

**State of California
Office of Administrative Law**

In re:
**Department of Corrections and
Rehabilitation**

Regulatory Action:

Title 15, California Code of Regulations

Adopt sections: 3999.27

Amend sections:

Repeal sections:

NOTICE OF FILING AND PRINTING ONLY

Government Code Section 11343.8

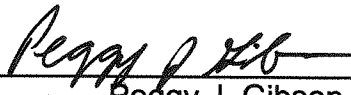
OAL Matter Number: 2019-1220-04

OAL Matter Type: File and Print Only (FP)

This action by the Department of Corrections and Rehabilitation adopts section 3999.27 as a pilot program for the condemned inmate transfer program. This filing is exempt from chapter 3.5 of part 1 of division 3 of title 2 of the Government Code pursuant to Penal Code section 5058.1 and is not subject to review by the Office of Administrative Law. This action is effective on filing with the Secretary of State pursuant to Penal Code section 5058.1 and remains in effect for two years.

OAL filed this regulation with the Secretary of State, and will publish the regulation in the California Code of Regulations.

Date: January 29, 2020



Peggy J. Gibson
Senior Attorney

For: Kenneth J. Pogue
Director

Original: Ralph Diaz, Secretary
Copy: Josh Jugum

NOTICE PUBLICATION/REGULATORY ACTION

FILE PRINT

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-	REGULATORY ACTION NUMBER 2019-1220-04FP	EMERGENCY NUMBER
For use by Office of Administrative Law (OAL) only			
NOTICE		REGULATIONS	

ENDORSED - FILED
In the office of the Secretary of State
of the State of California

JAN 29 2020
1:51 pm

2019 DEC 20 P 3:34
OFFICE OF
ADMINISTRATIVE LAW

AGENCY WITH RULEMAKING AUTHORITY
California Department of Corrections and Rehabilitation

AGENCY FILE NUMBER (if any)
19-0050

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE ☐ Notice re Proposed Regulatory Action ☐ Other		4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY	ACTION ON PROPOSED NOTICE ☐ Approved as Submitted ☐ Approved as Modified ☐ Disapproved/Withdrawn		NOTICE REGISTER NUMBER	PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Condemned Inmate Transfer Pilot Program		1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)	
2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)			
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)		ADOPT 3999.27 AMEND REPEAL	
TITLE(S) 15			
3. TYPE OF FILING			
☐ Regular Rulemaking (Gov. Code §11346) ☐ Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4) ☐ Emergency (Gov. Code, §11346.1(b)) ☐ Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute. ☐ Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1) ☐ Emergency Readopt (Gov. Code, §11346.1(h)) ☒ File & Print ☒ Other (Specify) <u>Pilot Program - PC 5058.1</u> ☐ Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100) ☐ Print Only			
4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)			
5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)			
☐ Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a)) ☒ Effective on filing with Secretary of State ☐ §100 Changes Without Regulatory Effect ☐ Effective other (Specify)			
6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY			
☐ Department of Finance (Form STD. 399) (SAM §6660) ☐ Fair Political Practices Commission ☐ State Fire Marshal ☐ Other (Specify)			
7. CONTACT PERSON Joshua Jugum		TELEPHONE NUMBER 916 445-2266	FAX NUMBER (Optional) 916 324-6075
		E-MAIL ADDRESS (Optional) joshua.jugum@cdcr.ca.gov	

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE

DATE

TYPED NAME AND TITLE OF SIGNATORY
RALPH M. DIAZ, Secretary

12-18/19

For use by Office of Administrative Law (OAL) only

AUTHORIZED FOR FILING AND PRINTING

JAN 29 2020

Office of Administrative Law

Memorandum

Date: January 29, 2020

To: Associate Directors, Division of Adult Institutions
Wardens
Classification and Parole Representatives
Correctional Counselors III, Reception Centers
Correctional Case Records Managers

Subject: **CONDEMNED INMATE TRANSFER PILOT PROGRAM**

PURPOSE

This memorandum announces the implementation of the California Department of Corrections and Rehabilitation (CDCR) Condemned Inmate Transfer Pilot Program (CITPP). The CITPP is being adopted under the authority of California Penal Code (PC) Section 5058.1 and, as such, does not affect more than ten percent of the total state male or female offender population or more than ten percent of the total state inmate population. The CITPP implements PC Section 3600, which allows the transfer of condemned male inmates from San Quentin State Prison (SQ) to alternate prisons within the state. The CITPP also allows transfer of female condemned inmates to alternate housing units at the Central California Women's Facility (CCWF). Placement in the CITPP is voluntary, but once approved, participation is mandatory.

All condemned inmates will be provided written notice of the pilot program once effective. The notice will suggest that inmates consult their appellate counsel prior to volunteering for the pilot program. A courtesy copy of the notice will be sent to the California Appellate Project and Habeas Corpus Resource Center. Additionally, the Men's Advisory Council, the Women's Advisory Council, and the Inmate Family Council at each designated CITPP institution, and the CDCR Office of the Ombudsman, will be advised of the implementation of the pilot program.

Male condemned inmates participating in the program will only be housed in the institutions identified in this memorandum commensurate with inmate case factors and security levels. Female condemned inmates within the CITPP program will remain at CCWF, as required by PC Section 3601. The CITPP is being implemented to test and evaluate the effectiveness of this housing program, which for the first time permits condemned inmates to be transferred from condemned housing, where they have historically been held, to other designated institutions or alternate housing units commensurate with their case factors and security levels. These inmates will be interspersed with other inmates in CDCR's population.

The CITPP is designed to provide enhanced job placement opportunities for condemned inmates to augment CDCR's compliance with the mandates of PC 2700.1. Both male and female condemned inmates in the CITPP are expected to participate according to their placement, which may include General Population, Sensitive Needs Yard, or Non-Designated Program facilities. This memorandum defines staff responsibilities and establishes a uniform process for the inclusion of condemned inmates into the CITPP. Upon

approval by the Office of Administrative Law, the CITPP will be in effect for no longer than a 24-month period at which time it will lapse by operation of law if regulations have not already been formally promulgated through the Administrative Procedure Act.

PILOT PROGRAM LOCATIONS

Participants in the CITPP shall only be housed at one of the following locations:

- California Correctional Institution
- California Medical Facility
- California State Prison, Corcoran
- Centinela State Prison
- Central California Women's Facility
- Kern Valley State Prison
- Richard J. Donovan Correctional Facility
- Salinas Valley State Prison

These locations provide a mixture of Level III and Level IV housing options available to accommodate each inmate's case factors and needs.

Inmates approved by Institutional Classification Committee (ICC) for participation in the CITPP who require transfer to a Psychiatric Inpatient Program, Mental Health Crisis Bed, or Specialized Medical Bed, shall be referred to the Health Care Placement Oversight Program for transfer endorsement consistent with existing procedures, to one of the CITPP institution locations listed above.

EVALUATION OF THE RESULTS OF THE PROGRAM

There will be an ongoing assessment of the CITPP by the CDCR Office of Research and the Division of Adult Institutions, which will monitor the implementation and evaluate the effectiveness of the pilot and the procedures as set forth in this memorandum. The Office of Research will gather data to evaluate the pilot to include: the number of inmates volunteering for, and accepted into the pilot; CITPP inmate participation in programs and job assignments; increases in restitution payments for CITPP participating inmates; disciplinary infractions; reduction or increase in classification scores; changes in housing assignments due to disciplinary issues, or as necessary for the safety of the CITPP inmate or other inmates whether a result of threats or other safety concerns; and visiting for CITPP inmates.

PROGRAM STRUCTURE

Inmates may volunteer for placement in the CITPP. However, once approved for placement in the CITPP, participation is mandatory and an inmate cannot withdraw from the program. The CITPP will incorporate existing classification policies and procedures, as identified in the California Code of Regulations (CCR), Title 15, Article 10 Classification, as they pertain to committee actions, transfer recommendations, and endorsement. Initial recommendation for placement will be made by the Unit Classification Committee (UCC) during the annual review process, and the subsequent determination of placement into the CITPP will be made by the SQ or CCWF Warden or designee through the ICC. Once placed in the CITPP, each condemned inmate will be monitored for the duration of their participation in the CITPP. Assessments consisting of program and annual reviews will be completed to document the participation of the inmate in the CITPP.

PROGRAM PROCEDURES

1. Inmate Eligibility

All condemned inmates, including newly received condemned inmates, under the jurisdiction of CDCR may be eligible for CITPP. However, inmates who volunteer for participation in CITPP may not be found eligible for transfer out of condemned housing if one of the following exclusionary case factors exists:

- Inmate is currently serving a Segregated Housing Unit term, or equivalent.
- Inmate has pending or has been found guilty of Division A through B offenses within the last five calendar years from the date of the annual review.

2. Initial Program Placement

Identification and Assessment

Notification to the inmate of their scheduled appearance before the UCC for annual review will also provide information about the CITPP. The UCC will ask the inmate if the inmate wishes to participate. If the inmate indicates they wish to volunteer for the program, staff shall review the inmate's case factors to determine if the inmate is otherwise eligible for placement in the CITPP. If eligible, staff shall complete a CDC Form 128-B, *General Chrono*, which the inmate will sign indicating that he/she has been advised of, and concurs with CITPP placement, prior to referral to the ICC for a final determination.

Upon referral, ICC shall evaluate appropriate placement in one of the eight designated CITPP institutions, dependent upon safety and enemy concerns, as well as county of commitment. Mental Health Services Delivery System (MHSDS) clinical staff shall be present at the ICC and can provide information about the inmate's clinical functioning. Staff shall adhere to the classification process as outlined in CCR, Title 15, Article 10 Classification, with the following notable exceptions for those inmates placed in the CITPP:

- Participants shall be applied an automatic mandatory minimum score of 36 points.
- Participants shall be placed in an appropriate inmate work group and privilege group pursuant to CCR, Title 15, Section 3044. However, participants are ineligible to receive credits, including, but not limited to Good Conduct Credit, Milestone Completion Credit, Rehabilitative Achievement Credit, Educational Merit Credit and Extraordinary Conduct Credit pursuant to CCR, Title 15, Sections 3043.2, 3043.3, 3043.4, 3043.5 and 3043.6.
- Participants shall be housed in no lower than a Level III CITPP-designated institution with a Lethal Electrified Fence, unless otherwise permitted by the Departmental Review Board.
- Participants shall not be designated Maximum (MAX) Custody, unless their case factors require MAX Custody housing.
- Participants shall be assigned and retain Close Custody designation permanently.
- Participants shall be granted Priority Legal User status.
- Participants shall be granted attorney visitations and consultation pursuant to CCR, Title 15, Section 3178 and legal telephone calls pursuant to CCR, Title 15, Section 3282.
- Classification committee action and recommendation shall be conducted by ICC chaired by the Warden for placement into CITPP institutions.
- Endorsement to participating CITPP institutions shall be conducted by processing a Warden-to-Warden endorsement agreement.
- Those institutions designated as CITPP shall provide for storage and ready access to CITPP participants' legal materials.
- CITPP institutions are to ensure appropriate withdrawals for restitution are made from participants' trust accounts as applicable.

3. Process Upon Arrival at CITPP Institution

Inmates transferred to a CITPP institution shall be screened for potential inclusion in the MHSDS, consistent with current policy. Clinician to clinician contact shall occur to ensure continuity of care. Pursuant to the agreement between California Appellate Project and the Prison Law Office, condemned inmates who have refused Developmental Disability Program (DDP) testing shall not be tested for placement within the DDP.

Associate Directors, Division of Adult Institutions
Wardens
Classification and Parole Representatives
Correctional Counselors III, Reception Centers
Correctional Case Records Managers
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Classification Committee Review

The inmate's assigned Correctional Counselor I shall present the case to the initial UCC and, in accordance with existing procedures, place the inmate on one or more appropriate waiting lists for available jobs and programming.

Inmate Assignment Office

Following existing procedures the Inmate Assignment Office at the CITPP institution will place the inmate into an available work assignment commensurate with their case factors.

4. Ongoing Program Placement

Following the initial placement process, all inmates participating in the CITPP shall be reviewed through the existing classification processes pursuant to CCR, Title 15, Section 3375.

If you have any questions, please contact Christopher Hees, Correctional Counselor (CC) III, Classification Services Unit (CSU), or Steve Jimenez, CC II, CSU, at m_CITPP@cdcr.ca.gov.

Original Signed By:

CONNIE GIPSON
Director
Division of Adult Institutions

Attachment

cc: Jennifer Barretto
Kimberly Seibel
Brian Moak
Heidi Dixon
Chris MacDonald
Chris Hees
Steve Jimenez
Nicole Clavo
Office of Ombudsman

Associate Directors, Division of Adult Institutions
Wardens
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Note: Authority cited: Section 5058 and 5058.1, Penal Code. Reference: Section 5058, Penal Code