

Introduced by Senator Morrow

February 22, 2001

An act to amend Section 5058 of, and to add Sections 5058.1, 5058.2, and 5058.3 to, the Penal Code, relating to the administration of prisons and parole.

LEGISLATIVE COUNSEL'S DIGEST

SB 563, as introduced, Morrow. Corrections: administration: rulemaking procedures.

Existing law authorizes the Director of Corrections to prescribe rules and adopt regulations for the administration of the prisons and administration of paroles. Existing law provides that in general, these regulations shall be adopted pursuant the Administrative Procedures Act, but exempts from that requirement regulations relating to pilot programs or to imminent danger, as specified. Existing law also exempts emergency regulations from certain requirements of the Administrative Procedures Act.

This bill would revise and recast these provisions, and would make various technical changes. This bill would also define "pilot program" for purposes of exemptions relating to the adoption of regulations pursuant to these provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 5058 of the Penal Code is amended to
2 read:

1 5058. (a) The director may prescribe and amend rules and
2 regulations for the administration of the prisons and for the
3 administration of the parole of persons sentenced under Section
4 1170 except those persons who meet the criteria set forth in Section
5 2962. The rules and regulations shall be promulgated and filed
6 pursuant to Chapter 3.5 (commencing with Section 11340) of Part
7 1 of Division 3 of Title 2 of the Government Code, except as
8 otherwise provided in this section *and Sections 5058.1 to 5058.3,*
9 *inclusive.* All rules and regulations shall, to the extent practical, be
10 stated in language that is easily understood by the general public.

11 For any rule or regulation filed as regular rulemaking as defined
12 in paragraph (5) of subdivision (a) of Section 1 of Title 1 of the
13 California Code of Regulations, copies of the rule or regulation
14 shall be posted in conspicuous places throughout each institution
15 and shall be mailed to all persons or organizations who request
16 them no less than 20 days prior to its effective date.

17 (b) The director shall maintain, publish and make available to
18 the general public, a compendium of the rules and regulations
19 promulgated by the director ~~or director's designee~~ pursuant to this
20 section *and Sections 5058.1 to 5058.3, inclusive.*

21 (c) The following are deemed not to be “regulations” as
22 defined in Section 11342.600 of the Government Code:

23 (1) Rules issued by the director ~~or by the director's designee~~
24 applying solely to a particular prison or other correctional facility,
25 provided that the following conditions are met:

26 (A) All rules that apply to prisons or other correctional
27 facilities throughout the state are adopted by the director pursuant
28 to Chapter 3.5 (commencing with Section 11340) of Part 1 of
29 Division 3 of Title 2 of the Government Code.

30 (B) All rules except those that are excluded from disclosure to
31 the public pursuant to subdivision (f) of Section 6254 of the
32 Government Code are made available to all inmates confined in
33 the particular prison or other correctional facility to which the
34 rules apply and to all members of the general public.

35 (2) Short-term criteria for the placement of inmates in a new
36 prison or other correctional facility, or subunit thereof, during its
37 first six months of operation, or in a prison or other correctional
38 facility, or subunit thereof, planned for closing during its last six
39 months of operation, provided that the criteria are made available
40 to the public and that an estimate of fiscal impact is completed



1 pursuant to ~~Section 6055, and following Sections 6650 to 6670,~~
2 ~~inclusive, of the State Administrative Manual dated July 1986.~~

3 (3) Rules issued by the director or director's designee that are
4 excluded from disclosure to the public pursuant to subdivision (f)
5 of Section 6254 of the Government Code.

6 ~~(d) The following regulations are exempt from Chapter 3.5~~
7 ~~(commencing with Section 11340) of Part 1 of Division 3 of Title~~
8 ~~2 of the Government Code under the conditions specified:~~

9 ~~(1) Regulations adopted by the director or the director's~~
10 ~~designee applying to any legislatively mandated or authorized~~
11 ~~pilot program or a departmentally authorized pilot program;~~
12 ~~provided that an estimate of fiscal impact is completed pursuant to~~
13 ~~Section 6055, and following, of the State Administrative Manual~~
14 ~~dated July 1986, and that the following conditions are met:~~

15 ~~(A) A pilot program affecting male inmates only shall affect no~~
16 ~~more than 10 percent of the total state male inmate population; a~~
17 ~~pilot program affecting female inmates only shall affect no more~~
18 ~~than 10 percent of the total state female inmate population; and a~~
19 ~~pilot program affecting male and female inmates shall affect no~~
20 ~~more than 10 percent of the total state inmate population.~~

21 ~~(B) The director certifies in writing that the regulations apply~~
22 ~~to a pilot program that qualifies for exemption under this~~
23 ~~subdivision.~~

24 ~~(C) The certification and regulations are filed with the Office~~
25 ~~of Administrative Law and the regulations are made available to~~
26 ~~the public by publication pursuant to subparagraph (F) of~~
27 ~~paragraph (2) of subdivision (b) of Section 6 of Title 1 of the~~
28 ~~California Code of Regulations.~~

29 ~~The regulations shall become effective immediately upon filing~~
30 ~~with the Secretary of State and shall lapse by operation of law two~~
31 ~~years after the date of the director's certification unless formally~~
32 ~~adopted by the director pursuant to Chapter 3.5 (commencing with~~
33 ~~Section 11340) of Part 1 of Division 3 of Title 2 of the Government~~
34 ~~Code.~~

35 ~~(2) Action or actions, or policies implementing them, taken by~~
36 ~~the department and based upon a determination of imminent~~
37 ~~danger by the director or the director's designee that there is a~~
38 ~~compelling need for immediate action, and that unless that action~~
39 ~~is taken, serious injury, illness, or death is likely to result. The~~



1 ~~action or actions, or policies implementing them, may be taken~~
2 ~~provided that the following conditions shall subsequently be met:~~

3 ~~(A) A written determination of imminent danger shall be issued~~
4 ~~describing the compelling need and why the specific action or~~
5 ~~actions must be taken to address the compelling need.~~

6 ~~(B) The written determination of imminent danger shall be~~
7 ~~mailed within 10 working days to every person who has filed a~~
8 ~~request for notice of regulatory actions with the department and to~~
9 ~~the Chief Clerk of the Assembly and the Secretary of the Senate~~
10 ~~for referral to the appropriate policy committees.~~

11 ~~Any policy in effect pursuant to a determination of imminent~~
12 ~~danger shall lapse by operation of law 15 calendar days after the~~
13 ~~date of the written determination of imminent danger unless an~~
14 ~~emergency regulation is filed with the Office of Administrative~~
15 ~~Law pursuant to subdivision (c). This section shall in no way~~
16 ~~exempt the department from compliance with other provisions of~~
17 ~~law related to fiscal matters of the state.~~

18 ~~(e) Emergency regulations shall be adopted pursuant to~~
19 ~~Chapter 3.5 (commencing with Section 11340) of Part 1 of~~
20 ~~Division 3 of Title 2 of the Government Code, except that:~~

21 ~~(1) Notwithstanding subdivision (e) of Section 11346.1 of the~~
22 ~~Government Code, the initial effective period for emergency~~
23 ~~regulations shall be 160 days.~~

24 ~~(2) No showing of emergency is necessary in order to adopt~~
25 ~~emergency regulations other than a written statement by the~~
26 ~~director or the director's designee, to be filed with the Office of~~
27 ~~Administrative Law, certifying that operational needs of the~~
28 ~~department require adoption of the regulations on an emergency~~
29 ~~basis.~~

30 ~~(3) This subdivision shall apply only to the adoption and one~~
31 ~~readoption of any emergency regulation.~~

32 ~~It is the intent of the Legislature, in authorizing the deviations~~
33 ~~in this subdivision from the requirements and procedures of~~
34 ~~Chapter 3.5 (commencing with Section 11340) of Part 1 of~~
35 ~~Division 3 of Title 2 of the Government Code, to authorize the~~
36 ~~department to expedite the exercise of its power to implement~~
37 ~~regulations as its unique operational circumstances require.~~

38 SEC. 2. Section 5058.1 is added to the Penal Code, to read:
39 5058.1. (a) For the purposes of this section, "pilot program"
40 means a program implemented on a temporary and limited basis



1 in order to test and evaluate the effectiveness of the program,
2 develop new techniques, or gather information.

3 (b) The adoption, amendment, or repeal of a regulation by the
4 director to implement a legislatively mandated or authorized pilot
5 program or a departmentally authorized pilot program, is exempt
6 from Chapter 3.5 (commencing with Section 11340) of Part 1 of
7 Division 3 of Title 2 of the Government Code, if the following
8 conditions are met:

9 (1) A pilot program affecting male inmates affects no more
10 than 10 percent of the total state male inmate population; a pilot
11 program affecting female inmates affects no more than 10 percent
12 of the total state female inmate population; and a pilot program
13 affecting male and female inmates affects no more than 10 percent
14 of the total state inmate population.

15 (2) The director certifies in writing that the regulations apply
16 to a pilot program that qualifies for exemption under this section.
17 The certification shall include a description of the pilot program
18 and of the methods the department will use to evaluate the results
19 of the pilot program.

20 (3) The certification and regulations are filed with the Office of
21 Administrative Law and the regulations are made available to the
22 public by publication pursuant to subparagraph (F) of paragraph
23 (3) of subdivision (b) of Section 6 of Title 1 of the California Code
24 of Regulations.

25 (4) An estimate of fiscal impact is completed pursuant to
26 Sections 6650 to 6670, inclusive, of the State Administrative
27 Manual.

28 (c) The adoption, amendment, or repeal of a regulation
29 pursuant to this section becomes effective immediately upon filing
30 with the Secretary of State.

31 (d) A regulation adopted pursuant to this section is repealed by
32 operation of law, and the amendment or repeal of a regulation
33 pursuant to this section is reversed by operation of law, two years
34 after the commencement of the pilot program being implemented,
35 unless the adoption, amendment, or repeal of the regulation is
36 promulgated by the director pursuant to Chapter 3.5 (commencing
37 with Section 11340) of Part 1 of Division 3 of Title 2 of the
38 Government Code. For the purpose of this subdivision, a pilot
39 program commences on the date the first regulatory change
40 implementing the program is filed with the Secretary of State.



1 SEC. 3. Section 5058.2 is added to the Penal Code, to read:

2 5058.2. (a) Chapter 3.5 (commencing with Section 11340) of
3 Part 1 of Division 3 of Title 2 of the Government Code does not
4 apply to a department action or policy implementing an action, that
5 is based on a determination by the director that there is a
6 compelling need for immediate action, and that unless the action
7 is taken, serious injury, illness, or death is likely to result. The
8 action, or the policy implementing the action, may be taken
9 provided that the following conditions shall subsequently be met:

10 (1) A written determination of imminent danger shall be issued
11 describing the compelling need and why the specific action or
12 actions must be taken to address the compelling need.

13 (2) The written determination of imminent danger shall be
14 mailed within 10 working days to every person who has filed a
15 request for notice of regulatory actions with the department and to
16 the Chief Clerk of the Assembly and the Secretary of the Senate
17 for referral to the appropriate policy committees.

18 (b) Any policy in effect pursuant to a determination of
19 imminent danger shall lapse by operation of law 15 calendar days
20 after the date of the written determination of imminent danger
21 unless an emergency regulation is filed with the Office of
22 Administrative Law pursuant to Section 5058.3. This section shall
23 in no way exempt the department from compliance with other
24 provisions of law related to fiscal matters of the state.

25 SEC. 4. Section 5058.3 is added to the Penal Code, to read:

26 5058.3. (a) Emergency adoption, amendment, or repeal of a
27 regulation by the director shall be conducted pursuant to Chapter
28 3.5 (commencing with Section 11340) of Part 1 of Division 3 of
29 Title 2 of the Government Code, except that:

30 (1) Notwithstanding subdivision (e) of Section 11346.1 of the
31 Government Code, the initial effective period for an emergency
32 adoption, amendment, or repeat of a regulation shall be 160 days.

33 (2) Notwithstanding subdivision (b) of Section 11346.1 of the
34 Government Code, no showing of emergency is necessary in order
35 to adopt, amend, or repeal an emergency regulation if the director
36 instead certifies, in a written statement filed with the Office of
37 Administrative Law, that operational needs of the department
38 require adoption, amendment, or repeat of the regulation on an
39 emergency basis. The written statement shall include a description
40 of the underlying facts and an explanation of the operational need



1 to use the emergency rulemaking procedure. This paragraph
2 provides an alternative to filing a statement of emergency pursuant
3 to subdivision (b) of Section 11346.1 of the Government Code. It
4 does not preclude filing a statement of emergency. This paragraph
5 only applies to the initial adoption and one readoption of an
6 emergency regulation.

7 (3) Notwithstanding subdivision (b) of Section 11349.6 of the
8 Government Code, the adoption, amendment, or repeal of a
9 regulation pursuant to paragraph (2) shall be reviewed by the
10 Office of Administrative Law within 20 calendar days after its
11 submission. In conducting its review, the Office of Administrative
12 Law shall accept and consider public comments for the first 10
13 calendar days of the review period. Copies of any comments
14 received by the Office of Administrative Law shall be provided to
15 the department.

16 (b) It is the intent of the Legislature, in authorizing the
17 deviations in this section from the requirements and procedures of
18 Chapter 3.5 (commencing with Section 11340) of Part 1 of
19 Division 3 of Title 2 of the Government Code, to authorize the
20 department to expedite the exercise of its power to implement
21 regulations as its unique operational circumstances require.

