



May 7, 2026

Re: Indoor Heat Illness Prevention in Correctional and Detention Facilities.

Dear Cal/OSHA Research and Standards Unit,

We appreciate the opportunity to provide comments on the Division's proposed Section 3397, which governs heat illness prevention in correctional and detention facilities. The undersigned organizations have extensive experience representing and advocating on behalf of workers in high-risk occupational settings, including those employed in California's prisons, local detention facilities, and juvenile facilities. These workers' testimonials and experiences have informed the comments below.

We commend the Division for undertaking this discussion draft and recognize the work of the stakeholders and agency personnel who contributed to the proposed text. The decision to extend indoor heat illness protections to correctional and detention facilities is long overdue, and we are encouraged by this step toward addressing a serious and well-documented occupational hazard. We expect that additional rounds of notice and public comment will be required before adoption.

We write in general support of the rule and its underlying purpose. However, we offer the following comments to address specific provisions that, as currently drafted, impose a lower standard of protection on correctional workers than on workers in general industry without adequate justification, create exceptions broad enough to frustrate the rules' core protections, and may ultimately invite legal challenge. If left unaddressed, these concerns risk undermining the standard's effectiveness and continue to leave a vulnerable workforce without the protections the Division intends to provide. These comments reflect a collaborative coalition effort, informed by the firsthand experiences of formerly incarcerated people who worked and lived in the heat

conditions this rule is designed to address, and whose voices are reflected throughout the analysis that follows.

I. Background.

California's correctional and detention facilities employ two distinct, but interconnected, workforces: the staff who supervise and administer these facilities and the incarcerated people who perform labor within them. Both groups are exposed to the same dangerous heat conditions.¹ Both are entitled to protection under California's occupational health and safety framework. Any meaningful heat illness prevention standard for correctional and detention settings must account for both.

The heat risk in these facilities is severe and well-documented. Incarcerated people are particularly vulnerable to heat illness and death during extreme events, a vulnerability compounded by the physical environment itself.² Incarcerated people experience disproportionately high rates of conditions which can exacerbate the impacts of extreme heat, such as mental illness and chronic conditions like diabetes, heart disease, and mobility disabilities. For example, research shows significantly higher rates of mental health conditions among incarcerated populations compared to the general population.³ Moreover, people with mental health diagnoses are "at increased risk of heat-related morbidity and death," and "mental

¹ See generally *Coleman v. Newsom*, 131 F.4th 948, 958 (9th Cir. 2025) (factor in low retention of clinical staff was job dissatisfaction due to "physical workspaces, which often took the form of windowless converted cells in old and unheated prisons"). State found in civil contempt of required staffing levels.

² See Disha Raychaudhuri et al., *Scorching Cells*, REUTERS, July 30, 2025, <https://www.reuters.com/graphics/USA-TEMPERATURE/PRISONS/jnpwbejwlvw/>; See also Clare Farley et al., *How Reuters Collected and Analyzed Prison Temperature Data*, REUTERS, July 30, 2025, <https://www.reuters.com/world/us/how-reuters-collected-analyzed-prison-temperature-data-2025-07-30/>; Julianne Skarha et al., *Heat-Related Mortality in U.S. state and Private Prisons: A Case-Crossover Analysis*, 18 PLoS ONE e0281389 (2023) (finding a 5.2% increase in all-cause mortality and a 6.7% increase in heart disease mortality associated with high temperatures in U.S. prisons); Julianne Skarha et al., *Provision of Air Conditioning and Heat-Related Mortality in Texas Prisons*, 5 JAMA Network Open e2239849 (2022) (finding a 15.1% increase in mortality risk on extreme heat days in Texas prisons without air conditioning and attributing 13% of warm-month deaths to extreme heat); Karina Brunn et al., *Carceral Heat Exposure as Harmful Design: An Integrative Model for Understanding the Health Impacts of Heat on Incarcerated People in the United States*, 367 Soc. Sci. & Med. 117679 (2025) (finding that incarcerated people are more likely to take medications that increase heat sensitivity, including psychotropic medications that can interfere with internal temperature regulation, particularly when combined with dehydration or prolonged heat exposure); Karen Westaway et al., *Medicines Can Affect Thermoregulation and Accentuate the Risk of Dehydration and Heat-Related Illness During Hot Weather*, 24 J. Clinical Pharmacology & Therapeutics 1 (2015) (same); Cal. Health Pol'y Strategies, L.L.C., *The Prevalence of Mental Illness in California Jails Is Rising: An Analysis of Mental Health Cases & Psychotropic Medication Prescriptions, 2009–2019* (2020) (finding that approximately twenty-seven percent of incarcerated individuals in California jails were receiving psychotropic medication as of 2019); Cal. Off. of the Inspector Gen., *Audit of the California Department of Corrections and Rehabilitation's Management of Temperature Conditions Within California's Prisons*, AUD No. 24-02 (Sept. 2025) (finding that approximately thirteen percent of the incarcerated population was taking medications designated as heat-alert under CDCR's heat plan and that staff offered heat relief measures only to that subset of the population).

³ See Richard Griffith & Cassam Tengnah, *Deprivation of Liberty: The Mental Health Act or the Mental Capacity Act?*, 17 BR J COMMUNITY NURS 640 (2012).

illness is one of the strongest predictors of heat-related deaths.”⁴ Furthermore, high temperatures in correctional settings correlate with a twenty percent increase in violent interactions and a thirty percent increase in daily suicide-watch incidents.⁵

Incarcerated workers in California perform a wide range of tasks within correctional facilities, including janitorial, food service, food processing, factory manufacturing, laundry, and facility maintenance. Many of these assignments take place in precisely the environments where heat illness risk is greatest. California law recognizes incarcerated people as workers entitled to certain labor protections, and Cal/OSHA’s jurisdiction extends to this workforce.⁶

II. The 87-Degree Threshold and the Removal of the Heat Index Measurements are Inconsistent with the Science of Heat Illness and the General Industry Standard.

The proposed rule triggers its core protections at 87 degrees Fahrenheit, five degrees higher than the 82-degree threshold established by Section 3396 for workers in general industry. That disparity requires justification, and none has been offered. Moreover, the proposed rule removes heat index as an independent triggering measurement. Heat index, which accounts for both temperature and relative humidity, is generally a more precise measure of physiological heat stress than dry bulb temperature alone. A worker in a humid environment may face dangerous levels of heat stress at a dry bulb temperature that the proposed rule would not treat as actionable. Furthermore, the removal of heat index as a triggering measurement has consequences beyond the threshold question. A correctional officer trained only to respond to dry bulb temperature readings may not recognize that a humid environment is placing their body, or the bodies of the incarcerated workers around them, under dangerous levels of heat stress, because the training requirements in Section (h) are keyed to the environmental risk factors employers are required to measure and monitor.

The human body does not respond to heat differently depending on the setting in which a person works. The physiological mechanisms that produce heat cramps, heat exhaustion, and heat stroke are the same in a prison laundry room as they are in a commercial warehouse. A regulatory framework that affords meaningfully lesser protection to one class of workers than another, without a scientific basis for the distinction, is difficult to defend on the merits and invites legal challenge on equal protection grounds. There is no rational basis for concluding that workers in a correctional facility are less susceptible to heat illness than their counterparts in general industry, and the Division should not adopt a standard premised on that conclusion.

Therefore, we urge the Division to align the thresholds in Section 3397 with those already established by Section 3396.

⁴ Siqui Xue, Amy Rajan & Sean A. Kidd, *Psychotropic Prescriptions in the Context of Extreme Heat*, 197 CMAJ E915 (2025).

⁵ See David H. Cloud et al., *Extreme Heat and Suicide Watch Incidents Among Incarcerated Men*, 6 JAMA NETWORK OPEN e2328380 (2023).

⁶ Labor Code § 6304.2.

III. The Cool-Down Area Exception in Section (d)(2) and (e)(2)(A - C) is Overbroad and Undermines Core Protections.

Access to cool-down areas is a central mechanism for heat illness prevention, through which the standard protects workers from serious harm. Section (d)(2) of the proposed rule requires employers to allow and encourage employees to take preventative cool-down rests when they feel the need to do so. That protection is meaningful, and we support it. However, the exception carved out immediately below it threatens to disrupt the rule entirely.

As drafted, the exception permits an employer to deny an employee access to a cool-down area whenever the employer can demonstrate that doing so “would imperil safety or security or disrupt services or programming for the incarcerated,” and a relief employee cannot be provided without the same consequence. This language is overbroad for several reasons.

For example, the “safety or security” standard is undefined and effectively unreviewable. The proposed rule provides no definition of what it means to “imperil safety or security,” no criteria by which that determination must be made, and no requirement that it be documented or reviewed. In the correctional context, “safety and security” is an expansive concept that facility administrators invoke routinely to justify a wide range of operational decisions. Without guardrails, this exception grants employers effectively unlimited discretion to deny cool-down rest on grounds that are difficult to challenge and nearly impossible to verify. To illustrate, any break or cooldown rest could be interpreted as disrupting an activity. An exception to a standard this broad essentially creates a suggestion.

Moreover, the alternative measures prescribed by the exception are insufficient substitutes for actual cool-down rest. Where the exception applies, the employer is required to (1) maintain communication with the employee, (2) reduce exertion levels to the extent feasible, (3) ensure the employee has water, and (4) provide personal heat-protective equipment or a cooling towel. While these measures may reduce risk at the margins, they do not replicate the physiological benefit of removing a worker from a hot environment and allowing the body to recover. The science of heat illness is clear: the body must be cooled.⁷ A wet towel is not a sufficient substitute for a cool-down area.

Furthermore, the exception renders the protection illusory. By conditioning access to cool-down rest on the availability of a relief employee, the rule builds its own failure into its architecture. Correctional facilities operate under documented, structural staffing shortfalls and

⁷ See Liangyue Shang et al., *Time and Environmental Conditions for Heat Stress Recovery Based on Human Physiological Responses: Developing a Predictive Model*, 267 BUILDING AND ENVIRONMENT 112228 (2025); Chun-Sen Ma et al., *Resolving Biological Impacts of Multiple Heat Waves: Interaction of Hot and Recovery Days*, 127 OIKOS 622 (2018); Lyndsay Krisher et al., *Heat Exposure, Heat Strain, and off-Work Recovery of Guatemalan Sugarcane Workers*, 328 AMERICAN JOURNAL OF PHYSIOLOGY-REGULATORY, INTEGRATIVE AND COMPARATIVE PHYSIOLOGY R703 (2025); Albert P.C. Chan et al., *Determining an Optimal Recovery Time for Construction Rebar Workers after Working to Exhaustion in a Hot and Humid Environment*, 58 BUILDING AND ENVIRONMENT 163 (2012).

security-driven operational demands.⁸ The conditions that trigger the exception are not exceptional; they are structural and persistent features of the correctional environment. A facility that chronically operates below adequate staffing levels will more frequently satisfy the conditions of the exception, and its workers will more frequently be denied the protection the rule is meant to provide.

Worse, the rule creates a perverse incentive that rewards precisely that outcome: the more understaffed a facility is, the more easily it can invoke the exception and the less it is required to do. The Division should not adopt a standard whose architecture incentivizes the very conditions that defeat its purpose and guarantees its own underenforcement in the facilities where protection is needed most.

Therefore, we recommend that the Division revise Section (d)(2) to narrow the exception in the following respects. First, the rule should define “imperil safety or security” with specificity, requiring that the determination be based on objectively identifiable and documented conditions rather than administrative discretion. Second, the exception should be strictly time-limited, with a defined maximum duration after which a relief employee must be provided, regardless of operational considerations. Third, employers invoking the exception should be required to document each instance, including the basis for determination and the duration, and to make those records available to employees, their representatives, and the Division.

IV. The Engineering Controls Provision Must Be Strengthened and Restored to its Full Scope.

The hierarchy of controls is a foundational principle of occupational health and safety. It holds that hazards should be addressed first through the most effective means available, i.e., engineering controls that eliminate or reduce the hazard at its source, and that lower order controls, such as administrative measures and PPE, should be substituted only where higher order controls are genuinely infeasible.⁹ It ensures that worker protection is maximized and that the burden of managing workplace hazards falls on the employer’s operational choices rather than on the worker’s body.

The proposed rule gestures toward this framework but does not fully embrace it. Section (e)(2)(A) requires employers to use engineering controls to reduce temperatures below the applicable thresholds, but permits departure from that requirement wherever the employer demonstrates that such controls “would imperil safety or security or otherwise are infeasible.”

⁸ See Nathan James, Cong. Rsch. Serv., R48826, *Correctional Officer Staffing in Federal Prisons: Background and Issues* 1-2 (2026) (finding that staffing shortages have been identified by GAO and DOJ’s Office of Inspector General as “longstanding management challenges” representing “a serious threat to inmate and staff safety”); *Coleman v. Newsom*, 131 F.4th 948, 959-60 (9th Cir. 2025) (affirming civil contempt findings against California for persistent failure to meet court-ordered staffing levels, noting that the State’s vacancy rates reflected “serious and significant shortcomings” that remained unresolved for two decades and directly impacted the welfare of those in CDCR custody).

⁹ See CDC, *Hierarchy of Controls*, HIERARCHY OF CONTROLS (Mar. 13, 2026), <https://www.cdc.gov/niosh/hierarchy-of-controls/about/index.html>.

That language, standing alone, is not objectionable in principle; no standard can require the impossible. The problem, as with the cool-down area exception in Section (d)(2), lies in the absence of any definition, criteria, or procedural requirement governing when and how that departure is justified.

As discussed above, the “safety or security” exception is overbroad. The proposed rule uses “imperil safety or security” as a freestanding justification for bypassing a core protection without defining what that phrase means or requiring that the determination be documented or reviewed.

Furthermore, the proposed rule’s removal of high radiant heat areas from the engineering and administrative controls provisions in Sections (e)(2)(A) and (e)(2)(B) compounds these concerns. Under Section 3396, high radiant heat areas trigger the obligation to deploy engineering and administrative controls at the lower 82 degree threshold because radiant heat imposes a heat burden on the body that dry bulb temperature alone does not capture. By removing high radiant heat areas from the engineering and administrative controls provisions, the proposed rule eliminates the employer’s obligation to deploy the most effective available controls in some of the most dangerous heat environments correctional and incarcerated workers face. This omission is particularly difficult to justify in facilities where the physical environment is fixed, thus the employer’s choice of control measures is the only meaningful variable available to reduce the risk.

Therefore, we recommend the Division revise Section (e)(2). First, define “imperil safety or security” with the same specificity we have urged with respect to Section (d)(2) and limit “disrupt[ion] of services or programming,” requiring that the determination be based on objectively identifiable and documented conditions rather than administrative discretion. Second, restore high radiant heat areas as an independent triggering condition.

V. Conclusion.

In closing, we urge the Division to make the following revisions to the proposed rule. First, align the temperature and heat index thresholds in Section 3397 with those established by Section 3396 for workers in general industry. Second, narrow the safety and security exception in Section (d)(2) by defining “imperil safety or security” with specificity, imposing a strict time limit on its invocation, and requiring employers to document each instance for review by employees, their representatives, and the Division. Third, strengthen the engineering controls provision in Section (e)(2) by restoring high radiant heat areas as a triggering condition at the 82 degree threshold, defining the safety and security exception with the same specificity as above, and ensuring the hierarchy of controls is grounded in objectively identifiable and documented conditions rather than administrative discretion. We believe these revisions are necessary to ensure that Section 3397 delivers the meaningful and enforceable protections its purpose demands. If you have questions regarding this comment letter, please direct them to Worksafe’s Jordan Uter (juter@worksafe.org). Thank you for your consideration.

Respectfully submitted,

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