court: "The protection of the safety of the public—particularly those family members who would be visiting these inmates in an unsupervised setting–is a legitimate interest that state prison officials may consider when determining which inmates may participate in the family visiting program."

Furthermore, existing state law includes provisions that allow persons sentenced to prison to be sentenced to a specific term of imprisonment or to an indeterminate term with the possibility of parole. However, the explicit power to allow parole for prisoners for indeterminate sentence terms that are otherwise legally eligible for parole is vested with the Board of Prison Terms (BPT) and *not* the Department of Corrections. As a separate organizational entity of the Youth and Adult Corrections Agency, the Department cannot compel the BPT to establish parole dates, Likewise, the Department can neither be party to deletion of the existing rule in order to circumvent the Board's authority over the establishment of parole dates for specific inmates or compel the BPT to affix maximum terms in order to accomplish the same end as Commenters appear to be requesting.

Certain "classes of inmates" covered by this regulation are not necessarily denied family visiting opportunities on a permanent basis, including those classified Close Custody A and B. Their eligibility depends on institutional assignment, conduct, time frames, positive programming results, rules violation clarifications and other such factors evaluated by classification committees on a case-by-case basis in accordance with other regulations contained in the Director's Rules. Therefore, these inmates receive "case-by-case" consideration for overnight family visitation upon reclassification, if otherwise eligible.

On the other hand, other "classes of inmates" and specifically those sentenced to determinate life terms, life without parole and the condemned are not, or have never been candidates for the privilege of overnight family visiting privileges in the manner set forth in these rules. The Department does not, after all, establish such sentences; the judicial branch does—frequently in accordance with statutory guidelines. The statutory provisions identified and discussed above suggest that such a change is highly unlikely from the perspective of the legislature. Moreover, as articulated by the Governor as recently as last year, expanding eligibility for supervised overnight visits would create a serious inconsistency in the current security practices enforced for life prisoners. Lastly, "allowing family visits for lifers and the condemned" would be at the very least a significant public policy change generating a great deal of public comment and controversy.

3177(f): Subject to Cancellation/Suspension

Family Visits should not be suspended, when circumstances beyond the family member's control delay their arrival. There should be an allowance for exceptions to this rule, as determined by the person in charge of visiting. **[N-79, N-80]**

RESPONSE: The department intends the subsection at issue as originally written to permit the exception requested above. Only those visitors who completely fail in their responsibility to report to the family visiting coordinator by 11:00 a.m. are subject to cancellation and suspension of privileges. Should circumstances beyond the family member's control delay their scheduled arrival, and the appropriate individual is advised of the arrival revision by the time specified in the

rule, then no penalty or limitation of future visits will be made in under the provisions of this particular regulation.

3178
ATTORNEY VISITATION AND CONSULTATION
GENERAL STATEMENTS AND OPINIONS

The following comments are aggregated and summarily dismissed because they are made in the form of a general statement, unsubstantiated assertion or opinion and no reasonable accommodation on the part of the Department is possible:

Whether the department likes it or not, inmates have a right to consultation with their legal representative, yet the department has a great fear of attorney-client contact. It is obvious for the Knox case that the department will grasp at any straw to deny access and to deflect any potential inmate legal action. As I read this proposed section, what I sensed was fear and retribution, an attempt at self-preservation. It's hard to imagine how many more roadblocks the department can throw up between attorneys and clients without getting slapped with a lawsuit. The department in general and local staff in particular is very good at restricting inmate access to documentation that might provide a legal basis for their release. A long string of decisions by the US Supreme Court has established that denying an inmate the instruments that could provide for their freedom is abhorrent to due process. Assuming the mind-set of the writer in reading this section I considered all the possible justifications and tried to balance the language of the section against the history of the department's actions. As hard as I tried to find reasonable justification for this section, there was a tone and motivation that was hard to avoid. This whole proposal must be conditioned by the department long history of resistance to exposing the internal conditions of its facilities to any outsiders, and I have often wondered why, it the state's correctional facilities are being operated in a humane manner, they are so intent on excluding anyone who might observe conditions first hand and report them. Yet given the department's ability to put their best face on and to restrict journalist and human rights inspectors, such groups have written reports that indicate that conditions in California prisons generally and women's facilities in particular, fall far short of meeting any international standard of humane treatment. As much as the public would like to vilify inmates, the department recognizes that if the true conditions of California's correctional facilities were known, neither the state of the department could withstand the reaction. A retreat to the guise of security is the last refuge of a scoundrel—security can be the justification for anything. Since the department or I can design a scenario that defeats the system, such fantasies become justifications. The greatly expanded restrictions on attorneys and their representatives reflects an abnormal paranoia that can only be explained by a guild complex that results form a knowledge that the conditions in departmental facilities are wrong. For those of us who enjoyed a secure upbringing and who learned what is morally right and wrong, trying to protect what one knows is wrong becomes a moral dilemma. The feeling I got as I read this section was that it was written under a certain amount of personal duress, so as not appear too passive, he or she had to appear severe. What is most obvious here is that should the department attempt to enact this section, the court challenges will begin, and perhaps the department has done a cost/benefit analysis, but I don't see how this serves anybody, least of all the taxpayer. **[Q-75]**

The proposed regulatory changes governing attorney and supporting staff access are oppressive and redundant, with an apparent design to complicate visitation. It is significant to note that the department chooses to eliminate the application of these regulations for *"student assistants and student assistant programs operating under agreements between the department, institutions, facilities and law schools."* The department persists in a double standard for visitation, presuming that visitors represent no significant threat to the safety and security of the institution/facility. Perhaps this is the same reason that the department refuses to apply the standards for drug detection to department employees that it imposes on the inmate population. **[X-1]**

Prisoners look forward to attorney visits. This is going to make it that much harder. And this is going to create a much more alienated, angry, and distressed prison population. **[P-12]**

RETAIN EXISTING § 3175

The following specific comments regarding retention of existing attorney-visiting regulations are not accommodated for the reasons indicated:

The statutory change making prisoner visitation a privilege does not apply to the right of a prisoner to confidential communication with counsel. Section 3175 of the current regulations contains the following provision, which should be retained in any amended rules: "Inmates have a constitutional right of access to an attorney. It is the policy of this department to facilitate both correspondence and personal consultation for this purpose." A prisoner's constitutional right to access to the courts, including the right to private visitation, continues to be recognized by the courts and the provisions of the current regulations which the department seeks to eliminate have been cited in two of these recent cases. In sum, the proposed regulations add more onerous requirements without justification and fail to meet the stated goals, and the current regulations should be retained with only minor changes. Unlike the area of personal visits, there have been no statutory amendments regarding attorney visitation and consultation, nor has the common law in this area changed. The department has failed to demonstrate any problems with the current system of attorney visitation that would justify a wholesale revision of the rules. The proposed changes in renumbered section 3178 fail to meet the stated goals of clarifying current policy and standardizing procedures system-wide. A more appropriate change would be to simply renumber the current section on Attorney Visitation and Consultation, with no changes. Retaining the current language would be a reasonable alternative…more effective in carrying out the purpose for which this action is proposed." **[M-3]**

The language of current §3175 recognizes in its opening paragraph that prisoners have a constitutional right of access to attorneys and that it is the policy of the department to facilitate this access in the form of correspondence and personal consultation. The language recognizing this right and policy deleted from the proposed regulations needs to be reinstated in proposed §3178. Absent such language, staff are likely to treat attorney visiting as having no more legal significance than general visiting, despite the fact that general visiting has been designated as a mere privilege in §3170. Reinstating the preamble language is necessary so as to not leave staff with the mistaken impression that attorney visitation is a mere privilege which staff are not obligated to facilitate. **[M-14]**

RESPONSE: Retaining the current language of attorney visiting as reflected in existing §3175(a) through (s) is not a reasonable alternative from the Department's perspective. As explained in detail on pages 17-22 of the ISOR, there are a great many (in fact, 4 full pages worth) of revisions, updates, adjustments, additions, rewordings and clarifications the Department feels are warranted in order to bring these particular provisions in line with current practice. While statutory or common law changes have not occurred, because existing attorney visiting procedures have not been revised in over a decade they are severely outdated and the treatment received is obviously needed. Obsolete text in §3175 respecting the "inmate's […] constitutional right of access to an attorney" has not been retained because the language is factually misleading. As Commenters above have more correctly observed, the "right" as such and as upheld by the courts, is the "right" of all citizens (including inmates) to access the judicial system as set forth primarily in amendments to the US Constitution and the Constitution and laws of the state of California. Moreover, §2601 of the Penal Code already set forth the "legal privileges" of inmates. They are, subject to stated limitations, the right to confidentially correspond with any member of the State Bar and to initiate civil actions. In addition, under the same provision of law, inmates have certain property, personal and contractual rights that indirectly imply access to the judicial system in order to consummate, exercise or adjudicate disputes respecting such options. Since it is contrary to standard regulatory practice to restate codified law in the form of a rule the

Department declines any suggestion to do so here. Finally, contrary to the assumption of Commenters above, the statutory deletion of "visiting" as an inmate right as previously discussed (pages 27-28 above) has no bearing on the proposed attorney visiting changes.

UNDESIGNATED SUBDIVISIONS

The following specific comment regarding undesignated subdivisions of the attorney-visiting regulations are accommodated in the manner described:

The new proposed section is as long and in many ways more cumbersome than current section 3175 (if you count the four unnumbered provisions in the revised preamble, and the fact that there are two subsections in the new rules, there are actually more sections). **[M-3]**

RESPONSE: The Department agrees that the proposed section is more cumbersome than the current section and accommodates this comment with a thorough reorganization of the text as originally proposed. While maintaining the same number of subsections contained in the existing rule, these "mechanical" or "reformatting" changes—in sequential order–are as follows:

- All undesignated subdivisions are relocated to specifically identified subsections appropriately identified in order of appearance in the text that follows.
- Newly designated subsection (a) incorporates material previously appearing in the undesignated text of this section, and is revised as discussed below.
- Subsection (a) as originally proposed is redesignated (b), revised to incorporate text originally contained in subsection (e) and revised slightly for improved clarity. In addition, subsections (1) and (2) are revised and (3) newly added so as to enable the originally proposed text of subsections (a) and (b) to be collapsed together.
- A remainder of subsection (c) has been combined with repositioned text from subsection (d) so as to enable the originally proposed text to be merged. In addition, other substantive changes are made as discussed below and the provisions of (f)(5) relocated to this subsection for added emphasis.
- Subsection (d) is based on the retention of a portion of the original text as revised in the manner described and for the reasons explained below.
- The original text of subsection (e) has been relocated to (b)(3) while the opening paragraph appearing in the undesignated portions of the section has been substituted and augmented in a manner to be subsequently explained.
- The proposed text of subsection (f) as originally presented has been deleted entirely. As revised, (f) is now based on sentences taken from the originally undesignated initial and second paragraphs of this section, as augmented in the manner explained below.
- Subsection (g) retains, in a substantially revised form, the text that was originally—and mistakenly–designated (f)(2).
- Subsection (h) likewise incorporates a revised version of what had originally been somewhat misleadingly designated (f)(3) and (f)(3)(A). The remainder of what had been designated as subsection (f)(3)(B), (f)(4) and (5) has been deleted, for reasons that will be provided below.
- What had been misdesignated as subsection (f) on page 61 of the NCDR text has been retained (and substantively revised) in newly designated subsection (i).
- Subsection (j) represents the original content of (g), as revised with the addition of new subsections (i)(1) and (i)(2).
- Subsections (k) and (l) contain what had been originally designated as (h) and (j) with certain additions and subtractions in text intended solely for the purpose of improved clarity.
- A revision of subsection (n) as originally proposed is retained in (m)(1), (2) and (3).
- The original subsection (i) has been repositioned and revised as (n).
- With very little change, subsections (o) and (p) retain the content of (l) and (m) and redesignated (q) retains the original (o) with no changes whatsoever.
- Subsection (r) represents a significantly streamlined (p), whereby (p)(1) through (5) has been reduced to (1) through (3) with textual deletions, additions and revisions as needed.
- Finally, subsection (s) retains, in a slightly revised manner, the original content of (q)

Substantive changes accompanying the formatting changes detailed above will be explained in the responses to comments appearing immediately below.

Curiously, a prisoner could, under your proposed regulation, reject all attempts by a district attorney or attorney general to interrogate him by refusing to give written consent. What is the legitimate penological interest here? Prisoners could preempt and defeat your proposed regulation by submitting an affidavit authorizing the unannounced visit of any licensed attorney who might seek to visit them. Legitimate security concerns about persons falsely posing as attorneys should be limited to requiring proper ID, Bar number and a Bar Association checks, if questions remain. If a prisoner doesn't want to see an attorney, court-appointed or not, he may always refuse a visit. Delete all references throughout to the requirement that an attorney must produce prior written consent of the prisoner before he may visit that prisoner. This is an oppressive and malevolent regulation that flatly interferes with the right of prisoners to gain the aid of counsel. For example, when the guards shoot a prisoner in the yard à la Corcoran, and the prisoner is paralyzed and in the hospital, are you now going to require written prior consent to seeing a lawyer? There is no legitimate penological interest in preventing licensed attorneys from visiting non-client prisoners without prior written consent. This is anomalous when one notes that media representatives may meet at random with prisoners, without prior written consent. **[N-66]**

To the extent that the language, "written consent from the inmate," in the proposed section will mean that the attorney now has to obtain consent by having a prisoner's signature on a specific form, the language as stated is a new requirement and it is going to require an extra step for attorney visitation which will increase the time and expense of attorney/client visitation. Visiting staff is not interpreting the words "written consent of the inmate" under the current §3175(d) as requiring specific written consent of the prisoner on a specific form, but in most instances requires mere proof of prior contact, which might be a letter from the prisoner asking the attorney for help. Since the content of the letter is confidential correspondence, the staff requires the attorney to show only the envelope from the prisoner indicating that the prisoner has written for attorney assistance. Additionally, in situations where the attorney has been appointed by the Board of Prison Terms (BPT) or the court to represent the prisoner, staff permits visitation with a showing of the appointment documents even thought the attorney may have never received any written documents from the prisoner. Therefore, "written consent from the inmate" in proposed §3170 must continue to be interpreted broadly to include any writing by the inmate that indicates proof of prior contact or to include documentation demonstrating appointment of the attorney. Additionally, it should be clarified that consent need not be on a specific form. **[M-12]**

RESPONSE: The following changes are intended to accommodate the comments above: "Written consent of the inmate" as originally required in the opening paragraph of this section has been completely removed as a requirement of these regulations. Alternatively, attorneys will be required, in accordance with the revised requirements of subsection (e), to declare the specific reasons for visiting. Four reasons are explicitly identified in (e)(1) through (4): Being the "attorney of record," "Having been requested by a judge to conduct an interview;" "Requesting to visit an inmate other than one currently represented in order to interview a witness," and "Seeking to interview an inmate at the inmate's own request." However, false statements or deliberate factual misrepresentations made in the declaration or in other required personal and professional information can either be grounds for request denials or for subsequent suspension or exclusion. While the Department does intend to develop a standardized form for use in making attorney visiting requests, providing information and making the required declarations, its use will not be mandatory. Required information can be provided in any written form the attorney wishes to use. With these accommodations, neither "written consent" or "proof of prior contact" will be needed, no new specific form is required to be used, nor is subsection (f) as it appeared in the original proposal needed, and so it also has been deleted.

Presuming that the Visiting Application] form [required by §3172] is to be included in the inmate's central file, it will contain personal information about the attorney including driver's license

number, social security number (optional), and date and place of birth. The placing of this information for every attorney and law student visitor in an inmate's central file raises privacy concerns. Inmates have the right to review and in some instances retain copies of the information in the central file in accordance with various other CCR sections of Title 15. There is no justification for requiring this type of personal information to be included in an inmate's file. **[M-3]**

RESPONSE: Personal information about an attorney is not placed in the inmate's Central File (C-File), but is retained instead in a visiting file assessable only to Department staff. Moreover, the proposed rule requiring attorneys to apply for visiting privileges in subsection (f) has been deleted as discussed above, accommodating the concern expressed regarding this rule.

The provision in the preamble allowing the possibility of a manual check taking up to 45 days is a new, more onerous, and totally unacceptable change. The proposal's stated objective is to standardize visitation procedure system-wide, yet the institution-by-institution of attorney verification is retained for no good reason. The department has access to computerized law enforcement records. If the approval process were performed once, for all institutions, the process would come closer to meeting the stated objective. Even if the procedure remains at the institutional level, there is no justification for this type of delay. Most states, including California, have information regarding licensed attorneys available over the Internet. The problems these proposed changes impose can be illustrated by an explanation of how many cases are referred to this office. Unlike in many criminal cases, in civil actions seeking relief under the civil rights laws, there is no right to a court-appointed attorney. However, federal law provides for the appointment of counsel in certain cases. This office routinely receives referrals of cases from US District Court and Magistrate Judges in Sacramento. We also receive referrals through the Ninth Circuit Court of Appeals Pro Bono Program. Although it is not always stated in the referring case order, the courts generally want to know if we are willing to accept a case within a relatively short time frame, generally no longer than 30 days. In some cases motions to dismiss or for summary judgment are pending or injunctive relief is immediately requested, and any delay is unwarranted and potentially harmful to the client. This office receives referrals in critical medical care cases in which this type of delay is potentially life threatening. When our office initially receives a case, we are not appointed as counsel. Instead we are given the opportunity to review file material and to interview our prospective client, before making a decision to accept the case. This is also the practice for panel attorneys on the section 1983 panel. Very often (with the exception of appellate cases, where the record is already fixed) the single most important factor in our determination of whether to accept a case is the personal interview with the prospective client. A delay of 45 to 60 days is completely untenable. In the context of a clinical program for certified law students, the problem is repeated every semester, as new students are certified and need to cleared for visitation. In a fifteen or sixteen-week semester, a 45 to 60 day delay would effectively eliminate a new student's ability to assist in the representation of our clients. **[M-3]**

Lawyers should be allowed to see inmates as soon as possible without any delays. Any type of delay could forfeit an inmate's case. **[V]**

RESPONSE: The provisions of superceded 3175(c) directed attorneys to contact the appropriate institutions "sufficiently in advance" to permit the scheduling of staff and facilities so as to allow access to the inmate at the requested time. Despite a week being the stated "desired" advance notice, 24 hours was the minimum "required for such service," while "in an emergency" appointment requests could be cleared through warden-level administrators. Replacement of these rules has become desirable from the Department's perspective because of a variety of factors. Increasingly, for example, attorneys have tended to make shorter as opposed to longer time fame requests. However, at the very same time, the Department's ability to comply with such requests has been severely challenged by circumstances beyond its control—such as correctional facilities filled to nearly twice their design capacity. As discussed elsewhere in the FSOR, such decreased personnel and physical setting options have been severe enough to

constrain the Department in a number of areas, the ability to provide attorney access on an "on-demand" basis among them.

Accordingly, as originally proposed, the Department revised the rule in question so as to more accurately capture contemporary policy and practice as reflected in local plans of operation and to replace state-wide memoranda that have attempted to address (or "clarify") the contradictions explained. As page 19 of the ISOR explains, subsection (e)(2) retained all of the provisions of existing 3175(c), with the exception that attorneys or their representatives not previously screened and approved would require 48 hours prior notice. Language also appeared in the undesignated "preamble" portion of 3178 to the effect that once the information required for approval had been received, the process of conducting a background check may take "up to 45 days." In light of the comments above, the Department agrees to further revise the original proposal.

For improved clarity, undesignated text identified above is merged with (e)(2) of the original proposal into subsections (f) and (g) as identified on page 111 above. The text indicating that a manual check may take up to 45 days is deleted. It was originally intended to be informational, and not directive in the manner mistakenly interpreted by Commenters. A new "two-year" validity provision has been replaced with indefinite validation, subject to the reporting of any changes in the information, arrest history and declarative basis upon which the initial approval had been based. The preferred timeline for prior notice is reduced from one week to five days; while the "standard" 24-hour notice request is changed to 48 hours in order to more realistically reflect the time frame within which such checks are likely to be completed. However, 24-hour notice—subject only to the documentation of a compelling need–is retained as is the "emergency" requests through the institution head or designee provision as it appeared in the original rule revision.

In addition, the rules respecting certified law students are amended: Revised subsection (d) now specifies that law students will be required only to accompany their sponsoring attorney and prove their certification in order to be admitted—prior clearance by the institution will not be necessary. As a result of this change, students will no longer be afforded the full status of attorney representative, because they will be under constant supervision in accordance with state bar rules. This change is also reflected in subsection (c) deletions.

As noted above, reasons for meeting with an inmate have been added to subsection (e) including (e)(2): "They have been requested by a judge to interview a named inmate for purposes of possible appointment as counsel by the same court." This change is a direct accommodation of the comment above.

With the above-noted changes the Department intends to sustain (if not improve) the prevailing time frame of attorney access to existing and prospective inmate clients; remove academic term barriers to law student participation in this process; and withdraw other miscellaneous obstacles such as "validity" periods or confusing informational text. Finally, a variety of word and phrase additions and subtractions are made in the material discussed above in order to maintain or improve logical consistency, meaning and readability.

However, the Department declines to accommodate the request for "one-stop and once-only" attorney approvals for all institutions. To do so would, first of all, require development, adoption and maintenance of an entirely new centralized system of record-keeping at a time when the Department is actually having to economize, if not cut back on, existing human and material resources. Secondly, attorney approvals are already processed at the institutional level. To needlessly interject a new process risks—at the very least temporarily–disrupting an in-place and relatively stable system with very little obvious benefit from the standpoint of the inmate client. The price of greater confusion and delay may not worth the supposed benefit received, except to the very few individuals who might find such change more convenient for themselves.

The department is also attempting to impose the provisions of Title 15 in the attorney-client relationship by violating confidential visiting, mail and/or telephone privileges without due process under state law, including review by authorities outside an institution or facility. **[X-1]**

The language relating to correspondence should also be retained in its current form. The right to confidential correspondence with counsel remains a statutory, as well as constitutional, right (Penal Code §2601(b). Clearly retaining the current language on both personal consultation and correspondence with counsel would be a "reasonable alternative…more effective in carrying out the purpose for which this action is proposed." **[M-3]**

RESPONSE: Commenter objections to the deletion of the superceded preamble of §3175 have been addressed on page 110 above. Furthermore, the unchanged provisions of existing §3141(c)(6) upholds the previously §3175-identified right of inmates to correspond with an attorney of law listed with a state bar association. However, in order to address the concerns expressed above, the applicability of this section is expressly altered in subsection (a) to include the legal service organizations identified in §3141(c)(8) by direct citation of this particular subsection.

Regarding the provision concerning possession of a valid driver's license to pass clearance, there are many attorneys who, for any number of reasons, never learned to drive or otherwise do not possess a driver's license. A California State identification, Bar card and/or passport should serve as substantial documentation of an attorney's identity. **[M-13]**

RESPONSE: Subsections (e) and (h) have been revised to accommodate the concern raised.

In the context of a clinical program for certified law students, the problem is repeated every semester, as new students are certified and need to cleared for visitation. In a fifteen or sixteen-week semester, a 45 to 60 day delay would effectively eliminate a new student's ability to assist in the representation of our clients. **[M-3]**

RESPONSE: Removal from the list of attorney representatives has eliminated the objectionable requirement of pre-clearance of law students. As reflected in the revised text of subsection (d), they will be admitted upon evidence of certification as a law student under bar rules and when accompanied by their sponsoring attorney. Accordingly, there should be no rules-related delay in a new student's ability to assisting in client representation.

The following specific comment regarding undesignated subdivisions of the attorney-visiting regulations are not accommodated for the reasons indicated:

It looks as though, unlike with regular visitors, approval of attorney visitors is not transferable. If an inmate is moved to another institution, does the attorney have to re-apply? If yes, why? If not, make that clear. **[M-1]**

RESPONSE: As discussed above (pages 112 and 114), the written consent requirement contained in the original rulemaking proposal has been dropped, as reflected in deleted "preamble" and subsections (e)(3)(B) (page 60 of the NCDR) and (f) text. In addition, the provisions of subsection (e)(4)—which required attorney representatives to comply with the inmate visiting application process–have also been removed. Therefore, parallels with the regular visiting process have been eliminated and therefore the "transferability" of approval should no longer be an issue. The Department prefers to retain the current practice of institution-level oversight of attorney visiting to that of a centralized approach in order to minimize obstacles to attorney access and in recognition of the increased fiscal burden the creation and maintenance a state-wide system of tracking inmate transfers and attorney approvals would represent.

There was a lot to be said about attorney contacts. One of the things we're working on right now is the habeas corpus, and the only way we can help our son do this because there are no more monies to support an attorney is that we help him by commenting on his written work and it goes back and forth in the mail. Sometimes, it takes as long as two weeks for a packet of materials to get to an inmate inside and then to come back. Families who are helping inmates with their habeas corpus should be allowed to bring their documents into the visiting room and work on them. **[P-3]**

It is significant to note that the department chooses to eliminate the application of these regulations for *"student assistants and student assistant programs operating under agreements between the department, institutions, facilities and law schools."* **[X-1]**

If the language regarding student assistant programs needs to be retained, it should remain toward the end of the section, nor near the beginning. It should include a clarification to avoid confusion with law students certified under rules of practice…moving it to the front could leave the mistaken impression that these rules do not apply to any law students. This subdivision should be prefaced with language that "While these regulations do apply to certified law students, they do not apply to student assistants, etc. **[M-3]**

RESPONSE: The Department regrets that for security and safety reasons, it is unable to "liberalize" the rule prohibiting non-attorneys from bringing legal papers into the visiting room as reflected in repositioned §3170.1(g). The student assistance programs provision is a verbatim repeat of superceded §3175(q) and as such does not constitute a change in policy in the manner alleged above. However, the relevant text has been repositioned to subsection (a). The Department disagrees with the opinion that this and the law student attorney representative provisions of the rules will be confused.

3178(a)
PRIVATE CONSULTATION

The following specific comments regarding subsection 3178(a) of the original attorney-visiting regulations are accommodated in the manner described:

This proposed rule neglects to make a positive statement that attorney-client visits are to be contact visits. **[N-79]**

Regarding subsection (a)(2), while I understand the need for appropriate staffing in order to accommodate visiting requests, the requirement that an attorney has to demonstrate a "compelling need" to see their client is very harsh. I can't imagine any attorney who visits a client because they have nothing better to do—they are much too busy. Any time an attorney needs to see their client there is a need to do so. And, if the need to see a client arises from something which occurred at the prison which is confidential, there is no way the attorney could "prove" to the warden why the visit is needed—the information would be privileged. This section needs to be rewritten or the department will be needlessly opening itself up to litigation. **[M-1]**

The guideline advising against attorney visiting on weekends when there is non-weekend days(s) available for visiting is particularly burdensome to Board of Prison Terms (BPT)-appointed attorneys. Attorneys appointed by BPT to represent inmates/parolees have frequently complained to BPT. They point out that the department's limited days and hours of access make it very difficult for them to do the job hired to do and provide adequate representation. For disabled inmates/parolees, the impact of the department's minimal attorney visiting schedule threatens state compliance with the Americans with Disability Act and court rulings in the Armstrong case. This regulation when read together with §3172.2 effectively limits attorney

visiting at some of all prisons to one weekday, since prisons may limit visiting to two or three days per week. An attorney with a Thursday or Friday hearing at a prison often cannot visit with the client the day before. This often requires two separate visits to prisons that may be at locations remote from the attorney's office. This increases expenses unnecessarily to the BPT, since this agency reimburses its appointed attorneys for expenses they reasonably incur. The result is contrary to California's public interest in times of budget deficits. To resolve these problems, BPT recommends that the regulations be amended to permit attorney visiting five days per week, Monday through Friday. We also recommend that attorney visiting be permitted at hours outside 8 AM to 5 PM where regular visiting hours at the prison are either earlier or later than 8 to 5. **[M-4]**

RESPONSE: The Department declines to explicitly equate all attorney visits with contact visits as requested because a non-contact context may be the only way the Department can guarantee visitor safety or institutional security during the visit in question. However, in order to provide greater clarity regarding this matter, the following textual changes have been made: The text of subsection (b) concerning "confidential area" is repositioned to follow the revised text of subsection (a) of the original proposal; Subsection (a) of the original proposal is redesignated (b); The remainder of (b) concerning the discretionary approval of a contact visit has been retained in a slightly revised form and redesignated (b)(2). By these revisions, readers should more clearly understand that attorney visits should be contact visits unless under exceptional circumstances.

The "compelling need" subsection (a)(2) of the original proposal is repositioned and incorporated into a revised subsection (g). As explained on page 112 above, a declaration of the reasons for the visit shall be required of attorneys prior to their visit in the manner set forth in the rewritten provisions of subsection (e). Moreover, the language of superceded subsection 3175(a) has been retained in subsection 3178(g), whereby "emergency" appointment requests may be cleared. The Department feels the revisions noted sufficiently soften the "compelling need" language so as to permit legitimate requests for attorney visits.

The text of redesignated subsections (b) and (b)(1) has been rewritten so as to clarify that attorneys may request weekday visits during normal business hours. In addition, as noted above, §3178(g) retains the existing emergency appointment rule.

3178 (d)
ATTORNEY REPRESENTATIVES

The following specific comments regarding subsection 3178(d) of the original attorney-visiting regulations are accommodated in the manner described:

The provisions of (d)(4) and (d)(5) would eliminate part-time or otherwise proper representatives of an attorney or licensed investigator. It would imply that non full-time attorney and investigator representatives are not legitimate agents. The proposed regulation does not comply with PC 2600, GC 11346.7(a)(2) & (3), or GC 11349(a)(1) & (4). **[N-79]**

The reference to certified law students should be broadened to include law students certified under federal court rules. While federal courts have rules similar to those of the State Bar, they do not require a separate certification by the State Bar. Proposed subsection (d)(2) should insert "or a similar federal court rule" between the words "law students" and "and sponsored by the attorney. **[M-3]**

RESPONSE: The Department does not intend to prohibit part-time attorney representatives from acting as legitimate agents of attorneys. Accordingly, the objectionable text of (d)(4) and (5) is deleted. In addition, revisions in 3178(c) and (d) of the original proposal are made as described in order to provide greater clarity regarding attorney representatives: Sections 3178 (c) and (d) are combined in subsection (c) so that the listing of allowable designations precedes the

designation and certification of same; Text concerning investigator and legal para-professional attorney representatives has been revised to more accurately describe the backgrounds expected of such individuals; Court and Judge has been added where necessary to clarify the authority designating the attorney representative(s); Text has been added respecting "certification" and "licensure" in order to clarify the documentation needed for background certification; The text originally found in (e)(5) has been revised and relocated to subsection (c)(3) in order to more fully emphasize that accommodations and services will be properly afforded attorney representatives; Finally, as explained on page 114, law students acting as attorney representative has been relocated to subsection (d). The textual addition "subject to the same rules and regulations" contained in (c)(3) is intended to broaden the applicability of the remainder of the attorney visiting section to attorney and attorney representative alike, permitting deletion of the textual redundancy "and attorney representative" throughout the rest of the text in this section.

While the repositioned text of subsection (d) is not changed in the manner requested, the addition of the phrase "provide proper evidence of their certification" is intended to achieve the same objective: broadening the reference to certified law students to include those certified under bar rules other than California.

3178(f)
ATTORNEYS NOT PREVIOUSLY APPROVED

The following specific comment regarding subsection 3178(f) [Mislabeled] of the original attorney-visiting regulations is accommodated in the manner described:

The current practice of obtaining clearance for attorneys and attorney representatives in the visiting context is handled through the institution's gate clearance procedures. These procedures require the attorney, for a first time visit to the institution, to contact prison staff in charge of attorney visiting approximately a week prior to the desired visit. These procedures require submission of the visitor's name, date of birth, social security number, driver's license number and state bar card number for clearance through the Department of Justice (DOJ). The clearance takes between 2 and 7 days and is valid for two years for visiting all prisoners at the institution that conducted the clearance. In other words, a separate clearance is not required for each prisoner at the institution. Proposed §3178 seems to codify the current gate clearance procedures for attorney visiting. However, proposed §3178(f) contradicts the language of §3178 by requiring the attorney (and presumably the attorney's designate) to supply clearance information for obtaining gate clearance through the DOJ/CLETS background check system, and instead subjecting the attorney to the additional procedures of proposed §3172 which requires use of the Visiting Application form. This form has never been required of attorneys before, and should not be required under the new regulations. To do so would be to effect a drastic change in procedure, contrary to the stated intent as expressed in the Initial Statement of Reasons. Additionally, the application process is excruciatingly slow in that it is currently taking a minimum of 8 weeks. This is not functional at all for an attorney who might visit several different prisoners in that it is generally used base on a visit to a particular prisoner. Moreover, from the language of proposed §3178(f), it is not clear whether the regulation will require the attorney to complete a separate form for each prisoner the attorney wants to see. The text of the form contains several indications that the form is specific to a single prisoner. The gate clearance process, on the other hand, already works very well for attorney visitation of several different prisoners at a particular prison. **[M-3, M-11, M-12]**

RESPONSE: The provision concerning visiting applications objected to above has been deleted.

3178(f)
SEEKING TO VISIT WITHOUT CONSENT FORM

The following specific comments regarding subsection 3178(f) of the original attorney-visiting regulations are substantially accommodated in the manner described:

The first portion of subsection (f) and in subsection (g) retains existing language in current §3175(d) requiring written consent of the inmate and allowing in some instances for an official to require proof as attorney of record of court appointment to the case. This rule should be eliminated. Our office often needs to conduct an interview with a prospective client under a very short time frame. Requiring the additional step of mailing an authorization form to the prospective client and having them return it, when the person has already filed a motion for appointment of counsel and received a referral from a federal judge to potential counsel, adds an unnecessary burden and delay. While in practice we generally obtain this permission in writing, if an inmate does not desire to meet with the attorney he or she can simply refuse the visit. There are a number of situations in which it could be necessary to interview an inmate whom the attorney does not represent, in connection with another individual's case. Suppose this office receives a referral for a case in which an inmate alleges a correctional officer subjected him to excessive force. The prospective client provides the names of 3 inmate witnesses, who he claims will support his version of the event. It would be more efficient to allow us to interview these individuals prior to accepting appointment in the case, and without a court order of appointment. Law students now work for prosecutors and public defenders under student practice rules. These students, and their supervising attorneys, should be allowed to visit potential witnesses in both criminal and civil matters, without advance notice to the prisoner and without a court order. **[M-3]**

The current regulations now allow attorneys to visit with prisoners even when the attorney is not the legal representative of the prisoner. For example, an attorney representing a prisoner accused of committing a crime in prison may have to interview other prisoners who may be potential witnesses to determine their testimony. The proposed §3178(g) seems to make the practice illegal and impossible because the attorney will not in such a situation be able to provide proof that any of these potential witnesses "had designated the attorney as his or her legal representative or that a court has made such an appointment." The regulations must continue to allow visitation by an attorney with prisoners who may be witnesses rather than clients the attorney is legally representing. **[M-12]**

The proposed language of this subsection seems to permit the staff to provide reasonable accommodation in the form of "bringing the inmate to the attorney visiting room." However, §3178(g) contradicts this practice with the provision permitting the institution head to require proof of the attorney's authorization as a representative. This contradictory language is likely to result in staff never providing reasonable accommodation and in attorneys being required to always provide proof of representation. The regulations need to emphasize that proof of representation need not be required routinely, but only as a sanction for the instances where staff has a suspicion of some kind of attorney misconduct or procedural abuse. **[M-12]**

RESPONSE: While dropping the application requirement of [mislabeled] subsection (f) of the original proposal, the Department declines to "eliminate"—as requested–other language contained in current §3175(d) and incorporated in subsections (f) and (g) on pages 61 and 62 of the original NCDR. Nevertheless, the following revisions to these particular subsections are made in an effort to partially accommodate the concerns expressed above: Subsections (f) and (g) are redesignated (i) and (j); the phrases "signed consent form," "not acting as legal representative" and "designation as … legal representative" are eliminated; Subsection (i) is substantially rewritten so as to allow for the interviewing of inmate witnesses not currently represented by the attorney; Increased clarity to (j) is provided with textual revisions reflecting that when there is suspicion of attorney misconduct or incitement of inmate conduct prohibited by §3005 authorities are authorized to require proof of the legitimacy of the inmate/attorney contact and initiate an investigation.

3178 (i)

EXCHANGING DOCUMENTS

The following specific comments regarding subsection 3178(i) of the original attorney-visiting regulations are substantially accommodated in the manner described:

Concerning the use of the word "may" rather than "shall" with respect to document exchange, in order for an attorney to adequately represent a client the exchange of documents is essential, and therefore preventing the exchange of documents is an obstruction of justice. **[M-13]**

The revisions regarding exchange of documents could be made clearer by included proposed sections (i) and (n) together, so that it is clear that documents can be exchanged and retained by both attorney and client, and the rules applying to same. **[M-3]**

RESPONSE: The Department makes the following revisions in the text of subsections (i) and (n) of the original NCDR in accommodation of the above comments: Subsection (i) is redesignated (n) and repositioned to follow the subsection originally designated (n); Redesignated subsections (m) and (n) are textually revised so as to make clear that documents can be exchanged and retained by both attorney and inmate. However, substitution of the word "shall" in place of "may" in the context of the subsections in question would have the undesired consequence of making document exchange on the part of the attorney and inmate mandatory, instead of voluntary. The only "obstruction" to document exchange the Department intends to impose is following inmate refusal to allow the documents in question to be inspected for contraband or other unauthorized items or substances. In such instances, the document(s) will be returned to the attorney or otherwise disposed of. While textual changes have been made in subsections (m) and (n) to reflect this process, the Department declines the request to change "may" to "shall" in order to sustain what is clearly meant to be a permissive option available to the attorney and inmate, if they so desire.

3178(j)
CONVERSATIONS BETWEEN INMATES AND ATTORNEYS

The following specific comments regarding subsection 3178(j) of the original attorney-visiting regulations are not accommodated for the reasons indicated:

One of the stated objectives of the proposed regulatory changes is to incorporate "updated references to the Penal Code." In order to further that goal, specific reference should be included in proposed subsection (j) to the fact that PC §636 makes it a felony offense to eavesdrop on attorney communications with prisoners. **[M-3]**

Visual observation is insufficient to ensure confidentiality because it is far too easy for people to read lips. **[N-80]**

RESPONSE: The regulation in question already complies with the requirements of Penal Code (PC) §636 by prohibiting the listening to or monitoring of private conversations between inmates and their legal representative. Since PC 636(b) expressly exempts inadvertently overheard conversations, and the regulation does not contemplate intentional eavesdropping, no additional citational reference is needed. Skilled lip readers are so scarce and the confidential areas reserved for such visits so non-optional for the reading of lips very little real threat to confidentiality is posed, despite the concerns expressed above. The subsection is redesignated and reworded slightly in an effort to improve clarity and maintain the logical order of the sequencing in the section.

3178(o)
ATTORNEYS ARE NOT PERMITTED TO ATTEND COMMITTEES

The following specific comment regarding subsection 3178(o) of the original attorney-visiting regulations is not accommodated for the reason indicated:

"…Except as may be authorized in these regulations." "These regulations" should be explained in full or a reference number as to where they can be found should be given in the document. **[N-37]**

RESPONSE: The phrase in question refers to California Code of Regulations (CCR) Title 15, Division 3, §§ 3000-3901.35.2, commonly referred to as the "Rules and Regulations of the Director of Corrections" or "Director's Rules" for short. It is a standard rule of regulatory construction that "these regulations" is used when discussing those sections of CCR pertaining to the Department of Corrections contained in Division 3 of the pertinent title. The phase would likewise pertain to other agencies with respect to regulatory provisions encompassed in other divisions and titles of CCR. However, in that context, the phrase "these regulations" would then refer to sections of other divisions and titles adopted by those other agencies.

3178.1(a)
EXCLUSION FROM PRISON GROUNDS

The following specific comments regarding subsection 3178.1of the original attorney-visiting regulations are not accommodated for the reasons indicated:

The development of an exclusionary process by the Department as this regulation that is subject to their interpretation and operates outside of existing state laws governing access to institutions and facilities, creates another opportunity for the department to determine who may see inside the operations of these institutions and facilities. **[X-1]**

RESPONSE: As page 22 of the ISOR states, this section retains former §3176(a). While superceding existing text there is no evidence to support the assertion that the Department is thereby creating "another" opportunity to determine who may see inside prisons. Moreover, the remainder of the exclusion section provides for due process, review, appeal, and legal representation with respect to such decisions. Finally, the exclusion order may be modified, conditional or rescinded as appropriate, in a manner wholly consistent with the provisions of state law and judicial principles.

3178.1(e)
EXCLUSIONS AFFECTING ATTORNEYS

Add "via the warden" following the word "Director" in the first sentence of this subsection. **[N-88]**

RESPONSE: The Department declines to add an operational provision to the regulatory text of this rule.

3179
APPEALS RELATING TO VISITING

The following specific comments regarding §3179 of the original attorney-visiting regulations are not accommodated for the reasons indicated:

There needs to be a formalized visitor grievance and appeals process established within the department, this need was identified in proposals prepared and submitted in July of 99. **[M-16]**

The CDC should provide for an administrative complaint process for visitors. This process should enable a visitor to file a complaint directly with the visiting official in Sacramento when there is a

reasonable basis to believe that filing at the prison from which the complaint arises could result in retaliation to the visitor and/or the prisoner. **[M-2, N-83]**

I feel that each institution should assign an impartial contact person who has the authority to investigate and take action on disputed visiting rules issues. It is very difficult for visitors to have any speedy recourse against accusations of misconduct or erroneous interpretations of rules and regulations by CDC Visiting Staff. This oversight has caused many to suffer during the months of waiting for written replies from Wardens and the Director's office to remedy the situation. **[N-86, B, E, M-7, V-3, N-42, Q-66]**

The appeal process needs to take place the day of the incident and be improved to let the visitors be involved. **[P-30, U-3]**

The Inspector General's office is far too busy to deal with visitor's complaints yet they are important healing and rehabilitative processes. The more rules imposed the greater resulting complaints and problems since most of the Guards are on power trips and abuse their authority. These regulations spew hate and help no one. They do a great deal to harm relationships and to further damage the most vulnerable members of our society, the innocent victims of crime who are the families and the children of prisoners. **[M-7, Q-66]**

Inmates have lost the ability to take photos, weights, and have certain personal property. Inmates in the past have shown their disagreement in many ways such as hunger strikes, work stoppage and violence. Grievance cannot be resolved through inmate appeals because a lot of appeals are not responded to and are lost at the discretion of the appeals coordinator. **[V-5]**

3179(a)(2)
APPEALS SUBMITTED TO THE INSTITUTION HEAD

Feels that CDC should add to this section the provision that the prison shall answer non-inmate's appeal in the same time frame "(15-days)" as inmates. **[N-75]**

3179(b)
APPEALS REGARDING INSTITUTION/FACILITY PROCEDURES

Proposed text seeks allowance of separate and different "procedures" when the entire basis for this expansive change is to "standardize visiting statewide". Only violations of OAL approved California Code of Regulations sections should be cause for disciplinary action. "Local procedures/policies" only create loopholes for the Department of Corrections to avoid non-legal rules from being stricken rules from being stricken by the OAL pursuant to the Administrative Procedures Act. "Local procedures/policies" are created by visiting staff, not the Director, and therefore are not reviewed by the OAL, nor is notice given for the change so that the public comment can be considered. **[N-39b, N-48, A, N-69]**

3179(d)
APPEAL DECISIONS

While there is no specific objection to the establishment of an appeals system relating to visiting, specifically suggested is the deletion of subsection (d) and it's replacement with language authorizing a "stay" in any restriction or suspension of visiting privileges pending the outcome of any appeal filed. Addition of this language would be a less restrictive alternative, and adequately address the circumstances of a visitor not being deprived of visiting for any amount of time should they ultimately win on appeal. This alternative addresses both the department's goals in sanctioning visitors found guilty of violating visiting rules, regulations and laws, and the interest of the innocent visitor of not being deprived of their visits for any amount of time while their case is on appeal. If the appeal is ultimately affirmed then the time factors for restriction or suspension

would not begin until the date of affirmation of the appeal. Moreover, it should be of particular note that a system for visitors to appeal charges brought against them is meaningless without a mechanism in place to have a due process hearing on the charges. **[N-49]**

RESPONSE: Subsection 3179(a) of this proposal—as ISOR page 23 points out–retains and combines former §3178 and 3178(a), but with the distinction now being made between the inmate appeal process set forth elsewhere (§§3084-3085) and appeals by visitors that are to be submitted to the institution head, thereby accommodating public comment previously received and mentioned above and encompassing the improvement of allowing visitors to be involved. Proposed 3179(b) permits appeals of visiting decisions at the institution/facility level to be made to the director, conceivably in anticipation of as well as in response to *perceived* prejudice or the threat of retaliatory action on the part of local-level officials. As previously stressed on FSOR page 21, the Department dismisses any and all blanket or unsubstantiated accusations of misconduct on the part of correctional personnel. Moreover, specific instances of perceived disrespect, prejudice or intimidation should be first reported to immediate superiors at the relevant institution/facility. This affords the Department the opportunity to more completely assess the nature and scope of the problem, as the complainant perceives it.

The Department appreciates that some Commenters would prefer an "impartial contact person" who would "speedily" resolve visiting rules disputes at the institutional level when they arise. However, such controversies invariably entail a tangled web of perceptions, facts and chronologies that takes time to identify, order and process into a recognizable case to be resolved. Moreover, the safety and security of the public and inmate alike must always govern the decisions and judgment of local personnel when making visiting-related determinations. In the exceptional occasion when such decisions turn out to have not been the best possible or correctly grounded in established rules or policy, they will be overturned upon review in accordance with the provisions of this section and §3176.1 as previously discussed. The Department really has no other choice but to retroactively reflect on the actions of its personnel for to do otherwise, in the manner suggested by Commenters, could subvert the safety and security principles upon which the Department places the highest possible priority.

The disgruntlement expressed by other Commenters over the revision of these rules and the supposed ineffectiveness of the inmate appeals process is noted, however, no reasonable accommodation on the part of the Department is possible. The Department's inmate appeal process (§§3084-3085) reflects judicial branch preferences for inmate due process outside of the dispute resolution system afforded by courts. Alleged flaws in this system and any known negligence on the part of an individual employee should be brought to the attention of the Director or the employee's immediate supervisor, as appropriate, for investigation and resolution.

Visitor appeals involve the need to communicate or interact with individuals outside of the institution/facility, clearly justifying a timeline greater than that specified for inmate appeal processing which exclusively takes place inside the physical setting of the facility.

The topic of "local procedures/policies" has been addressed on pages 28 and 48-50 above and the fact that they are not intended to be "loopholes for the Department…to avoid non-legal rules from being stricken" has already been fully explained. The authority to create operational plans and procedures at the local level is found in CCR §3380(c), a rule previously reviewed by the Office of Administrative Law (OAL) and adopted in full accordance with the Administrative Procedures Act. Moreover, Penal Code (PC) §5058 exempts rules issued by the director applying solely to a particular facility such as operational plans adopted pursuant to §3380(c). In addition, PC §2086 authorizes wardens to issue temporary rules and regulations in an emergency "to remain in force until the department otherwise provides." Therefore, the basis for local operational plans and/or "institution/facility procedures relating to visiting" on a permanent or temporary basis is solidly grounded in existing law and regulation, despite assertions to the contrary.

Finally, a "stay" in the imposition of restrictions or suspension of visiting pending the outcome of an appeal is an impractical alternative to the provisions contained in proposed subsection (d). The proposed rule permits "prompt" approval or restoration of visiting privileges, whereas the suggested change would, in effect, "prohibit" any imposition of restrictions or limitations, irrespective of egregiousness, severity or presence of actual threat to security and safety. For reasons already presented immediately above, the Department cannot subvert the safety and security principles upon which it places the highest possible priority by allowing the alternative suggested. In addition to the due process principles contained in the text of this section, the due process of the notification process is found in §3176.1(g).

SUMMARY OF ADDITIONAL ACCOMMODATIONS AND SELF-IDENTIFIED STRUCTURAL REVISIONS IN THE TEXT CONTAINED IN THE INITIAL NCDR

A recapitulation of changes in the text contained in the Initial NCDR, including those structural changes not otherwise identified and discussed above are presented below, summarized on a section-by-section basis:

§3045.2

Amendments to subsections 3045.2(e) (2) (F) and (H) have been made in the matter described elsewhere above.

§3170

The "General Visiting" provisions of this section have been streamlined with the repositioning of some text to the following section and the addition of other text from a subsequent section.

§3170.1

The "General Visiting Guidelines" provisions of this section have been streamlined with the repositioning of some text from the previous section, the repositioning of other text to a subsequent section, and with a heading revision.

§3171

"Visiting Procedures" provisions have been streamlined with the repositioning of text from and to the previous section.

§3172

Provisions for "Applying to Visit an Inmate" have been revised as discussed elsewhere above and with a heading revision, while some text has been repositioned internally within the section and other text relocated to the subsequent section. The provisions of subsection (c) have been altered slightly adjusting to the deletion of the minor application requirement in the previous subsection. In addition, the requirement that prior written approval for minors not accompanied by their parents be provided has been deleted as redundant in light of the textual content of 3173(d).

§3172.1

Provisions for "Approval/Disapproval of Prospective Visitors" have been revised as discussed above and with a heading revision, while operational text has been deleted and other text repositioned from earlier sections.

§3172.2

Some of the “Minimum Visiting Days and Hours” text has been condensed and a new provision for visiting appointments added.

§3173

The provisions of “Processing of Approved Visitors” have been changed with a heading revision, numerous textual revisions as discussed, and the deletion of operational language from (c)(6).

§3173.1

Changes in the provisions respecting “Visiting Restrictions with Minors” are nonsubstantive.

§3173.2

Provisions regarding “Searches and Inspections” have been changed with a heading revision, textual alternations as discussed, the addition of some text and the deletion of other operational text for greater content clarification. Some the deleted text may be repositioned to the Department Operations Manual (DOM).

§3174

“Standards of Dress for Inmate Visitors” has been revised as discussed and with the repositioning and condensing of some text.

§3175

Changes in the “Standards of Conduct for Inmates and their Visitors” provisions are as discussed previously.

§3176

Provisions pertaining to “Denial, Restriction, Suspension, Termination or Revocation of Visits” have been revised with a heading reorganization, textual changes as discussed, as well as some repositioning and content deletion.

§3176.1

The “Visitor Violation Process” has been significantly revised with the deletion of extraneous or operational text and with other accommodations as noted previously. In addition, some text has been internally repositioned within the section.

§3176.2

Changes in the provisions concerning “Violation of State Law on Institution/Facility Property” are either nonsubstantive or minor and are intended to improve or clarify the text as originally proposed.

§3176.3

The changes in “Restriction, Revocation or Suspension of an Inmate’s Visits” provisions are all nonsubstantive.

§3177

“Family Visiting” provisions are revised with a heading change and a few minor textual changes intended to be nonsubstantive in scope.

§3178

Provisions for "Attorney Visitations and Consultations" have been significantly revised. Structural changes within the section have been described in detail on page 111. In addition to the accommodations described on pages 112-121, newly designated subsections (h), (k), (p) and (s) reflect minor textual changes intended to improve some of the language contained in the original proposal. Newly redesignated subsection (r) has been substantively revised with the deletion of extraneous text and specifically with the reduction of numbers (1)—(5) to (1)—(3). In addition, some text has been internally repositioned and/or consolidated within the section. The word "private" has been added to subsection (a) to distinguish private attorney visits from the visits of public attorneys provided for under the separate provisions of §3267.

§3178.1

Changes in the "Exclusion of a Person from Institutions/Facilities" provisions are minor, needed in order to maintain correct cross-referencing, or intended to be nonsubstantive in scope.

§3179

Changes in the "Appeals Relating to Visiting" provisions are minor or intended to be nonsubstantive in scope.

Changes Throughout

Non-substantive changes have been made throughout the text where necessary, including: inappropriate upper-case letters changed to lower-case; supercilious words deleted without changing text meaning; enumeration changed as needed to maintain the appropriate sequencing of text; improper capitalization of job titles dropped; grammatical errors corrected; words such as "rank" or "designee" added in order to clarify the intended meaning of the original text.

TEXTUAL CHANGES REFLECTED IN THE RESPONSES ABOVE APPEARED IN A 15-DAY RENOTICE WITH A COMMENT PERIOD CLOSING ON AUGUST 9, 2002. THE PUBLIC COMMENT RECEIVED IN RESPONSE TO THIS RENOTICE HAS BEEN SUMMARIZED BELOW, TOGETHER WITH THE DEPARTMENT'S RESPONSES AND/OR ACCOMMODATIONS TO OBJECTIONS AND/OR RECOMMENDATIONS FOR CHANGING THE AMENDED PROPOSAL:

General Renotice Comments:

The following general comments are aggregated and summarily dismissed because they are made in the form of a general statement, unsubstantiated assertion or opinion and no reasonable accommodation on the part of the Department is possible:

We demand that the Department stop its attack on the fundamental and unconditional human right of families, friends and community to visit with their loved ones in prisons. The fact that the majority of the people held in the prisons are Mexican and African adds to the continued aggression of the government to commit genocide against a people, according to Resolution 260(III)A of the United Nations General Assembly. This attack is a reflection of the U.S. government slowly taking civil, human and democratic rights away from the people. If the state takes [away] the right to visit our loved ones, then they will continue to take the rest of our rights away. **[DD]**

All of these changes are directly formulated to punish visitors and break apart families that are already struggling to stay intact. It has been proved by psychologists around the world that the

current practices by the Department only weaken family ties and cause emotional instability to both family members and prisoners alike. Often times [inmates are turned loose…] worse than when they were [when] initially committed because of the "care and treatment" [provided] by the Department. At what point do they pass bills to help maintain contact, emotional ties, and parental ties so that these people can help their children not fill these jails and prisons? The Department has made [punishment] a multi-million dollar business. One to which all the loose ends are being tied; so the next time someone is killed by a guard for fun or amusement, our hard earned money, [our] tax-dollars spent for trivial departmental matters, let us all blame ourselves. **[GG-01]**

So, tax dollars for prison expansion spawned a penal tidal wave that hasn't touched the crime-rate. But the tide can be turned, by modeling a successful Christian-based program in Texas. Though geared for inmates due for release, it fosters positive behavior through a Christian environment with incentive privileges (apart from the general population) that can de adapted for other compliant inmates. The program's 10% recidivism-rate is a proven success over the 83% recidivism-rate of those without it. Citizens deserve more return on their tax money than a blight of human warehouses that can be downsized with such a program, and changing the 3-strike law. It's time for a positive answer that changes lives, families and communities instead of feeding a penal power structure! **[HH-41]**

There should be no increase in harsh and/or difficult rules and guidelines for inmates and family members to put up with, for it only increases unhappiness and further strains relations. And, it is just not fair and moral. Any increase in "senseless" and controlling rules and regulations only increases resentment against correctional officers and visa-versa, and it will lead to confrontations. There are too many innocent people—and a lot more guilty people convicted on minor crimes–which do not deserve this increasingly inhuman treatment. And remember, no one—at the highest levels of government–is trying to rectify this series of problems on both sides. **[GG-42]**

The need for families to visit their incarcerated family members must be recognized as humanely crucial, instead of hindering, shortening or denying visits. There is no closure to their suffering from excessive separation, the fractured family unit, children raised by one parent, and the years of rushed, tiring drives to maintain valued marital and family ties. So, their need and right to maintain those ties must be guarded instead of undermined by added restrictions, and inadequate visiting space that results in shortened visits or families doubling up. **[HH-41]**

I believe that visiting privileges are among the most important in the prison system. We will all have to live side by side with inmates when they get out. I want them—insofar as possible–to have relationships with people outside prison. Especially over long sentences, such relationships can't really be maintained without generous visiting privileges. **[HH-36]**

Most of the changes take away more from the inmates and they have had enough taken way. They barely have decent meals and families have to subsidize them with money and packages or they go hungry. Stop trying to punish those that are already being punished [enough] by just being in prison and away from loved ones. **[GG-16]**

Why does CDC think they are there to punish inmates, I thought being incarcerated was punishment enough. CDC needs to remember their place and guard the inmates, like the name "guard" not punish. **[GG-40]**

It is hard enough to be shut away and deprived of the "ordinary" freedoms and rights of life. Inmates must be able to receive visitor, access to legal counsel and all forms of organizations and services to which they are entitled. **[HH-47]**

I want to find out if inhumane treatment of human beings in confinement is becoming more of the norm in California. I am horrified that a new breed of cold-hearted authorities is in charge of the care of people under confinement. **[GG-14]**

While I was heartened initially to see that perhaps some sense of reality might be settling in, a closer examination demonstrated that punitive motivation was alive and well. **[GG-59]**

As a long-term visitor I cannot agree with the majority of these changes as it appears to be a delayed "9/11" response and lacking necessity and consistency with other laws. **[GG-43]**

I am definitely against the proposal. They should not be adopted as currently written. They are too restrictive. **[GG-48, GG-49, GG-56, GG-58, HH-44]**

These proposed regulations would only bring about a negative and detrimental impact upon the inmate, their families, advocates and other support persons such as legal representatives. The policies in question clearly are punitive with no rehabilitative value. **[GG-56]**

We are writing to express our deep concern about the revised visiting regulations issued by the CDC. **[HH-21]**

The following general comments are not accommodated for reasons explained on pages 18 and 19 of the FSOR above:

Why was the Renotice not posted in the prisons? This was a problem with the first proposal. I thought that CDC would have taken measures to prevent that from happening again. How come the time period to respond is less and there isn't a public comment hearing? At the March 8th hearing we were lead to believe that we could face you again to air our comments. **[GG-13, GG-43, GG-63]**

Your Department failed to do its job in ensuring that ALL prisoners and visitors had access to this information when it was originally released in January. The next time there is a need to revise the visiting regulations, I would encourage you to take a more active role in guaranteeing that all state prisons post any proposed changes within the prison facilities and in all visitor-processing areas *immediately* upon notification. **[GG-64]**

The proposed rules rewrite omitted the statement that they "must be posted for all inmates to see." Was that an intentional omission to quell further opposition? We are concerned that the Renotice will not be made available to the prison population or the non-internet visiting public. Can we expect that the prisons will be directed to post within 24 hours and the deadline extended, as the comment deadline is only days away and those who have not seen the rewrite [need] time to respond? Many prisoners who are on the list weren't sent the rewrite either. I realize this may simply be an error, but it does smack of chicanery on the part of the Department after discovering after proposed changes last spring that there are literally thousands of people concerned about their visiting rights. **[GG-51, GG-61, GG-63 GG-69]**

Because inmates at this prison have been denied notice of this proposed regulation, even though it directly affects us, we have been left totally in the dark as to exactly what it is and what our legal representatives are going to be allowed to do, or not do. This circumstance alone violates the Administrative Procedure's Act fair notice requirements, since we don't know what the contents of the proposed regulation are but would be subject to them, with attendant penalties and deprivations, should we unknowingly violate their proscriptions. To prevent [a violation of] the fair notice requirements, the proposed regulation must be submitted again for public comment and timely and adequate notice of the regulations be properly posted at the prison so that we, the

affected inmates, have an opportunity to understand, conform to, and offer public input. **[GG-61, GG-69]**

I, or others at [the institution in question] have not received a copy of the Renotice. I am asking to have the comment period extended until we can get a copy and make our written comments. **[GG-15]**

Please send the Renotice. What are the new rules and when are they going to be implemented at Pelican Bay State Prison? **[GG-04, GG-54]**

I ask you to not make visiting my wife any harder than it is already. All I got is what is in the visiting room. **[GG-26]**

The following general comments are aggregated and summarily dismissed because they pertain to procedures not addressed in this proposed action:

I am against the additional restrictions [upon] press oversight. **[HH-42]**

The families of incarcerated individuals are citizens with rights, whose taxes have contributed to the prison expansion, maintenance, and salaries of staff responsible for humanely meeting the needs of their confined family members. Yet, even these free citizens are victimized into paying retribution for crime they didn't commit…20% of money they send in for inmate canteen needs is transferred to a surplus "Victims Fund". And, a lucrative "kick-back" was arranged with phone carriers that discriminately overcharged families for inmate collect calls. **[HH-41]**

There is something fundamentally wrong with privatizing prisons since it promotes crime and the "creation" of criminals [inasmuch as] the more people who go to prison, the more money is made by the private prisons. The private prisons have a vested interest in seeing more people go to jail. **[GG-58]**

The following general comments are not accommodated for reasons explained on pages 26 and 27 of the FSOR above:

Time to re-instate Reagan's "Inmate Bill of Rights." **[GG-47]**

The notion of visitation as a "privilege versus a right" has some underlying implications of being unethical and makes one wonder as to why the Department would not want to support anything that will contribute to the inmate rebuilding his or her life? It seems as if the Department or someone wants people to keep coming back to prison. **[GG-56]**

Proposal chooses to delete the word privilege. If this sentence is deleted please clarify what visiting is. **[GG-68]**

Thank you for recognizing that visiting is a "right" and correcting the text accordingly. This restores visiting as a right guaranteed by the California Constitution. **[GG-37, GG-50]**

I would suggest that the words "visiting privileges" be removed [wherever they appear in the text] and replaced with "a loss of visits." As this would reflect that visiting is a right, but can be removed for cause, after a due process hearing and appeal. **[GG-50]**

The following general comments are not accommodated for reasons explained on page 21 of the FSOR above:

Since the posting of the first proposed changes, the officers [at the institution in question] have posted in bold print that they enforce identification regulations for minors/the 5-second rule for kissing and embracing. I believe that they will continue to do that even though the new rule has kept "brief" as the descriptive word. [This institution] has posted in their visiting lobby a list of the original proposed rules changes. They hand out a visiting pamphlet that was revised in April of this year that includes all the restrictive changes of the rules [as originally proposed] and have now been stricken. How do we who visit at [this prison] get their administrators to do the right thing? **[GG-13, GG-23, GG-38]**

Most visiting staff are either (a) new CDC guards who are extremely inexperienced and unfamiliar with Title 15; (b) come into the system with no education, a great deal of ignorance, and are prejudiced against prisoners and their family members; or, (c) are given misinformation by their superior (including both sergeants and lieutenants) regarding the current interpretation of the visiting regulations. As a result, regulations are frequently and widely misinterpreted. **[GG-64]**

Citing an incident that the commenter feels should have resulted in a warning as opposed to a termination, concludes that visiting facilities are staffed with inexperienced Correctional Officers who are not adequately trained regarding Visiting rules. **[GG-63]**

According to current regulations, visitors are not to wear clothing that reveals "more than two inches above the knee." I happened to be wearing a dress that was less than one inch above the knee. The visiting guard who took my pass informed me that I would have to change. Her reasoning was, "If you sit down your dress will be more than two inches above." This guard was new to the visiting area and I explained that this was not a correct interpretation of the rules. When I approached the visiting sergeant regarding this matter she had not only misinterpreted the regulation herself but she was the one who had misdirected the visiting staff regarding this regulation. This is the type of problem we are dealing with. It's why your department needs to think very realistically about how the regulations will be enforced and the impact it will have on the visiting experience. In addition to the point I am making here, I feel that some of the language and intent of your regulations is invasive, violates our right to free choice and expression, and is just generally insulting. **[GG-64]**

More restrictions aren't needed because guards are trained and accountable for maintaining prison rules, including the visiting area. **[HH-41]**

3045(e)(2)(H): Changes to ETO usage

The following miscellaneous comment has already been accommodated in the manner described on page 28 of the FSOR above.

Are there guidelines that would protect inmates from being scheduled to work each day of visiting access? If an institution has visiting Thursday through Sunday, would an inmate's schedule allow for at least one day of visiting? **[GG-22]**

3170(a): Value of Visiting

Although the following comments are not accommodated as explained, the subsection in question is revised in the manner described and for the reason provided:

The Department should rewrite this section to encourage all prisons to give people as much time as possible—only limiting the visits when a vast number of people are visiting. **[GG-03, GG-24]**

The proposed changes do nothing to address the real problems which plague visiting rooms. Revise the proposed rules once more in such a way that this statement will be practiced. Families often times exit visiting rooms stressed to the point where they do not wish to return.

Open visiting rooms seven days a week and truly "recognize," and "encourage" families to come. Require each institution to develop and practice training programs for visiting staff. Finally, design the visiting regulations to protect the taxpaying, law-abiding citizens from the mistreatment they must regularly endure. **[GG-63]**

If it were truly the belief of the Department that visiting is encouraged, prisons would offer visiting seven days of week as they once did, family visits would not be denied those serving life sentences and there wouldn't exist this continuing battle between family members and prisoner advocates and the Department over changes to Title 15. **[GG-64]**

Replace the word shall in the first sentence to will. Shall is too vague and gives officers discretionary calls. **[GG-68]**

RESPONSE: As explained on pages 26, 64-65 and 105-106 of the FSOR above, the Department has to balance multiple and at times conflicting and complex demands with respect to the hours, frequency and scope of visits allowed between inmates and the public. Certain accommodations in this section have already been made (see pages 27 and 28 in particular) and the word "shall" is interpreted by §300.5 of these regulations as "mandatory," not "discretionary," as one Commenter mistakenly believes. However, in order to reflect an enactment of the outgoing Legislature amending Penal Code §6400, the initial sentence of the revised Renotice is replaced with new text reflecting the content of the new statutory language.

3170(b): Privacy of inmates and their visitors

The following suggestion is accommodated:

Validate is an awkward choice of words, wouldn't verify be better? **[GG-62]**

RESPONSE: The text in question has been changed in the manner suggested.

3170(c): institution/facility emergency

Although the following comment is not accommodated as explained, the subsection in question is revised in the manner described and for the reason provided:

Include the words, "but not limited to." **[GG-62]**

RESPONSE: The subsection in question is not intended as a general rule covering the declaration of a State of Emergency. That condition is addressed in a separate rule, §3383, which already contains the phrase suggested. However, slight changes in the wording of the text is made for purposes of improved clarity. "Inmate visiting" is changed to "visits with inmates" and other needed words are added at the end of the sentence.

3170.1(c)(1): Number of Visitors Per Visit

The following suggestions are accommodated in the manner described:

Include language that would permit each institution head [or other unspecified official] to approve/waiver additional visitors for those families with more than 4 children. There must be a way to allow some flexibility for those inmates with large numbers of children and/or receive infrequent visits. **[AA, GG-08, GG-09, GG-10, GG-11, GG-59]**

I believe there should be no limit on the number of children that are permitted to see an inmate, if they are a part of the inmate's family. It would not be fair if some of the children in the family could go see their family member, while the others could not. **[HH-39]**

Clarify what "same time" means. Does this mean on the same day? Does it mean in the visiting room at the same exact time? **[GG-68]**

RESPONSE: Notwithstanding the FSOR remarks contained on pages 32 and 33 above, the Department has reconsidered and offers a further accommodation. Text revisions are made in subsections (c)(1) and (2) so as to permit parties in excess of the total allowed at one time to visit in rotation, with the added proviso that any such accommodation must be treated as a single visit whenever overcrowding forces the termination of visits in progress. By this change the Department is trying to relax absolute limitations on the number of visitors during any one visit, without compromising the safety and security principles upon which this regulation rests.

3170.1(d): Visiting with More than One Inmate at the Same Time

The following suggestion is not accommodated for the reason provided:

Commenter suggests that there be an exception written into this rule for attorneys of multiple clients at one institution who wish to meet with more than one inmate during a visit, either at the same time, or later in the same day, depending on their legal needs. **[HH-05]**

RESPONSE: The comment has already been partially addressed with changes to §3178(i). Other attorney visiting provisions contained in §3178(d) have been revised, as reflected below, so as to substantially allow for the outcome requested.

3170.1(d): Commitment Offense Limitations on Contact Visits [DELETED]

The following comments have already been accommodated with the deletion of the provision in question:

This, like so many other policies and subsequent practices of the criminal justice system […] in the U.S. has inherent undertones of racism and sexism. The first 12 months of incarceration are critical to their development and making progress while incarcerated. Therefore, again, the essential therapeutic value of family and supporter visits will be negated if these regulations are implemented. **[GG-56]**

Should read: "Visitors and inmates are immediate family members, and have prior written approval from the institution/facility head or designee." The reason: visiting staff does not have the immediate ability to do "spot checks" regarding immediate family relationships. This should be documented prior and placed in the visiting file for future reference. **[GG-66]**

Who is the state to define for everyone what "family" is? In the Afro-American community as well as other communities of color, there exists the extended family; a social-cultural concept which is significant in terms of its impact on the development of youth and adults alike. **[GG-56]**

3170.1(e): Non-contact Visits

The following suggestion is accommodated in the manner described:

This proposal should read: Inmates assigned to reception centers (other than General Population Inmates assigned to reception center as Permanent Work Crews). **[GG-66]**

RESPONSE: The text in question has been revised to read "inmates undergoing reception center processing" in order to capture the intent of the suggestion made above.

3170.1(f): SHU Inmates

The following comments are addressed individually with an explanation of textual adjustments made accommodating or rejecting the suggestions below:

Restricting the visits of SHU inmates to what the Department defines as "immediate family" is problematic. Who is the state to define for everyone what "family" is? In the Afro-American community as well as other communities of color, there exists the extended family; a social-cultural concept which is significant in terms of its impact on the development of youth and adults alike. **[GG-56]**

I ask that you allow contact visits for SHU inmates. Along with work, education and religion, contact with family and/or friend(s) plays a key role in preventing prisoners from re-offending. **[GG-57]**

Disagrees with the wording of (f) specifying that visitors shall required to make an appointment for non-contact visits. Say that an inmate friend or family member approved to visit the inmate happens to go out of state or Country, or just came to see the inmate the same weekend the inmate went to administrative segregation. Being unaware [of this status change], and coming to the institution [expecting to be able to] visit, they couldn't because they didn't make an appointment. **[GG-71]**

I do not see the purpose or necessity for requiring "appointments" to be scheduled, because even if they are scheduled, visitors who break the appointments are not subject to a requirement to notify the institution of their intention to cancel, thereby depriving others who might be able to visit at said time the [opportunity] to use the time [slot]. Additionally, non-contact visiting is a nuisance to both the prison inmates subject to it, as well as the prison guards, who absolutely despise all the trouble they have to go to when "escorting" an inmate from an ad-seg facility to visit. I fail to see the necessity of placing "ad-seg" inmates on non-contact visiting status all, in the first place. Just because a prisoner is placed in ad seg doesn't mean they are a danger to themselves, their visitors or anyone else. Proof of that fact is that most ad-seg inmates are double-celled. The non-contact visiting facilities are extremely limited. The prison never provides enough time for the prisoner and the visitor to say all they wish or need to say to one another, and the prisoner does not have access to things like use of a toilet or a drink of water. **[GG-69]**

RESPONSE: As explained on page 40 of the FSOR above, limiting inmates with SHU terms to visiting with immediate family only has already been deleted from this proposal. Because—as page 3 of the ISOR points out–non-contact restrictions applied to SHU inmates are based upon safety and security concerns arising from the inmate's demonstrated behavior history that may include acts of violence against staff or other inmates, it is not possible to reverse this policy as requested. However, the Department feels that the point has been legitimately made that a last-minute change to administratively segregated status may inadvertently prevent what would otherwise be an acceptable contact visit. Accordingly, the text of this subsection is revised so as to allow institution heads or designees a discretionary opportunity to permit contact visits for such inmates on a case-by-case basis. This allows visiting officials to afford an inmate, when circumstances so justify, a contact visit which would otherwise be prohibited. Regarding non-contact visiting appointments, the Department has softened the provision of this rule somewhat with the addition of text which specifies that priority will be given to those visitors who make appointments in advance. This change is intended to accommodate the concern that "no-shows" adversely affect the visiting process. In addition, the repositioning of text to §3172(d) explained on page 40 of the FSOR is rescinded, as reflected in textual restoration in this subsection and deletions in the other subsection as cited. This reversal is necessitated by the addition of new

text at the end of the section intended to parallel the changes noted in subsections 3170.1(c)(1), addressing the termination of non-contact visits when overcrowding occurs in such a way as to ensure that at least an hour of visitation will have transpired before termination.

3171(a): Visiting Procedures

The following suggestions are not accommodated for the reason provided:

If one of the purposes of these regulations is to bring some standardization, far too much discretion can be left with a warden. Families who are the victims of arbitrary decisions made institution by institution regularly contact the Senate Rules office. **[HH-12]**

Reinstate text of [superceded] § 3171(a) which read: "The director's approval is required before implementation and before any revision is made to an approved plan [of operation]." [Without this language]…every prison will revise any rules they decide they don't want without your approval. We are already victims of an overly punitive and prejudiced Visiting Staff at almost every prison in the State system. **[AA, GG-55]**

The reason for omitting this requirement from the regulations should be clarified, or the existing language should be retained. **[GG-25, GG-57]**

A 8/2 letter by the Director states "the Department has promulgated proposed regulations in an effort to standardize visiting statewide." Now, it appears to me that what has been done here has nothing to do with standardization. In effect the proposed regulation would allow any local administration [by virtue of 3171(a) omission] to implement whatever regulations they wish at anytime. We already have local administrators and staff implementing their own variations of the rules based on individual interpretation, the last thing we need is the removal of oversight. If the proposed regulation cannot be modified to include the Director's oversight, then the whole revised section should be abandoned. **[GG-59]**

Replace the word shall in the first sentence to will. Shall is too vague and give officers discretionary calls. **[GG-68]**

RESPONSE: Page 49 of the FSOR above explains that, in effect, the text as originally proposed represents reimposition of standardized statewide regulations over subordinate Local Rules/Plans of Operation for visiting. For that reason, the superceded text of §3171(a) that required the Director's approval of local plans of operation has been replaced with the phrase "not in conflict with." This revision permits local procedure or practices in conflict with the readopted and revised statewide rules to be appealed by the public or inmates in accordance with the provisions of §3179. Therefore, concerns regarding the deletion of the superceded provisions of this subsection have already been accommodated. Inasmuch as the word "shall" is interpreted by §300.5 of these regulations as "mandatory," not "discretionary," as one Commenter mistakenly believes, a change to the contrary would be inappropriate. In fact, the word "shall" has already been added elsewhere in the paragraph of this subsection in an effort to diminish the discretionary content of the rule in question.

3172: Applying to Visit an Inmate

The following comments are not or have already been accommodated as explained below:

I draw the line with proposed federal background checks for preteens. These kids have already been traumatized enough with the loss of a parent. Shame on you. These kids do not need any more trauma. **[GG-23]**

Making children undergo a background investigation is nothing more than a mean-spirited, state sanctioned effort to bring continued humiliation to the inmate, his family and the larger community **[GG-56]**

RESPONSE: The provision objected to has already been deleted as reflected in the Renotice Text and acknowledged on page 53 of the FSOR above.

3172(c): Minor Approvals

The following comments are not accommodated for the reasons provided:

Subsection is misleading. Process already explained fully in 3173(d). Why not just write, "All minor visitors shall be accompanied by an adult." **[GG-72]**

Clarify that the first sentence does not mean that prior written approval is needed for minors who are brought on the facility by their legal guardian/parent and clarify that minor children or sibling does not only include biological but foster, step and adoptive as well. Add when and under what circumstances minor children will be permitted unchaperoned. **[GG-68]**

Disagrees with wording of (c) stating that minor visitors shall have prior written approval. Say that one of the parents have custody of the minor, but is unable to bring the child to the institution to visit with the parent that's incarcerated, and has to have one of the parents siblings to bring the child up to visit the parent, for whatever reason. I feel that as long as the parent that the child is going to visit doesn't have an restraining order on them, or no sex offenses in their files, their family or friends should be allowed to bring their child up to visit with that parent, because its very hard on families of inmates to get a notary every time they would like to bring the child up. **[GG-71]**

RESPONSE: The subsection at issue addresses visits by unchaperoned minor children or siblings. Unless the minor in question has applied and been approved as an adult visitor as provided in the preceding subsection, they will be required to provide prior written approval from a parent or guardian. In addition, unless prior approval has been obtained from the appropriate Departmental authority, an approved adult must accompany such visitors. The Department believes the text as written is sufficiently clear at this point, although certainly not above perfecting in some future revision. In deleting the minor application requirement, the Department is in effect allowing local procedure and practice to prevail, whereby the adult visitor merely identifies accompanying minors on a visiting pass and log maintained at each institution/facility. Prior notarized consent of a person with legal custody permitting a minor to visit is required—in §3172.2(d)–only when the minor is accompanying someone other than his or her parent or legal guardian. This notarized consent has only to be obtained once, provided the adult in question does not change. It would not be in the best interest of the parents of such minors for the Department to relax this rule. Finally foster, step and adoptive relationships are already encompassed in the definition of "immediate family" contained in §3000. In the unlikely event regulatory guidance would be needed in order to clarify the meaning of "children or sibling" in the subsection in question, this existing definition would be authoritative.

3172(e): Two-year Questionnaire Updating

The following comments are addressed with explanations of accommodating textual adjustments or reasons for rejecting the suggestions made below:

Because the wording of this section says that it is necessary to provide this information "in order to retain the status of an approved visitor," it could be interpreted by prison staff to mean that the ability to visit a prisoner shall be revoked if the visitor moves and does not provide new address information. It could also be interpreted to mean that the revocation will remain in effect until a

new questionnaire is processed. I don't believe that is the intention. However, I think this language needs to be clarified so it states that while visitors need to provide new address information, failure to do so will not affect their visiting status nor will that visiting status change while the new information is being processed. **[GG-64]**

The only thing that we object to in your new visiting rules is the fact that we have to renew our application to visit every two years. We think this is a waste of money to pay people to do the paperwork on this, especially for older people like us whose information never changes. **[GG-22]**

We are concerned about the need to renew visiting applications every two years. There must be provisions for how the renewal is to be accomplished in a way that does not penalize visitors, and allows for resubmission in person, at the time of a visit. **[HH-21]**

This statement is ambiguous and some people don't want to [give out] their phone number. Must a visitor call the institution and tell them every time they get a traffic ticket, or is suspected of a crime, or mistakenly identified in a crime? **[GG-69, GG-71]**

RESPONSE: In consideration of the concerns expressed, subsections (e), (g) and (h) have been revised as follows: The entire text of subsection (h) of the Renotice text has been relocated to the initial sentence of subsection (e) and the original subsection deleted; New text is added to subsection (e) and existing text relocated to subsection (g). As revised, the visiting approval process will include an inquiry sufficient to complete a criminal records clearance based on the information provided on the questionnaire. The information obtained will be subject to periodic review and changes must be reported. The reporting of changes may entail the submission of an updated questionnaire, when appropriate. When updates are required, absent information warranting immediate disapproval, the visitor will be allowed to visit pending the review and approval/disapproval of the questionnaire at issue. The two-year requirement for update has been dropped entirely. In addition, as already pointed out on page 55 of the FSOR above, the Department intends the renewal process in most cases to consist of little more than an updating of information already on file. However, the Department does intend this rule to mean that deliberate non-disclosure of the critical information specified (name, address, telephone number or arrest history) can be the basis for "revoking" the ability to visit. The information requested, including telephone number, may be critical in investigations or in the return of an inmate following escape from the institution/facility. From a practical standpoint, changes should be reported at the beginning of a visit, before the inmate arrives in the visiting room.

3172(h): Approval Inquiry

Although the following comment is not accommodated as explained, the subsection in question is revised in the manner described and for the reason provided:

Could read: history information only as sufficient to. **[GG-62]**

RESPONSE: While the suggestion above is declined, the text of the subsection in question has been relocated to the initial sentence of subsection (e) as discussed immediately above.

Addition of the word "personal" is redundant because it would necessarily be included to mean, "identifying information." **[GG-70]**

RESPONSE: Identifying and personal information are distinct in that the latter refers to address and telephone number whereas the former refers to name and any other vital statistic that identifies or validates the identity of the individual in question.

3172.1(b)(3)(D): Addition of "Incarcerated"

The following comment is not accommodated for the reason provided:

Addition of the word incarcerated is redundant because by definition an "inmate" is incarcerated. **[GG-70]**

RESPONSE: The word incarcerated has been relocated from elsewhere in a longer sentence that has been shortened in accordance with the regulatory clarity standard. It's use as a modifier makes it clear that the inmate is currently incarcerated.

3172.1(b)(4): Lifting Felon Restrictions

The following comment is accommodated for the reason provided:

A portion of the last sentence is unclear: It can either be read to mean that a discharged prisoner must wait for a year but a discharged parolee/outpatient does not have to wait a year. The word "or" in the sentence makes the application of the one year waiting period unclear as to whether it applies to discharged prisoners only or to prisoners AND parolees/outpatients. **[GG-60]**

RESPONSE: The Department agrees, therefore the text as originally proposed has been restored.

3172.1(f): No Restrictions on the Number of Inmate Approvals

The following comment is not accommodated for the reason provided:

When viewed in conjunction with §3170.1(d), seems internally conflicting with this subsection. If, ultimately, the purpose for redrafting the regulations is, at least in part, to provide clarity for visitation regulations, then redrafting is needed to reconcile the "no restrictions" clause in §3172.1(f) and the proposed restrictions contained in §3170.1(d). **[HH-05]**

RESPONSE: The perceived contradiction does not exist. The numbers of approved visitors are not limited; the numbers of individuals visiting at any one moment in time must be limited in accordance with safety and security concerns.

3172.2: Minimum Days & Hours

The following comments are not accommodated for the reasons provided:

We are concerned about the very low minimum number of hours that visiting will be required – 12 hours. **[HH-21]**

In addition, those institutions that have a higher demand for visiting could extend visiting hours or add another visiting day to their schedule (since these same regulations allow each institution the discretion to choose either a two day, three day or four day visiting schedule). **[GG-65]**

Disagrees with the wording of 3172 (b)(2)—holidays visiting days: These Five (5) holidays are not just the only days that the people in prison, or the State of California celebrate, and the inmates would like to visit with their families on more than just the five (5) holidays set forth. **[GG-71]**

Feels that excessive power has been given to a designee. A decision [to reduce the visiting schedule] shouldn't be given to an designee, because of the lack of training of the designee, and because taking visiting hours below 12 hours should only be done when an extreme emergency occurs, and [then] only by an experienced person. **[GG-71]**

RESPONSE: As explained on pages 64 and 65 of the FSOR above, the Department's options with respect to expanding visiting hours or directing institution heads to make doing so a local priority are very limited, due to external and budgetary constraints unlikely to change in the foreseeable future. The designee phrase found here and elsewhere throughout the text of these regulations allows the Department to appropriately operationalize the delegation of authority by higher to lower level authorities on a permanent or temporary basis. Deletion of such language, as suggested above, would catastrophically cripple the Director's rules by eliminating a practice common and customary to all complex organizations and which has been, moreover, a standard operating procedure for this particular government agency in particular for years, as reflected elsewhere in it's rules and regulations.

3172.2(d): Extension of One-hour Increments

The following comments have already been accommodated to the degree possible in the manner explained below:

On the surface this appears to be an improvement. However, this new language gives the Department the exact same discretion to limit visits to only one hour and one hour is not enough. The Department should rewrite this regulation to encourage longer visits as long as space permits. **[GG-03, GG-17, GG-24, GG-65, HH-36]**

The statement should be reworded so that it encourages all prisons to give people as much time as possible in their visits. The only occasions when they should limit visit length should be when there is an unusually high number of visitors for a given visit day. **[GG-65, HH-36]**

The text should read: "Non-contact visits shall be scheduled in at least one-hour increments, with longer visits scheduled as space permits." **[GG-17, GG-65, HH-36]**

The revision should be modified to provide that "non-contact visits shall be scheduled in at least one-hour increments and shall be extended subject to space availability. **[HH-02]**

It is my hope that such visits will be at minimum 1-hour, and that visits will certainly be longer if space allows. **[GG-12]**

Addition of the term "may" conversely gives discretion to not extend visits for any reason. The remaining words in the sentence "based on availability" give a definite, adequate reasoning for not extending such visits. Thus the words "may be" are not necessary and only create potential confusion. **[GG-70]**

One-hour visits are not long enough. It works to undermine all efforts towards strengthening our relationships under what are already very difficult conditions. PBSP currently schedules SHU visits in 2 1/2 hour time periods and only reduces that time to a little under 2 hours on weekends when there is a higher than usual demand for visiting. This is human. **[GG-65]**

RESPONSE: As noted on page 133 above, the Department has cancelled the earlier decision to relocate the text in question to this subsection. The regulation, as revised, is now found in subsection 3170.1(f). In addition, the words "and" and "based" have been added and the phrase "at least" deleted in an effort to accommodate the concerns expressed above with respect to foreshortening time allotted for non-contact visits. It is not the Department's intention to do so. The rule as now revised provides for non-contact visits to be scheduled in one-hour increments and to be extended based on space availability. If overcrowding occurs, termination of visits in progress will proceed in accordance with the provisions of subsections 3176(a)(9) and (10). The approach noted is also intended to allow local-level practices to continue in the manner described.

3173(b): Processing Minors

The following comment is accommodated for the reason provided:

The word "also" should be removed so as to not imply that picture identification is being required of children. **[GG-72]**

RESPONSE: The comment has been accommodated in the manner requested.

The following comments are not accommodated for the reason provided:

Making children present a certified copy of their birth certificate is nothing more than mean-spirited, state sanctioned effort to bring continued humiliation to the inmate, his family and the larger community. **[GG-56]**

The requirements regarding identification of minors remain problematic. In the revision, instead of a copy of a birth certificate, CDC is requiring the actual certificate or an embossed abstract. There should be a provision for other kinds of identification to be used, when possible – for example a passport or driver's license. Many minors have these and they are sufficient for adult identification. The regulations should make children's visits as easy as possible, not difficult and cumbersome. **[HH-21]**

Subsection (b) should read: "all adult visitors shall present picture identification before being permitted to visit. For each minor, a certified record of birth (official certified county birth certificate) shall also be presented during each visit." The reason: Birth certificates are the only document that provides sufficient information (i.e. parents full name) to verify relationship to minor. Pursuant to Mr. Tristan's memo, Inyo and Alpine County are the only two authorized. **[GG-66]**

RESPONSE: Birth Certificates are required for minors because they are the only document that provides sufficient information to verify parental relationships to the minor, as pointed out in the Comments above.

3173: Mexican Consulate-issued ID

The following comment is accommodated for the reason provided:

Delete: This form of ID is no longer accepted by the Department of Corrections pursuant to Immigration and Nationality Act, Section 124, and the United States Code, Title 8. **[GG-66]**

RESPONSE: The text in question has been edited, eliminating the reference to the title of a particular picture identification card no longer used by the authority in question. This deletion removes over-specificity that could pose future difficulty when the title of the card is changed again in the future.

3173.1: Visiting Restrictions with Minors

The following comments are addressed with explanations of accommodating textual adjustments or reasons for rejecting the suggestions made below:

I believe this should be changed to read: "visiting restrictions with minor victims." Because there is no juvenile court assigned to adjudicate a minor who is not a ward of the court, no (listed) sex

offender can ever get a visit from any minor. There is no legitimate penological interest in having such a regulation. I feel the failure to correct it now will lead to predictable litigation later. **[GG-41]**

This section appears to be overbroad and unnecessary in regards to the specification: "Inmates may be prohibited from having contact or non-contact visits where substantial evidence of misconduct described in section 3177(b)(1) exists, with or without criminal conviction." There does not appear to be any necessary or reasonable relationship between a "discretionary" (what is the "criteria" for the exercise of discretion?) prohibition and categorical ban on visiting with "any" and all minors, based merely on "substantial evidence" (which can be easily "fabricated" and falsely provided) or alleged "misconduct" specified in 15 CCR 3177(b)(1). I fail to see the rationale, or any particular rationale that could justify a total ban on all visitation with any minor. This will no doubt be used as a tool to harass prisoners and play favorites with others, for no legitimate or logical reason. **[GG-69]**

I believe there should be no limit on the number of children that are permitted to see an inmate, if they are a part of the inmate's family. It would not be fair if some of the children in the family could go see their family member, while the others could not. **[HH-39]**

If an inmate is currently incarcerated for committing an act of domestic violence, is there any provision that would prohibit or restrict the victim from visiting? Current policy only speaks to minors who are victims of a domestic violent crime and many of the victims who visit are adults. **[GG-67]**

RESPONSE: Page 9 of the ISOR and pages 73 and 74 of the FSOR above have explained that the rule expansion in question is intended to be a tool for visiting staff to facilitate restrictions needed to keep everyone, and children in particular, safe in accordance with the general provisions of §3170. Monitored and/or supervised visiting rooms and/or the presence of a non-incarcerated parent or relative has not always sufficiently deterred alleged child molestations or other sexual improprieties during visits. Accordingly, the Department's decision to prohibit such visits with a minor is penologically justified as "prudently preventative." However, notwithstanding ISOR page 16 and FSOR page 106 statements explaining why "substantial evidence" is a legitimate evidentiary burden, the Department has revised the text with the insertion of the following parenthesized language: "court transcripts, police or probation officer reports or parole revocation hearing findings describing the misconduct." While the meaning of the rule is unchanged, it would appear the additional verbiage clarifies somewhat the "substantial evidence" controversy that some Commenters believe exists. Aside from limitations on the number of children that can visit per trip and the limitations mentioned immediately above, these regulations do not otherwise limit the number of children permitted to see an inmate, as has been erroneously concluded by one Commenter above. While §3177(b)(1) does limit overnight family visiting for inmates convicted of a violent offense involving a family member, the Department does not at the present time contemplate expanding the rule in the manner requested. However, it should be kept in mind that the decision to visit is an entirely voluntary act. The victim never has to visit the incarcerated individual they have been victimized by unless they feel irrationally compelled to do and that compulsion survives the numerous opportunities to reconsider that the §3172 process affords.

3173.2(a): Searches and Inspections/Probable Cause

The following comments are accommodated to the degree possible in the manner described:

Should be reworded: "Every person is required to be subjected to inspections […]." Such rewording would create conformity with the text of subsequent subsections. **[GG-72]**

There needs to be a separation of what is required (shall) and what is asked (may) of a visitor because everyone entering the institution is allowing himself or herself to be searched, but

visitors under this section are subject to probable cause searches. Also, stating "contraband" is sufficient to cover unauthorized items. **[GG-72]**

Disagrees with the wording of 3173.2(a). When it states "inspections," "a search of a visitor's person," and "probable cause," these words in the text as they are formulated are ambiguous. If institution officials have knowledge of a crime about to occur, they should call the proper authority, and have [that authority] obtain a search warrant for that person, or persons. Because the word "probable" is a tricky one and can be interpreted any way, that opens the door to abuse. **[GG-71]**

The words "probable cause" should be defined in section 3000 as follows: "1. Supported by evidence, but leaving some room for doubt; likely; 2. Giving ground for belief, but not proving," just as "good cause: is defined in the same section. **[GG-72]**

Does the conduct of refusing to be searched give correctional officials probable cause to believe the visitor's conduct constitute a crime? This needs clarification. **[GG-72]**

The following text is suggested to substitute for proposed subsections (a), (b) and (c): "3172.2. Searches and Inspections. (a) Every person/visitor coming onto the property of an institutional/facility shall be required to be subjected to inspections by contraband and/or metal detection devices, and a through search of all personal items including wheelchair, implant, prosthesis or assistive device, to ensure institution/facility security and presentation of contraband prior to being allowed to visit an inmate. (b) In addition to (a) above, a search may be asked of the visitor's person, property and vehicle when there is probable cause to believe the visitor has contraband while on the grounds. (c) Visitors may be forcibly detained while a search warrant is issued to conduct a search when officials have probable cause to believe that the visitor is in possession of contraband or unless evidence may be lost or destroyed before a search warrant can be obtained the visitor may be forcibly search while on the grounds. Only minor changes in the Renotice text (as summarized) would have to be made in subsequent sections in order to match the revision suggested here. **[GG-72]**

RESPONSE: In addition to the accommodations already discussed on page 76, the Department has altered the text in question so as to clarify that forcible searches shall not occur absent a court-issued warrant or detention pursuant §3292. This particular existing regulation provides for the arrest and detention of a civilian when their unlawful actions/activities present an immediate and significant threat to the custody and control of inmates, parolees, employees and the public. With the addition of this text to the first sentence of subsection (b), much of the rest of this and the entire last sentence can be deleted and a Commenter request for clarification thereby provided. However, notwithstanding these changes, the Department disagrees with the assertion that probable cause, as it appears in the remaining text, is tricky or subject to any interpretation other than that already well-established by case law and constitutional interpretation. These and previous changes have sufficiently addressed the concerns voiced. Moreover, the use of the word "contraband" in addition to "unauthorized items or substances" assists in more fully clarifying the meaning of the regulation for non-inmate readers; therefore the Department declines any suggestion for further change. Finally, the Department appreciates but declines other textual suggestions. While they might represent a workable alternative to the proposed text, there is little reason to believe the revisions would constitute a significant improvement, despite the considerable effort that would have to be devoted in changing much of the proposed text in the manner suggested.

3173.2(c): Inspection of wheelchairs, implants, prosthesis etc.

The following comments are not accommodated for the reasons provided:

The word implant may be construed to mean breast augmentation; therefore staff may be placed in an awkward situation. **[GG-62]**

All of the added words are redundant because they are "personal items." **[GG-70]**

Disagrees with the wording of 3173.2 (c) including inspection of a wheelchair, implant, prosthesis, or assistive device. A prospective visitor in a wheelchair may have a deadly disease. The discovery of this condition by the person conducting the inspections may cause embarrassment to that visitor. The method of using the metal detector device shall be enough to achieve the goals of checking for contraband, unless the visitor is suspected of introducing contraband into the institution. If that is the fact the officials at the institution/facility shall contact the local authority and advise them of the information, and to obtain a search warrant for the person, or persons. The same goes for the persons with implant, prosthesis or assistive device. **[GG-71]**

RESPONSE: The added words and phrases provide needed textual clarity, irrespective of assertions to the contrary presented above. In addition, correctional staff can be relied upon to be discreet and sensitive when conducting inspections that may cause embarrassment to the visitor. Other concerns regarding searches have already been addressed immediately above.

3174(a): Standards of dress

The following comment is accommodated as described:

Initial and second sentence: First you say we should dress "appropriately" and then you say we should dress "modestly." Isn't this a bit redundant? Also, I feel your choice of wording of "good judgment" and "modestly" are insulting and imply that we don't use good judgment and we don't know how to dress for the prison environment. Perhaps you can simply word this as, "Visitors are expected to dress appropriately and maintain a standard of conduct during visiting that is not offensive to others." I believe this captures your intentions without being insulting. **[GG-64]**

RESPONSE: The text in question has been revised exactly as suggested.

The following comment has already been accommodated:

Visiting staff [of this institution] are receptive to the clearer guidelines for attire. **[GG-67]**

The following comments are not accommodated for the reasons given:

I'm sure that the visitor would have sense enough not to wear anything that would bring embarrassment to them or the person that they are coming to visit. **[GG-71]**

Disagrees with use of the phrase: "conduct during visiting that is not offensive to others consistent with making visiting a safe, positive, constructive time for families, and staff." **[GG-71]**

Rather than offensive to others, better wording would be: "respectful to all visitors." **[GG-62]**

Your Department needs to remember something. While prisoners may have grooming standards and restrictions on what they can wear, family members and friends of prisoners are NOT prisoners. Stop treating us like prisoners by attempting to invade our bodies and make choices for us. **[GG-64]**

RESPONSE: It is precisely because visitors have not always shown good judgment in dress and in particular have been known to wear items embarrassing to others—if not to the wearer or the person being visited–that the Department feels it to be necessary to adopt guidelines for dress

standards. Visitors do not have to visit, and if they choose to do so, it is appropriate and consistent to require that dress is appropriate and inoffensive to others, within reason and as set forth in these rules.

3174(a)(2) Undergarments

How do you expect to enforce this regulation? "Excuse me sir, but are you wearing underwear? In order for us to verify that you are wearing underwear, you'll need to tell us what color it is." If you can't see through our clothes, then why should it matter what we have or don't have on underneath? This regulation is an invasion of privacy and insulting. **[GG-64]**

RESPONSE: Enforcement of this regulation will be upon the obvious and clear absence of underclothing sufficient to maintain modesty and decorum. The opportunity to correct the deficiency with augmenting or remedial dress shall continue to be offered.

3174(a)(3) Brassiere

The following comments are accommodated as described:

If a woman is small breasted or has had a mastectomy, they why should she have to wear a bra? This regulation is an invasion of privacy and insulting. **[GG-64]**

Omit "brassiere" and replace with top and bottom undergarments. **[GG-55]**

I fail to see any reason or legitimate penological purpose served or furthered by sexual harassment of females by "commanding" that they must wear a brassiere. What is immodest is CDC purporting to inflict dress code of "modesty" based on artificial standards, which are a mask for gender oppression, and domination. **[GG-69]**

RESPONSE: The text of this subsection has been revised with the deletion of the sentence requiring the wearing of a brassiere and with the relocation of the last sentence concerning slips as revised to later in the same subsection. The reworked text specifies that under all circumstances, undergarments shall be worn beneath translucent clothing. Reference to any gender specific garment has been eliminated as requested.

3174(b)(3)(B): Prohibited Attire/Anatomical Detail and Related

The following comments are partially accommodated in the manner explained:

Do you honestly expect an uneducated, inexperienced and misinformed prison guard to be able to understand what this means? I have already offered an example of a common misinterpretation, how do you expect them to accurately interpret [something as complex as] this? Second, save a burlap sack, almost ALL clothing allows anatomical detail to be viewed. We're human beings and we have bodies. Why are you forcing us to hide this fact? Is there something wrong with my husband being able to see that I have arms and legs? There is enormous potential for this wording to be misinterpreted and abused. Moreover, if my clothing does not "expose the breast/chest area, genitals or buttocks" than what is the necessity for this regulation? In addition, you already have wording that indicates that clothing cannot be "excessively tight" which seems clearer to me than the wording under consideration. However, I take issue with the "excessive tight" wording contained in §3174(b)(3)(C) as well. If I am wearing clothing that doesn't reveal my "midriff" and does not "expose more than two inches above the knee" then what does it matter if clothes are tighter fitting? Once again the Department is invading my body and my right to express myself through the clothing I choose to wear. **[GG-64]**

Disagrees with the wording "midriff," because a visitor might want to wear a half T-shirt that exposes just a little of their abdomen, and because of weather conditions this should be allowed. **[GG-71]**

In regards to the addition of the words <u>or</u> midriff: The midriff is a: "body part;" hence, this is redundant. Secondly, the midriff is not an: "anatomical detail of body parts." The exposure of the midriff is [currently] a common cultural fashion and practice throughout the state and country. Therefore, no law, rule or reasonable justification would support this addition **[GG-70]**

If I am wearing clothing that doesn't reveal my "midriff" and does not "expose more than two inches above the knee" then what does it matter if clothes are tighter fitting? You are allowing sleeveless garments but if a garment is sheer on the sleeve up to the shoulder then this wouldn't be allowed? That doesn't seem to make much sense. These two regulations could potentially contradict one another. **[GG-64]**

This addition would prohibit sheer, transparent clothing even if there were other garments under that would prevent exposing "anatomic detail of body parts." It is unnecessary and redundant. **[GG-70]**

Subsection (a)(3) conflicts with (b)(3)(C): (a)(3) allows translucent skirts to be worn as long as undergarments are worn, (b)(3)(C) says no sheer or transparent. The three could be construed as the same or different. Clarify that skirts may be worn if undergarments (slips) are worn underneath. Clarify that shirts, blouses, etc that are worn and undergarments imprints are showing will be allowed. **[GG-68]**

Disagrees with the term "sheer, transparent." When weather conditions are humid in the summer, as is common at many of the locations where institutions/facilities are located, it is only common sense to wear light clothing. When media and doctors advise to wear light clothing when it's hot, now why should it be any different for people coming to an institution/facility? Commenter further contends that most business/professional people wear these kind of clothes, which are consistent with polyester slacks, shirts, and silk, slacks, and shirts. Just to point this out even further, most of the top administrative staff members working at correctional settings dress in this kind of clothing while at their work. Putting a ban on visitors who wear them would be hypocritical. **[GG-71]**

Disagrees with the term garment, because this wording could be interpreted by the person doing the inspection to mean a summer dress that exposes the side of a women's breast, or the man who's wearing a tank top t-shirt. **[GG-71]**

Is this two inches above the knee when seated or standing? **[GG-62]**

<u>RESPONSE: As stated on page 10 of the ISOR, the Department is attempting to set minimum dress standards for visitors' attire based on modesty and decency to ensure that an appropriate, conducive, visiting environment is maintained for all visitors, particularly children. Such standards are not new; they reflect long-standing practice at most institutions. In an effort to capture legitimate concerns as expressed in the Comments above, the Department has revised the text in question as follows: The phrase "due to the absence of" and the word "excessively" is added to subsection (3)(B); the phrase "when standing" is added to subsection (3)(D) and new subsection (3)(E) is added based on a reworking of the text originally found in (a)(3). By these changes the Department intends to provide greater specificity with respect to excessively revealed anatomical detail, guidance on exposure above the knee, and clarity with respect to the requirement that undergarments must be worn, when needed. The Department expressly rejects the assertion that these rules are invasive or deprive anyone of an expressive "right." Visitors do not have license to disrobe or wear revealing clothing at will in public settings outside those controlled by the Department nor are prevailing "cultural fashions" among certain segments of the general population viewed by everyone as modest or appropriate. It is unrealistic to expect the</u>

Department to sanction a lesser standard. Moreover, these rules do not prohibit seasonally appropriate clothing and every effort has been made to eliminate gender bias in the garment specificity contained in the revised text. Therefore, no further accommodations are made.

3174(b)(5): Approval & Staff Inspection

The following comment is not accommodated for the reason given:

The addition of the term during is unnecessary because inspection would take place prior to a visit and after or at the end of a visit if probable cause existed. Making such an inspection during a visit would be redundant and potentially embarrassing to visitors who had lost hair, especially children. **[GG-70]**

RESPONSE: The Department feels the change objected to represents a significant improvement over the original text of subsection (d), and the suggestion is accordingly declined.

3175(e) Brief Embrace/Kiss

The following comments are not accommodated for the reasons given:

Eliminate word "briefly." This word will definitely be interpreted differently by each staff and invite discrimination. Depending on which persons the visiting staff likes, that could range from a second to an hour! Since this regulation only applies to adults, we see no need to expand on this punitive restriction. **[AA]**

This greeting and departure contact is the one thing that sustains most of us. Knowing that our visiting privilege may be terminated because a particular staff person deems our contact too prolonged is enough to cause great concern and often supercedes our need for the embrace. Please carefully weigh the benefits to both the inmates and visitors as opposed to the possibility of wrongdoing. **[GG-55]**

I realize that the five-second kiss was an attempt to eliminate ambiguity, but there are a lot of CO's trying to implement the five-second rule on their own. Those of us who are adults realize that a contact visit is not the occasion for a grope session thus we conduct ourselves in an appropriate manner. For those unable to make that distinction, the option of terminating the visit still remains. I would suggest that you try treating adults like adults and restrict your punitive actions to those unable to limit their behavior **[GG-59]**

The 5-second kiss is the most ridiculous of all proposed rule changes. Since family visits were taken away, this is the only show of affection we have. It is not taken by visitors and inmates as a chance to get away with something, but as a chance to show each other the constant low and affection that awaits them. **[GG-16]**

Disagrees with the term "briefly." An inmate is already deprived of being with their families and [other] loved ones. When they do get a chance to see each other, to *briefly* embrace with them, and kiss your wife or husband would take the whole atmosphere out of positive, constructive, visit with the family because that is the only real time that an inmate and their family have quality time to embrace, especially if the inmate has a life sentence. **[GG-71]**

RESPONSE: Substitution of the word "briefly" for the 5-second embrace and kiss is an accommodation explained on page 91 of the FSOR above. The Department recognized that substituting this word did not clarify how long this particular type of contact will be tolerated. However, the rule as revised will allow continued flexibility at the institutional level where it currently resides. Therefore, the option of "briefly" represents unchanged existing practice, which seemed to be the preferred outcome expressed in the initial set of comments.

3175(f) Holding Minor Children

The following comments are accommodated in the manner described below:

Why are you now restricting children in this section to immediate family members? Title 15's definition of immediate family is already very restrictive and does not include nieces, nephews, cousins and godchildren whom I would all consider to be immediate family. What if my best friend comes in the visit my husband and that best friend not only has a small child but my husband and I are the godparents of the child. My husband cannot hold this child or his niece or nephew, in the presence of the child's parent, with the parent's approval? If you are allowing prisoners to hold their own children and the children of their immediate family, then why can't they also hold children of friends and other family members as long as that child's parents or approved guardian is present. This seems unnecessary and punitive. **[GG-64]**

These additions prohibit holding minors that are relatives of some sort. There is no justifiable need for this prohibition. The excluded children should not be singled out or excluded from this common and culturally accepted nurturing practice. **[GG-70]**

How utterly ridiculous to only want to stop little children from sitting of their dad's laps. I find this cold, cruel and callous at best. **[GG-23]**

The denying of a father or mother to hold their child and making children 7 years or older be restricted from sitting in their parent's lap is nothing more than a mean-spirited state sanctioned effort to bring continued humiliation to the inmate, his family and the larger community. **[GG-56]**

RESPONSE: Notwithstanding the Department's reservations expressed on page 95 of the FSOR above, the text in question is revised to allow inmates to hold minor children accompanied by an adult. Page 95 already explains that the text has been revised so as to drop the age and gender specificity contained in the original NCDR.

The following comments are not accommodated for the reasons given:

I suggest the seven-year old limit remain as currently written. **[GG-66]**

RESPONSE: As reflected on page 95 above, the requirement was dropped in accordance with the requests of other Commenters.

3175(g) No Other Bodily Contact Permitted

This provision is punitive; it should be reworded or stricken. Most visiting staff interprets this literally as nothing besides holding hands and terminates visits for the most innocent of actions. Most prison visiting rooms will post their own additional rules like: No intertwining of legs, no excessive touching, no sexual contact, etc. **[AA]**

RESPONSE: The reasons for not accommodating this request have been provided on pages 91 and 96 of the FSOR above.

3176(a)(1) Visitors under the influence of alcohol, drugs etc.

Can you distinguish between intoxicated persons and persons with speech disabilities, stroke, or other medical conditions causing the appearance of an individual under the influence? **[GG-62]**

RESPONSE: This issue has been addressed on page 99 of the FSOR above: Visitors who appear sufficiently impaired so as to pose a threat to self or others cannot, under any reasonable standard, be allowed to visit and therefore the Department declines to alter this particular rule.

3176(a): New subsection

There should be a new subsection provision providing for the following condition: Conduct that disrupts institution/facility program such as melees, riots, lockdowns or state of emergency as determined in §3383 shall be temporarily suspended in order to prevent, contain, or control a disturbance and shall be returned when the institution head determines a modified program can be safe to do so. **[GG-72]**

RESPONSE: The Department believes that the text of the section cited already sufficiently addresses the concerns voiced.

3176 (a)(3)(A): Conditioning Future Visits on Willingness to Search

These statements are ambiguous, and can be interpreted in any fashion, in the name of safety, and security. Many visitors may feel that the institution/facility official may abuse their official authority at times by using the phrase "probable cause" that a visitor may be attempting to break the law or one of the rules of the Department of Corrections. Who is to protect the visitor from being harassed, or retaliated on, because of something that the visitor may have done, or some one that the visitor may have talked to concerning the official conduct, or officials? In any event, the language is too ambiguous. **[GG-71]**

Addition of the words "unauthorized substances or items" is wholly redundant because it would necessarily be included in the definition of "contraband." **[GG-70]**

RESPONSE: The change objected to is already an accommodation as explained on page 97 of the FSOR and an explanation for the addition of the phrase in question is provided on 141. The Department declines further changes.

3176 (a)(4): Various Conduct

This language is ambiguous because what constitutes excessive physical contact? Tapping your wife, or husband, or kids on the arm, or getting something out of your wife, husband, kid's eyes, or rubbing their back, or neck, elbowing each other while laughing about a subject? Further disagrees with the wording "refusal to follow staff instructions," because it also is ambiguous. There may be a staff person or persons unfamiliar with certain visiting policies and over aggressive in their conduct. That staff person feels the inmate or visitor may be doing something wrong and there is a dispute about the situation. The visitor or the inmate may want to talk to the visiting official's supervisor, and ask to do so. However, the "offending" staff person in turn will simply terminate the inmate's visit based upon the inmate's refusal to follow his instruction, and state that the inmate was being disruptive. **[GG-71]**

RESPONSE: It is not the Department's intent to punish "innocent and natural" impulses with visit terminations; see page 96 of the FSOR above. The Department does not agree that "refusal to follow staff instructions" is ambiguous. However, an inmate appeal process is already in place and visitor appeals process is being established by these regulations whereby allegations of any misconduct, including that deliberate "over aggressiveness" on the part of staff, may be appropriately reviewed and remedied.

3176(c)(1): Denial, Restriction, Suspension, Termination or Revocation of Visits

This should read, the official in charge of visiting may revoke or suspend an approved visitor's future visits for a specific period of time for the following reasons: "The information which would have resulted in disapproval of visits in Section 3172.1 becomes known." It is important to note that approved visitors are required to update their information every two years. Frequently, new criminal information is discovered and the official in charge of visiting needs the authority to disapprove the visitors appropriately with regard to the new information. **[GG-65]**

RESPONSE: The suggestion requested has already been adopted.

3176.1 (c): Six-Month Suspension

Disagrees with the provision of an inmate having visits suspended for six months at a time. Inmate fears being unjustly made an example of and having a 10-year old violation still in their file to consider toward the inmates guilt. Additionally, suspension of inmate visits on "belief of visitor's involvement in a criminal act" is very ambiguous and anyone caught in this catch-22 would be abused. **[GG-71]**

I foresee the sword cutting both ways, and abusive treatment of visitors based on pretext accusations (certainly not infrequent or unheard of in CDC visiting rooms) will likely open the door to lawsuits, and various types of retaliation and harassment by CDC. **[GG-69]**

RESPONSE: The provision at issue does not apply to inmates nor are the records of such actions affecting visitors kept in the inmate's file, as has been mistakenly assumed. "Belief of involvement" is directly conditioned with the words immediately following: "pending outcome of an investigation." The final comment is made in the form of an unsubstantiated assertion and no reasonable accommodation of the part of the Department is possible.

3176.1(d) & (e): Visitor Suspensions

We are concerned that Section 3176.1 (d and e) creates an even lower standard for suspension of visiting privileges. It now allows visiting to be suspended for up to 12 months for being involved in activity "which constitutes a misdemeanor," —whereas before a person would have to have been convicted of a misdemeanor. We believe in due process. Furthermore, 12 months is a very long time period for relatively minor infractions. The same language is used in subsection "e" with regard to felonies —dropping the conviction and using language about what constitutes a felony. **[HH-21]**

Replace the word "may" be with "will" be. If a warning is to be given it should be afforded all inmates. Clarify how long visits will be terminated if the amendment deletes "for the day". Add the definition of formal warning. **[GG-68]**

This proposed regulation is heading in the wrong direction. Here, you would make a non legally trained correctional officer (who's sole requirement to join CDC is to have a GED) the sole arbitrator and fact finder of what constitutes either a misdemeanor or a felony, in the absence of a conviction, and without any trial, fact-finding procedure or other basic requirements for evidence, or even in "defense" of the charge, and where the standard and quantum of proof is not even identified. The language of this rule is ridiculous, as well as its effect and likely application. CDC run of the mill personnel are not qualified to play the judicial officer. Further, no reasonable person would subject prisoners and their visitors to the torment and harassment of committing such a determination to the "mere" judgment of a non-legally trained CDC line staff, who are doing "good" if they can read and understand even ½ of the CDC regulations pertaining to staff, inmates and their visitors. Now, you expect them to be legal experts on the penal code and other statutes, and have judgment incapable of question in all such matters. **[GG-69]**

RESPONSE: As used in the subsections in question, the word "constitutes" substitutes for the phrase "results in conviction." The change is desirable from the standpoint of textual simplification and does not, contrary to assertions above, consciously represent the adoption of a lower standard. Nevertheless, the Department believes that any criminal activity on the part of visitors serious enough to be considered a misdemeanor or felony violation of the law demands at the very least the sanctions specified. Relatively minor "infractions" are more likely to be subject to suspension for a period of up to six months in accordance with the provisions of subsection (c), not (d) as has been assumed above. Moreover, the matter of visitor violation of state law is addressed in §3176.2 and that rule does afford the "due process" protections desired.

The word "may," under §300.5 rules of construction, properly captures the permissive nature of the authority being given the officials in question whereas the word "will" could be mistaken for "shall." Inasmuch as "shall" would eliminate the option to not suspend and this would probably be contrary to the wishes of the Commenter, the change requested is not accommodated. Moreover, the Commenter mistakenly believes that this rule applies to inmates, when it does not. Visits in progress can only be terminated for the day in question, and written notification of such action is provided when taken by the official in charge in accordance with subsection 3176(b).

Finally, as pointed out in the previous response immediately above, subsection (c) provides that, pending the outcome of an investigation of a visitor's involvement in a criminal act, officials may impose suspensions. Subsections (d) and (e) are subsequently constructed so as to progressively provide that the suspensions imposed will be by made by higher level authorities when the criminal activity in question proves serious enough to be considered a misdemeanor or felony violation of the law. Therefore, it is misleading to assert that correctional officers will be substituted for judicial officers or that the protective processes set forth elsewhere in law or regulation are being set aside by the Department in the adoption of this regulation.

3176.3(c), (d) & (f): Suspension/Restriction of Inmate Privileges

In §3176.3(e)(2) the phrase "loss of visits" is used. To keep the regulations in harmony, would not this phrase be a better choice of words instead of "visiting privileges" as used in the other subsections as noted? **[GG-50]**

RESPONSE: Commenter mistakenly assumes that visiting is a right, not a privilege earned by inmates, as explained on pages 27 and 28 of the FSOR above. Accordingly, the suggestion is not accepted. However, it should be noted that this section has been renumbered 3176.4 in order to adjust for the repositioning of provisions relating to the exclusion of a person from institution/facilities, formerly §3178.1. In addition, a nonsubstantive change in subsection (e)(1) has been made.

3176.3(e)(1)(A): Inmate Suspension Timelines

Up to 180 days for any second offense: shouldn't this read, up to an additional 90 days for any second offense? Likewise, up to an additional 180 days in 3176.1(e)(1)(B)? **[GG-62]**

RESPONSE: The Commenter has misinterpreted the rule in question.

3777(b): Family-Visiting Privilege

Family visiting should have the same status as regular visiting, as a right and not a privilege. **[GG-07]**

RESPONSE: Commenter mistakenly assumes that visiting is a right, not a privilege earned by inmates, as explained on pages 27 and 28 of the FSOR above. Accordingly, the suggestion is not accepted.

3177(b)(1) & (2) Limits on Family Visiting Privileges
(Superceded existing §3174(e)(2)

Allow (or restore) family visiting for ALL prisoners and their families**. [GG-05, GG-29, GG-30, GG-31, GG-32, GG-33, GG-34, GG-35, GG-36, GG-39, GG-47, GG-52, GG-57, GG-63]**

For anyone (Lifers included) who is incarcerated, to be denied the therapeutic essence of a family visit is a question of moral concern of and on the quality of treatment of the incarcerated as it is practiced by the Department. **[GG-56]**

Don't give family visiting to some inmates and not give it to all. Take it away from everyone. **[GG-28]**

Family visits did not cost the taxpayers or the Department any money as the families paid for the food. I am a believer that family visits should be restored for ALL inmates whose families want to come to visit them. It is especially important for those who will be coming home soon and need to be able to have an intimate and loving relationship before release. **[GG-16]**

Family Visiting should be allowed for all inmates and their families based on individual information, not according to the sentence given, or strictly due to the amount of time being served. There should be a cost-effective way to adhere to guidelines prescribed by CDC for counselors or classification boards to evaluate the eligibility of each inmate on a person-by-person basis. The program could be reinstated without additional cost to CDC within one year by utilizing the yearly classification boards. **[AA, GG-19, GG-52]**

Family visiting should be given back to some people who have life sentences. There are a multitude of reasons why people are serving time. If there is no apparent threat posed, then many lifers should be permitted family visits. **[HH-39]**

Remove the existing restriction on family visits imposed for inmates who have a life sentence. Such inmates need family support the most. Also, the family members still need the inmate in his role in the family regardless [of the physical limitations incarceration imposes]. Denying family visits is the icing on the cake in the Department's attempt to destroy these families as well as the inmate's chances of success in life of any form. It is prejudicial to […deny] inmates who meet all the requirements necessary to receive family visits [the opportunity to have such visits] based on his sentence alone. [The privilege of overnight family visitation…] could provide an incentive for those inmates to act in good behavior. What other incentives does he have? **[FF]**

Pressure is building for blanket reinstatement of Family visiting. More than sufficient mechanisms currently exist to allow inmate eligibility to be judged on an individual basis. Disqualifying inmates by category is simply arbitrary and capricious, and for some categories, disqualification maybe illegal. For instance, those inmates sentenced to indeterminate life terms without a release date would become eligible if the Board of Prison Terms were in compliance with the California Supreme Court mandate to set primary terms for such inmates. **[GG-59]**

The prohibiting of family visits to life-term inmates without a set parole date is overly and needlessly restrictive. A superficial understanding of prisoner status may make it seem that prohibiting life-term inmates from having family visits is a "safe" policy, a more thoughtful analysis to this ban reveals that it probably contributes to a more unsafe prison environment. If the Department were to adopt a policy which permits life-term inmates to have family visits IF they stay disciplinary-free perhaps for the time they are on close custody—at least five years–and have no adverse prior history of violence against family, children, etc., then there is no reason the Department should not allow life-term inmates to have family visits. As an extra incentive to the lifer and an added assurance for the prison, the Department could require that life-term inmates

remain discipline free for a longer time than non-life term inmates and if they do violate the rules, they will lose their family visiting privileges for a longer time: This "carrot-and stick" tactic would benefit staff and inmates by requiring that these inmates obey rules to a greater extent than currently called for by regulations. It would improve and help maintain inmate-family relations during a lengthy prison stay. **[GG-60]**

RESPONSE: Pages 104, 105 and 107 of the FSOR above explain that no changes in the general eligibility provisions of this rule are contemplated absent unanticipated statutory changes by the Legislature, changes in policy held by the Governor or in the practices of other agencies.

If an inmate is currently incarcerated for committing an act of domestic violence, is there any provision that would prohibit or restrict the victim from visiting? Current policy only speaks to minors who are victims of a domestic violent crime and many of the victims who visit are adults. **[GG-67]**

While §3177(b)(1) does limit overnight family visiting for inmates convicted of a violent offense involving a family member, the Department does not at the present time contemplate expanding the rule in the manner requested. However, it should be kept in mind that the decision to visit is an entirely voluntary act. The victim never has to visit the incarcerated individual they have been victimized by unless they feel irrationally compelled to do and that compulsion survives the numerous opportunities to reconsider that the §3172 process affords.

3177(b)(1)(A): Misconduct Evidence

The following comment is partially accommodated in the manner described:

Family visiting should only be prohibited where there is a conviction or multiple arrests for misconduct described in §3177(b)(1). **[GG-07]**

RESPONSE: Notwithstanding statements contained on page 106 of the FSOR above, the Department revises the text in question as follows: The words "documented" and "or evidence" are added to the original sentence of this rule and an entirely new sentence is added. By these changes the Department intends to clarify that the family visiting prohibitions apply only where substantially documented evidence or information of the misconduct exists. In addition, with respect to the kinds of evidence or information appropriate for the purpose of this rule, the Department is newly specifying that the following are acceptable: court transcripts, police or probation officer reports, parole revocation hearing findings or rules violation reports describing the misconduct at issue. These changes remove ambiguities some believe were inherent in the text as originally proposed.

3178: Attorney Visits

3178 Attorney Visits (General)

The following comments are not accommodated for the reasons provided:

Do prisoners know the amount of taxpayer money that went into investigation, law library, apprehension, trial, appeals, and [public] defender? They already cost us because they could not behave. Plus room and board, retraining [and such equals] hundreds of thousands of dollars! I doubt it and I doubt they care. Self-interest predominates by those who brought it on themselves. Behave and no problem! The prisoner's attorney of record is sufficient. **[GG-27]**

RESPONSE: While the Department appreciates the sincerity of the sentiment expressed, the majority of Commenters are in disagreement with many of the initial text changes and many such concerns have been addressed with accommodations in the manner described below.

I will not stand by as more incarcerated citizens are denied the most basic legal services. You had better do something or there will be action akin to a revolt. My advocacy group and me are prepared to make a serious example out of you and your bullshit go-along politics. We are not going to have it and this is far from the end. **[GG-20]**

At a time when individual rights are being threatened by being infringed upon by the federal authorities, I do not want to see my state government following suit. Instead of closing things down so that no one really knows for sure what is going on inside the state prisons access should be kept open. **[GG-58, HH-38]**

Already, with the budget crunch, it seems more and more ridiculous to pour money into the effect instead of the cause of the crime. Go forward with restricting legal access and the tide will change in this state. **[HH-61]**

Why is it that all you people do is think up ways of screwing the inmates. Already, most of the inmate's lives have been forever ruined and most of them have lost most of the money that they have ever had. And now, the one hope that they have to possibly get out of prison and start a new life [by obtaining] some inexpensive legal representation is to be curtailed by a bunch of vindictive and hard-nosed prison guards and administrators. This will in many cases ensure a tomb for men and women who might otherwise have a chance to make a decent living for themselves. Your efforts to cut down this right is definitely excessive and without merit. You guys already get paid too much. Now, earn it. **[GG-44, HH-37]**

The State does not release people who have long since paid their debt to society, been rehabilitated and could be useful tax-paying citizens once again, if the governor and parole board obeyed the law! Now you want to [disadvantage] these helpless people [even more by] restricting [their ability to] obtain any kind of legal assistance if they don't possess a large amount of money to hire a licensed attorney who must come, in some instances, from far way! I want to register my complaint and request that these rules not be adopted. **[GG-21]**

The rewrite of this section is simply an extension of the Department's well-known policy for restricting outside access to the conditions in its institutions in any and every way possible. This regulation will never stand up. It has been well settled constitutional law that when persons are denied access to those instruments that might assist them in gaining their liberty, due process is violated. You can be sure that should you attempt to implement this section, numerous lawsuits will follow. **[GG-59]**

My husband and I cannot afford to pay attorney fees. We are now dependant on the help of others to get his conviction overturned. We are in the process of seeking help from the Innocence Project, Centurion Ministries and […] law schools. I am so afraid that the restrictions in the new proposed rules would deny my husband the help we desperately need to allow his freedom. **[GG-13]**

The new regulations limit attorney-client privilege, baring law students and legal aid workers who are not lawyers from visitation. For prisoners without money, volunteer legal help from law students and legal aid workers is essential to maintain their access to the courts. **[EE, GG-02, HH-8, HH-43]**

The new regulations would make it harder for small non-profits or clinics run by law students to provide legal aid to prisoners. This policy will effectively bar nonprofit organizations from representing prisoners. The fight against repressive and inhuman conditions in the prisons relies on this legal access. These new proposed regulations also afford the state with greater power to monitor meetings between prisoners and non-lawyer legal representatives. These new proposed regulations even limit the access of prisoners to licensed attorneys! **[EE, GG-40, HH-38]**

We believe that corrections officials throughout the country should make every effort to allow full access for independent observers and advocates providing information, services, or support to prisoners, within the general rules guaranteeing safety within those facilities. Yet California has already imposed significant restrictions on media access to prisoners. These proposed regulations appear to be an attempt to further limit prisoners' ability to maintain contact with the outside world, to convey issues of concern, or to seek redress for abuses. **[HH-22]**

Do not restrict visits and communications by and with lawyers and their staff any further than do existing regulations. **[HH-27, HH-38, HH-42]**

My wife and I agree with the article in the Los Angeles Times. **[HH-56, HH-67]**

Many inmates are falsely imprisoned. Why are you doing this? **[HH-57, HH-58]**

The new regulations would appear to bar human rights groups like ours from meeting with prisoners privately to learn more about prison conditions and prisoner treatment. Prisoners should be able to speak freely, and in confidence, with rights group representatives and others seeking to obtain information about custodial conditions. We know from our experience that prisoners are hesitant to provide information in general visiting areas where conversations are easily overheard. Whether intentionally or not, these revisions would have the effect of silencing prisoners with legitimate abuse or other complaints. **[HH-22]**

In the spirit of the court ruling on execution viewing, I feel prisoners have the same right to engage in private conversations with journalists, lawyers and other legal workers. Many of the recently overturned death penalty cases in Illinois would not have come about if that state instituted the same restrictions of access to prisoners by the journalists and legal aid volunteers who worked tirelessly to prove the innocence of these men. **[HH-46]**

I am writing to express disappointment at the potential restriction of legal aid and other visitors, along with the whittling away of privacy of conversations for prisoners here in California. Please consider that our country should be the example of democracy for others to follow, and we are slowly becoming a nation like many we criticize. **[GG-45, HH-44]**

These new amendments to the visiting rules are a frontal assault on the right of prisoners to seek legal counsel and to meet with attorneys and their representatives. They are not fair to prisoners and inconsistent with what Americans want from their legal system. **[CC, GG-03, GG-17, GG-18, GG-24, GG-38, GG-56, HH-27, HH-38, HH-40]**

These amendments criminalize legal services and legal access for prisoners. **[CC, GG-03, GG-17, GG-24, GG-56, HH-27, HH-36, HH-74]**

This approach unlawfully limits prisoners' access to attorneys and attorneys' ability to practice their profession. **[HH-02, HH-04]**

These amendments violate attorney-client confidentiality and will discourage law firms and legal workers from providing needed services to prisoners. **[CC, GG-03, GG-17, GG-24, GG-56, HH-27, HH-36, HH-42]**

This section would limit access to a very narrow group of people and appears blatantly aimed at limiting access to the courts for prisoners, most of who are indigent. **[HH-21]**

Don't restrict the inmates' access to legal assistance. **[HH-49, HH-54, HH-55]**

These changes will effectively deny/make it very difficult for prisoners to receive legal aid. These new amendments do a grave injustice. **[EE, GG-03, GG-24, HH-37]**

I feel very strongly that these new regulations are a frontal assault of the right of prisoners to seek legal counsel and to meet with attorneys and their representatives. I believe these regulations will make it impossible for most law offices to send in attorney representatives to interview prisoners. These regulations will serve to deny prisoner's access to these legal service organizations. **[HH-15, HH-16]**

CDC should welcome, not prohibit any attorney/paralegal interviews and legal assistance. These are important tools to someone who is incarcerated and poor. **[HH-42]**

After having witnessed the brutality, harassment and health epidemics inside the California state prisons, the denial of paralegal, legal investigators and law students will make it impossible to represent victims of these inhumane conditions. **[HH-74]**

I am alarmed at new provisions in the revised regulations that will severely limit prisoner access to attorneys and legal services. **[HH-15]**

I am extremely concerned regarding the proposed visiting regulations that would restrict the right of incarcerated individuals in California to obtain legal counsel and representation and to challenge oppressive or illegal practices. **[HH-16, HH-17, HH-21]**

We are writing to convey our opposition to proposed regulations that would curtail access to prisoners for legal service providers, human rights groups, and others who seek to ensure that prisoners are treated in a fair and humane manner. We urge the Department not to adopt these regulations as proposed. **[HH-08a, HH-11, HH-22, HH-24]**

I personally see these proposed rule changes as CDC's attempt to rid itself of the presence of attorneys who are a nuisance to it, namely, not for profit organizations that vigorously represent and advocate for prisoners (for example) who are ill or on death row. **[HH-75]**

It sounds like the Calif. Prisons are attempting to keep what occurs within their prisons quiet. They are also attempting to limit a prisoner's ability to obtain assistance from the outside in such areas as challenging policies and working on appeals. **[GG-65, HH-69]**

Prisoner access to legal assistance is already minimal. **[HH-42]**

I fail to understand why visits with attorneys/attorney representatives would be restricted at all! **[GG-12]**

I correspond with many inmates, I know of numerous inmates who a wrongfully imprisoned due to inadequate legal representation. The anti-terrorist act severely limited the amount of time individuals can petition the court for a redress. Most cannot afford to pay an attorney and must rely on organizations that use law students, interns and volunteers to gather information. I urge you not to change the access laws. **[HH-30]**

I am writing to strenuously object to the proposed CDC policy changes to current prison visiting policy, in particular, Section 3178, regarding who can be authorized by attorneys to act on their behalf. **[HH-75]**

Strike all of the new wording (and/or restore the original text) of §3178. **[CC, EE, GG-03, GG-05, GG-13, GG-17, GG-24, GG-46, GG-56, GG-61, HH-04, HH-27, HH-36, HH-38]**

I request that all new language be struck from the present regulations under Section 3178 and returned to the language from the previous proposal. **[HH-15, HH-21, HH-22, HH-29]**

The amendments regarding legal access appear to have the intent to limit legal services and legal access for prisoners, they violate attorney-client confidentiality and will discourage law firms

and legal workers from providing needed services to prisoners. These amendments constitute an assault on the right of prisoners to seek legal counsel and to meet with attorneys and their representatives and we ask that this section be deleted. Allow legal aid non-profit access to prisoners. **[GG-58, HH-21]**

RESPONSE: The foregoing comments have been aggregated and summarily dismissed because they have been made in the form of a non-specific or generalized statement, or because the comments constitute an unsubstantiated assertion, opinion or threat and no reasonable accommodation on the Department is possible. On the other hand, textual changes have been made addressing section-specific concerns as described below.

Attorney Visits: Retain Existing §3175

Our earlier comment, that the most reasonable alternative available would be to retain existing regulatory language regarding attorney visits, applies with even greater force to the most recent changes. The most recent proposed changes go far beyond anything contemplated in the original proposal or its accompanying ISOR. The newly proposed changes are likely to have a significant adverse economic impact on small business. We continue to urge that a more appropriate change would be to simply renumber the current section with no changes. This option would be more effective in carrying out the purpose for which this action is proposed, and it would be as effective and less burdensome to affected private persons than the proposed regulations. **[HH-08]**

Existing §3175(j) of current regulations sets forth the procedure for controlling abuse of visitation privileges. The offending individual would be required to show proof that he or she and the inmate have a legitimate legal reason for contact, and would be subject to an investigation by the head of the institution. In addition, any student involved in inappropriate conduct would face possible discipline by the State Bar, the federal court, or their law school. Students and other legal visits must report whether they have any family in the CDC system upon obtaining visitation privileges in a facility. **[HH-08]**

We demand that §3375 be rewritten to permit a lawyer to designate anyone whom the attorney declares is sufficiently trained and supervised to act as his or here agent for purposes of having a confidential legal visit with a prisoner. Failure to do so unconstitutionally curtails prisoner legal access and is in violation of current California law and regulations. **[HH-04]**

All that has been accomplished by this exercise is a monumental waste of time and taxpayer money. Perhaps this is how you justify your existence but it was ill conceived and poorly thought out. I strongly suggest you return to the original regulations. **[GG-59, HH-40]**

RESPONSE: Reasons explaining why retaining the current (superceded) language of the Attorney Visiting rules is not a reasonable alternative have already been provided on pages 110 and 111 of the FSOR above.

The proposed changes to the attorney visiting regulations are a violation of the United States Constitution. **[HH-04, HH-05, HH-07, HH-33, HH-51, HH-59, HH-65]**

We demand that the department allow prisoners their constitutionally guaranteed rights to legal representation. **[EE, HH-38]**

The proposed regulations offend the 1st Amendment rights of non-profit law offices that represent prisoners. The Supreme Court has held that when a non-profit corporation with mixed purposes such as advocacy and litigation engages in work on behalf of disenfranchised persons, their activities are protected under the 1st Amendment. **[HH-04]**

These regulations create undue burdens on an attorney's ability to represent prisoners in violation of attorneys' 6th Amendment rights. Moreover, these regulations further violate attorneys' 14th Amendment guarantee of the right to engage in any of the common occupations or professions of life. Such a right is both a "liberty" and "property" right protected from state deprivation or undue interference. **[HH-04]**

The proposed regulations have a disparate impact on the access of people of color and women to legal assistance, both being protected classes under the 14th Amendment. The amended regulations disproportionately impact African Americans and Latinos who are disproportionately represented in prisons. Additionally, as there are fewer women's prisons, women tend to be more geographically isolated from legal counsel when imprisoned. There are even fewer attorneys' providing services to women prisoners then to men. These regulations will further aggravate this disparate representation by impeding legal assistance of prisoners. Thus, the proposed regulations have a disparate impact on women of color and people of color in violation of their right to equal protection under the 14th Amendment. **[HH-04, HH-13]**

RESPONSE: The Department intends no specific violation of constitutional rights. While the validity of such assertions would normally have to be resolved in a court of law, the Department believes that accommodations identified below have alleviated all of the concerns expressed above.

I am against revising §3178 (entire section). Since this change was not in your original proposal, we feel/demand a public hearing should be held—in accordance with Government Code § 11346.8(a)–before any major changes in this provision are done, or this entire section should not be revised. These amendments are substantive and warrant a public hearing. **[AA, BB, CC, EE, GG-03, GG-17, GG-24, GG-56, HH-04, HH-27, HH-36, HH-45, HH-48]**

We request/demand the comment period be extended to 45 days as the changes proposed are quite substantive and warrant a comment period as long as the previous one. **[BB, CC, GG-03, GG-12, GG-17, GG-18, GG-24, GG-56, HH-04, HH-27, HH-36, HH-37]**

This is to demand a public hearing be called to address these newly proposed regulations. As with the first set of regulations, these new regulations should not go into effect until all objections are aired publicly before a hearing officer. **[HH-15, HH-16, HH-21, HH-74]**

I oppose the new language and demand a public hearing. This is an assault on the rights of prisoners to seek legal aid. **[GG-65, HH-68, HH-79, HH-77]**

These proposed revisions are perplexing because there does not appear to be any penological need to curtail visits between prisoners and legal service providers, human rights groups, or others. Thus far, we are unaware of any explanation or justification offered by the Department of Corrections for the new regulation's restrictions. **[HH-22]**

Recent court decisions are significant in setting a precedent for regulations such as those of the CDC—one that would hold the CDC visitation regulations regarding attorneys to be invalid, because they are clearly an exaggerated response to any security concerns. The regulations fail to meet the standard for being reasonably related to legitimate penological interest. In fact, no valid reasons have been put forth by the Department, making it impossible to fulfill this part of the legal test. **[HH-8]**

There are several very troubling provisions contained within the proposed regulations and this organization, on behalf of over 2,000 attorney members, strongly urges the CDC to reconsider the regulations and work with representatives of the legal community to draft less draconian and more reasonable regulations. **[HH-26]**

This new language is an eleventh-hour addition that would make it difficult if not impossible for most law offices to send in attorney representatives to interview prisoners. **[HH-16]**

There was no statement of reasons for these changes mentioned in the ISOR. I request that the Department implement its policies directly in a rule-making process which states the policy being implemented and the reasons for the rules, and which provided for a full comment process which includes a public hearing for any changes which were not justified in the ISOR. **[HH-04, HH-09, HH-11]**

Rather than present a compelling state interest for the proposed regulations, the Department's failure to adhere to basic administrative law requirements in its attempt to promulgate these regulations evidences bad faith. **[HH-04]**

The California Department of Corrections has not provided any rationale for the proposed changes. Therefore, the proposed regulations are both unacceptable and illegal. **[HH-01, HH-04, HH-05, HH-11]**

The CDC refusing to hold a public hearing allowing us to address the newly proposed regulations. The only hearing on the proposed regulations took place in the Spring 2002 prior to the addition of current changes adversely affecting legal visitation. Pursuant to California Government Code 11346.8 (a), staff of our offices filed requests for a hearing with your office prior to 15 days in advance of the close of public comment. Once a hearing is requested the Department must provide notice—the scheduling of this hearing is not discretionary **[GG-65, HH-04]**

The Department failed to provide proper notice of the proposed changes. California Government Code 11346.4 requires that a government agency give notice of a proposed action 45 days prior to the hearing and close of the public comment period. Such a notice was not provided concerning the proposed regulations limiting attorney visitation, we demand an extension of the public comment period. **[GG-69, HH-11]**

We demand that all proposed language be discarded and that public hearings be held with the goal of broadening prisoners' access to legal assistance. At best, such a profound and controversial proposal should be scheduled for a public hearing after providing stakeholders with proper notice. **[HH-04, HH-27, HH-37]**

Many substantive proposed amendments to the regulations that we have commented on in the preceding sections of this comment were not printed in bold typeface. These proposed amendments include the elimination of the full-time employee attorney representative designation, the elimination of the ban on tape recording attorney representatives, and the movement of certified students from the list of attorney representatives. Other sections where "attorney representative" was removed create substantive changes to the text, yet are not listed in bold typeface. **[HH-04]**

CDC has chosen to sidestep the ISOR provision by submitting these new revisions in a prior set of proposed rule changes. This subverts the rulemaking requirement that changes be justified, limits the comment period to a mere 15 days, and prevents consideration of these significant changes in a public hearing. At a minimum, the newly revised changes should be subjected to the same scrutiny as the earlier proposed changes, many of which have now been abandoned by the Department. **[HH-08]**

The new proposal contains new, additional changes, which have not been previously discussed in public. **[HH-77, HH-80]**

RESPONSE: The Department's approach with respect to compliance with the requirements of the Administrative Procedures Act has already been explained on pages 17-19 of the FSOR above. It is the Department's position that the changes reflected in the Initial Renotice of July are

sufficiently related to the original proposal, as fully explained on pages 109-120 of the FSOR above, so as not to necessitate another public hearing or extended review period. In fact, despite the alleged deficiency in the time allotted for review, the volume of response generated by the First Renotice has certainly been sufficient to provide the Department with a clear basis upon which to make significant and numerous revisions in the First Renotice text as reflected in the FSOR from page 126 forward. Some minor formatting errors contained in the First Renotice text have been subsequently corrected and are reflected in a Second Renotice closing December 13th. Finally, the reason for deletion of "attorney representative" from various places in the Attorney Visiting regulations is explained on page 118 above, and any formatting omission was entirely inadvertent.

While it may seem logical to bring CDC policies into harmony with guidelines set by the State Bar, the proposed changes could impact inmate rights. They could also keep the public uninformed about prison issues and conditions; California citizens have a right to know how tax dollars are spent. **[HH-43]**

Access to legal aid and what's going on in the penal system just should not be limited. Our citizenry is entitled to information on conditions in a system of punishment that's consuming more tax dollars than educating future generations. Voters are entitled to see the results of $5 billion in prison expansion, $1 billion in staff raises and costly overtime, despite a $23.6 billion state deficit. **[HH-41]**

This entire section should be restored to reflect the willingness of CDC to work with advocates for prisoners, to ensure fair and just treatment for ALL prisoners, not just those with family and friends advocating for them. Because CDC employees aren't following the Director's orders [regarding posting Regulation changes] we are in need of continued contact with those inmates most likely affected by discrimination, medical neglect, segregation and such. Eliminating these advocacy groups is giving those employees a free and unchallenged hand at abusing the system. **[AA, HH-81, HH-82, HH-83]**

I think that if someone wishes to visit someone in prison, either to review a case or get information on a current case, a legal rep should be able to see and interview a prisoner. Closing off prisons to the outside world of charitable helpers, whether legal or religious or social, is making a giant statement about how deplorable the conditions must be since you are barring them being observed by non-governmental people. Besides, the government cannot afford to help rehabilitate prisoners on their own. Better to allow help for prisoners than to take the attitude of throwing away the key. **[GG-49]**

The proposed rules would do little to increase security and do much to shield prison administration from legitimate public oversight. Prison regulations should reflect the board interests of the citizens of California, not the narrow, self-protective, bureaucratic interests of prison administrators. **[HH-40]**

We know from our experience that prisoners are hesitant to provide information in general visiting areas where conversations are easily overheard. Whether intentionally or not, these revisions would have the effect of silencing prisoners with legitimate abuse or other complaints. **[HH-22]**

If government leaders are encouraging the public to report wrongdoing by those in high places without fear of retaliation, should we not allow inmates the same ability to report wrongdoing by prison official to a reporter, lawyer or legal aide in order to provide public accountability? **[HH-46]**

RESPONSE: Contrary to Commenter assertions above, there is no evidence to support the allegation that with changes reflected in the Initial Renotice, the Department intended to deliberately reduce public oversight of prisons, silence inmates or curtail legal assistance provided inmates. In fact the changes in question were all developed in accordance with the requirements of the Administrative Procedures Act (APA) and in direct response to earlier

comment as explained on pages 109-121 of the FSOR above. While the apparent consequences of some of these changes as voiced by Commenters were unanticipated by the Department, the creation of any such "problems" was wholly unintentional and the Department intends to address all of these "problems" as appropriate with further revisions, accommodations or satisfactory explanations in a manner consistent with the expectations and requirements of the APA. Moreover, some accommodations may entail "undoing" changes reflected in the text of the Initial Renotice.

The US District Court for the Eastern District of California has established a pro bono panel of attorneys to accept appointment in certain civil rights cases that are brought initially by a plaintiff without benefit of counsel. The implementation of these rules will seriously impair the effectiveness of the panel in at least two ways. The initial screening of cases, which is done by law students, will be limited. In addition, private attorneys will be less willing to accept pro bono prisoner cases, as they will be unable to utilize staff to the degree they currently can, in carrying out routine functions (obtaining signatures, completing routine discovery, etc.). Many of the panel lawyers practice in firms that are small businesses, and the impact of the proposed regulations on these small businesses will be severe. Pro bono attorneys must divert their time, energy and economic resources when working on such cases as oppose to one for a paying client. Thus, they must be able to utilize fully their staff and assistants to facilitate their job. Private attorneys appointed by the panel will have a much loser incentive to take such cases if so many of their resources have to be diverted by accompanying their staff. It is much more efficient for a student assistant or paralegal to take care of the preliminary work of meeting with and interviewing clients, while the attorney spends his valuable time working on the legal aspects of the case. **[HH-08]**

These restrictions would thwart the shared goal of the State Legislature, the California Supreme Court, and our organization of reducing the backlog of capital cases for which post-conviction counsel has not been appointed. As the Legislature contemplated in creating this organization, reducing this backlog necessarily requires recruiting and training private attorneys, investigators and paralegals new to this work, thereby expanding the pool of qualified individuals available to litigate these cases. The Legislature recognized the financial disincentives involved in taking capital appointments. Requiring attorneys to attend all client visits and inmate interviews or to employ only licensed or certified investigators and paralegals to do so rather than continuing to train other legal staff members would impose a substantial burden upon the court. Such a policy is a direct conflict with the goal of minimizing costs to private counsel. **[HH-01, HH-05, HH-06, HH-33, HH-34, HH-35, HH-52, HH-53, HH-59, HH-63, HH-64, HH-65]**

If the changes with regard to law student and attorney employees take effect, it will have a very negative impact on our already under-funded and understaffed program. **[HH-17]**

The proposed changes would have a significant impact on my company's current and future budgets. **[HH-6]**

Government Code 11346.2(b)(3)(B) requires when there are impacts on small business, government agencies must provide a description of any reasonable alternative the agency has identified that would lessen any adverse impact on small business. All of our agencies qualify as small business as defined by California Corporation Code 5060 and California Government Code 1437. All of our offices will be financially compromised by these regulations as we cannot afford to hire only staff attorneys, licensed investigators, certified paralegals, or certified law students to conduct visits. **[HH-04]**

Section 3178 horrifies me. I urge that all revised wording be dropped so that attorney's can continue to utilize law students, employees, and advocacy groups to conduct legal visit. Most inmates are indigent. They depend heavily on donated services, which would effectively disappear were this provision adopted. **[HH-76, HH-78]**

As an organization funded by California state money, I strongly advise against this policy change which will not only inhibit the work of our project to obtain the release of wrongfully convicted inmates, but will also cost the state significant money in funding our attorney's valuable time. **[HH-17]**

Many prisoners cannot afford to hire an attorney and thus rely on free legal advice from paralegals, legal investigators and law students. Without their services, access to legal counsel would be severely curtailed.
[HH-22, HH-23]

RESPONSE: Contrary to the above Commenter assertions, there is no evidence to support the allegation that with changes reflected in the Initial Renotice, the Department intended to deliberately affect small businesses adversely without describing reasonable alternatives. In fact the changes in question were all developed in accordance with the requirements of the Administrative Procedures Act (APA) and in direct response to earlier comment as explained on pages 110-120 of the FSOR above. Any inadvertent error on the part of the Department will be undone as appropriate in a manner consistent with the expectations and requirements of the APA, as described below.

3178(a): "Private"

The following comments are accommodated in the manner described:

As written, the proposed revisions would seemingly remove any and all visiting guidelines as the same might be applied to attorneys and investigators working in a county public defender's office or the Office of the State Public Defender. The problem stems from the fact that present §3175, applies to all "attorneys," whereas your proposed §3178 incorporates much the same language of 3175 and applies it only to "private attorneys." I assume that by insertion of the modifier "private", you did not intend to include public defenders: But that begs the questions as to what regulations will now apply to public defender attorneys and investigators. If your newly proposed section 3178 applies only to "private attorneys" and that category is meant only to apply to attorneys who are not employed in government service as public defenders, etc., then it would seem necessary that you also include a brief subsection as to what regulations do or do not apply to public defender attorneys and their public defender investigators, paralegals, and other defender personnel. **[HH-20]**

Addition of the word "private" would exclude non-private or governmental attorneys, investigators et cetera from the regulations. All of these people (i.e., private and governmental) are officers of the court and, therefore, one sub-set or group should not be discriminated against or favored because of employment circumstances. **[GG-70]**

Please provide the text that applies to Consular visits with inmates who are their nationals under the Vienna Convention on Consular Relations. **[HH-66]**

RESPONSE: Notwithstanding the Department's stated reason for adding the word "private" found on page 126 of the FSOR above, the original NCDR text is restored with deletion of the word in question. §3267, a separate rule not being changed by this proposal, already permits public officials who need to interview inmates the ability to do so. Moreover, "public official" is elsewhere operationally interpreted by the Department to include "foreign dignitaries" such as consular officials. However, the unintended consequence of adding of the word "private" in the Initial Renotice text has lead to the confusion expressed above: "What regulations will now apply to public defender attorneys and their investigators?" Inasmuch as the Department does intend public defender personnel, Board of Prison Term contracted attorneys and pro bono appointees of the court (among other more clearly "private" attorneys) to follow the revised rules irrespective their "officer of the court" status, recession of the Renotice addition of "private" appears to be the

most direct and least complicated solution available at this time. The regulatory overlap of this regulation and that of §3267 is expected to be minor to non-existent.

3178(a): Confidential Correspondence/§ 3141(c)(8) Cross-reference

The following comments are not accommodated for the reason provided:

Already there is some press censorship in the state prison system. In a democracy the public should be able to monitor the conditions in our state prisons. **[HH-44]**

The proposed rules to further restrict prisoners' access to reporters and the media are an outrage and a sham. Our founding fathers never imagined or intended this sort of draconian measure to be proposed or enforced. **[GG-06]**

Reinstate the following: Media one-on-one interviews with inmates and protect prisoners' mail to journalists as confidential and do not allow [such] mail to be opened by prison officials. **[GG-58]**

In 1997, the state severely limited media access to prisoners. No public or human rights interests were served by these severe measures. Nor will any public interest be served by the new proposed rules, which would take several more steps towards cutting off prisons from public oversight and limiting the rights of the poor. **[HH-38]**

RESPONSE: The reason for the new cross-reference has already been provided on page 115 of the FSOR above. Other objections appear to be unrelated to the regulations currently under consideration.

3178(a): "Assistance Programs"

The following comments are accommodated in the manner described:

I object to subsection (a) insofar as the obvious "discrimination" imposed between legal service programs, etc. I perceive these regulations as a tool for manipulation, harassment, and with the intention (by the department/institutions/facilities) to impair prisoner's access to the courts and ability to have reasonable access to legal services without cost, or at low cost. By making unreasonable general regulations as to eliminate law student access to prisoners for interview purposes, etc., then excluding departmentally selected law schools/postsecondary institutions, the department or "facilities" are free to "restrict" the type of legal issues such law schools/postsecondary institutions are permitted to deal with. It appears the object of this "proposed regulation" is to exert undue and coercive influence over such law schools and postsecondary institutions as the department and institutions may enter agreements or contractual arrangements with, and can be used to "coerce" such law schools etc. into "refraining" from engaging in certain kinds of litigation activity wherein the department/facility or institution, etc. may find itself "defendant". And such rule will likewise permit the "department & facilities, etc." to penalize any law school/postsecondary institution by dropping or failing to renew any agreement in the event they have facilitated litigation against the department and/or CDC employees, and use this potential as a means of discouraging the provision of needed legal services. **[GG-69]**

In California, there are only a few law school clinics that provide legal services to prisoners incarcerated in state institution. The proposed changes would deprive the indigent prisoner population of a crucial means of access to the legal system. Realistically, the supervising attorneys of this project simply do not have the time to make visits to each client on a regular basis. The logical result of such regulations would translate to either ineffective service or more likely a severe reduction in cases handled. Most, if not all, of those clients would be forced to handle their own cases, as they cannot afford other means of legal representation. **[HH-05]**

The California Innocence Project is a law school clinic that uses law students to investigate and assist in the litigation of wrongful conviction cases. I constantly send law students out to the CDC facilities to get information from inmates that we cannot get over the phone. Our clinic has only 2 staff attorneys and we would get very little accomplished if all of their time was used driving around the state to visit prisons. As an organization funded by California state money, I strongly advise against this policy change. It will inhibit the work of our project and will also cost the state significant money in funding our attorney's valuable time. **[HH-17]**

RESPONSE: Notwithstanding the Department's defense—contained on page 116 of the FSOR above–of the "law student assistance" language, the text of this rule is now dropped. In the 1974 *Procunier* decision, the US Supreme Court upheld a district court ruling against the Department with respect to, among other matters, prohibiting law students employed by practicing attorneys from conducting inmate interviews. At the time of this decision the Department's then well-established policy regarding law school programs providing legal assistance to inmates was not embodied in regulation. This explains the origin of the language establishing such a rule contained in superceded §3175(q), repeated in the original NCDR and retained in the Initial Renotice. However, any "agreements" that may have existed between the Department and the relevant parties, which justified an exemption of the attorney visiting rules in the first place, seemingly have long ago become obsolete and abandoned or forgotten and no longer enforced. The deletion decision appears fully justified whereas that no Commenter has defended this rule, the Department has been unable to locate an intact agreement of the kind contemplated and any meaningful distinction between employed and academically supervised law student—as attested to by Commenter remarks here and below–appears to have disappeared over time.

3178(b)(1): Weekday Scheduling

The following comments are not accommodated for the reasons provided:

I propose that attorney visits should be allowed Monday through Friday during normal working hours. Attorneys frequently have demanding office and in-court schedules. It is often difficult or impossible for an attorney to visit and/or interview on the Thursdays and Fridays now permitted at CSP Sacramento/Folsom. And, attorneys are often family people and Saturdays and Sundays are frequently the only days that they can spend quality time with their families. It has been our observation the CDC personnel also disfavor weekend attorney visits because it tends to disrupt the supervision of family visits. We would propose Monday through Friday, 8:00 a.m. to 5:00 p.m. visiting schedule (even 8:00 a.m. to 3:00 p.m. would be preferable to the current limitations). **[HH-25]**

Even in prisons that have a weekday-visiting schedule, attorneys should be permitted to visit on any weekday during normal business hours. The insistence that they visit only on the weekday during which visiting is regularly scheduled places an unnecessary burden on attorneys' scheduling. **[GG-65]**

Some of your facilities seem to be able to do (perhaps even to prefer) attorney visits on days not usually available for regular visits, and the regulations seem to discourage this practice. Given how remote many of your facilities are I think the more days/hours attorneys have to work the better. **[HH-18]**

RESPONSE: The Department has explained on pages 113 and 114 of the FSOR above why it is unable to provide attorney access on an "on-demand" basis. In effect, any written request to schedule an attorney visit during weekday working hours will be honored by visiting officials, although the Department has other expressed preferences. In addition, §3178(g) provides that appointment requests may be cleared through the institution head or designee in an emergency. However, in order to accommodate other expressed concerns, minor revisions in the text of this

subsection are made: The term "attorney representative" is added or restored and "when a compelling need exists" deleted for reasons which will be explained below.

3178(c): Attorney Representative/Issue Overview

The following comments are accommodated in the manner described:

Current regulations permit an attorney to designate several kinds of "other persons," as an attorney representative. None of these "other persons" is authorized to act independently as a representative of a prisoner, but they all act as representatives of the attorney and are sent into the prison by the attorney or by a licensed private investigator who is working under the direction of the attorney. Currently, these "others" can be either a licensed investigator [licensed by any state], a law student certified under state bar rules for practical training of law students [and sponsored by the attorney], a legal para-professional certified by a state bar or other equivalent legal professional body [and sponsored by the attorney], or a full-time employee of the attorney of the licensed investigator. To prevent unauthorized persons from pretending to act as attorney representative, the current rules require the attorney to provide a letter to the warden signed by the attorney or investigator authorizing the representative to act for the attorney. Thus, the attorney is responsible for directing these "others" in the legal service tasks to be performed and for the conduct of these "others" while conducting those tasks. These individuals also are subjected to a background check.

- The Renotice changes no longer allow the attorney to designate full time employees as representatives of the attorney at all.
- They no longer allow the attorney to designate law students as representatives of the attorney
- They saddle the legal para-professional with the additional requirement of having to be an employee of the attorney or appointed by the court;
- They require the para-professional to supply a diploma or degree proving that he or see is a graduate of an expensive course and employed by the attorney or appointed by the court;
- While law students can attend an attorney visit, the student can do so only by providing proof of certification by the state bar and must be accompanied to the visit by the sponsoring attorney.

Each of these changes will have an adverse impact on the practice of lawyers representing prisoners and the impact will be most severely adverse on the practice of solo practitioners and other public interest lawyers who fall into the category of "small business." Under the current regulations, the attorney may use the relatively inexpensive services of attorney representatives to perform many mundane tasks, the performance of which would be prohibitively expensive if they had to be performed by the attorney. Due to the confidentiality obligations of the lawyer, these tasks must often be done face to face with the prisoner rather than through some other means. For example:

- Sometimes the attorney doesn't have sufficient time to employ the often-used means of confidential mail, because the turn-around time for mail to and from a prisoner is often more than two weeks;
- While telephone consultation would be admittedly easier than a face to face interview, the Department does not have a very liberal policy for allowing attorneys to conduct confidential calls with prisoners;
- In the rare instances where confidential calls are permitted, prisoners are reluctant to communicate over the telephone because the attorney cannot guarantee the line is not being monitored;
- Conducting interviews in attorney visits is very time-consuming due to the security measures necessary for processing and such waiting/delay is beyond the attorney's control. It is not uncommon for the attorney/attorney representative to spend from one and half to four hours for a 30-minute visit, not including travel time round trip from the office to the prison.
- Moreover, on the day of an attorney visit, the attorney is not able to schedule other appointments (court appearances, conference calls, non-prison interviews) because of the

uncertainty as to how long it will take to get into the prison and given that unanticipated delays routinely occur.

The full-time employee option as legal representative of the attorney should be reinstated because it is often the only option available to the small practitioner who often has only a single employee who doubles as receptionist/secretary, and who is not able to afford to employ an additional investigator or legal para-professional. Other existing procedures are sufficient for insuring that the attorney is responsible for training the employee, making sure the person is aware of prison regulations and explaining the tasks to be performed during the interview. The existing background clearance process is sufficient for ensuring that any employee with a history of involvement in criminal activity or other breaches of institutional security will not enter. **[HH-09]**

CDC should permit a lawyer to designate anyone to act as his or her agent for purposes of having a confidential legal visit with a prisoner. This has been permitted by CDC rule or practice for the last 30 years, approximately. For decades attorneys have been allowed to designate, for purposes of conducting legal visits, other persons whom they supervise, including non-certified law students, other students and community volunteers. CDC also permits translators, sign language interpreters, and mental health clinicians to accompany attorneys or their designate representatives. Many of those who advocate for prisoners rely heavily on full-time or part-time employees, certified and non-certified law students and others to conduct legal visits. This office has never been informed that there has been any problem with this approach. The new proposed revision is thus not necessary. **[HH-02, HH-04]**

Under the new rules, qualified investigators and paralegals as well as interns, volunteers, law students and any other litigation support staff would no longer be able to conduct client and inmate interviews on behalf of attorneys. For decades, CDC has permitted lawyers to designate others to act as agents for confidential legal visits. Now the rules will allow only licensed investigators or credential paralegals. Law students will be allowed to conduct legal visits only if certified and accompanied by a lawyer. Scores of inmates have been assisted by law students who could not possibly make these visits if they had to be accompanied by attorneys. Students other than law students have also been extremely useful in this process. They, too, would now be excluded from assisting. These new requirements will have the practical effect of denying some inmates representation. I can't imagine a circumstance that warrants such broad changes. **[HH-01, HH-05, HH-12]**

By limiting the people who will be admitted to prisons as valid legal representatives of an attorney, the CDC will be denying prisoners access to legal representation. Other states do not limit whom an attorney may designate as an authorized representative in regards to legal visitation. California should not either. **[HH-75]**

These changes reverse regulations in place for over 20 years which have allowed a lawyer to "designate representative" to conduct legal visits on his or her behalf. CDC must continue to permit a lawyer to designate anyone to act as his or her agent for purposed of having a confidential legal visit with a prisoner. To do otherwise is cost-prohibitive for such offices and organizations due to their small budgets and the virtually non-existent government funding available for such work. **[HH-04, HH-23]**

I believe that attorneys' representatives should inevitably be a part of the system. There is already a lack of attorney assistance when it comes to inmates and the few attorneys assisting inmates are inevitably inundated with work. I do not understand how any harm can be done with continuing to allow attorney representatives aid attorneys in the system. **[HH-39]**

This section permits attorney's to designate "representatives" who may visit with inmate clients, but then limits those who may serve as representatives. The regulation formerly provided the employees of the attorney could serve as a representative. The proposed amendment would delete that provision, and restrict representatives to attorneys, investigators and legal para-

professional. This proposed restriction on attorney's employees will unduly curtail the ability to provide legal services in capital cases. **[GG-65, HH-03, HH-04, HH-13, HH-73, HH-76]**

The proposed regulation significantly and unacceptably limits whom an attorney may designate to conduct a legal visit with a prisoner on his or her behalf. Current regulations already unreasonably limit attorney designation, and the proposed regulations are more narrowly tailored than those already existing. The proposed regulations are unreasonably restrictive and serve to usurp the authority of the legislative and judicial branches of the government. Under the California Business and Professions Code, the legal requirements to become a paralegal or a legal assistant do not require certification. All paralegals, whether certified or not, can perform client interviews. **[GG-65, HH-04, HH-68, HH-70, HH-71, HH-84]**

The amendment designated §3178(c)(1)(A) would eliminate existing provisions that allow visitation access to any full-time employee of an inmate's counsel. The change would require that any investigator who whished to visit an inmate client as an attorney representative must be a licensed private investigator who is either employed by the inmate's attorney or appointed by the court. Similarly, § 3178(c)(1)(B) would limit inmate client visitation by paralegals to those certified with a state bar certification (which does not exist in California), or those possessing a diploma or degree "substantiating legal proof of training." Should the changes be adopted and prove applicable to this judicial branch agency, the impact would be profound and the effect on private counsel who accept appointment to represent indigent defendants unquestionable. They would limit enormously the ability of our staff to do work that is indispensable to our representation of death-sentenced men and women. It is essential that our entire staff of attorneys, paralegals, investigators and litigation support assistants have reasonable, unhindered and sometimes unsupervised access to our clients. **[HH-01]**

For the entire period of my license, all legal visitors have been "cleared" prior to being added to an inmate's list for visiting. This was sufficient to eliminate any criminal contact with inmates. I have not been aware of any violence or other problems associated with the system as it has functioned in the past. **[HH-29]**

In California, there are only a few law school clinics that provide legal services to prisoners incarcerated in state institution. The proposed changes would deprive the indigent prisoner population of a crucial means of access to the legal system. Realistically, the supervising attorneys of this project simply do not have the time to make visits to each client on a regular basis. The logical result of such regulations would translate to either ineffective service or more likely a severe reduction in cases handled. Most, if not all, of those clients would be forced to handle their own cases, as they cannot afford other means of legal representation. **[HH-05]**

By not permitting law students and other paraprofessionals to meet with, interview, or otherwise contact clients without a supervising attorney present, the proposed regulations will severely limit the effectiveness of valuable legal programs and services. These include the University of California Civil Rights and Prison Law Clinics, the Post Conviction Justice Project at the University of Southern California, the Northern California Innocence Project at Santa Clara University, the Innocence Project at California Western School of Law and the Death Penalty Clinic at Boalt Hall in Berkeley. **[HH-08, HH-13]**

Attorney representatives should not be stricken from this section. **[AA]**

3178(c): Allowed Attorney Representatives

The rule revision should be modified to provide as follows: (c). An attorney or court may designate other persons to act as attorney representatives. These representatives shall be afforded the same accommodations and services and are subject to the same rules and regulations as attorneys, provided that all other requirements of this article are met. (1). The attorney who employs or uses a representative and who wishes the representative to visit with an

inmate on legal matters shall provide the institution head or official in charge of visiting with a signed statement including: (A) Certification of the representative's ability to perform in this role and awareness of the responsibility of this position; and (B) A pledge to supervise the representative's activities. **[HH-02]**

Current regulations already unreasonably limit attorney designation, and the proposed regulations are more narrowly tailored than those already existing. The Department must permit a lawyer to designate anyone who the attorney declares is sufficiently trained and supervised to act as his or her agent for purposes of conducting a confidential legal visit with a prisoner. Failure to do so unconstitutionally hampers prisoners' access to the courts and legal counsel and attorneys' ability to practice their profession. **[HH-04]**

Investigator:

As to the matter of investigators, the vast majority of investigators working in public defender offices throughout the state are NOT licensed private investigators, despite the fact that public defender investigators often have many years of investigative experience. There is no need for such a license. **[HH-07, HH-20]**

Though I have been the holder of a valid Private Investigator's license since 1983, this new regulation would make it nearly impossible for me to run my business. My practice [consists] solely of preparation for capital trials and appeals. Normally I employ two or three interns or trainees working under the supervision of the attorney of record and myself. My employees always obtain access to our clients via an authorized letter from the attorney to the warden. Without their help, I will not be able to visit and interview all the clients myself, or, if I were to try, I would have not time to do the necessary fieldwork on their cases. **[HH-29]**

Neither the California Supreme Court nor the United States District Court requires an Investigator to be licensed or a Paralegal to be certified in their job descriptions and acting in their official capacity of an employee of this Federal Public Defender's office. Because almost all of the unit investigators and most of the unit paralegals do not meet the new standards set forth in the proposed section, the requirement will have a significant impact on the proper operation of this office. Our office investigators would be excluded from interviewing potential witnesses in your custody as well as talking to former clients of our office. The result will require that an attorney in our office must conduct interviews, and because such interviews are both frequent and generally require extensive travel, the attorneys will be less able to attend to other demands. The result will be an unnecessary delay imposed on the federal judiciary and the California Supreme Court. Moreover, the current budget is in place and it does not provide for the hiring of staff that would satisfy the new requirement. **[HH-06, HH-07, HH-10]**

The proposed rules unreasonably limit attorney's ability to designated employees, volunteers and non-licensed or non-employee investigations as their representatives. The State Bar allows for attorneys to engage the services, regardless of whether any compensation is paid, of non-lawyers specifically to do legal work of a preparatory nature and to communicate with clients and third parties. The regulations should comply with these Bar rules allowing non-lawyer employees, volunteers and non-licensed or non-employee investigators to act as representatives. **[HH-04]**

The policy would directly conflict with the goal of minimizing costs to private counsel as a recruitment incentive by necessitating the expenditure of modest financial resources for habeas investigation to engage the services of full-fledged, licensed private investigators. Given the rigorous requirements for obtaining a private investigator's license, including hundreds of hours of supervised work, there are many experienced investigators who have not yet become licensed, who work under the license of another investigator, and whose services are therefore more affordable. **[HH-01]**

Law Student:

The California Innocence Project is a law school clinic that uses law students to investigate and assist in the litigation of wrongful conviction cases. I constantly send law students out the CDC facilities to get information from inmates that we cannot get over the phone. Our clinic has only 2 staff attorneys and we would get very little accomplished if all of their time was used driving around the state to visit prisons. As an organization funded by California state money, I strongly advise against this policy change. It will inhibit the work of our project and will also cost the state significant money in funding our attorney's valuable time. **[HH-17]**

Commenting organization strongly opposes the proposed amendments affecting the visitation of Certified Law Students with prisoners in California correctional institutions. One-on-one visits with clients by such students serve a vital role in pursing the interests of the Project's clientele. Prior to visiting a client, each law student meets with his or her supervising attorney to discuss the purpose and parameters of the visit. After each visit, the student reports back to the attorney to provide an update of the matters discussed. No legal advice is ever given without previous approval provided by supervising attorney. The practical implication of mandating the personal presence of a supervising attorney at each client visit is that the project will have to reduce the client caseload. **[HH-05]**

The law student option as a legal representative should be reinstated because legal services organizations and law school clinics employ law student interns and support staff that are not licensed as investigators or legal para-professionals. To become a law student intern, the law students must be from a law school accredited by the American or California State Bar Association. The supervising attorney is responsible for training the law students to carry out various tasks involved in the provision of legal services including the task of conducting interviews. The requirement in the existing regulations that the attorney provide written authorization to the warden insures that no untrained or unsupervised law student will be placed in the role of attorney representative. **[HH-09]**

The proposed rules go beyond what is required by the California State Bar in regard to certified law students. State Bar Rules governing the "Practical Training of Law Students" require different levels of attorney supervision for different types of student work. Students at law school clinics meet with inmate clients to provide legal advice. A Certificated Student may "give legal advice to the client" provided that he or she "performs the activities under the *general supervision* of the Supervising Attorney." By contrast, a student may only appear on behalf of the client in a deposition or in a judicial or administrative proceeding under the *"direct and immediate supervision* and in the *personal presence* of the Supervising Attorney." It is clear by comparing these two sections that the Bar does not require a Supervising Attorney's personal presence for law student meetings with clients. In specifying the level of Supervising Attorney involvement for giving advice, the State Bar chose to require only general supervision, not the sort of direct supervision and the personal presence of the lawyer that is required for taking depositions or appearing before an agency or tribunal. **[HH-03, HH-04, HH-05]**

Certified Legal Para-professional:

By making a degree (unspecified as to type) a prerequisite to qualifying as an attorney representative, the regulation as written would prohibit college student volunteers, who often expend enormous time and energy helping lawyers investigate their capital cases, from visiting clients without being accompanied by a lawyer. It would also eliminate the use of seasoned investigators who lack "a degree." **[HH-01]**

Applicable law prohibits restricting confidential legal visits to certified legal Para-Professionals and investigators. California accords the rights and responsibilities of paralegals upon full-time employees of attorneys. (Bus. & Prof. Code [paralegal may be qualified by work experience].) Accordingly, your agency's proposed restrictions unjustifiably restrict confidential legal visits. (See Reed v. Evans (S.D. Ga. 1978) 455 F. Supp. 1139, 1142 aff'd (5th Cir. 1979) 592 F.2d 1189

[requiring only that a paralegal be employed by an attorney to qualify for confidential legal visit with inmate]; Bus & Prof Code, 6453 [applying to paralegals the duty of confidentiality and attorney-client privilege co-extensive to that applicable to attorneys under Bus. & Prof Code 6068].) **[HH-08a, HH-24]**

Regulations prohibiting all but licensed private investigators and the ill defined "certified legal paraprofessionals" from confidential visits with clients and inmate witnesses could, narrowly construed, effectively prohibit a significant number of the Habeas Corpus Center personnel from visiting with our clients without being accompanied by an attorney. **[HH-01]**

There are only 544 certified legal assistants in the State of California, of whom 30 have continued to earn paralegal certification. This low number is shocking when compared to the 157,035 prisoner's currently incarcerated in California. **[HH-04]**

Would limit inmate client visitation by paralegals to those with a State Bar certification (which does not exist in California), or those possessing a diploma or degree "substantiating proof of training." **[HH-01, HH-05, HH-06, HH-07, HH-10, HH-11, HH-14, HH-31, HH-32, HH-33, HH-50, HH-51, HH-53, HH-55, HH-59, HH-60]**

There is no mandatory certification for paralegals in California. Certification can only be obtained through the National Association of Legal Assistants. Those who qualify must take a two [part] text to obtain the certification credential: CLA. California has an advanced certification program the CAS examination. That examination cannot be taken unless that individual has obtained the CLA designation. **[HH-14]**

By changing the regulations to allow only credentialed paralegals or licensed investigators to make the visits, CDC will dramatically raise the costs associated with representing inmates. In fact, that rule alone will likely force many non-profits and other civil rights organizations devoted to helping inmates with their legal problems (whether having to do with confinement issues or unrelated legal matters) to cease operations or otherwise seriously curtail the number of clients they represent. We hope this is not CDC's real intent. **[GG-70, HH-26]**

Full-Time/Other Employee:

Would eliminate existing provisions that allow visitation access to any full-time employee of an inmate's counsel. The change would require that any investigator who wished to visit an inmate client as an attorney representative must be a licensed investigator who is either employed by that inmate's attorney or appointed by the court. A Public Defender's Investigators are not always licensed as Private Investigators. This excludes law students, law interns and volunteers who really wish to provide legal help. **[HH-01, HH-05, HH-06, HH-07, HH-10, HH-11, HH-31, HH-32, HH-33, HH-50, HH-51, HH-52, HH-53, HH-55, HH-59, HH-64, HH-65]**

By removing confidential visits for all "full-time employees" of the attorney or appointed investigator, the proposed regulation deprives this office of the Federal Defender of being able to use any full-time staff member. **[HH-10]**

The full-time employee designation is eliminated; attorneys who represent prisoners in civil rights cases, criminal appeals and direct legal services currently use this category extensively. **[HH-04]**

Full time employees of attorneys should not be stricken as authorized representative. To eliminate full-time employees of attorney representatives, which includes most advocacy groups, is giving [CDC] employees a free an unchallenged hand at abusing they system. It will ensure unfair and unjust treatment for prisoners. It implies that CDC is afraid of discoveries that these visitors may make. **[AA, GG-08, GG-09, GG-10, GG-11]**

The CDC's proposed regulations irrationally and severely limit who can act as an attorney's representative. These regulations will stifle the communication between a prisoner and his or her attorney and will significantly hamper an attorney's ability to represent prisoners, as attorneys will not be able to utilize volunteers, non-certified law students and non-certified paraprofessionals as legal representatives. Such deterrence to legal counsel has not been tolerated by the United States Supreme Court in prior litigation against the California Department of Corrections. In Procunier v. Martinez. "The court reasoned that the ban against the use of law students or other paraprofessionals for attorney-client interviews would deter some attorneys from representing prisoners who could not afford to pay their traveling time… Allowing law students and paraprofessionals to interview prisoners might well reduce the cost of legal representation for prisoners. **[GG-65, HH-04, HH-13]**

Requiring attorneys either to attend all client visits and inmate interviews or to employ only licensed or certified investigators and paralegals to do so rather than continuing to train other legal staff members who can perform these tasks at a more cost-effective rate would impose a substantial financial burden upon the court operating this program. **[HH-01]**

The requirement that the legal para-professional be an employee of the lawyers should be eliminated because small business practitioners, legal services organizations and law school clinics often are not able to hire legal para-professionals and often must seek out volunteer legal para-professionals on a pro-bono basis. These volunteers are trained in performing the legal tasks requested by the attorney, and in the behavioral expectations necessary for preserving client confidentiality and prison security. It will be difficult for small business practitioners to comply with the “employee” requirement without setting up a formal employment structure that will pay but a nominal wage, but require financially prohibitive and elaborate record-keeping for tax and social security purposes for the individual involved. Such “red tape” difficulty is not justified because the “employee” requirement does nothing to provide additional security to the prison above what is already provided by the current requirement. **[HH-09]**

If legal visits to inmates can only be made by lawyers, licensed investigators and professional paralegals, prisoners could lose legal representation altogether. **[HH-43]**

Our sentencing specialists have occasion to visit an inmate in the event of an upcoming resentencing hearing order by either the trial or appeal court. These specialists typically have a probation-type background, but are neither licensed investigators nor paralegals. There can be no valid reason for excluding these specialists from visiting as attorney representatives. **[HH-07]**

A substantial number of CDC inmates suffer from psychiatric disorders of varying degree. Those who act out and get into trouble in the institutions are frequently those who suffer from serious mental illnesses. Consequently, it is often necessary to have our client/inmate examined, privately and confidentially, by a psychiatrist or psychologist (or both) retained by the defense. There appears to be no provision in your proposal to provide for visits by such defense-retained experts to examine or consult with the client. I would propose an exception for psychologists and/or psychiatrists employed by the defense. Your proposal appears to lack provision for confidential visits by members of the defense team other than the attorney. I would ask that such provisions be made. There is also no provision for translators, sign language interpreters or mental health clinicians. **[HH-12, HH-25, HH-75]**

I recommend the Department reject proposed subsection (c)(1). In the alternative, it should amend the text as follows: “(C) An Investigator or Paralegal who is an employee of the Federal Defender.” However, this alternative does not solve the same problems the proposed ext will cause for private attorneys who accept similar appointments to represent habeas corpus petitioners. **[HH-06]**

The restrictions on who can serve as an attorney representative seem far too stiff—a private investigator working a case with an attorney might well not be “employed” by that attorney, and a

person performing paralegal services may well not be credentialed (we have a bilingual secretary in our office, for example, who probably does a much better job of these interviews than better-credentialed paralegals). This rule seems particularly harsh because of the large number of inmates who are either not fluent in English or not wealthy enough to pay for lawyers with staff that meet your regulations. Again, particularly because it can take more than a day of driving to do an interview at some of your facilities, this regulation imposes an extreme hardship on attorneys and their clients. **[HH-18]**

If the Department has a policy to the effect that a prisoner's spouse (or other relative) cannot have a legal visit with the prisoner, then it should promulgate that policy into a regulation (assuming the Department could come up with a proper justification). Such a policy would apply not only to an attorney representative who was an employee of an attorney or a non-Bar-certified law student, a certified legal para-professional, a licensed private investigator and to an attorney. The rule could be implemented merely by adding to the attorney authorization requirement, and additional requirement that the attorney indicates that the attorney representative is not the spouse of the prisoner. The attorney might well have good reasons, even without such a regulation, for not wanting to authorize the spouse of the prisoner to act as a representative for the attorney. On the other hand, the attorney may have good reasons for wanting to authorize the spouse. Either way, if the policy is explicit rather than underground, the Department can enforce it and the attorney can conform to it, which would take care of the Department's security concern and the attorney could also seek an exemption in a special case where there might be a demonstrable need for the involvement of a spouse ad a legal representative. In the alternative, if the Department simply wants to know whether the attorney representative is the spouse of the prisoner, the Department has the ready alternative of promulgating a regulation that mandates such disclosure instead of implementing a wholesale elimination of categories of "other persons" whom the attorney can authorize. Finally, there is nothing in the proposed regulations which would prevent the spouse of a prisoner from performing as an attorney representative by becoming a law student and obtaining bar certification, by obtaining a diploma as a para-professional or becoming an authorized private investigator. **[HH-09]**

Concerning the explanation that the rule is warranted to prevent an inmate's wife slipping through on a legal visit…this is a hypothetical situation not grounded in any evidence. Wives and other family members have other means of visiting inmates, as they have access to family visitation. **[HH-08]**

It the perceived need for these changes is related to concerns about conduct engaged in by attorney representatives while conducting inmate visits, such concerns are already adequately addressed by the California Rules of Professional Conduct, which are binding upon all members of the state Bar. These rules make clear that attorneys have the duty to supervise the work of non-attorney employees or agents, and any misconduct engaged in by agents acting as attorney representatives is imputed to the attorney. **[HH-01]**

If any misconduct were to occur, there are institutional procedures already in place to deal with the problem. Existing §3175(j) of current regulations sets forth the procedure for controlling abuse of visitation privileges. The offending individual would be required to show proof that he or she and the inmate have a legitimate legal reason for contact, and would be subject to an investigation by the head of the institution. In addition, any student involved in inappropriate conduct would face possible discipline by the State Bar, the federal court, or their law school. Students and other legal visitors must report whether they have any family in the CDC system upon obtaining visitation privileges in a facility. **[HH-08]**

The proposed rule is a fundamental denial of inmates right to meaningful access to the courts. There are inmates here who have difficult speaking and writing in English. They require access to translators to effectively communicate with attorneys, investigators, or the courts in order to meaningfully purse their right to petition for redress. Also, many inmates are afraid to put anything on <u>paper</u> regarding their complaints or information concerning conditions in prison

because of CDC's well-known policy of retaliation. These inmates would be denied their right to meaningful representation if they cannot speak personally and confidentially to someone who will represent their legal interests—whether the client is speaking directly to his/her attorney or that attorney's designated representative. Furthermore, a regulation that allows the states attorney general to send any of its representatives into a prison to speak with inmates, yet forbids the inmate's attorney from doing the same would not only be in violation of the fundamental right to adequate representation, it would also violate the 14th Amendment's guarantee of equal protection. **[GG-61]**

Organizations providing legal aid to inmates need to continue to use volunteers, interns and law students as an affordable means to communicate with their inmate clients, whether the subject be criminal proceedings, making out a will, or to inquire about prison conditions. **[HH-43]**

Many attorneys who assist inmates need an intern, volunteer, law student, etc. [when they] see the innate—why should this not be allowed? **[GG-12]**

Absent some compelling justification to restrict these visits, we must not hinder the ability of inmates to have adequate legal representation and engage in confidential communications with attorneys and their staff members. Such staff is necessarily used to reduce costs (especially when dealing with long distances between the lawyer and the inmate) and such a restriction most adversely impacts persons with low incomes. **[HH-27]**

RESPONSE: Irrespective of the accommodations previously noted on pages 114 and 117 of the FSOR above, the following additional textual revisions summarized below have been made in direct response to the comments concerning §3178(c) above:

- The Renotice text of (c)(1)(A) is amended so as to replace the word "employed" with "sponsored."
- The Renotice text of (c)(1)(B) is replaced with new text, adding "an investigator employed by a government agency, public agency or public institution" to the list of individuals who may be designated as attorney representative.
- The Initial NCDR text of (d)(1)(C) which had been changed and relocated to the Renotice text subsection (d) has been restored, as amended, to subsection (c)(1)(C).
- The Renotice text of (c)(1)(B) has been revised and redesignated (c)(1)(D).
- The text of (c)(1)(E) is newly added to permit "an employee of an attorney, legitimate legal service organization, or licensed private investigator sponsored by the attorney or licensed private investigator" to be named an attorney representative in accordance with the provisions of this regulation.
- Subsections (c)(1)(E)(i) and (ii) have been newly added so as to allow certain personnel retained by an attorney or attorney representative to accompany attorney visits provided written certification of such designation has been provided in accordance with other amended provisions of this subsection. In addition, unaccompanied visits by certain specified licensed professionals will be allowed by this new rule.
- The revisions summarized above necessitate certain other minor changes in the Renotice text as published. The textual amendments concerning law students that had been relocated to subsection (d) have been withdrawn. Accordingly, as the text of the Second Renotice reflects, the Initial Renotice redesignation of subsection "(e)" is cancelled.

By these changes the Department intends to "undo" the unintentional consequences of revisions contained in the Initial Renotice as described on pages 114, 115, 117 and 118:

- Licensed private investigators, as opposed to having to be employees of the attorney, have to be attorney sponsored only, which significantly expands the options available to the attorney in naming attorney representatives.
- Options are likewise expanded with the addition of public sector investigators to the list of allowed attorney representatives. This change is coupled with the elimination of the word "private" as a modifier in the text of subsection (a) as described on pages 160-161above.

- Law students have been "restored" to the list of allowable attorney representatives. In addition the rule has been updated to eliminate certification language that has proved confusing to Commenters and which now appears unnecessary in light of the discussion contained and change described on page 162 above. Other objectionable textual additives reflected in the subsection (d) text of the Initial Renotice have been discontinued.
- Paralleling revisions pertaining to private investigators described above, legal para-professionals will have to be attorney sponsored only, significantly expanding the options available with respect to naming attorney representatives. For the same reason, existing and added language regarding bar or post-secondary certification has been entirely deleted. This permits paralegals as legally defined as well as other individuals formally or informally possessing the qualifications needed to function in a legal para-professional capacity to be named attorney representative.

By these changes the Department further intends to significantly widen the existing scope of the rules concerning attorney representative designations in order to accommodate suggestions appearing above:

- A new "blanket" category has been created: *Any* employee of an attorney, legal service organization or licensed private investigator sponsored by the attorney or investigator may be designated attorney representative in accordance with this regulation. This addition accommodates those who felt deletion of "full-time employee" from the NCDR version of the rules was unwarranted. Moreover, it allows the individual in question to be employed in a less than "full-time" capacity as was previously required in the superceded rules pertaining to attorney visits.
- As fully and openly reflected in the remarks of certain Commenters above, it has apparently been a long-standing informal procedure for "litigation support personnel" to accompany attorneys or attorney representatives, irrespective of the absence of a specific rule permitting such practice. Accordingly, this deficiency is being corrected with the adoption of a new rule. Certified interpreters, court reporters and health care professionals providing litigation support will be officially permitted to accompany attorneys and attorney representatives during future visits. In addition to not limiting the list of allowable personnel to only those listed, the Department is creating a special exemption for health care professionals to the requirement that the attorney or representative must accompany such support personnel during a visit. While individuals acting in a volunteer avocational or non-retained capacity are not included as litigation support personnel, such individuals may be qualified to act as legal para-professional as newly redefined.

3178(c)(1)(A) & (B), (c)(2)(C) & (d): Licensure/Certification

The following comments are accommodated in the manner described:

Special "certification" language was not in the regulations addressed in the hearing on March 8th. **[HH-15]**

Certification provisions for paralegals, legal investigators and law students will make it impossible for most legal agencies to utilize attorney representatives and conduct their legal work. Very few paralegals or employees are "certified." Attorneys should be able to utilize employees, students and volunteers to conduct legal visits as long as an attorney sponsors them. Restricting access only to licensed and certified personnel will dramatically reduce the pool of professional people available to do this work. **[CC, GG-03, GG-17, GG-24, GG-56, HH-11, HH-21, HH-27, HH-29, HH-36]**

The concern lies with the term regarding a para-professional being "certified by a state bar…" The California State Bar nor any other agency does not certify para-professionals, nor is there any mandatory certification in place for para-professionals. It is unclear as to the term

"certification" in section 3178(c). Please refer to Business & Professions 6450, (c) 1-4, which clearly defines the qualifications of a paralegal. Please also consider that the Business & Professions Code 6450 (D) and (E) which defines what a paralegal is NOT: (e) A paralegal does not include a nonlawyer who provides legal services directly to members of the public or a legal document assistant or unlawful detainer assistant as defined in Section 6400. (f) If a legal document assistant, as defined in subdivision (c) of Section 6400, has registered, on or before January 1, 2001, as required by law, a business name that includes the word "paralegal," that person may continue to use that business name until he or she is required to renew registration. **[HH-28]**

The legal requirements to become a paralegal or a legal assistant do NOT require certification. All paralegals, whether certified or not, can perform client interviews. There is no rationale for why the Department should be permitted to limit attorney visitation to only certified paralegals. **[HH-04]**

The fundamental constitutional right of access to the courts requires prison authorities to assist inmates in the preparation and filing of meaningful legal papers. Among the alternatives prison authorities may utilize in providing that access is to supply adequate assistance from persons trained in the law, including paraprofessionals and law students, either as volunteers or in formal clinical programs. Prior California prison regulations which restricted inmates to receiving legal assistance only from members of the bar, and which effectively prevented inmates from receiving that assistance from paraprofessionals and law students, were held to constitute an unconstitutional infringement on the inmates' right of access to the courts. The proposed regulations attempt to revive these rules, in spite of the fact that they are at odds with the holding of the *Procunier* case. **[HH-08]**

The requirement that the state bar certify the legal para-professional should be eliminated. Many of these volunteer legal para-professionals have acted as representatives of attorneys for prisoner interviews since long before there was any such thing as a certification program. Yet the attorneys they work for train them and they are competent to do the tasks the attorney authorizes. Moreover, they are specialists in that their only legal interest is in the civil and human rights of prisoners. Because none of the legal para-professional training programs in California offer courses in the specialized area of prisoner interviewing, and because these volunteer specialist legal para-professionals are not interested in a for-profit career as a generalist legal para-professional, the diploma requirement saddles these specialists with a needless expense without providing the prison with any assurance that the individual in question will be trained to act competently and within the behavioral guidelines of the prison. This new diploma requirement is not necessary because it does not eliminate the responsibility for the attorney to train the legal para-professional representative and provide written authorization to the warden. **[HH-09]**

Attempting to regulate visitation in order to supposedly assure quality representation is not only ludicrous, but is not a legitimate concern of the Department. It is inappropriate for the Department to police the provision of legal services to inmates. The courts have maintained that allowing students and other paraprofessionals to visit inmates without an attorney present at all time is a desirable way for such cases to be handled. If an inmate is dissatisfied with the quality of a visit with a student or paraprofessional, he can request that the attorney visit, either form the student during the visit, or in writing. Thus, because inmates have an available remedy to any perceived inadequacies, and because the courts have stated that the use of clinical programs and attorney staff are appropriate for the management of inmates' cases, the Department is not in a position to argue or interfere with such programs' operation by implementing the proposed regulations. **[HH-08]**

As with law students, the certification requirement in the current regulations has never been strictly interpreted, in my experience, to require volunteer legal para-professionals trained and authorized by an attorney to present a diploma or any proof of certification by the bar or other program. The current regulations should continue to be so interpreted in order not to completely remove from attorneys the options of authorizing well trained but uncertified legal para-

professionals. They also should continue to be so interpreted so as to not force these para-professionals to ensure the expense of obtaining a diploma that is wholly unrelated to the specialized prison work of the attorney. The prisons should continue to rely on the written authorization of the attorney for assurance as to the competency and training of such individuals. **[HH-09]**

It is inconceivable that the Department can be held liable to a prisoner who has suffered from some kind of legal malpractice due to actions or inactions of an attorney or attorney representative. The Department is protected by its already existing requirement that the attorney must provide written assurance that the representative is authorized to act for the attorney. This requirement fulfills the prison's only duty, which is to make sure that the attorney has indeed authorized the attorney representative. The attorney has the duty of making sure the representative is qualified and trained for the job. **[HH-09]**

Given that the state will only pay $25 per hour for someone to translate for me, there are limited persons I can draw on. Requiring someone "certified" is going to cause hardship and additional expenses. I also need to have other professionals on occasion come in to see my clients. These professionals have included polygraph examiners, psychologists, and the like. These folk are important to the work I do and there has never been a problem with CDC with any of the experts I have used. If I have to get a court order for access, it will be a waste of my time, the court's time, and the taxpayer's money. **[HH-19]**

We object in the strongest possible terms to the requirement of certification for individuals who act as intermediaries between lawyers and prisoners. Certification of paralegals is a relatively new process that has not been widely tested among lawyers who serve the needs of prisoners. We are unaware of any incidents involving investigators, law clerks, or student assistants to attorneys that suggest a need to burden the process in the way proposed. It is in the interest of everyone in the system for these people to have adequate access in the institutions. **[GG-25, GG-57]**

It is entirely unjust to deny prisoners access to legal aid, whether "certified" or not. Attorneys and their representatives with signed legal visiting forms should continue to be allowed to visit prisoners. **[HH-45]**

Professional degree and license holders are expensive. They send people under their supervision in order to hold costs down. **[GG-02, HH-11]**

Revise: Additional state certified legal visitors are allowable. **[GG-55]**

RESPONSE: Deletions in "certification" language contained in Renotice subsections (c)(1)(C), (c)(1)(D) and (d) have already been explained on page 172 of the FSOR above. In addition the text of subsection (c)(2)(C) is revised as follows: The written designation of attorney representative presented by public sector investigators shall contain valid identification of their employment; or, the written designation will be a letter in the form of a declaration that the representative is being sponsored by the attorney and the attorney accepts full responsibility for actions taken by the representative. As at least one Commenter has pointed out, the "certification" text contained in the attorney visiting rules has never been enforced, and were possibly too carelessly framed in the first place. Well-intentioned changes and revisions such as those described in the ISOR and on 118 of the FSOR above have been needlessly upsetting to and seriously misinterpreted by the commenting public. Therefore, the Department has tried to "repair" the problem with the revisions noted.

3178(c)(3): Affording Attorney Representatives Accommodations/Services

The following comments are accommodated in the manner described:

Attorney representatives should not be stricken from this section. **[AA]**

It is unclear whether or not the confidential protections for "attorney representatives" apply to provisions of these regulations in which the words "attorney representatives" are explicitly stricken. Given that the designation "attorney representatives" is retained in other portions of the regulations, this is confusing. **[HH-01]**

Proposed changes of other subsections (such as subsection "l") deletes "attorney representative" from those legal visitors who are entitled to a conversation with the inmate-cline that the Department neither monitors nor "listen[s] to." Thus, proposed subsection (l), when not considered with (c)(3) creates confusion about whether an attorney representative is entitled to the same confidential arrangement afforded an attorney. If the Department did not intend to exclude attorney representatives then it should clarify that "attorney representatives," like the attorneys they represent, are entitled to conversations with the inmate-client (or inmate-witness) that the Department neither monitors nor listens to. **[HH-06]**

RESPONSE: As page 118 of the FSOR above explains, the textual addition of "subject to the same rules and regulations" contained in (c)(3) was intended to broaden the applicability of the remainder of the attorney visiting section to attorney and representative alike, permitting deletion of the textual redundancy "and attorney representative" throughout the rest of the text in this section. Unfortunately, there has been much public misunderstanding of this change, most Commenters assuming incorrectly that the Department was removing "confidential protections" with the subsequent deletions of "attorney representatives" from the Initial Renotice text. Consequently, while probably not ideal from the standpoint of avoiding needless repetition, the phrase "attorney representative" has been restored and sometimes even added to the text where it had been previously stricken or omitted. This appears to be the least complicated way to remedy the concerns expressed.

3178(d): Student Attorney

The comments appearing immediately below have already been addressed and accommodated in the manner described above on pages 171 and 172 of the FSOR:

Any concerns regarding the competency of certified law students to provide legal representation is unfounded. In order to gain certification, law students must successfully complete a number of legal courses including, but not limited to, civil procedure and evidence. **[HH-13]**

In amending regulations under the guise of promoting clarity, the Department is actually limited the scope of legal representation available to those incarcerated in California's correctional settings. **[HH-05]**

The movement of the provision for certified law student from proposed (c)(2) to (d) creates a distinction between certified law students and attorney representatives. This movement is substantive in nature as it then opts students out of the rights and responsibilities afforded attorney representatives. This change results in prisoners interviewed by law students losing many rights and is therefore unacceptable. Law students should remain classified as attorney representatives in order to ensure them the rights to which they are entitled. **[HH-04]**

This proposed section would not allow Certified Law Students to meet with inmates unless the Supervising Attorney is present. That goes further than the State Bar Rules; The State Bar Rules governing the "Practical Training of Law Students'" require different levels of attorney supervision for different types of student work. Students at law school clinics meet with inmate clients to provide legal advice. State Bar 5.1.1 provides that a Certified Student may "give legal advice to the client" provided that he or she "performs the activities under the *general supervision* of the Supervising Attorney. By contrast, a student may only appear on behalf of the client in a

deposition or in a judicial or administrative proceeding under the "direct and immediate supervision and in the personal presence of the Supervising Attorney" It is clear by comparing these two sections that a State Bar does not require a Supervising Attorney's personal presence for law student meeting with clients. **[GG-65, GG-70, HH-03, HH-04, HH-05]**

The California Rules of Court likewise does not require a Supervising Attorney's personal presence for law student meetings with clients. **[HH-05]**

The most recent proposed changes fail to include certified law students in the list of approved attorney representatives. The requirement that the supervising attorney be physically present at a prison attorney visit exceeds any requirement imposed by state of federal student practice rules, clearly fails to meet the most reasonable alternative test and runs afoul the constitutional rights of detainees. This provision appears for the first time in the revised proposal, and is not contemplated in the ISOR, nor is there any empirical basis for change. While state bar rules require the direct and immediate supervision and physical presence of the supervising attorney for depositions and court appearances, the rules specifically require only "general supervision" for giving legal advice to clients. The applicable student practice rules for the US Circuit Court and federal district courts also allow client conferences with certified law students without the physical presence of the supervising attorney. The Department lacks the authority to impose more stringent requirements on certified law students than these other judicially based authorities. The provision runs afoul of the requirement that rule changes include only the most reasonable and least burdensome alternative. **[HH-08]**

By mandating that every student be accompanied by a licensed attorney for every inmate visit, the proposed changes will force already over-worked attorneys to take time out of their day for what is often a routine visit, during which the student merely needs to ask a few questions or get court documents signed. These visits are time-consuming, and prohibit the attorney from using his time to work on the merits of the case while the student takes care of other details. The proposed rules interfere with the ability of attorneys supervising law students or employees to exercise their independent judgment in allocating scarce resources. The determination of whether to send a staff member or law student to perform a routine task is one that currently is left to the individual lawyer, and the regulations should not be amended to remove the ability of the lawyer to make these choices. **[HH-08]**

It is important that law student interns retain the ability to attend client interviews, even when not accompanied by a lawyer. **[HH-01]**

The proposed regulation would interfere with legitimate educational goals. While at the clinic I learned interviewing techniques and document preparation skills. I was given every opportunity to learn how to handle every aspect of a case at I helped our clients. Although I always had an attorney supervising and overseeing my work, my ability to visit inmates without being accompanied was helpful and allowed the attorney to assist other students, or work on the merits and legal issues of the case. **[HH-13]**

The clinic cannot provide quality and consistent service if the supervising attorney must accompany the certified law student each time they visit an inmate. The greatest advantage to allowing certified law student to concentrate in the fact gathering and administrative details of the cases is to allow our supervising attorney to focus on the core legal issues of the case. **[HH-13]**

I object to the requirement that the law student be required to be "accompanied" by their sponsoring attorney during the attorney visit, as this is not required by state bar rules in any event, and serves no reasonable interest, while impairing the provision of legal services to poor inmates, who could not otherwise obtain the needed legal services. **[GG-69]**

Addition of the terminology "be accompanied" would be inefficient because this would mean that an attorney would have to be present when an investigator or other authorized individual was

visiting the prisoner. Since the investigator or other authorized person should have been approved, an attorney should not then be required to chaperone the investigator. **[GG-70]**

The proposed changes are narrower than both the State Bar rules and California Rules of Court with respect to Certified Law Students. **[HH-05]**

The proposed change requiring certified law-students be accompanied by "their sponsoring attorney" is overly narrow. Certified law students might work for any number of attorneys during their clerkship period in this office. Generally, while one attorney will sign the forms required for federal court supervision, federal court rules recognize and accommodate the reality that the supervising attorney may change during the certified law students' clerkship. Additionally, a certified law student may be officially supervised in federal court on misdemeanor cases by one attorney and still assist other attorneys on legal research projects. Occasionally, such a certified student will express an interest in accompanying the second attorney on a prison visit to the inmate on whose behalf the research project was needed. The specific "sponsoring" attorney should not be required to accompany the law student if another attorney employed by this office is already providing such supervision. **[HH-10]**

We also object to that part of the newly proposed regulations that would require certified law students to present evidence of their certification. Although federal court rules require many law students to meet the same requirements as those imposed by the California Bar, they do not require a separate certification by the State Bar. Moreover, the federal courts do not currently provide evidence of certification. At most, the Department should require a letter signed by the supervising attorney, indicating that the student has been certified by the appropriate court. **[HH-08]**

3178(e): Visit Requests

The following comment is accommodated in the manner described:

The proposed rule requires a lawyer to request a legal visit in writing. Current practice at most prisons allow such visits to be requested by telephone. The proposed rule should provide for "fax" requests. **[GG-70, HH-02, HH-04, HH-07]**

RESPONSE: In fact, the Department currently allows for facsimile requests because a facsimile request is—and always has been–considered a written request consistent with the superceded provisions of §3175(c) retained in the undesignated text portion of §3178 published in the January NCDR version and in subsection (e) of the July Initial Renotice. Despite not being previously raised and being at best a borderline clarification, because the suggestion is so minor and relatively harmless, the words "including via facsimile" are added twice parenthetically so as to minimally disrupt the text in question.

3178(e): Declaration of Reason(s) for Visit

The following comments are accommodated in the manner described below:

Applicable law and public policy prohibit restricting confidential legal visits by associate attorneys of court-appointed attorneys. Under the U.S. and California Constitutions, confidential communications between an attorney and client are fundamental to the right to effective assistance of counsel (See, e.g., Barber v Municipal Court (1979) 24 Cal.3d 742, 751 (citing Fisher v. U.S. (1976) 425 U.S. 391, 403).) Applicable law guarantees the confidentiality of communications between a client and "an attorney," not merely a court-appointed attorney. (Bus. & Prof. Code, 6068;Cal. Code Regs., tit 15 Section 3175, subd. (j); see also Pen. Code, Section 2601(b) [guaranteeing confidential correspondence between inmates and any member of the

State Bar of California].) I respectfully request that you continue to permit inmate legal visitations by non-appointed attorneys. **[HH-08a, HH-24]**

Now requires a lawyer to declare that an inmate visit is for one of four specific purposes, under threat of future suspension or exclusion. What is the reason for this change and why should an attorney need to specify a purpose? The purposes you describe in four categories do not even include assisting with legal matters other than the case of record or allow a lawyer to interview an inmate-witness about an incident unless the lawyer is already representing an inmate in a legal proceeding regarding that incident. **[HH-12]**

Most prisoners do not have "attorneys of record" or ongoing cases. This amendment would make it impossible for attorneys to investigate prisoner complaints regarding treatment, care and confinement issues. Attorneys and their representatives with signed legal visiting forms should be allowed to visit with prisoners. **[CC, GG-03, GG-17, GG-24, GG-56, HH-27, HH-36]**

By demanding that an attorney be the attorney of record or be involved in active litigation, the CDC is attempting to block the possibility or likelihood of new litigation, such as might arise out of a case of medical neglect, etc. **[HH-75]**

The amendments include no provision for allowing attorneys who represent non-inmate clients from visiting inmate witnesses. The provision may prevent associate counsel or attorneys from agencies who are not attorneys of record, to advise and consult inmates who are awaiting the appointment of counsel, which can take many years in capital cases. There appear to be no provisions for attorneys who are not the attorney of record to advise and consult with an inmate, even at the request of counsel **[HH-01]**

Declares that attorneys who visit inmates must be the "attorney of record" or be representing inmates in active litigation. Most inmates do not have open criminal cases and do not have an "attorney of record". Limiting visits to attorneys of record will prevent most inmates from having legal access at all. Many times a Public Defender who is not the Attorney of Record, must interview an inmate who is no longer a client. **[HH-07, HH-11, HH-50, HH-51, HH-62]**

These restrictions would exclude visits to provide advice or consultation short of legal representation. They would exclude visits to an inmate witness by counsel representing a non-inmate. They would not permit visits by an attorney who is not counsel of record or planning to become so, even though that attorney is working with the attorney of record. Thus, represented inmates could not receive legal visits from legal service organizations, even with counsel's permission. Furthermore, an attorney would not be permitted to send an associate, not appointed by the court, to visit the client. Thus, "supervised counsel" would not be able to visit their clients by themselves. **[HH-11]**

An appellate attorney becomes attorney or record for the purposes of appeal. However, as trial counsel, the public defender may have need to visit a former client, either while appellate review is being pursued or after the conclusion of such review. The status of the Public Defender as "attorney of record" is open to question under these circumstances. The definitions should be expanded to permit visitation by trial counsel regardless of whether or not an appeal was pursued. **[HH-07]**

Requiring that an attorney declare that the inmate he or she seeks to visit may be directly relevant to the client's legal proceedings, thereby implicating confidentiality concerns. This intrusion into counsel's defense strategy violates protections of attorney work product, especially if counsel is required to divulge the name of his or her client in making this declaration. **[HH-01]**

Reducing the number of reasons for a legal visit is a problem. Inmates have a variety of legal needs and problems. Limiting legal visits to discussion of criminal proceedings unjustly ignores

these needs. These regulations exclude significant legitimate forms of legal assistance and curtail prisoners' access to the courts. **[HH-04, HH-43]**

Forcing attorneys to declare or explain why or the reason for visiting any prisoner would potentially reveal attorney-client confidentiality, e.g., legal strategy. It is improper to make such demands. **[GG-70, HH-04]**

Re: "subsequent suspension." There is no suspension length of time given. **[GG-70]**

Limiting the type of attorney who would be granted access is objectionable. Many prisoners' needs are complex and a stringent, blanket rule will not meet their needs. It is ridiculous to prohibit attorneys from seeking to interview a witness as reported in the newspaper. **[GG-02]**

The words "good standing" are redundant because an attorney or other authorized legal visitor who has "proof of current registry" would necessarily be in good standing by virtue of current registry. **[GG-70]**

Addition of "also report any prior felony convictions, explain any prior suspension or seclusion for a correctional facility" is unnecessary because an attorney is an officer of the court, and visiting application and the approval process and/or CDC records would reveal or provide such information. **[GG-70]**

The purposes specified do NOT include visiting a prisoner for purposes of determining whether he or she is a witness relevant to a particular matter, unless the lawyer is already representing an inmate in a legal proceeding regarding the incident. They also do not include providing legal advice and counsel unrelated to any intent to represent an inmate in a legal proceeding; or assisting with a legal matter such as an advanced health care directive or power of attorney that is unrelated to a "legal proceeding." Other circumstances under which a lawyer or lawyer representative would appropriately schedule a legal visit with a prisoner are also not included. The proposed rule unlawfully limits prisoners' access to attorneys and attorneys' ability to practice their profession. **[HH-02, HH-07]**

I think your list of reasons that attorneys must give for why they want an attorney visit is too narrow, and recommend they be allowed for any "legitimate legal reason" (the language you use elsewhere in the rule) instead. For example, an attorney might need to interview material witnesses for a legal proceeding that has not yet begun, and it is not clear that this is included within the rules, though it clearly should be. **[HH-18]**

I oppose all new language proposed under this section declaring that attorneys who visit prisoners must be "attorneys of record." Most prisoners do not have open criminal cases and do not have attorneys of record. Many legal agencies visit prisoners to investigate complaints of medical neglect, discrimination, and conditions of confinement. Limiting visits to attorneys of records will, in fact, prevent most prisoners from having any legal access. I ask that all new language be stricken from these sections and that you return to the earlier proposed language. **[HH-15, HH-16, HH-21]**

Even those attorneys of record would be harmed by the new regulations because they would prohibit law students from collecting information and conducting simple tasks, on behalf of the attorneys for whom they work, without having the supervising attorneys present. **[HH-22]**

Implicates confidentiality concerns, this intrusion into counsel's defense strategy violates protection of attorney work product, especially in counsel is required to give the name of his or her client in the making of this declaration. A lawyer should not have to disclose the purpose of a visit, even generally. **[HH-01, HH-7]**

The proposed rule requires a lawyer, when requesting a legal visit, to declare under threat of suspension or exclusion in the future, that the visit is for one of four specified purposes. A lawyer should not have to declare a purpose for a legal visit, even generally, as such a requirement would compromise lawyer-client confidentially. Furthermore, the purposes specified in the proposed rule do not include visiting a prisoner for purposes of determining whether he or she is a witness relevant to a particular matter, providing legal advice and counsel unrelated to any to represent him or her in a legal proceeding, investigating potential civil rights violations, or assisting with a legal mater such as an advanced health care directive or power of attorney that is unrelated to a "legal proceeding". These regulations exclude significant legitimate forms of legal assistance and curtail prisoner's access to the courts. **[GG-65, HH-04, HH-07, HH-23]**

The addition of inmate (4th word) would exclude attorneys representing non-prisoners. It gives no authorization for attorneys to visit prisoners for purposes of representing other persons, i.e., non-prisoners. **[GG-70]**

This addition (and/or elsewhere in section) does not provided the opportunity for an attorney to visit a prisoner for the purpose of consulting or advising when the attorney would not be designated as the attorney of record or otherwise actually representing the prisoner in a legal proceeding. Nor would it allow for an attorney visit for an interview to determine if either person wants to engage in an attorney-client relationship. Furthermore forcing attorney's to declare or explain why or the reasoning for visiting any prisoner would potentially reveal attorney-client confidentiality. Additionally, there is no suspension length of time given. **[GG-70]**

The following language should be substituted: "…that the attorney wishes to visit an inmate (1) whom the attorney represents or on whose case the attorney is working; (2) whom the attorney is considering representing; (3) whom the attorney wishes to interview as a witness; or (4) who has requested a visit (or for whom a visit has been requested by a third party when the inmate cannot do so due to a health care condition, disability or other circumstance). The attorney is not required to state the subject matter of the representation, lawsuit, or interview. **[HH-02]**

RESPONSE: The Department's explanation for requiring a declaration of reasons for an attorney visit appear on pages 112, 117 and 119 of the FSOR above. "Written consent of the inmate," as originally required in the opening paragraph of this section, was completely removed as a requirement of these regulations from the Initial Renotice text. Alternatively, attorneys will be required to declare the reasons for visiting. Initially, four reasons were explicitly identified in (e)(1) through (4). With this accommodation, neither "written consent" or "proof of prior contact" will be required as had been previously proposed in the published NCDR of January.

In direct response to the suggestions and objections above, the following revisions have been made in the subsection in question:

- "Of record" has been deleted and the word "inmate's" added to subsection (e)(1);
- "Currently represent an inmate in a legal proceeding and that they" and the words "the same" have been deleted and "a process, purpose or" added to subsection (e)(3);
- The words "process, for a legal purpose or in a legal" have been added to subsection (e)(4);
- An entirely new subsection designated (e)(5) has been added. This declaration is appropriate when the inmate—because of a medical condition, disability or other circumstance–is unable request an attorney visit but a third party has made such a request in the inmate's interest.

By these changes the Department intends to:

- Eliminate a contradiction some Commenters believe the phrase "attorney of record" creates. While this particular phrase has been long established and commonly used in the attorney visiting regulations with no prior objection, its use in the context of this particular subsection has obviously contributed to the confusion noted. In removing the modifier "of record" to attorney, the confusion is eliminated.

- Broaden the declarative list so as to include visiting witnesses relevant to nearly any conceivable legal purpose, including civil processes as well as criminal proceedings. Moreover, nothing impedes attorneys who represent non-inmate clients from making requests to visit inmates.
- Broaden the declarative list so as to include interviewing inmates at the inmate's request for the purpose of considering any conceivable legal representation or "legitimate legal reason," civil and criminal alike.
- Finally, in the manner described immediately above, third party attorney visit requests—especially those of a medical nature such as alleged neglect–have been included in the declarative list as specifically requested.

In *Procunier*, the court acknowledged, "prison authorities are not required to adopt every proposal that may be thought to facilitate prisoner access to the courts." Since the Department's declarative requirement does not ban attorney visits and in fact, represents a less restrictive regulation than originally opposed, the argument that the rule as revised represents an erosion of attorney-client confidentiality or violates protection of attorney work does not weigh heavily, if at all. Moreover, there is no deliberate intent on the part of the Department to have the regulatory impact alleged. Therefore, the declarative requirement has been retained despite being interpreted by at least Commenter to be an improper disclosure of the purpose of a visit.

Finally, the suspension provisions of these regulations are to be found in §3176.1. The phrase "good standing" has been retained for clarity's sake and because the placement of the phrase merely reflects a repositioning of proposed text. Being an officer of the court has no bearing on whether attorneys should be required to report convictions or explain prior suspensions or seclusions. Because the attorney visiting process is decentralized and the attorney will not be required to comply with the regular visiting authorization process, absent a rule being placed somewhere in these regulations, the Department would have no means by which to require the disclosures desired. Therefore, it is inappropriate to suggest that such a rule is unnecessary.

3178(g): 48 Hour Notice for Private Consultation

The following comments are partially accommodated in the manner described:

Why is 24 hours notice inadequate, particularly when CDC encourages most legal visits on normally posted visiting days? **[HH-12]**

Why are 48 rather than 24 hours of notice needed before an attorney can meet with an inmate? **[GG-12]**

The current rule allows legal visits to be requested with a minimum 24-hour notice. This should be retained; in addition, the warden or visiting head should be permitted to authorize visits on an even shorter notice. This should be retained; in addition, the warden or visiting head should be permitted to authorize visits on an even shorter notice. Without prompt ability to have an attorney conduct a visit, prisoners' right of access to attorneys and the courts is unlawfully restricted. **[HH-02]**

The proposed rules states five days as the preferable time frame to request an attorney visit in advance. The rule that allows legal visits to be requested by phone and with a minimum 24 notice should be retained. **[HH-23]**

Would increase the minimum notice required to schedule a legal visit from 24 to 48 hours, making it more difficult to gain access to clients in a short notice situations. 24 hours notice should be adequate for regular visits. Moreover, the regulations should provide for emergency visits without time or burdensome restrictions. This is particularly vital in death penalty cases, which often proceed under severe time constraints. Any changes to this section should alleviate, not compound, this problem. **[HH-01, HH-07, HH-11]**

The proposed rule requires that a legal visit be requested at least 48 hours in advance, with five days stated as the preferable time frame. The current rule allows legal visits to be requested with a minimum 24-hour notice. Lengthening the notice any further will seriously damage prisoners' rights to representation in legal matters where time is of the essence, such as compassionate release cases or recall and re-sentencing pursuant to PC 1170(d), where even one day's delay could render representation moot. **[HH-04]**

RESPONSE: The Department's explanation for changes affecting this portion of the Initial Renotice are found on pages 113, 114 and 117 of the FSOR above. This text is additionally revised with the replacement of "48" with "two business days" and the deletion of the second revised sentence of the subsection in question. This particular sentence established 24 hours notice for attorneys and their representatives previously approved to visit upon documented compelling need. Because regulatory text already exists in this paragraph allowing appointment requests to be cleared in an emergency, a redundancy has been eliminated with the deletion noted. As already noted on page 113 above, the Department's ability to provide attorney access on an "on-demand" basis has become increasingly constrained over time. Regrettably, it is no longer operationally feasible for Departmental personnel to process non-emergency requests in less than two business days.

3178(h): Processing Attorneys into the Institution

The following comment is not accommodated for the reason indicated:

The new language indicated in bold—"and under the same restrictions"–permits institutions to impose unspecified restrictions on legal visitors beyond those currently in place. And yet there are legitimate reasons why legal visitors should be treated differently from regular visitors, such as their need to bring in extensive legal materials for their consultations with their clients. **[HH-11]**

RESPONSE: The objected-to change has been made as a minor editing improvement as reported on pages 111 and 126. In accordance with subsection (m) of the Initial Renotice, legal documents will be permitted into the security area as the Commenter desires and expects. The phrase "under the same restrictions" was added simply to better ensure that it is understood attorney processing will occur in the same manner and under the same restrictions as regular visitors, i.e. with inspections, the possibility of detection device use, imposition of contraband prohibitions, and so forth. There is no hidden intent as implied by the Commenter.

3178(j): Fostering Inmate Misconduct

The comments below have either been partially accommodated in the manner described or, in the alternative, reasons for declining the suggestion have been provided:

"Fostering inmate misconduct" is a very vague standard to which I strongly object. If one of the purposes of these regulations is to bring some standardization to visiting, this is far too much discretion to be left with a warden. **[HH-12]**

The standards: "active litigation," "legitimate reason for contact" and "fostering inmate misconduct" are vague, unworkable, infringes on attorney-client privileged matters, and is susceptible to abuse by prison officials. This should be eliminated entirely. **[HH-02]**

The proposed rule allows the warden to require proof that the lawyer or representative and the prisoner are involved in active litigation or "have a legitimate reason for contact" whenever prison officials believe the lawyer is "fostering inmate misconduct". These standards are vague, unworkable, infringe on attorney-client privileged matters, and are susceptible to abuse by prison officials. **[HH-04, HH-07, HH-23]**

Additionally, an investigation into the circumstances surrounding a legal visit would necessarily result in an investigation into the content of an attorney-client discussion. Such an investigation would clearly infringe on attorney-client confidentiality and is blatantly unconstitutional. **[HH-04]**

Allows prison officials to harass inmates by "Investigating" whether their legal visits are legal in content. **[HH-50, HH-51]**

I suggest that this provision be added to this proposal when it is determined that an attorney as acted in an unprofessional/unethical manner: The State Bar Association should be notified. **[GG-66]**

RESPONSE: Irrespective of the page 119 explanations of Initial Renotice changes in this subsection, the phrase "fostering inmate misconduct" has been discontinued in accordance with the wishes expressed above. However, the remainder of these subsection revisions have been retained as published in the Initial Renotice. The phrases "active litigation" and "legitimate legal reason for contact" substitutes for deleted text, no longer relevant because of other changes, namely the discontinuance of the written consent process. Certainly requiring "proof of designation as legal representative" appears to have originally been no less an infringement on "privileged matters" than the alternative the Department now proposes. Likewise, it is disingenuous at best to suggest that the Department's investigations constitute a license for harassment. The degree of distrust inherent in such a statement defies accommodation. Finally, the Department may well notify the State Bar of violations of these regulations by its members. However, it is inappropriate for the Department to delegate to or rely on a separate authority to be the enforcer of professional standards or sanctions outside or independent of these rules and regulations.

3178(l): Conversations

The following comments arise from misunderstanding changes contained in the Initial Renotice and have been already addressed with the accommodation explained on page 175 of the FSOR above.

The proposed rule eliminates confidentiality for all legal visits except those conducted by an actual attorney and the prohibition on monitoring conversations between a prisoner and attorney representative; every legal visit must be confidential, no matter who is conducting it. The rule should be charged to reflect this fundamental requirement. **[HH-04, HH-07, HH-12]**

It appears this subsection is being re-written to exclude the attorney representative from protected conversation. Should the cost of such policy result in less than equal protection under the law, then that policy may result in the degrading and dismissal of charges against an inmate which would otherwise been legitimate. **[HH-72]**

The proposed rule eliminates confidentiality for all legal visits except those conducted by an actual attorney. The proposed ruled eliminates the prohibition on monitoring conversations between a prisoner and an attorney's designated representative. This provision violates the confidentiality of the attorney client privilege. There is no conceivable justification for this amendment and is certain that if challenged in court, the regulation would be considered unrelated to any legitimate safety concerns. **[HH-23, HH-26]**

Strikes the language that previously protected the confidentiality of meetings between client and attorney representatives. The utility of anyone other than an attorney visiting the client is lost if the conversations are not privileged. The deletion of attorney representative is contrary to the implied intent of other statutes and regulations that afford non-lawyers the same confidentially that an attorney is afforded when they are working as a representative of the attorney. Business and

Professions Code §6453 notes that a paralegal is subject to the same duty as an attorney to maintain inviolate the confidentiality, and "at every peril to himself or herself to preserve the attorney-client privilege." **[HH-01]**

The proposed subsection does not explicitly include non-attorney visitors who are acting as representatives of an attorney. Given the broad scope of attorney-client and attorney-work product privileges, this wording can create problems by not clearly including attorney representatives in the category of persons entitled to confidentiality. **[HH-10]**

The proposed rule eliminates confidentiality for all legal visits except those conducted by an actual attorney; the proposed rule eliminates the prohibition of recording/monitoring conversations between a prisoner and an attorney's designated representative. This proposal conflicts with federal law in the Ninth Circuit and Evidence Code §952 that requires that prisoners be afforded confidential access to an attorney's investigator. (An agent who acts on behalf of the attorney, such as a legal investigator, stands in the shoes of the attorney in securing the attorney-client privilege). **[GG-65, HH-04, HH-11]**

This section unlawfully permits monitoring of confidential conversations between legal para-professionals and inmates. Applicable law applies the attorney-client privilege to communications between a client and a legal para-professional. (See e.g., People v. Meredith (1981) 29 Cal3d. 682, 690, fn. 3 [applying attorney-client privilege to communications between client and paralegal or investigator]; Bus. &Prof. Code, 6453 [applying to paralegals the duty of confidentiality and attorney-client privilege co-extensively to that required of attorneys under 6068].) Infringing upon confidential legal visits between investigators or legal para-professionals and inmates violates inmates' rights to due process guaranteed by the Fourteenth Amendment of the U.S. Constitution. (See Reed v. Evans (S.D. Ga. 1978) 455 F. Supp. 1139, 1142, aff'd. (5th Cir. 1979) 592 F.2d 1189 [requiring only that a paralegal be employed by an attorney to qualify for confidential legal visit with inmate]; see also Morris v. Superior Court (Walker) (1983) 145 Cal.App3d 561, 565-566 [citing, inter alia, Bounds v. Smith (1977) 430 U.S. 817, 822; Procunier v. Martinez (1974) 416 U.S. 396, 419].) I respectfully request that you do not restrict these legal visits. **[HH-08, HH-24]**

3178(m): Document Inspection

The following comments are accommodated in the manner described:

The rule expands prison officials' power to read legal documents brought into a visit by permitting such reading if the prisoner consents. The current rule provides that both the inmate and the lawyer must consent. The voluntariness of consent in prison is difficult to gauge, so consent of the lawyer should also be required. The proposed rule is disturbing because a lawyer visiting multiple prisoners on the same day often brings in documents related to multiple prisoners, and the consent of one may permit prison officials to read documents related to others. **[HH-02, HH-04]**

Change language to ensure both counsel and client consents to the reading of any documents. **[HH-04]**

Presumably this regulation envisions that the inmate's consent will be elicited at the time the attorney arrives with the materials and after counsel has informed the inmate of this rights. That puts the inmate in the untenable position of either following his counsel's advice (and alienating the guards) or ignoring that advice, and diminishing the bond of mutual trust and confidence that is essential to the attorney-client relationship. The wording leaves open the possibility that the institution will seek advance or blanket consent to read all materials. Such a consequence is unacceptable and contrary to the principle that a waiver of rights must not be extracted from uncounseled laypersons, especially those represented by counsel. **[HH-01]**

The proposed rules expands prison officials' power to read legal documents brought in to a visit by permitting such reading if the prisoner consents. The voluntariness of consent in prison is difficult to ascertain; the rule that both the inmate and the lawyer must consent before a prison official can read a legal document or papers should be retained. **[HH-23]**

Currently, both the inmate and the attorney must give consent before CDC can read legal documents. An inmate is not in a position to refuse a request by CDC officials, and would likely feel obligated to turn documents over even though he or she has a constitutional right to keep legal documents confidential. We are not aware of any rationalization that would justify this rule change. **[HH-26]**

The long-standing rule has been that both the inmate and the lawyer must consent before a prison official can read a legal document or papers. Documents containing the address or hone numbers of witnesses do not belong to the client and the client's access to such documents is restricted, if not prohibited. **[HH-07]**

If the language requiring consent from the inmate's attorney or attorney representative is deleted, prison staff with the mere consent of the inmate could inspect confidential legal materials. Such access to an inmate's legal material that, upon inspection, is shown to contain no contraband, is both unjustified and illegal. This proposed text would chill frank communication between attorney and client because counsel cannot bring working drafts of documents for the client's review without fear of prejudicial disclosure. **[HH-01]**

Adds language that allows staff to open and inspect materials brought to the inmate by the attorney or attorney representative, and deletes language requiring consent from the inmate's attorney or attorney representative prior to staff being allowed to read the materials. This would allow prison staff to inspect legal materials with the mere consent of the inmate. The wording of this provision leaves open the possibility that the institution will seek advance or blanket consent to read all materials brought to the institution by counsel. The California Work-Product Privilege protection applies to the contents of a writing delivered to a client. This protection precludes third parties who do not represent the client from gaining access to the writing. An inmate's assent to inspection, secured in the coercive context of a request from prison staff, does not legitimize such violations of attorney-client confidentiality. Items such as photographs and Medical Records may not on the surface appear to be Legal Material, or Court generated documents however they may be valuable legal documentation. This section excludes attorney representatives who must be included to ensure the attorney client confidentiality is maintained. **[HH-01, HH-06, HH-07, HH-10, HH-11, HH-34]**

"Contraband" is defined in §3000, however, there is no definition of "unauthorized items or substances" causing uncertainly about the scope of staff's discretion to inspect and exclude documents. **[HH-11]**

Addition of the words "unauthorized substances or items" is wholly redundant because it would necessarily be included in the definition of "contraband." **[GG-70]**

RESPONSE: Existing consent safeguards provided inmates with respect to document exchange are not being intentionally diminished by the Department. "Attorney representative" textual deletions made in the Initial Renotice for the reasons described on page 118 above have been mistakenly interpreted by Commenters as evidence to the contrary. As described on page 175, these revisions have been cancelled and the relevant text restored as needed in the published Second Renotice text. In addition, the subsection text contains other minor changes: Subsection (m) is redesignated (n) to reflect enumeration changes made elsewhere in the section; Words are added and subtracted from subsection (n)(3) so as to drop operationally unworkable language respecting the processing of legal documents when the inmate fails to provide inspection consent. This is a self-identified correction on the part of the Department. On the other hand, the

Department disagrees with the assertion that "unauthorized items or substances" as used in this context constitutes a redundancy with respect to "contraband." The phrase is intended to help discourage any inappropriate exchange of items or substances under the guise of supposed legal significance and not only things prohibited under these rules by §3006. The Department's operation manual will provide field personnel any guidance needed to operationalize the rule in addition to the text of the rule itself.

3178(n): "Legal" documents

The following comments are not accommodated for the reasons indicated.

Restricting the documents that an inmate may receive during a visit to "legal" documents invites arbitrary exclusion of relevant documents and may keep attorneys from consulting with their clients about materials, such as photographs or medical records, that have clear significance to their cases although they may not on their face, be "legal" or court-generated documents. **[HH-11]**

RESPONSE: As explained immediately above, in these rules the Department is attempting to discourage the prohibited exchange of items or substances under the guise of supposed legal significance or case relevance. Therefore, addition of the word "legal" as a modifier of "written or printed" is appropriate to this end. Any exclusion would not be arbitrary, but related directly to the attempt to exchange photographs, records or items of a non-legal nature not obviously relevant to the case or legal matter at hand. The word "material" has already been added to this subsection anticipating the concern that case-related photos, records or other items that are not on their face "legal or court generated" could be inadvertently excluded. In addition, the Department's operation manual will provide field personnel any guidance needed to operationalize the rule in addition to the text of the rule itself. Finally, Subsection (n) is redesignated (o) to reflect enumeration changes made elsewhere in the section

3178(o)(1): Attorney may audio record

Deletes the language that previously allowed an attorney to audiotape client interviews. **[HH-01]**

I feel these new proposed regulations attack attorney-client confidentiality. This section allows for the Department of Corrections to tape record conversations between inmates and attorney representatives. **[HH-50]**

Your proposal appears to limit the audio or videotaping of client/inmate visits to attorney visits only. I would propose that any member of the defense team, whether it is an investigator, psychiatrist, polygrapher, or any other member of the defense team, be explicitly permitted to use audio or video taping tools on the same basis as an attorney. **[HH-25]**

RESPONSE: Existing consent safeguards provided inmates with respect to document exchange are not being intentionally diminished by the Department. "Attorney representative" textual deletions made in the Initial Renotice for the reasons described on page 118 above have been mistakenly interpreted by Commenters as evidence to the contrary. As described on page 175, these revisions have been cancelled and the relevant text restored as needed in the published Second Renotice text. With this restoration, any individual included within the broadened definition of "attorney representative" (described on pages 171-2) will be explicitly permitted to use taping tools on the same basis as an attorney. In addition, the subsection text contains other minor changes: Subsection (o) is redesignated (p) to reflect enumeration changes made elsewhere in the section

3178(p) Attorneys may videotape interviews

Deletes the language that previously allowed an attorney to videotape client interviews. **[HH-01]**

RESPONSE: Existing consent safeguards provided inmates with respect to document exchange are not being intentionally diminished by the Department. "Attorney representative" textual deletions made in the Initial Renotice for the reasons described on page 118 above have been mistakenly interpreted by Commenters as evidence to the contrary. As described on page 175, these revisions have been cancelled and the relevant text restored as needed in the published Second Renotice text. In addition, the subsection text contains other minor changes: Subsection (p) is redesignated (q) to reflect enumeration changes made elsewhere in the section

3178(r): Restricting Attorney Privileges

Section 3178 (r) allows administrative action to restrict confidential privileges for visiting, mail and/or telephone privileges between an attorney and client for very vague and general reasons, "where cause exists". This is a completely unacceptable standard and could drastically impair legal representation. While we do not believe this provision will hold up in court, it will take years to settle such a dispute. Because of the importance of legal visiting, the Director should be required to approve any decision restricting an attorney's legal visiting. It should be removed from the regulations. **[HH-21] [HH-23]**

The proposed rule permits the warden or designee to discipline attorneys by imposing restrictions on a lawyer's confidential visits. Because of the importance of legal visiting, and the potential for abuse, the Director alone should be required to approve any decision restricting an attorney's legal visiting. **[HH-02, HH-04]**

I object to this section as it does not identify the nature of "cause" nor explain why the prisoner's attorney should be notified in writing that, based on the prisoner's minor infraction of institution facility regulations, the prisoner's confidential legal privileges will be modified/suspended etc. for a minimum of 6 months. This rule seems rather strange, in that it provides the prison authorities are to act like a tattletale to the prisoner's attorney, authorizing them to notify the attorney of the prisoner's minor misconduct. Even if the rule were referring to the "attorney's" conduct rather than the prisoner's, I somehow fail to see any balance or legitimate interest in seeking to impose serious and indefinite in nature sanctions (no maximum limit specified) over what is subject to trivial accusations of no significant import to anyone actuality. **[GG-69]**

RESPONSE: As explained on FSOR page 126 above, subsection (r) has been substantively revised with the addition, deletion, internal repositioning and/or consolidation of extraneous text. Among these additions is text newly clarifying that restrictions on privileges accorded attorneys or their representatives will be by administrative action of institution/facility heads or designees. This corrects an original NCDR text omission that failed to specify which official would take administrative action in spite of text appearing in the immediately subsequent subsection clearly indicating that the director would be notified of such actions. The Department believes this revised formulation is correct, and further points out that by providing for Director notification, this rule provides the Director the opportunity to review and, if appropriate, order lower-level reconsideration of such decisions. In another revision, the phrase "restrict, for cause" has been replaced with "restrict, where cause exists." The change is intended to emphasize that restriction must be based on the existence of causal evidence, and not on basis of any cause, which could in theory include whim or bias. Moreover, this textual revision notably improves upon text of superceded §3175(r): "The director will be notified when any attorney or attorney's representative abuses the privacy permitted in visiting inmates and administrative action is taken to restrict such visits." If the "very vague and general" text of the existing rule has not yet proven to be an unacceptable standard impairing legal representation, it is hard to see how text clearly and specifically revised so as to reduce such vagueness would have the effect claimed by Commenters above. In yet other revisions, this subsection's original resemblances to text appearing elsewhere pertaining to inmate rule infractions has been greatly reduced, but

apparently not enough to prevent confusion on the part of one Commenter above. As revised, the regulations provide that written warnings of minor infractions or violations of the institution's regulations that can't be prosecuted may be followed with modifications, suspensions or exclusions for periods of at least six months if warnings fail to deter or correct the offending behavior. Therefore, the sanction timeline is specific and clearly more than a trivial matter of concern to no one, as has been claimed above. However, the subsections text identified above contain minor changes: Subsection (r) is redesignated (s) and (s) is redesignated (t) to reflect enumeration changes made elsewhere in the section

3179(d) Appeals Relating to Visiting

In §3176.3(e)(2) the phrase "loss of visits" is used. To keep the regulations in harmony, would not this phrase be a better choice of words instead of "visiting privileges" as used in this section? **[GG-50]**

RESPONSE: The distinction between visiting "privilege" and "right" has been explained previously on pages 27 and 28 (and elsewhere) in the FSOR above. The Commenter is mistaken about the need for a "harmonizing" change.

SUMMARY OF OTHER REVISIONS IN THE INITIAL RENOTICE TEXT

Changes in the text contained in the Initial Renotice, including those structural changes not otherwise identified and discussed above are presented below, summarized on a section-by-section basis:

§3170(e)

Revised cross-reference to 3176.3.

§3176

The following sentence has been added: "The director or institution head may, for cause, exclude a person form entering institutions/facilities of the Department." This adjustment is necessitated by the repositioning of the exclusion provisions of these regulations from §3178.1 to §3176.3

§3176.3

Section 3178.1 has been repositioned to this location in the text and the provisions of §3176.3 renumbered §3176.4. Subsection (b)(5) cross-referencing has been altered to reflect revisions made elsewhere in the Attorney Visiting rules.

§3176.4

Section 3176.3 of the Initial Renotice has been displaced from its original textual location and renumbered §3176.4. Subsection (e)(1) cross-referencing has been altered to reflect revisions made elsewhere in the section.

§3178(k)

Subsection 3178(k) has been restored to the Second Renotice text. This rule, described on ISOR page 20 had been inadvertently omitted from the text of the Initial Renotice.

§3178(l), (m), (p) and (r)

These subsections have been redesignated to reflect enumeration changes made elsewhere in the section.

§3178(s)

Subsection (s)(31) cross-referencing has been altered to reflect revisions made elsewhere in the article.

§3178.1

In a self-identified revision, the Department has relocated the text originally designated §3178.1 to §3176.3. The change is intended to make the regulatory text more logically consistent and the subsection "3178.1" designation—no longer required–is eliminated.

SUMMARY OF CORRECTIONS TO THE SECOND RENOTICE TEXT

Inadvertent omissions from and/or errors in the Second Renotice text are corrected on a section-by-section basis below:

§3170.1(e)

Text of the initial sentence of this subsection should read: **"Inmates undergoing reception center *processing* shall be limited to non-contact visiting."** The word "processing," should have replaced the word "visiting," as evidenced by the fact that otherwise the sentence as it presently appears in the Second Renotice does not make sense.

§3172(a)

This subsection text should read: **"It is the inmate's responsibility to forward a visiting questionnaire to any prospective visitor."** An extraneous comma between the words "questionnaire" and "to" should have been omitted.

§3178(c)

Text of the initial sentence of this subsection should read: **"An attorney or court may designate other persons to act *on their behalf* as attorney representatives."** The text of subsection (c)(1) should read: **"Attorney representatives ~~acting on behalf of an inmate's attorney~~ must be one of the following:"** Verbiage stricken above from the second sentence more properly belongs in the second.

§3178(c)(1)(E)(i) and (ii)

Paragraphs (i) and (ii) in the Second Renotice text are not in fact dependencies of the preceding topic and should not be represented as such, hence the need for redesignation as follows: Subsection (E)(i) should be designated **(c)(2)**, a cross-reference in the first sentence must be changed from (c)(2) to **(c)(3)** and the designation of (E)(ii) completely deleted. Adjustments must accordingly be made in the remainder of subsection 3178(c): subsection (c)(2) changes to **(c)(3)** and (c)(3) to **(c)(4)**.

§3178(d)

The final sentence in subsection (d) has been designated subsection (e), correcting a drafting omission in the Initial and Second Renotice text. In addition, the words "in subsection (d)" substitute for the replaced word "above" in the same sentence.

§3178(f)

Although the parenthesized acronym "CLETS" is unnecessary because of text deletions, it was inadvertently retained in the Second Renotice text, and has been removed from the text as finally adopted. In addition, preceding subsection re-designations were inadvertently left unchanged in the Second Renotice text: (e) has been changed to (d), (d) to (c), and (f) to (d) in the Text as finally adopted.

§3178(p)(1)

The word "such" needs to replace the word "their" in the first sentence of subsection (p)(1) in order to read: **"The institution/facility shall make audio recording equipment available for *such* use."** The revision was intended, but inadvertently omitted from the Second Renotice text.

PUBLIC COMMENT RECEIVED IN RESPONSE TO THE DEPARTMENT'S SECOND NOTICE OF CHANGE TO DIRECTOR'S RULES (CLOSING DECEMBER 13, 2002) HAS BEEN SUMMARIZED BELOW, TOGETHER WITH THE DEPARTMENT'S RESPONSE TO OBJECTIONS AND/OR RECOMMENDATIONS FOR CHANGING THE REGULATION AS ORIGINALLY PROPOSED AND REVISED IN THE INITIAL AND SECOND RENOTICE:

The following comments are NOT accommodated for the reasons indicated. If the reason has already been indicated in the preceding text of the FSOR, the appropriate page(s) are cited and no further explanation or response provided:

General

Replace the word "inmate" with the term "people behind bars" to acknowledge that people are on both sides of the bars. **[JJJ]**

RESPONSE: The suggestion is impractical because "inmate" is pervasive throughout Title 15 and the substitution of an uncommon phrase would be confusing.

Insufficient Review/APA Noncompliance

Not enough time has been given to review the proposal. Inmates received notice and copies on December 5th and comments are only taken until the 13th. Since the only way an inmate can respond is through the mail this does not give them very much time to thoroughly review changes and get a letter mailed to be received by the deadline. More time should be given to respond to the proposed changes. **[BBB]**

Why is it that you have only offered 15 days to respond and why is it that the public is not aware of this, only people whom you feel have a special interest by responding in the past. This goes against many laws and regulations. Why did the first notice not go through? Are you not doing the exact same thing now as you did then, making very little information available to the affected public and offering less time than the legal limit would require and not offering a public forum for comments? **[CCC]**

The Department is refusing to hold a public hearing allowing us to address the newly proposed regulations in accordance with the requirements of state law. Pursuant to the relevant Government Code provisions, office staff filed requests for hearing within the time frame provided by law. Once such a hearing is requested, the department must provide notice of a hearing and the scheduling of such a hearing is not discretionary. In addition the Department has failed to provide proper notice in accordance with the law. Despite having submitted written comments on the Initial Renotice, staff did not receive written notice of the Second Renotice. Therefore, we demand, at minimum, an extension of the public comment period. **[NNN]**

The Department's bad faith in proposing these amendments is evident in their continued flagrant disregard of administrative law requirements concerning notice and public comment on these regulations. To date, the Department has offered no rationale for either their first or second proposed amendments to the visitation regulations that affect legal visitation. Since these changes to the initial proposed regulations have presented substantive and significant amendments affecting legal visitation, rationale is required in accordance with the provisions of the Administrative Procedures Act (APA). **[NNN]**

Moreover, the APA requires a description on the part of Department of any reasonable alternative the agency has identified that would lessen any adverse on small business. All of our offices/agencies qualify as small businesses as defined by California law. We believe all of our agencies/offices will be financially compromised by these regulations because we cannot afford to hire personnel equal to the standard imposed by §3178(c) and non-licensed investigators, volunteers, and non-legal-paraprofessional employees trained in house will be eliminated from conducting private visitation under the proposed regulations. Despite being entitled to special protection as small businesses we will suffer undue hardship as a result of adoption of the proposed regulations. Therefore, we demand that these proposed regulations not be adopted. **[NNN]**

RESPONSE: See pages 17-18 of the FSOR above. The Department has complied with the aforementioned requirements of the APA by issuing an initial regulatory change proposal and in making two Renotice revisions to the initial Notice of Change to Director's Rules reflecting revisions, adjustments and clarifications in direct response to public comment within the time frames established by law. The Department is legally obligated only to Renotice that portion of the public directly commenting on revisions to the rules that are still in the process of being adopted. Individuals, who opt out of the revision process by not commenting on changes made in previous versions, are not provided notice. Those unfamiliar with this process may mistakenly perceive the practice as catering to a special interest rather than the public as a whole. In addition, the review time frames for Renotice comment (15 days) are notably shorter than that for the original review period (45 days), by statute. Therefore, it is wrong to assume that the Department has intentionally foreshortened the review process.

Moreover, requested public hearings are mandatory only for regulations as originally made public. A public hearing was held in March and the public thereby already adequately noted that subsequent textual changes could be expected in the rules in question as reflected in the Initial and Second Renotices. In a Final Statement of Reasons (FSOR), the Department is obligated to: update information contained in the Initial Statement of Reasons (ISOR); summarize each objection or recommendation made regarding the specific adoption, amendment, or repeal proposed; explain how the proposed action has been changed to accommodate each objection or recommendation or the reasons for no change; and, respond to any written comments received regarding sufficiently related changes. This document is the FSOR satisfying any public expectation regarding "rationale for the first and second proposed amendments" affecting legal visitation.

"Undue hardship" upon small business is not sufficient reason under current law to afford small business "special protection," in the manner Commenters demand. All that is legally required is for an agency to assess the potential for adverse economic impact with stress placed upon avoiding imposition of unnecessary or unreasonable regulations or report, record keeping, or compliance requirements. Furthermore, Commenters are not complaining about imposition of added reporting, record keeping or compliance requirements. The financial handicap they oppose arises from presumably halting practices not currently authorized by regulation (i.e. closing a loophole). It is not by adoption, amendment or repeal of regulation that the Department is being accused of imposing an adverse economic impact, but rather by failure to officially sanction unregulated practices that have safety and security implications for the Department. The courts have long held safety and security as a legitimate reason for regulation adoption, irrespective of adverse small business impact, real or alleged. Finally, the Department believes

Commenters have made mistaken assumptions with respect to the impact of these regulations on their businesses as explained below. Such impacts do not in fact exist in the manner supposed.

§3045.2(e)(2)(H)

From context and content, it would seem that the addition of this subsection would nullify the provisions of three other established subsections in this section relating to regular visiting under extraordinary circumstances. The conflict would be with subsections (e)(2)(A)—Out of State visitors; (e)(2)(B)—-Excessive distance; and (e)(2)(F)—Infrequent visits. **[OOO]**

RESPONSE: See pages 28 and 130 of the ISOR above. The proposed rule is in addition to and not in replacement of the other stated reasons for permitting regular visiting under extraordinary circumstances. Reasons for assuming that the new rule nullifies existing rule are not apparent.

§3170(a)

Commenter asserts, "Visiting is a right" and the regulatory text should be changed accordingly. **[DDD]**
Visiting should be listed a privilege as it is subject to loss as directed in §3315. **[EEE]**

RESPONSE: See pages 28 and 29 of the FSOR above. Textual constructions referring to the "loss" of visiting privileges on the part of an inmate are more appropriately found in subsequent sections.

§3170(c)

Institutional heads or their designees will abuse their termination, temporary suspension and modification discretion in order to shut down visiting when they choose. There are instances where a conservation camp has not allowed inmate visitation at all, when non-contact visits were an option. **[DDD]**

RESPONSE: See page 32 of the FSOR above. Instances of deliberate institutional nonconformity with these regulations may be appealed in accordance with §3179.

§3170.1(c)(1) and (2)

Allowances for visitors in excess of five per visit by rotation will cause undue loitering and add confusion to an already confusing situation. To create more confusion and traffic through our Sallyports is not in the best interest of our security. **[EEE]**

The regulation newly calls for visiting in groups of up to ten visitors. With reception center changes in visiting for extended stay inmates, the lack of a physical plant and furniture to accommodate large groups will have a significant negative impact at this institution. **[HHH]**

The wording here is contradictory and confusing. Staff will err on the side of caution by never allowing groups of more than five or three, thus rendering this regulation completely ineffectual. I assume that "accommodate" as used here means to find seating space in the visiting room for groups of visitors larger than three or five. If so, then what does "rotation through the visiting area" mean? Does it mean visitors will be moved to yet another location? I fail to see why a rotation would be necessary it a group finds adequate visiting space upon arrival. Finally, what is the meaning of the phrase "considered a single visit?" Once in the visiting room, how can anything change it from begin "a single" to multiple visits, thus precipitating a termination. Were you to terminate larger groups first—even though other, perhaps smaller groups arriving before then had been visiting for longer periods–that would be a discriminatory termination. **[MMM]**

RESPONSE: See page 132 of the FSOR above. Institutions continue to have the authority to adopt non-conflicting and institution-specific procedures appropriate to conditions particular to a single physical setting and locally prevailing conditions in accordance with §3171(a). This affords the ability to craft remedies to such minor operational difficulties as those noted above. The latest textual revisions to this rule allow groups larger than five or three to be accommodated by allowing individuals other than the first five or three to enter the visiting room after the initial visitors relinquish their places. A misreading of the rule can lead to the conclusion that the wording is contradictory and confusing in the manner asserted. Staff decisions visitors believe make "regulations ineffectual" may be appealed to higher authorities under these rules.

§3170.1(f)

Allowing case-by-case judgment on Ad-Seg contact visits as written will cause numerous letters, appeals and interruptions. Inmates are placed in Ad-Seg to be segregated from the General Population for various reasons, and allowing contacts under such circumstances is contrary to Ad-Seg placement. Therefore, the provision is too vague. **[EEE]**

The newest version of this rule has changed little from the Initial Renotice, and the language is still not strong enough. While it allows for the possibility of longer visits, it does not require or even encourage the institutions to offer such visits. I again suggest you rewrite the rule as follows: "Non-contact visits shall be scheduled in one-hour increments, with longer visits scheduled when space is available." I also ask again for you to make the regulations reflect the sentiments the Department expresses in §3170(a). The regulations should go further in the direction to encouraging the longest visits possible. **[III]**

Have the time for extended non-contact visits to be four hours each. Allow extended visits for people driving greater than 250 miles in the case of non-contact visits. **[JJJ]**

Just because staff may extend visiting time beyond the one hour appointment does not mean they must or that they will. In most instances staff will not do what they don't have to do. Therefore it appears you are attempting to decrease visiting for one class of prisoners once again as you tried to in the original proposal. Keep the appointment times as they are and allow the institutions to shorten a visiting appoint if and when there is overcrowding. By keeping the regulation as it stands you are ensuring that staff will cut visiting when there is no need to. **[MMM]**

RESPONSE: See pages 40, 133-134 and 138 of the FSOR above. The Department regrets it is not possible go further in the direction of encouraging longer visits than already reflected in the accommodations noted. Operational constraints of both a permanent and temporary nature may legitimately restrain the extension of a non-contact visit and it is unnecessarily negative to assume that staff will cut visiting when there is no need to.

§3172(e)

The requirement that changes be reported should be specific to visiting personnel. **[EEE]**

RESPONSE: The Department declines to create a regulation out of an operational directive. If necessary, the Operations Manual will provide field personnel any such guidance needed to operationalize the rule in question.

§3172(b)(2)

There has been a long and continual problem with visitors forging marriage certificates (Confidential marriages come to mind). I have serious concerns with allowing minor spouses to

visit without an adult. If we must go there, I believe that there should be limits on the minor spouse's ability to visit due to the inmate's commitment offenses (e.g. Penal Codes §§ 288, 273.5 etc). **[HHH]**

RESPONSE: The Department declines to create a regulation—identifying forged certificates–out of an operational directive. If necessary, the Operations Manual will provide field personnel any such guidance needed to operationalize the rule in question. If statutorily limits on a minor spouse's ability to visit already exist, there is no need to create a duplicative regulation.

§3172.1(c)(2)

On the reasons for denial of visits, the current regulations call for general reasons pursuant to our licensure for the CLETS. If we have to give specific reasons, we may lose our CLETS licensure. **[HHH]**

RESPONSE: The reasons given will be sufficiently generalized so as to protect the Department's CLETS licensure.

§3172.2(b)(2)

Include all major holidays to insure that the visiting program goals of developing and maintaining healthy family relations are promoted. **[JJJ]**

RESPONSE: See pages 64-65 and 138 of the FSOR above.

§3173(b)

Minor children from the age of 12 through 17 years should be required to provide proof of picture identification consistent with §3173(c). There is a substantial risk of young or young-looking inmate affecting an escape through visiting. **[GGG]**

RESPONSE: See page 72 of the FSOR above. If necessary, the Operations Manual will provide field personnel any guidance needed to operationalize the rule in question, such as recommending that children of the age indicated carry picture identification.

§3173(c)(6)

This form of identification is not currently accepted throughout the state in accordance with a direction from Sacramento headquarters, as numerous falsifications have been reported. **[EEE]**

Has a previous memo regarding the Martricula Consular been superceded? **[FFF]**

RESPONSE: See page 139 of the FSOR above. All operational memoranda in conflict with these regulations are superceded with the promulgation of the new Visiting Rules

§3173.1

Commenter restates earlier request with respect to this section. Whereas the plain intent of superceded §3170.5 was to restrict visitations by child victims, subject to the approval of the juvenile court having jurisdiction, the new rule instead restricts all specified sex offenders from ever visiting with any children unless they are victims. The net effect is to block all visits by any children, except victims. Commenter asks that section §3173.1 be restored to its former workable language—by reinserting the "victim" after the word "minor" in the proposed regulation. **[AAA]**

This policy does not seem clear. The way it is written looks as if any inmate who has been convicted of the crimes mentioned may not have minors visit them. Visiting officers seem to think that 3173.1 means that inmates can not have visits from minors who have been the victim of the listed crimes. If the proposal does not allow any minor to visit with an inmate convicted of any of the listed crimes, then CDC will be creating an environment within almost every facility of highly probable violent proportions. There is already an existing stringent security measure within most facilities that restricts inmates who have committed crimes against minors to have visits with those minors. My husband has been convicted of one of the listed crimes, but this crime did not involve a child. I am pregnant now and concerned about our future visits. If my husband is not allowed to visit with a minor this means he will not be able to visit with his baby. Other inmates will wonder why be cannot see his baby and this restriction will reveal significantly life-threatening information about him to others incarcerated in the same facility. If the revision just means that inmates who have committed crimes with minor victims cannot have visits with those minors then the rule needs to be rewritten, as it stands now it can be misleading and interpreted different ways. **[BBB]**

Wording of the second sentence of this rule is being interpreted by visiting staff to mean that all inmates that are not eligible for family visits shall not be eligible for contact or non-contact visits. This sentence needs to be rewritten so that it is clear that the rule is intended to apply only when visitors are bringing minors in to visit with one specific inmate and not for all inmates that are in the room. Commenter asks that two words be added to the sentence in question: "Inmates may be prohibited from having contact or non-contact visits ***with minors*** where substantial … [etc]." **[DDD]**

RESPONSE: See pages 73, 74 and 140 of the FSOR above. Other than that already provided, the Department intends no further accommodation.

§3173.2(a)

Raising the level of cause from reasonable to probable severely hinders our ability to provide a safe environment for inmates, staff and visitors. The Department has and needs to have a lower level of cause to conduct serves as the text originally specified. **[HHH]**

RESPONSE: See pages 76 and 141 of the FSOR above. Revisions in this section more accurately capture the existing regulatory authority of the Department when visitors pose an immediate and significant threat. The Department's need for a "lower level of cause" can be thereby reflected in regulation without causing controversy with the use of a legally untenable word.

§3173.2(e)

All wheelchair-bound visitors need to transfer to an institutional wheelchair for searches. There should be no exception for convenience when dealing with security issues. **[HHH]**

RESPONSE: The exception is not for convenience, but rather in accordance with the Department's obligation to provide reasonable accommodation for physically impaired individuals. This text has already been revised to specify that in such cases, the visitor shall permit an inspection and the use of a hand held metal detection device. Transfer exemptions are allowed only upon presentation of an "excuse" letter from a physician confirming the need for using a battery powered/custom wheelchair.

§3174(b)(2)

Recommend adding" "excluding members of the Armed Forces on active duty in Military dress uniforms." **[GGG]**

The clothing regulations do not include barring visitors dressed in reception center-type attire. We don not allow visitors in orange or yellow jumpsuits due to 75% of our inmates wearing those types of clothing. **[HHH]**

RESPONSE: The suggested change is unneeded. The prohibited attire rule applies to visitors wearing clothing resembling military-type clothing. Uniformed active duty visitors are officially and legitimately costumed in their military apparel, not clothing resembling such uniforms. Institutions continue to have the authority to adopt non-conflicting and institution-specific procedures appropriate to conditions particular to a single physical setting or locally prevailing conditions in accordance with §3171(a). This affords the ability to craft remedies to such minor operational difficulties the one noted above with respect to reception center-type attire. In addition, the Operations Manual will provide field personnel any added guidance needed to operationalize the rule in question.

§3174(c)(6)-(8)

Shear or transparent garments, sleeveless garments and clothing exposing the midriff have been deleted. This type of clothing should not be allowed in the visiting room. **[FFF]**

RESPONSE: None of the clothing described will be allowed in the visiting room. Commenter has failed to notice that the deleted text has been repositioned elsewhere in the same subsection.

§3175(c)

It is the opinion of the staff of this facility that breast-feeding should not be permitted in the visiting room. **[EEE]**

RESPONSE: Prevailing opinion is to the contrary, and the Department declines the suggestion to undo the accommodation described on page 83 of the FSOR above.

§3175(f)

This section does not give age limitations or accurately describe what "hold" means. **[EEE]**

Due to the majority of inmates housed at the California Medical Facility with convictions of a sexual nature against children, an age limit should be imposed for children sitting on inmates' laps of age 6 and under only. **[FFF]**

RESPONSE: See pages 95 and 146 of the FSOR above. Age and gender limitations contained in the original NCDR text have been removed in accordance with public comment. Over defining the word "hold" may unduly inhibit the bonding-facilitation intent of the regulation in question. Revisions in the Departmental Operations Manual accompanying the adoption of this rule will point out the regulatory provisions of existing §3007: "Inmates may not participate in illegal sexual acts."

§3176(a)(3)(B)

Use of the phrase "visiting privileges" here and elsewhere in this section is inconsistent with §3170. **[EEE]**

RESPONSE: Inmates are afforded the privilege of visiting, therefore the phase as used here and elsewhere is not inconsistent.

§3176.1(c)

Language is confusing to us. It is unclear if we still have the latitude to take 30, 60 or 90 days of privileges. **[EEE]**

I object to the removal [and/or revision] of subsections (c) and (d). Without the assistance of measurable guidelines as they appeared originally in the subsections in question, you risk the likelihood of misapplication of this rule. By giving staff the opportunity to impose "suspensions for up to six months" I could be denied visits with my husband because of staff incompetence, despite addition of wording specifying that the suspension length will be "commensurate with violation seriousness." I still feel this is not enough of a safety against the misapplication of regulations and abuse of authority on the part of CDC visiting staff. By having more detailed guidelines as originally outlined you ensured the appropriate application of a length of a suspension. **[MMM]**

RESPONSE: The Department believes that the amended language is clear: With respect to *visitor* (not *inmate*) violation of rules, regulations or procedures, access to the visiting program can be imposed for up to 6 months. The length of such suspension shall be commensurate with the seriousness of the violation. Such language grants discretion that the original text lacked. As revised, officials can take into consideration extenuating circumstances and the severity of the offense in determining the length of suspension. Moreover, the text as originally proposed, was misleading and confounding because visitors were treated as inmates, especially procedurally. Not only does the Department reject the contention that it's staff will act incompetently, ample opportunity has been provided in these rules to afford visitors a process by which to resolve allegations of perceived misconduct.

§3177

In that general visiting has been described as a "privilege," is family visiting also to be considered a privilege? **[HHH]**

RESPONSE: General visiting is not described as an inmate privilege and the text of §3177(b) has not been changed: "Family visiting is a privilege."

§3177(b)(1)

Change the regulation to permit life-term inmates not convicted of a serious or violent crime—as defined by Penal Code §§ 667.5(c) and 1192.7–against immediate family members to have family visits, provided these life-term inmates have maintained a disciplinary-free incarceration for seven years. If, as this subsection suggests, family visiting is subject to work/privilege group status, and work group status is dependent upon an inmate's in-prison behavior, then the regulations governing eligibility for family visiting should be based upon in-prison behavior, not one's arrest record in subsection (b)(1) or one categorical listing sentence as in subsection (b)(2). It would be in keeping with the stated purpose of both general visiting and family visiting to allow life-term inmates who are on good behavior to be eligible for family visits. Life-term inmates with clean behavior for 7 years have sufficiently proved they are not include to violent behavior and therefore should be given the privilege of family visiting. Any subsequent misbehavior can be appropriate cause for the removal of the privilege. **[KKK]**

RESPONSE: See pages 105-108 and 149-151 of the FSOR above.

Attorney Visiting Regulations/Constitutional Infringements

The newly proposed regulations [as revised in the Second Renotice] continue to severely curtail prisoner access to legal assistance, infringe on attorney-client confidentiality, squelch free speech and disparately impact small businesses. We again reiterate that these regulations will severely

compromise the provision of legal services to prisoners. We demand that all proposed language affecting §3178 be discarded and public hearings be held with the goal of broadening prisoners' access to legal assistance. Barring such action, we demand that the regulations again be amended to ensure increased prisoner access to legal assistance and guarantees of attorney-client confidentiality. **[NNN]**

The proposed regulations violate numerous rights guaranteed by the United States Constitution. By limiting attorney representatives so severely, attacking attorneys' ability to communicate with their clients through breaches of confidentiality, and posting untenable rules, the proposed attorney visiting rules serve to impede prisoners' access to attorney representation in violation of their 14th amendment right to due process and 6th amendment right to representation. The mirror image of the prisoner's 6th amendment right to effective counsel is the attorney's right to practice their profession without undue governmental interference. These regulations also create undue burdens on an attorney's ability to represent prisoners in violation of the attorneys" 6th amendment rights. They further violate attorneys' 14th amendment guarantee of the right to engage in any of the common occupations or professions of life. Such a right is both a "liberty" and "property" right protected from state deprivation or undue interference. The proposed regulations also have a disparate impact on the access of people of color and women to legal assistance, both of which are protected classes under the 14th amendment. They also offend the 1st amendment rights of non-profit law offices that represent prisoners. The Supreme Court has held any statute, regulation or practice by the state that interferes with the activities of a mixed advocacy and litigation organization acting on behalf of disenfranchised persons must be subject to strict scrutiny under the 1st amendment. Thus, by curtailing the ability on non-profit law offices to represent prisoners, the non-profit organization's 1st amendment rights are infringed upon. The distinction between different classes of un-licensed investigators, penalizing those un-licensed investigators not employed by the state, is discriminatory and in direct violation of constitutional equal protection clauses. Absent a compelling state interest, the state is barred from infringing on such constitutional rights. To date, the Department has offered no such rationale for such infringements and therefore the proposed regulations are unconstitutional. **[NNN]**

RESPONSE: See pages 156, 158 and 191 of the FSOR above. The Department is not compelled by known provision of The Administrative Procedures Act (APA) to accommodate demands of any sort, particularly those that are not made in the form of a specific objection, suggestion or recommendation. Moreover, discarding *all* proposed language of §3178 as demanded above hardly qualifies as a reasonably relevant comment as contemplated by the Act. Objections have not been registered by any other Commenter to *all* the proposed language of this rule. In fact, many objections, suggestions and recommendations regarding *parts* of the proposed rule including those previously voiced by the Commenter above have been successfully accommodated, as this FSOR reflects. To discard *all* the text would fragrantly disrespect APA process by disregarding the preponderance of public opinion with respect to the overwhelming acceptance of revisions and changes that have already been made. Likewise, to hold public hearings in the manner further demanded condemns the regulatory adoption process to an endless cycle of comment, changes and objection, especially with respect to issues or regulations Commenters philosophically oppose or refuse to accept. The APA does not require the Department to lock itself into such an unending and unproductive cycle and in this particular instance the Department consciously chooses not to, despite the demand made by the Commenter above. Finally, as has further been demanded above, the Department sees no need to again amend the regulations objected to since—as explained below–the argument that prisoner access to legal assistance has been unduly abridged is not accepted.

The Department has made no conscious effort to infringe upon the constitutional rights of inmates, attorneys, organizations or individuals. Any rule as originally proposed or revised that may have been so interpreted has been re-evaluated by the Department and changes have been made, as appropriate and described throughout the FSOR. These revisions appear to have satisfied the vast majority of Commenters. Moreover, as required, this FSOR contains an explanation of compelling state interest for any rule which may still be interpreted as

"constitutionally suspect" and the Department believes all outstanding constitutional questions connected to compelling interest have thereby been resolved in its favor.

§3178(c)(1) and [as corrected, see page 189 above] (2)

The regulations continue to unacceptably limit whom an attorney may designate to conduct a legal visit with a prisoner on their behalf. Current regulations already unreasonably limit attorney designations and the proposed changes continue to be overly restrictive. It is our position that the CDC must permit a lawyer to designate or sponsor anyone who the attorney declares is sufficiently trained and supervised to act as his or her agent. Failure to do so unconstitutionally hampers prisoners' access to the courts and the attorney's ability to practice their profession.

In addition to allowing a lawyer to designate representatives to conduct visits on their behalf, under existing attorney visiting provisions [superceded §3175] and as a matter of practice, the Department has for decades allowed attorneys to designate as representatives less than full-time employees, non-licensed investigators, non-certified law students, and others, including community volunteers. By practice, the Department has also permitted translators, sign language interpreters, and mental health clinicians to accompany attorneys or their designated representatives during legal visits. Law offices and non-profit legal organizations representing inmates rely heavily on such individuals. To otherwise do so is cost-prohibitive due to the small budgets and virtually non-existent government funding available for such work. Such practice (the commenter asserts) has proven reasonable from a corrections perspective, as there are few documented cases of security breaches resulting from such practice and procedure. Moreover reliance on part-time and volunteer assistance reduced fees in the event of litigation, further resulting in reduced legal fees awards in meritorious cases against the Department.

Under the revised designation of representative rules, the employees of an attorney other than licensed private investigators, investigators acting for public defenders, law students, and legal paraprofessionals cannot visit prisoners on their own, they would be permitted only to accompany attorneys or designated representatives. No provision has been made for un-licensed investigator or community volunteers assisting legal service organizations to act as a designated representative. Moreover, the full-time employee designation is greatly eliminated; non-legal-paraprofessionals who assist attorneys will not be afforded legal visitation without being personally accompanied.

Because the rules unreasonably restrict attorney's ability to designate representatives, the authority of the legislative and judicial branches has been usurped by the Department. There is no rationale for why the Department should be permitted to limit attorney visitation to the categories specified. The state bar allows for attorneys to engage the services, regardless of whether compensation is paid, of non-lawyers specifically to do legal work of a preparatory nature and to communicate with clients and third parties. Since clearly lawyers are legally entitled to utilize non-lawyers as their representative under the law, CDC regulations should comply with bar rules allowing non-lawyer employees, volunteers, and non-licensed investigators to act as representatives.

The requirement that non-legal-paraprofessional employees be accompanied during visits runs counter to the direction of state court rulings and the state bar and severely hamstrings attorneys' use of non-lawyer employees. There is no legal duty of attorneys to be in the immediate presence of non-lawyers under their employ. The requirement will seriously impede the work of most small non-profit organizations and law clinics.

Finally, the regulations illegally allow un-licensed investigators who work for the state or public agencies to be attorney representatives, while un-licensed investigators privately employed or employed by no-profit organizations are disallowed from action as a delegated representative. This distinction between different classes of un-licensed investigators and penalizing one and not the other is discriminatory and directly violates constitutional equal protection clauses. **[NNN]**

RESPONSE: The Department is not obligated, contrary to the sentiment expressed, to "broaden prisoner's access" because current regulations "already unreasonably limit attorney designations." There has been no known statutory enactment or judicial ruling which could be construed as directing the Department to broaden access in the manner requested. Moreover, the Department has never permitted a lawyer to designate or sponsor anyone who the attorney declares to act as their agent (as requested above), to do so would represent a dramatic and distinct change of policy as reflected in official attorney visiting regulations. Parolees, at-large criminals, known enemies or codefendants of a notorious inmate, individuals associated with prison escape or under investigation, indictment or pending sentencing are among those who the Department could never allow entry under color of delegation as an attorney's agent, regardless of any "training and supervision" certification provided by the attorney. Furthermore, despite the clear and obvious penological implications associated with the adoption of such a wide-open delegation policy, the attorneys' declaration of sufficient training and supervision is the only safeguard Commenters propose. Absent Commenter willingness to propose and accept safeguards reasonably sufficient to uphold the Department's legitimate (and judicially upheld) obligations with respect to institutional, inmate and public safety there is no compelling reason for the Department to act on the request as offered. Finally, whether prisoner and attorney constitutional rights are deprived by the Department's failure to make such changes is a matter for courts and not the Commenter to decide.

During the period of time when local operating procedures substituted for standardized statewide visiting regulations (see explanation on pages 28, 49, 80, 123 and 134 above) it appears, based on the comments above and those previously summarized (especially pages 164-165), that as a matter of local practice some institutions permitted (admittedly perhaps for decades) attorneys to designate as agents individuals which otherwise did not satisfy the standards contained in the §3175 rules published, but because of a court ruling, not enforced by the Department. It is likewise highly probable that institutions regularly permitted the admittance of certain auxiliary personnel such as translators and clinicians accompanying attorneys or "designated representatives" during attorney visits. Nevertheless, these practices have not—as is claimed above–proven reasonable from a "corrections perspective" because there are allegedly "few" documented cases of security breaches resulting from such informality and regulatory non-enforcement. While the Department has not conducted an exhaustive study, there is ample antidotal evidence from the field so as to document the occasional occurrence of such breaches and, moreover, when they do occur, they stand out in memory as sufficiently flagrant and alarming as to warrant preventative action on the part of the Department. Being prudently preventative is a legitimate penological interest and closing any known regulatory loophole, such as one which has presented problems in the past, seems plainly appropriate now that questionable or informal local practice is again being made subordinate to statewide rules.

Nevertheless, the Department contends that the delegation problem as perceived and described by the Commenter above does not in fact exist. As the corrected (see page 189 above) text reflects, the rule permits "an employee of an attorney, legitimate legal service organization or licensed private investigator" to be an officially designated attorney representative. An un-licensed private investigator employed by licensed private investigator can under this provision, be indeed be named an attorney representative. Moreover, under the Second Renotice version of §3178(c) text, a legal para-professional sponsored by an attorney can also be named attorney representative. Since subsection (c)(1)(D) language previously narrowing the definition of para-professional has been eliminated entirely (in accommodation of prior comment), this rule affords an opening for volunteers or unlicensed investigators acting in a legal capacity to be named attorney representative as well, so long as the attorney accepts responsibility for all actions taken by their representative in accordance with (c)(3)(C). That such representatives couldn't conduct unaccompanied visits is an erroneous conclusion arising from a drafting error that has been corrected as described on page 189 of the FSOR, and as will be reflected in the text as finally adopted.

However, the suggestion that CDC comply with bar rules with respect to the utilization of non-lawyers is rejected. It is inappropriate for the Department to rely on a separate authority to establish standards that have such serious safety and security implications and which operate or change independent of these rules and regulations.

Finally, there is objection to newly adding "public" investigators to the list of potential attorney representatives, a revision made in accordance with concerns previously voiced by other Commenters (see page 166-167). While this change creates—as pages 160-161 describes–a minor regulatory overlap with §3267, there is really no discriminatory allowance being made. A public employee performing investigative duties under the direction of a public defender is not a different class of un-licensed investigator, as claimed, but rather a government employee performing a job as authorized by law and appropriately funded by the appropriate legislative branch. The status of employment is not as important as having been designated to act as an official agent of the attorney of the public defender's office in the manner this rule sets forth. Besides, as described immediately above, it is untrue that the regulation forbids un-licensed investigators to be designated a representative.

§3178(c) [as corrected, see page 189 above] (3)

While we do not object to an attorney representative providing the information required by this rule, we do object to the need to provide additional copies of such information at each visit. Our experience is that our legal teams are required to provide multiple copies of written confirmation of our individual visits to multiple staff at several checkpoints when entering the prison, and we are not returned this information. It is unacceptable to expect our staff and representatives to release multiple copies of such sensitive identity information to multiple people. For the security of our staff, it is our position that such identifying information should be available only to the administrator conducting clearance reviews and than no other copy of identifying information other than an appropriate identification card as is current practice be required to be presented at future visits. **[NNN]**

RESPONSE: Problems with the operational interpretation of any rule should be immediately brought to the attention of the executive of the institution/facility in question so that any needed corrective steps can be taken as promptly as possible. Field personnel will be provided additional operational guidance in DOM revisions accompanying these rule revisions so as to minimize the problem identified above.

§3178(d)(1)-(5)

Subsection (d)(1) states in part that attorneys may visit inmates other than those already formally represented. Without departmental safeguards, this regulation could lead to abuse and attorneys may enter institutions just to solicit business. Inmates already can hire lawyers and there is a provision for court appointments. **[EEE]**

The list of reasons may not include a category which would permit a lawyer from the California Appellate Project, or attorneys who that project selects when there is a conflict of interest, to visit condemned prisoners who do not have an appointed attorney. **[LLL]**

The proposed rule requires a lawyer, when requesting a visit, to declare that the visit is for one of five specified purposes. A lawyer should not have to declare a purpose for a legal visit; even generally, as such a requirement would compromise lawyer-client confidentiality. **[NNN]**

The proposed rule places on the attorney an affirmative duty to "report any prior felony convictions, explain any prior suspension or exclusion." It should be the duty of the state to check an attorney's record. **[NNN]**

RESPONSE: See pages 180-181of the FSOR above. The changes objected to by the first Commenter have been developed in response to overwhelming public comment and numerous accommodations to expressed concerns. The Department believes that it has formulated safeguards sufficient to anticipate the abuses feared, while recognizing that others will legitimately feel that the rules are now overly permissive. The concerns of the second Commenter are already addressed in the language of revised subsection (d)(1); whereas the inmate's request for a visit can be reasonably assumed to exist by virtue of their automatic appeal rights afforded by the constitution and law. The Department has previously explained above that purpose declaration substitutes for prior inmate request. Without some method to ascertain the reason for a visit, the Department would be reduced to allowing any visit by any individual claiming to be an attorney at any time, irrespective of the existence of legitimate penological interest to the contrary. Finally, as page 114 suggests, approvals for attorney visits will continue to be made on an institution-by-institution basis. Accordingly, it is consistent for the Department to request self-disclosure of information that may have a bearing on whether risk exists in approving a particular individual, attorney or otherwise, to enter the secure and exceptional settings under it's control. Moreover, there is no reliable centralized database that can be checked to ascertain the record needed.

§3178(g)

The current rule allows legal visits to be requested with a minimum 24-hour notice. Lengthening the notice any further will seriously damage prisoner' rights to representation in legal matters where time is of the essence, such as compassionate release cases or recall and resentencing where even one day's delay could render representation moot. Such delay is particularly significant in light of institutional staff error that may interfere with scheduled visits. The necessity of keeping the notice requirements to a 24 hours minimum as opposed to a working day minimum is highlighted by an example of a prisoner's paperwork not being completed before death "due to prison staff error." **[NNN]**

RESPONSE: See pages 113-114 and 182 above. Provisions for emergency approvals have been retained throughout all versions of the proposed rules.

§3178(h)

The processing provision is inappropriate and unlawful. Attorneys should not be processed in the same manner as regular (or social) visitors and they are in fact entitled to special privileges such as bringing into the prison legal material, pens, paper and recording devices. Attorneys should be given priority in processing, so long as the attorney arrives at or before the scheduled time of their visit. Requiring attorneys to wait in lengthy first come, first served lines unlawfully infringes on a prisoner's right of access to the courts and right of assistance of a lawyer, and on the lawyers' right to practice their profession. In addition, since many lawyers who visit prisoners are court-appointed, requiring lawyers to wait in long lines before being processing for a visit unnecessarily wastes taxpayers' money. Currently, several institutions have already begun processing attorneys as "other" visitors. Moreover, the rule as written, requires that attorneys visit under the same restrictions as regular visitors who cannot bring in documents, or even paper and pen. Imposing such restrictions on attorneys unlawfully infringes on a prisoner's right of access and the lawyers right to practice. It is in the interest of the state, the attorney, and the prisoner for legal visits to be granted priority in processing. **[LLL, NNN]**

RESPONSE: See page 182 above. If it is indeed true that institutions have begun processing attorneys as regular visitors, such incidents need to be documented and reported immediately to the appropriate institution head for possible corrective action. It is not the intent of the subsection cited to be used as justification of such treatment that would be, moreover, overwhelmingly contradictory to the other provisions of this rule (for instance, see 3170.1(g) which specifies that legal documents may be taken from the visiting area).

§3178(j)

Standards contained in this regulation are vague and unworkable and susceptible to abuse by officials. They readily could be used to justify illegal harassment of prisoners both before and after a legal visit. The addition of "legal service organization" also opens the door to the targeting for harassment of entire organizations with which corrections officials have an adversarial relationship. Significantly, an investigation into the circumstances surrounding a legal visit necessarily would result in an investigation into the content of an attorney-client discussion. Such an investigation would clearly infringe on attorney-client confidentiality and is blatantly unconstitutional. Moreover, attorneys have an absolute duty of confidentiality to their clients. To require an attorney to explain the legal purpose of a visit would necessarily force an attorney to violate this duty. Therefore, as written, attorneys cannot cooperate with such an investigation. The amended regulations would result in termination of legal visitation for attorneys who refuse to violate their legal duty of confidentiality. Overall, this proposed regulation will have a chilling effect and will leave prisoner and attorneys susceptible to retaliation and abuse of authority. We demand that this rule be eliminated. **[NNN]**

RESPONSE: See page 183 of the FSOR above. Certainly, an attorney (or organization) cannot be compelled to cooperate with an investigation; particularly if they believe that in so doing they will violate attorney-client confidentiality. There is no expectation on the part of the Department that attorneys will be derelict in their duty to their client(s). However, it is true that upon the outcome of an investigation, administrative action could conceivably be taken against an attorney in accordance with the provisions of subsection (r). On the other hand, these same rules afford the opportunity to appeal such actions and therefore any unjustified action, including any improbably linked to the attorney's refusal to violate their legal duty, can be reviewed and legal visitation thereby restored. Finally, as noted on page 198 above, the Department is not compelled by known provision of The Administrative Procedures Act (APA) to accommodate demands of any sort, particularly those that assume an adversarial relationship of such epic proportions as the Commenter depicts.

§3178(n)

The regulations constructively coerce prisoners' consent to the reading of legal documents; if they do not consent they cannot bring necessary documents to their lawyers or receive necessary documents. Such coerced consent is both illegal and wholly unnecessary. There is no reason that legal documents attorneys and prisoners wish to exchange during legal visits cannot be treated as is legal mail—allowing documents to be opened and inspected (including shaking them out to release any contraband). Under no circumstances should prisoners be coerced into consenting to the examination or reading of the contents of such documents or materials. We demand that subsections (n)(2) and (n)(3) be eliminated in order to discourage corrections staff from attempting to read legal documents. **[NNN]**

RESPONSE: See page 185 of the FSOR above. The Department denies that the alleged "constructive coercion" of inmates exists in the rule cited. If inmates do not consent to the inspection of materials to be exchanged during the visit the exchange will not be permitted, as stated. However, the inspection process does not involve staff reading the documents to be exchanged and practically, will proceed as the Commenter describes, for example shaking to release any unauthorized material. How this constitutes constructive coercion is not clear.

§3178(p)

It is not possible to adequately search a tape recording or video taping device. This is why we provide them and the attorneys supply sealed tapes to be used. My memory of departmental history includes instances of attorneys being caught smuggling items in these items. **[HHH]**

RESPONSE: The concern is already addressed by the regulation in question and is an outcome contemplated in the rule.

3178(r)

Do the provisions of this section mean that the inmate may be denied an attorney/client confidentiality privilege? If so, this will probably be ground for further litigation. The more appropriate option may be to suspend the attorneys' access to institutions/facilities on a case-by-case basis. **[EEE]**

RESPONSE: The rule in question already provides for the outcome suggested.

§3178(s)

The proposed rule permits either the institution/facility head ***or designee*** to discipline attorneys by imposing restrictions. Because of the importance of legal visiting, and the potential for abuse of this provision, the Director alone should be required to approve any decision restricting an attorney's legal visiting. **[NNN]**

RESPONSE: See pages 138 and 187 of the FSOR above. To delete "designee" as requested would handicap the Director's administrative ability to determine which subordinate is best suited to handle lesser-order matters. While the Commenter above would obviously disagree, attorney legal visiting is a lesser-order matter in comparison to much weightier fiscal, organizational and statutory obligations. Besides, the provisions of §3176.3(e) already provide for special notification of the director when exclusion orders or matters that may have "department wide significance" affect an inmate's attorney.