

NOTICE OF PROPOSED ACTION – CHANGES IN THE REGULATIONS OF THE CALIFORNIA DEPARTMENT OF STATE HOSPITALS

Contraband Search and Confiscation Regulations

The Department of State Hospitals (Department) proposes the adoption of the regulations described in this document. A public hearing is not currently scheduled. No later than 15 days prior to the close of the public comment period, any interested person, or their duly authorized representative, may make a written request for a public hearing pursuant to Section 11346.8 of the Government Code, and a public hearing will be held. Requests for a public hearing should be sent to the address or number below. If a request for public hearing is received, the date, time, and means by which the public hearing will be conducted will be provided in a separate notice.

Any interested person or their representative may provide comments relevant to the proposed regulatory action to the Department in writing, email, or facsimile to the address or number listed below. The public comment period for this regulatory action will begin on April 9, 2021.

For any written comment to be considered, it must be received by the Department no later than the close of the 45-day comment period, which is May 24, 2021. Comments sent to persons or addresses other than that specified in this document or received after the date and time specified may be included in the record of this proposed regulatory action, but may not be summarized or responded. For consideration, written comments shall be submitted to:

California Department of State Hospitals
Regulations and Policy Unit
Contraband Search and Confiscation
1600 9th Street, Room 410
Sacramento, CA 95814
Tel: (916) 654-2478, Fax: (916) 651-3090
Email: DSH.Regulations@dsh.ca.gov

AUTHORITY AND REFERENCE

Welfare and Institutions Code sections 4005.1, 4011, 4027, 4101, 4109, 4139, 4312, and 7295; Penal Code sections 830.3, 830.38, and 830.5.

INFORMATIVE DIGEST AND POLICY OVERVIEW

Existing laws prohibit patients in a state hospital from possessing various items identified either in law, regulations, or on a contraband list developed by the Department except as authorized by law or the Department.

These proposed regulations, to assist in the enforcement of these laws and ensure contraband is identified and secured as expediently as possible, would establish the ability for identified Department personnel who are not peace officers to monitor and perform searches in various areas of the facility as well as perform pat-down searches if there is a reasonable belief that the patient is in possession of contraband or there is a threat to the safety and security of the patients, hospital staff, or the facility. Patients committed to the Department are primarily observed by non-peace officer staff. As such, non-peace officers are often the first to observe and identify contraband in the possession of a patient. These regulations provide needed assistance for Department police officers by identifying the contraband early and securing the contraband.

Existing laws also prohibits people from delivering, or attempting to deliver, various items identified either directly in law, on the statewide contraband list developed by the Department, or on the contraband list developed by each Department facility unless otherwise authorized by law or the Department.

While Department police officers have the authority to perform searches for contraband and other items as necessary in the performance of their duties, these regulations clarify this authority as it relates to searches for contraband on the grounds of a Department facility and are not intended to limit or expand any existing authority for peace officers to search for and either secure or confiscate contraband. These regulations detail the types of searches permitted by Department police officers and the conditions under which certain types of searches are performed.

These proposed regulations also define the types of searches all persons entering a Department facility are subject to. These searches may be performed, as determined to be necessary, on the person seeking to enter the Department facility as well as the property of that person. Items identified as contraband are prohibited from entry and the person with the contraband may be asked to remove the contraband from facility grounds. Items which are illegal and in violation of state or federal laws are subject to confiscation and the person with the item subject to criminal prosecution.

These regulations will assist in reducing the amount of contrabands entering facility grounds as well as increasing the detection and confiscation or securing of contrabands in the possession of patients. The increased detection of contrabands will increase the safety and security of the patients, Department staff, and the public.

ANTICIPATED BENEFITS

These proposed regulations would increase the ability of Department personnel to identify and secure contrabands within the facility in the possession of a patient. These proposed regulations also enhance the ability for the Department to detect and prevent the entry of contrabands into the facility by clarifying the types of searches people seeking entry into the facility are subject to. The combination of defined search methods, increased public awareness of the types of searches performed, and the ability of select Department staff to monitor and search for contrabands is anticipated to

reduce the amount of contrabands found in and around Department facility grounds, increasing the safety and security of the patients, Department staff, and the public.

EVALUATIONS AND DETERMINATION

Mandate on local agencies and school districts: None.

Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None.

Cost or savings to any State agency: None.

Other nondiscretionary cost or savings imposed on local agencies: None.

Cost or savings in federal funding to the State: None.

Significant effect on housing costs: None.

Effect on small business: The proposed regulations do not effect small businesses because the proposed regulations will only effect patients and state hospital facilities.

Cost impacts to a representative private person or business: None.

Evaluation of Inconsistency or Incompatibility with Existing State Regulations

During the development of this proposed regulatory action, the Department reviewed any existing regulations on this topic and concluded that the proposed regulation is neither inconsistent nor incompatible with existing state regulations or statutes. In arriving at this conclusion, the Department reviewed the Welfare and Institutions Code, Penal Code, and its own regulations in title 9 of the California Code of Regulations.

SIGNIFICANT, STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS AND INDIVIDUALS

There will not be a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

STATEMENT OF POTENTIAL COST IMPACT ON PRIVATE PERSONS OR BUSINESS

The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

STATEMENT OF RESULTS OF ECONOMIC IMPACT ASSESSMENT

The adoption of the proposed regulations will neither create nor eliminate jobs in the State of California, nor result in the elimination of existing businesses or create or expand businesses in the State of California. The proposed regulations benefit the health and welfare of California residents, worker safety, and the state's environment.

STATEMENT OF ALTERNATIVES CONSIDERED

The Department must determine that no reasonable alternative considered or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective as and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The Department invites interested persons to submit statements or arguments with respect to alternatives to the proposed regulation during the comment period

CONTACT PERSONS

The primary contact for this regulatory action is Tarik Allen, and the backup contact is Sylvester Okeke. They can be reached by contacting the Regulations and Policy Unit phone number at (916) 654-2478.

AVAILABILITY OF STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, AND RULEMAKING FILE

DEPARTMENT staff has prepared an Initial Statement of Reasons (ISOR) for the proposed regulatory action, which includes a summary of the economic impacts of the proposal and all the information upon which the proposal is based, including an ISOR for the proposed regulatory action and the proposed text (the "express terms") of the regulation.

Copies of the proposed regulation text and the ISOR may be accessed on the Department's website, listed below, or may be obtained from the Department using the contact information provided in this document.

Further, interested persons may direct non-substantive inquiries concerning the proposed regulatory action to Tarik Allen, Regulations Coordinator, at (916) 654-2478. The Department has compiled a record of this rulemaking action, which includes all the information upon which the proposal is based. This material is available for inspection upon request to the contact persons.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After the Department holds a public hearing and considers all timely and relevant comments, it may adopt the proposed regulations substantially as described in this notice. If the Department makes modifications which are sufficiently related to the originally proposed text, except for grammatical changes, it will make the modified text, with the changes clearly indicated, available to the public for at least 15 days before the Department adopts the regulation as revised. Please send requests for copies of any modified regulation to the attention of the contact persons indicated above. The Department will accept written comments on the modified regulation for 15 days after the date on which it is made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, the Final Statement of Reasons (FSOR) shall be available and copies may be requested from the contact persons in this notice or may be accessed on the Department's Internet web site listed below.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

This notice, the ISOR, the proposed regulation text, and all subsequent regulatory documents, including the FSOR, when completed, are available on the [Department's website](https://www.dsh.ca.gov/Publications/Regulations.html) at <https://www.dsh.ca.gov/Publications/Regulations.html>.