This Policy Explainer breaks down changes to the Controlled Substance Distribution regulation and the damaging impact this has on people incarcerated in California's Department of Corrections and Rehabilitation (CDCr) prisons. As women and gender non-conforming people with incarcerated loved ones, understanding purposefully confusing regulations that will impact our loved ones, helps equip us with the knowledge to better advocate for ourselves and their safety.

About the Controlled Substance Distribution Regulation:

CDCr will hold a public hearing on August 15th, 2022 and then the regulation will become effective and would affect anyone currently incarcerated in a California state prison.

- This regulation proposes:
  - Changing the definition of the term “Distribution,” greatly expanding who can be charged with “Distribution.” This will make it much easier for CDCr to charge incarcerated people with a new felony and add years on to their sentence.
  - Adding “Possession with Intent to Distribute” into CDCR's Rules and Regulations for the first time.

Language Matters and Key Terms Defined

We recognize that the policies most impacting us and our incarcerated loved ones use criminalizing and dehumanizing language. We are committed to using human-centered language and for these reasons, will use the following terms throughout the policy explainer:

- In place of “inmate”, we use incarcerated loved ones and incarcerated person/individual.
- We also use a lowercase “r” when referencing the rehabilitation aspect of the California Department of Corrections and Rehabilitation (CDCr) as a form of resistance and understanding that prisons will never lead to the rehabilitation of our loved ones.

The following terms will be referenced throughout the policy explainer and are defined as follows:

- Rules Violation Report (RVR) and/or 115 are interchangeable terms to describe a write up given to an incarcerated person in response to a presumed or perceived violation of prison policy.
- C-File refers to the master file that is connected to every individual incarcerated person in CDCr custody. This CDCr maintained file contains reports, evaluations, and correspondence as well as all RVR or 115 write ups. This file is relied upon extensively by the board of parole commissioners when deciding on a person’s suitability to be paroled.
- Public Comment Period refers to the period of time that the public can submit a written comment in response to a policy change.
- Public Hearing refers to the mandated hearing that is held in Sacramento anytime there is a pending, permanent regulation change. These hearings are open to the public and allow for spoken public comment.
- Title 15 refers to the section of the California Code of Regulations (CCR) that outlines all policies and regulations regarding anything to do with the California carceral system. Title 15 is called “Crime Prevention and Corrections” and can be used to look up any rule, policy or regulation of CDCr.'
**The policy change would lead to lengthier sentences and would be extremely harmful to incarcerated people.**

Expanding the definition of distribution, CDCr can more easily charge an incarcerated person, resulting in a felony conviction that could add up to an additional 4 years in prison on top of the sentence they're already serving (see the chart below for a breakdown of this language change and its impact). Currently, it is common practice for CDCr to attempt to charge an incarcerated person with distribution or possession with intent to distribute, generally bypassing a simple possession charge, regardless of the quantity found. Once a CDCr employee decides to charge an incarcerated person with intent to distribute, the case is turned over to the District Attorney for the county in which the person is housed.

Based on anecdotal reports from incarcerated people inside California state prisons, the DA (District Attorney) rarely chooses to pick up the case and if they do, oftentimes the judge vacates (withdraws) the distribution charge and instead modifies it to a simple possession charge. The difference between these two charges outside of prison are vast. The penalty for simple possession is a misdemeanor with up to 1 year maximum in county jail, while a distribution charge carries a sentence of 2 to 4 years and fines of up to $20,000. If the District Attorney chooses not to charge an incarcerated person with “Distribution”, CDCr often still penalizes a person as if “guilt” has been proven.

**Before:** The definition of “distribution” as outlined in the old policy language includes the sale of any illegal, controlled substance as well as any controlled substance that is prohibited inside California state prisons, e.g., alcohol and cigarettes.

This included anyone caught in the act of these violations. It also included anyone who helped in any way, the planning or execution of introducing an unlawful controlled substance(s) into any CDCr facility and that person(s) would be held just as liable as the person who planned it from the beginning.

**Now:** The new definition of “distribution” increases the opportunity and instances in which an incarcerated person can be found guilty of distribution. Unfortunately, this makes it a lot easier for corrections staff to write up false rules violation reports.

**This new definition includes:**
- selling, furnishing, administering, or giving away any controlled substance; as well as offering; or attempting to request or convince another incarcerated person to plan or conspire to do any of the prohibited acts listed in this section as “distribution”.
- The definition of “distribution” has further been expanded to include possession of any controlled substance with the intent to perform any of the prohibited acts outlined in this section.
- There is no guidance on how to determine intent, this will be left up to the discretion of custody staff.

**Application to Rule Violation Reports (RVR):** The language in the “Serious Rules Violations” section of the policy has been updated to include all of the new language added to the list of actions that will now lead to an RVR. This matters because receipt of an RVR or 115 can be devastating to a person’s chances at the parole board. An RVR or 115 stays in a person’s C-File for the entire length of their incarceration and is looked at as highly unfavorable by the Board of Parole commissioners.

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This policy change gives more power to CDCr to convict incarcerated people, with very little oversight. It does so in the following ways:

- **First, CDCr explicitly states that the reason they’re pursuing this policy change is to increase their power to prosecute incarcerated people.** This proposed policy is written so broadly and relies on “reasonable suspicion” and “intent,” not evidence, in order to charge people. The use of this language makes it even easier for correctional officers to overexert their power over incarcerated people and to make broad claims, regardless of whether a person has used drugs or not or actually committed the act they’re suspected of.

- **Second, this proposed policy is a concerted attempt to get around recent court rulings that have prevented CDCr from being able to convict incarcerated people for distribution.** In the regulation, several cases are given as examples as to when CDCr was unable to convict an incarcerated person of distribution because the current definition only covers distribution, not the “intent to distribute.” In these former cases, CDCr notes that the incarcerated person was able to successfully argue that the current regulations do not permit possession with intent to distribute to be a basis for a distribution offense. By making this policy final, it will eliminate many of the ways that incarcerated people have used to fight against these charges in the past.

- **Third, the policy does not include any oversight mechanisms for how CDCr employees charge incarcerated people for distribution.** Without opportunities for incarcerated people to challenge a charge against them or oversight into how correctional officers make these charges, CDCr is able to run wild and holds unilateral power in creating more harm in a person’s life, especially because correctional officers’ claims against incarcerated people often go unopposed and unchallenged given the hierarchy between correctional officers and incarcerated people.

This policy change does not address the role that correctional officers play in bringing drugs into prisons or using charges as a form of retaliation and punitivity against incarcerated people. During the COVID-19 pandemic when all CDCr facilities went on lockdown, drugs were still making their way inside of prisons. In many instances, correctional officers are the ones bringing in and distributing drugs and there are plenty of examples of this occurrence. In 2017 two Centinela State Prison correctional officers were charged with smuggling cellular phones, methamphetamine, heroin, PCP and tobacco into a California state prison. Recently a former correctional officer was sentenced to 3 years in prison for smuggling drugs and cell phones into a CA prison. In addition, incarcerated people often report instances of correctional officers planting controlled substances (illegal drugs and/or alcohol) in their cells in an attempt to penalize them and retaliate against them. These aren’t just rules violations but rather actual felonies that will lead to more years added to a person’s sentence. The action of a correctional officer falsely setting up an incarcerated person has always been effortless and these policy changes will make it even easier.
This policy change further demonstrates the ways in which CDCr is not at all focused on rehabilitation for our incarcerated loved ones and continues to lie about their actions. CDCr explicitly states their reason for pursuing this policy change is to more easily be able to convict incarcerated people. Yet, further on in the document, they also uplift two additional reasons for why they're pursuing these changes, which they claim are rooted in their interests in rehabilitation. Those additional reasons are the following:

- **First, CDCr claims that by implementing this policy it will “better allow inmates to focus on rehabilitation, which will result in more productive citizens being released into the community and make the community safer as a whole.”** This is a lie and contradicts their earlier stance in the policy that seeks to further convict incarcerated people. If this policy becomes permanent, it will actually do the exact opposite of what CDCr states this policy will do. That is because this policy would allow CDCr to more easily convict incarcerated people for this offense, thereby adding on more time for a person to be incarcerated on top of the time they’re already serving. This policy is not invested in getting people out of prison sooner or in community safety, instead it’s intent on keeping people locked up for longer periods of time, with no way out. CDCr has never been in the business of rehabilitation and this policy is not going to change that, despite what CDCr claims.

- **Second, CDCr claims that one of the reasons these policy changes are needed is so the rules inside of prison more closely align with specific California’s state laws related to Health and Safety (laws outside of prison).** This change, though, actually creates a larger divide between free world law and prison policy (Title 15) and upon further inspection, the language in this policy change is actually not in alignment with CA health and safety laws. This means that this claim is false and is a guise for CDCr to appear like they are making changes that they’re not actually making.

If you’d like to see a comparison of CDCr regulations and California state law that they are claiming to better align with click [here](#).

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**Where to go for more resources**

- Read the full Controlled Substance Distribution regulation change here: [Full Regulation Change](#)
- Research and read California laws and California Health & Safety Codes visit - [FindLaw.com](#)

**For any questions,**

For any questions, please reach out to Alesha Monteiro, Advocacy Fellow, at Essie Justice Group at alesha@essiejusticegroup.org

To learn more about how you can be connected to a loving and powerful community of women with incarcerated loved ones, visit: [www.essiejusticegroup.org](http://www.essiejusticegroup.org) ; [@essie4justice](http://twitter.com/essie4justice)