

**State of California
Office of Administrative Law**

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

Regulatory Action:

Title 15, California Code of Regulations

Adopt sections: 3340, 3341, 3341.1, 3341.2,
3341.3, 3341.4, 3341.5,
3341.6, 3341.7, 3341.8,
3341.9

Amend sections: 3000, 3044, 3269, 3269.1,
3335, 3335.5, 3336, 3337,
3338, 3339, 3340
(Renumbered to 3335.5),
3342, 3343, 3344

Repeal sections: 3341, 3341.5

**NOTICE OF APPROVAL OF EMERGENCY
REGULATORY ACTION**

**Government Code Sections 11346.1 and
11349.6, and Penal Code Section 5058.3**

OAL Matter Number: 2015-0513-04

**OAL Matter Type: Emergency by Operational
Necessity (EON)**

This emergency action adopts, amends, and repeals provisions governing methods for placement and housing of inmates in segregated housing.

OAL approves this emergency regulatory action pursuant to sections 11346.1 and 11349.6 of the Government Code, and section 5058.3 of the Penal Code.

This emergency regulatory action is effective on 6/1/2015 and will expire on 11/9/2015. The Certificate of Compliance for this action is due no later than 11/9/2015.

Date: June 1, 2015



Mark Storm
Senior Attorney

For: DEBRA M. CORNEZ
Director

Original: Jeffrey Beard
Copy: Anthony Carter

EMERGENCY

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-	REGULATORY ACTION NUMBER	EMERGENCY NUMBER 2015-0513-04EON
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For use by Office of Administrative Law (OAL) only

2015 MAY 13 PM 3:13

OFFICE OF ADMINISTRATIVE LAW

NOTICE REGULATIONS

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

JUN -1 2015

3:36 PM

AGENCY WITH RULEMAKING AUTHORITY Corrections and Rehabilitation	AGENCY FILE NUMBER (if any)
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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 <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	ACTION ON PROPOSED NOTICE		NOTICE REGISTER NUMBER
			PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Segregated Housing	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
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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 2335.5, 3341.1, 3341.2, 3341.3, 3341.4, 3341.5, 3341.6, 3341.7, 3341.8, 3341.9, (SEE ATTACHED)
	AMEND 3000, 3044, 3269, 3269.1, 3335, 3336, 3337, 3338, 3339, 3340, 3341, 3341.5, 3342, 3343, 3344, per agency request
TITLE(S) 15	REPEAL

3. TYPE OF FILING

<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> 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.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input checked="" type="checkbox"/> Other (Specify) <u>Emergency Necessity- P.C. 5058.3</u>	

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)

<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input checked="" type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> §100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify)
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6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal
<input type="checkbox"/> Other (Specify)		

7. CONTACT PERSON Anthony Carter	TELEPHONE NUMBER (916) 445-2220	FAX NUMBER (Optional) (916) 324-6075	E-MAIL ADDRESS (Optional) Anthony.Carter@cdr.ca.gov
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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 5-12-15
TYPED NAME AND TITLE OF SIGNATORY Scott Kernan, Undersecretary-Operations, Calif. Dept. of Corrections and Rehabilitation	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

JUN 01 2015

Office of Administrative Law

FORM 400 Sections Affected Attachment

per agency
request

ADOPT

3340
3341
3341.1
3341.2
3341.3
3341.4
3341.5
3341.6
3341.7
3341.8
3341.9

AMEND

3000
3044
3269
3269.1
3335
3335.5
3336
3337
3338
3339
3340 (Renumbered to 3335.5)
3342
3343
3344

REPEAL

3341
3341.5

TEXT OF PROPOSED REGULATIONS

In the following, underline indicates added text and ~~strikethrough~~ indicates deleted text.

California Code of Regulations, Title 15. Crime Prevention and Corrections
Division 3. Rules and Regulations of Adult Institutions, Programs, and Parole
Department of Corrections and Rehabilitation

Subchapter 4. General Institution Regulations

Article 7 Title and Sections are amended to read:

Article 7. Segregated Housing

Section

§ 3335 Administrative Segregation

§ 3335.5 Exclusions

§ 3336 ~~Segregation Order~~ Administrative Review of Administrative Segregation Unit Placement

§ 3337 ~~Review of Segregation Order~~ Classification Hearing of Administrative Segregation Placement

§ 3338 ~~Hearing on Segregated Housing Order~~ Change of Reason for Segregation

§ 3339 Release from Administrative Segregation and ~~Retention in Administrative Segregation~~

§ 3340 ~~Exclusions~~ Assistance to Inmates for Administrative Segregation Hearings.

§ 3341 ~~Staff Assistance~~ Segregated Program Housing Units

§ 3341.1 Protective Housing Units

§ 3341.2 Psychiatric Services Unit

§ 3341.3 Security Housing Units

§ 3341.4 Security Housing Unit Terms-Initial, Concurrent, and Consecutive

§ 3341.5 ~~Segregated Program Housing Units~~ Suspending Security Housing Unit Terms

§ 3341.6 Re-imposed Security Housing Unit Terms

§ 3341.7 Forfeiture of Clean Conduct Credit

§ 3341.8 Security Housing Unit /Psychiatric Services Unit Classification Hearings

§ 3341.9 Security Housing Unit Term Calculation and Assessment

§ 3342 Case Review

§ 3343 Conditions of Segregated Housing

§ 3344 Administrative Segregation Records

§ 3345 Officer in Charge

3000. Definitions.

Section 3000 is revised to add, amend, and alphabetically merge the definitions below with those that already exist.

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*

Classification Staff Representative (CSR) means a departmental employee designated to represent the Director in the classification process during the review, approval, or deferral of actions by institution classification committees, including but not limited to inmate transfers, inmate special housing program placements/retention, and custody designations.

Clean Conduct Credit means a combination of months, followed by days which represent credits that shall be applied to the maximum determinate SHU term, as long as the inmate remains free of any subsequent serious misconduct through the MERD. Clean conduct credit is calculated as one-half or 50% of the assessed SHU term.

Minimum Eligible Release Date (MERD) means a combination of months, followed by days which represent the minimum amount of time that must pass before a determinate SHU term expires. The MERD initially represents 50% or one-half of the maximum SHU term, as it incorporates 50% or one-half clean conduct credit, for eligible inmates. The MERD may be adjusted based upon subsequent serious misconduct.

Same and Similar Behavior means comparable serious misconduct warranting SHU term assessment, contained in section 3341.9(e), that may be used to aggravate and/or mitigate a SHU term. Specifically, acts of homicide, violence against persons, threats to kill or assault persons, as listed in subsection 3341.9(e)(1), (2) & (3), or any homicide, violence against persons or threats to kill or assault persons in conjunction with any other offense listed in 3341.9(e), are all considered same/similar to one another regardless of victim. Any possession of a weapon, as listed in 3341.9(e)(4), or any possession of a weapon in conjunction with any other offense listed in 3341.9(e), are all considered same/similar. Any distribution of a controlled substance, as listed in 3341.9(e)(5) is same/similar only to itself (possession of a controlled substance is not same/similar). Escapes, as listed in subsection 3341.9(e)(6), are same/similar only to themselves. Disturbances, riots or strikes as listed in subsection 3341.9(e)(7), are

same/similar only to themselves. Harassment, as listed in subsection 3341.9(e)(8) is same/similar only to itself. Any theft or destruction of state property offenses, as listed in 3341.9(e)(9) or any theft or destruction of state property in conjunction with any other offense listed in 3341.9(e), are all considered same/similar. Any extortion or bribery offenses listed in subsection 3341.9(e)(10) are same/similar to one another. Sexual misconduct offenses listed in 3341.9(e)(11) are same/similar only to themselves.

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Note: Authority cited: Sections 2717.3, 3000.03, 5058, 5058.3 and 1170.05, Penal Code; Section 10115.3(b), Public Contract Code; and Sections 4525(a), 4526 and 14837, Government Code. Reference: Sections 186.22, 243, 314, 530, 532, 646.9, 653m, 832.5, 1170.05, 1203.8, 1389, 2080, 2081.5, 2600, 2601, 2700, 2717.1, 2717.6, 2932.5, 3003.5(a), 3020, 3450, 3550, 4570, 4576, 5009, 5050, 5054, 5068, 7000 et seq. and 11191, Penal Code; Sections 1132.4 and 1132.8, Labor Code; Sections 10106, 10108, 10108.5, 10115, 10115.1, 10115.2, 10115.3 and 10127, Public Contract Code; and Section 999, Military and Veterans Code; Section 391, Code of Civil Procedure; Section 297.5, Family Code; Section 8550, 8567, 12838 and 12838.7, Government Code; Governor's Prison Overcrowding State of Emergency Proclamation dated October 4, 2006; *In re Bittaker*, 55 Cal.App. 4th 1004, 64 Cal. Rptr. 2d 679; Section 11007, Health and Safety Code; and *Madrid v. Cate* (U.S.D.C. N.D. Cal. C90-3094 TEH).

Chapter 1. Rules and Regulations of Adult Operations and Programs

Article 3.5. Credits

Section 3044. Inmate Work Groups

Subsections 3044(a) through 3044(b)(5) remain unchanged.

Subsection 3044(b)(5)(A) is amended to read:

(5) Work Group C: Disciplinary unassigned. Zero credit.

(A) Any inmate who twice refuses to accept assigned housing, or who refuses to accept or perform in an assignment, or who is deemed a program failure as defined in section 3000, shall be placed in Work Group C for a period not to exceed the number of disciplinary credits forfeited due to the serious disciplinary infraction(s).

Subsections 3044(b)(5)(B) through 3044(f)(1) remain unchanged.

Existing Subsection 3044(f)(1)(A) is amended to read:

(f) Privilege Group C:

(1) Criteria, any of the following:

(A) The inmate who twice refuses to accept assigned housing, or who refuses to accept or perform in an assignment, or who is deemed a program failure as defined in section 3000.

Subsections 3044(f)(1)(B) through 3044(j)(3) remain unchanged.

Note: Authority cited: Sections 2700, 2701 and 5058, Penal Code. Reference: Sections 2932, 2933, 2933.05, 2933.3, 2933.6, 2935, 5005, 5054 and 5068, Penal Code; and *In re Monigold*, 205 Cal.App.3d 1224 (1988).

Subchapter 4. General Institution Regulations

Article 1.6. Inmate Housing

Section 3269. Inmate Housing Assignments.

Section 3269 through subsection 3269(f) remains unchanged.

Subsection 3269(g) is amended to read:

(g) If an inmate refuses to be housed as determined to be appropriate to this section, the inmate shall be subject to the disciplinary process, ~~with the potential to be housed in alternative and more restrictive housing.~~ Refusal to participate will result in the issuance of a Rules Violation Report (RVR) for Conduct, subsection 3005(c), Refusing to Accept Assigned Housing, for the Specific Act of Willfully Resisting, Delaying, or Obstructing any Peace Officer in the performance of Duty (CCR subsection 3323(f)(6)). Subsequent acts of the above listed offense will result in the issuance of additional disciplinary reports and consideration for placement in more restrictive housing such as an ASU or a SHU.

Note: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.

Section 3269.1. Integrated Housing.

Section 3269.1 through subsections 3269.1(b)(4) remain unchanged.

Subsections 3269.1(b)(5) is amended to read:

(5) RR, Restricted by Refusal. Inmate is otherwise eligible for integrated housing but refuses to participate. Refusal to accept an integrated housing assignment, when all available documentation and information does not preclude such, shall result in disciplinary action ~~with the potential to be housed in alternative and more restrictive housing, such as an Administrative Segregation Unit (ASU) or a Security Housing Unit (SHU).~~

Subsections 3269.1(c) through 3269.1(d)(7) remain unchanged.

Subsection 3269.1(e) is amended to read:

(e) If an inmate refuses to be housed in appropriately determined housing, he shall be subject to the disciplinary process, ~~with the potential to be housed in alternative and more restrictive housing.~~ Refusal to participate will result in the issuance of a Rules Violation Report (RVR) for Conduct, section 3005(c), Refusing to Accept Assigned Housing Obeying Orders, for the Specific Act of Willfully Resisting, Delaying, or Obstructing any Peace Officer in the Performance of Duty (CCR subsection 3323(f)(6)). ~~and shall be considered after the first RVR for placement in more restrictive housing such as an ASU or a SHU.~~ At any time during this process the inmate may elect to participate in the IHP.

Subsections 3269.1(f) through 3269.1(g) remain unchanged.

Note: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code; *Johnson v. California* (2005) 543 U.S. 499 [125 S. Ct. 1141], remand of *Johnson v. California*, (9th Cir. 2007) [Dock. No. CV 95-1192 CBM(BQR)].

Subchapter 4. General Institution Regulations

Article 7 title is amended to read:

Article 7. Segregated Housing

Section 3335. Administration Segregation.

Section 3335 is amended to read:

~~(a) When an inmate's presence in an institution's general inmate population presents an immediate threat to the safety of the inmate or others, endangers institution security or jeopardizes the integrity of an investigation of an alleged serious misconduct or criminal activity, the inmate shall be immediately removed from general population and be placed in administrative segregation. Administrative segregation may be accomplished by confinement in a designated segregation unit or, in an emergency, to any single cell unit capable of providing secure segregation.~~

~~(b) Non-Disciplinary Segregation. Non-Disciplinary Segregation (NDS) means segregated housing placement for administrative reasons to include but are not limited to:~~

~~(1) ASU placement for safety concerns not resulting from misconduct warranting a Rules Violation Report.~~

~~(2) Investigations not related to misconduct or criminal activity~~

~~(3) Being a relative or an associate of a prison staff member.~~

~~(c) Temporary Segregation. Pending a classification committee determination of the inmate's housing assignment, which may include assignment to one of the segregation program units specified in section 3341.5 of these regulations or to the general inmate population, an inmate may be placed in a designated temporary housing unit under provisions of sections 3336-3341 of these regulations.~~

~~(d) An inmate's placement in segregation shall be reviewed by the Institutional Classification Committee (ICC) within 10 days of receipt in the unit and under provisions of section 3338(a) of these regulations. Action shall be taken to retain the inmate in segregation or release to general population.~~

~~(e) When, pursuant to this section, an ICC retains an inmate on segregation status, the case shall be referred to a Classification Staff Representative (CSR) for review and approval. Unless otherwise directed by the CSR, subsequent ICC reviews shall proceed in accordance with the following timelines until the inmate is removed from segregation status:~~

~~(1) At intervals of not more than 90 days until pending Division C, D, E, or F rules violation report is adjudicated. Upon resolution of such matters, an ICC shall review the inmate's case within 14 calendar days. At that time, if no further matters are pending, but continued segregation retention is required pending transfer to a general population, ICC reviews shall be within at least every 90 days until the transfer can be accomplished.~~

~~(2) At intervals of not more than 180 days until a pending Division A-1, A-2, or B rules violation report is adjudicated, a court proceeding resulting from a referral to the district attorney for possible prosecution is resolved, or the STG validation investigation process is complete. Upon resolution of such matters, an ICC shall review the inmate's case within 14 calendar days.~~

~~(3) At intervals of not more than 90 days until completion of the pending investigation of serious misconduct or criminal activity, excluding STG validation, or pending resolution of safety and security issues, or investigation of non-disciplinary reasons for segregation placement. Should the completed investigation result in the issuance of a Rules Violation Report and/or a referral to the district attorney for criminal prosecution, an ICC shall review the case in accordance with the schedule set forth in subsections (1), (2), or (3) above. Upon resolution of such matters, an ICC shall review the inmate's case within 14 calendar days. At that time, if no further matters are pending, but continued segregation placement is required pending transfer to a general population, ICC reviews shall be at least every 90 days until transfer can be accomplished.~~

~~(f) Inmate retention in administrative segregation beyond the initial segregation ICC hearing shall be referred for CSR review and approval within 30 days and then thereafter in accordance with subsection (d) above. In initiating such reviews an ICC shall recommend one of the following possible outcomes:~~

~~(1) Transfer to another institution in accordance with section 3379.~~

~~(2) Transfer to a Segregated Program Housing Unit in accordance with section 3341.5.~~

~~(3) Retention in segregation pending completion of an active investigation into an alleged violation of the rules/disciplinary process, an investigation of other matters, or resolution of criminal prosecution. In such instances an ICC shall offer a reasonable projection of the time remaining for the resolution of such matters.~~

~~(g) Subsequent to CSR approval of an extension of segregation retention, an ICC will schedule the case for future CSR review in a time frame consistent with the projection(s) made in accordance with subsection (d) above.~~

~~(h) Inmates in segregation who have approved Security Housing Unit (SHU) term status, but are still awaiting other processes (i.e., court proceedings, adjudication of other rule violation reports, STG validation, etc.), shall be reviewed by an ICC in accordance with the SHU classification process noted in subsection 3341.5(c)(9).~~

~~(i) The need for a change in housing or yard status of any inmate segregated under the provisions of this article shall be reviewed at the next convened ICC hearing.~~

When an inmate's presence in an institution's General Population (GP) presents an immediate threat to the safety of the inmate or others, endangers institution security or jeopardizes the integrity of an investigation of an alleged serious misconduct, criminal activity, or the safety of any person, the inmate shall be immediately removed from the GP and placed in administrative segregation. Administrative segregation may be accomplished by confinement in a designated Administrative Segregation Unit (ASU) or, in an emergency, to any single cell unit capable of providing secure segregation.

(a) Non Disciplinary Segregation.

(1) Non Disciplinary Segregation (NDS) means segregated housing placement for administrative reasons to include but are not limited to:

(A) ASU placement for safety concerns not resulting from misconduct warranting a Rules Violation Report.

(B) Investigation not related to misconduct or criminal activity.

(C) Being a relative or an associate of a prison staff member.

(2) Designation as NDS shall be made by ICC.

(A) Any case designated as NDS, and included in the MHSDS, shall be transferred to an appropriate institution within 72 hours of initial designation.

(b) The reasons for ordering an inmate's placement in administrative segregation shall be clearly articulated on an CDC Form 114-D (Order and Hearing on Segregated Housing), which is hereby incorporated by reference, by the initial segregating authority.

(1) The CDC Form 114-D shall include sufficient information and detail to allow the inmate to present a written or verbal defense to the stated reason(s) and circumstances for segregation during the classification hearing.

(2) The authority to order an inmate's initial placement in segregated housing shall not be delegated below the staff level of Correctional Lieutenant or Correctional Counselor II (CCII), except when a lower level staff member is the highest ranking official on duty.

(3) A copy of the CDC Form 114-D shall be issued to the inmate at the time of placement in administrative segregation by the official ordering placement or by staff at the level of Correctional Lieutenant, CCII or higher.

(A) When necessary, the official ordering administrative segregation placement shall document whether there is a need for an accommodation to ensure effective communication as defined in section 3000, and if necessary, how it was provided, how it was achieved, and how they were satisfied effective communication was accomplished.

(4) Administratively segregated inmate's returning to their endorsed institution from out-to-court or out-to-medical shall not require an updated CDC Form 114-D unless the inmate's next scheduled ICC hearing was missed or the circumstances for segregation have changed.

(c) In addition to the CDC Form 114-D, the initial segregation authority or designee shall prepare a CDCR Form 114-A1, Inmate Segregation Profile, which is hereby incorporated by reference, for each inmate being placed on administrative segregation status.

(d) A staff member at the rank of Captain, Correctional Counselor III (CCIII) or higher may rescind the placement and order the release of an inmate in administrative segregation at any time prior to the initial Institution Classification Committee (ICC).

Subsection 3335(j) is renumbered to 3335(e)

(je) All classification committee actions shall be documented, including a specific record of the inmate's participation, an explanation of the reason(s), and the information and evidence relied upon for the action taken. The inmate shall be provided copies of the completed forms relied upon in making the decisions affecting the inmate.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 5054 and 5068, Penal Code; Wright v. Enomoto, (1976) 462 F Supp 397; and Toussaint v. McCarthy (9th Cir. 1986) 801 F2d 1080, cert. denied, 481 U.S. 1069.

Section 3340 has been relocated to adopted subsection 3335.5, renumbered, and amended to read:

334035.5. Exclusions.

~~Removal of an inmate Separation from the Ggeneral Ppopulation(GP) for the reasons and under the circumstances described in this section is not considered administrative segregation and is specifically excluded from the other provisions of this article.~~

~~(a) Medical. When an inmate is involuntarily removed from the GP general inmate status for medical or psychiatric reasons by order of medical healthcare staff and the inmate's placement is in a medical hospital setting or in other housing as a medical quarantine, the inmate will not be deemed as segregated for the purpose of this article. When personnel other than medical staff order an inmate placed in administrative segregation for reasons related to apparent medical or psychiatric problems, that information will be immediately brought to the attention of medical staff. The appropriateness of administrative segregation or the need for movement to a hospital setting will be determined by medical staff. Administratively segregated inmates with~~
When medical and psychiatric reasons healthcare concerns are involved, but are not the primary reasons for an inmate's placement in administrative segregation, shall remain on administrative segregation status, regardless of housing, will be continued if the inmate is moved to a hospital setting and the requirements of this article will apply.

~~(b) Orientation and Lay-Over. Newly received inmates and inmates in transit or lay-over status may be restricted to assigned quarters for that purpose. Such restrictions should not be more confining than is required for institution security and the safety of persons, nor for a period longer than the minimum time required to evaluate the safety and security factors and reassignment to more appropriate housing. If administrative segregation is used for this purpose, such placement shall be in accordance with the provisions of Subchapter 4, Article 7.~~

~~(c) Orientation. Newly received inmates may be restricted to assigned quarters for that purpose. Such restrictions should not be more confining than is required for institution security and the safety of persons, nor for a period longer than the minimum time required to evaluate the safety and security factors and reassignment to more appropriate housing. If administrative segregation is used for this purpose, such placement shall be in accordance with the provisions of Subchapter 4, Article 7.~~

~~(ed) Disciplinary Detention. Placement in disciplinary detention as an ordered action of a disciplinary hearing is not subject to the provisions of this article except as provided in section 3338(a)(2) and (3).~~

~~(ef) Confinement to Quarters. Confinement to quarters as an ordered action of a disciplinary hearing is not subject to the provisions of this article.~~

~~(f) Segregated Inmates. When an inmate has been classified for segregated housing in accordance with this article and commits a disciplinary offense while so confined, or is returned to segregated housing upon completion of a disciplinary detention sentence for an offense committed in a segregated unit, the provision of this article will not apply.~~

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.

Section 3336. Segregation Order is amended to read:

3336. Segregation Order. Administrative Review of Administrative Segregation Unit Placement

~~Authority to order an inmate to be placed in administrative segregation, before such action is considered and ordered by a classification hearing, may not be delegated below the staff level of correctional lieutenant except when a lower level staff member is the highest ranking official on duty.~~

~~(a) The reason for ordering an inmate's placement in administrative segregation will be clearly documented on a CDC Form 114-D (Order and Hearing on Segregated Housing) by the official ordering the action at the time the action is taken.~~

~~(b) In addition to explaining the reason and need for an inmate's placement in administrative segregation, the official ordering the action will determine if a staff member needs to be assigned to assist the inmate in presenting the inmate's position at a classification hearing on the need for retention in segregated housing. Staff assistance will be assigned and the assignment will be noted on the CDC Form 114-D if the inmate is illiterate or if the complexities of the issues make it unlikely that the inmate can collect and present evidence necessary for an adequate comprehension of the inmate's position at a classification hearing. If an inmate is not illiterate and the issues are not complex, staff assistance will not be assigned. The reason for not assigning staff assistance will be entered on the CDC Form 114-D.~~

~~(c) In assigning staff assistance, the official initiating the CDC Form 114-D will designate the inmate's caseworker by name, as the staff member to assist the inmate. If the assigned caseworker's name is not known or cannot be readily determined by the official initiating the CDC Form 114-D, the words "assigned caseworker" will be entered on the form.~~

~~(d) A copy of the CDC Form 114-D, with the "order" portion of the form completed, will if practical, be given to the inmate prior to placement in administrative segregation but not later than 48 hours after such placement. Copies of the CDC Form 114-D with the "order" portion completed will also be submitted to the warden or superintendent or designated staff for review and possible further action as described in section 3337. A copy of the CDC Form 114-D will also be routed to the records office as a notice of the inmate's current status and pending actions.~~

Note: Authority cited: Section 5058, Penal Code. Reference: Section 5054, penal Code.

(a) The purpose of the administrative review is to determine if the reason(s) for administrative segregation placement is appropriate and whether continued administrative segregation status retention is necessary, in accordance with the provisions of this article.

(b) An inmate's administrative segregation placement shall be reviewed for retention or release by staff at the level of Captain, CCIII or higher, on the first business day following such placement. The review shall include: the inmate's case factors, reason(s) for segregation, and an interview with the inmate unless the inmate refuses to participate.

(1) Administrative reviews shall not be conducted by the staff member who authorized initial administrative segregation placement.

(2) An acting Captain may conduct an administrative review; however, in this case, an Associate Warden (AW) shall conduct a subsequent review that same day. If the reviewing AW is also in an acting capacity, their permanent rank shall be no lower than Captain or CCIII.

(3) When required, the Administrative Reviewer shall document the need for effective communication accommodation, how it was provided, how it was achieved, and how they were satisfied effective communication was accomplished.

(4) The inmate shall be released to the GP if the Administrative Reviewer deems continued administrative segregation placement unnecessary.

(5) If administrative segregation placement is deemed appropriate, the Administrative Reviewer shall retain the inmate in administrative segregation and address the appropriate cell status pending the ICC hearing.

(6) The decision rendered shall be documented on the CDC Form 114-D.

(c) The Administrative Reviewer shall ensure the following procedural safeguards are afforded to the inmate in anticipation of the ICC hearing and that any necessary efforts to ensure effective communication are provided and documented.

(1) Staff Assistance. The Administrative Reviewer shall determine the need for a Staff Assistant (SA) in accordance with section 3340 and document on the CDC Form 114-D.

(2) Investigative Employee (IE). If an inmate requests witnesses and/or the assistance of an IE, the Administrative Reviewer may assign an IE in accordance with section 3340 and document on the CDC Form 114-D.

(3) Inmate Waiver. An inmate may waive their right to the 72-hour preparation time in writing by signing and acknowledging the waiver on the CDC Form 114-D, pursuant to subsection 3337(a)(2).

Note: Authority cited: Section 5058, Penal Code. Reference: Section 5054, pPenal Code.

3337. Review of Segregation Order is amended to read:

3337. Review of Segregation Order Classification Hearing of Administrative Segregation Placements.

~~On the first work day following an inmate's placement in administrative segregation, designated staff at not less than the level of correctional captain will review the order portion of the CDC Form 114-D. If retention in administrative segregation is approved at this review, the following determinations will be made at this level:~~

~~(a) Determine the appropriate assignment of staff assistance, if such assistance was deemed necessary by the official initiating the CDC Form 114-D. If the inmate's caseworker is not an appropriate assignment because of the caseworker's schedule, an alternate staff assistance assignment will be made. The inmate will be notified in writing of any change in the assignment of staff assistance. An inmate may decline to accept the assignment of his or her caseworker or the first person assigned. In such cases a different staff member will be assigned to assist the inmate.~~

~~(b) Determine the inmate's desire to call witnesses or submit other documentary evidence. If the inmate requests the presence of witnesses or submission of documentary evidence at a classification hearing on the reason or need for retention in segregated housing, an investigative employee will be assigned to the case. A request to call witnesses and the names of witnesses must be submitted in writing by the inmate.~~

~~(c) Determine if the inmate has waived the 72-hour time limit in which a classification hearing cannot be held, as indicated on the CDC Form 114-D, or if the inmate desires~~

~~additional time to prepare for a classification hearing. A request and the reason for needing additional time to prepare for a hearing must be submitted in writing by the inmate. In the absence of an inmate's waiver of the 72-hour preparation period or an approved request for additional preparation time, a classification hearing cannot be held earlier than 72 hours after the inmate's placement in segregated housing, but will be held as soon thereafter as it is practical to do so.~~

~~(d) Determine the most appropriate date and time for a classification hearing based upon the determination arrived at under (a)(b) and (c) and the time limitations prescribed in section 3338.~~

~~Note: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.~~

(a) The need to retain an inmate in administrative segregation shall be determined by the ICC.

(1) The initial ICC hearing shall be held within 10 calendar days after the date the inmate was initially placed in administrative segregation. Voluntary extension of this time frame by the inmate is not permitted.

(2) The inmate shall be allowed at least 72 hours to prepare for the ICC classification hearing. However, the inmate may waive this procedural safeguard, after the Administrative Reviewer considers the need for SA and the inmate does not require a SA.

(3) In addition to a copy of the CDC Form 114-D, provided to the inmate at the time of placement in administrative segregation in accordance with subsection 3335(b)(3), the inmate shall be provided copies of all additional documentation concerning the reasons for administrative segregation placement at least 24 hours prior to the ICC hearing. Confidential information pertaining to the case shall be afforded to the inmate in accordance with subsection 3321(b)(3).

(4) Inmates not requiring a staff assistant, in accordance with section 3340, may waive the 24-hour period for documentation review. Waivers shall be formally noted in the CDC Form 128-G.

(5) Exceptions to the inmate's physical presence at the hearing shall be permitted in accordance with subsections 3320(g) or 3375(f)(3). The reasons for any hearing conducted without the presence of the inmate shall be recorded within the CDC Form 128-G.

(6) If the inmate refuses or is unable to attend the hearing, a staff member shall query the inmate on behalf of the classification committee and convey all relevant information to the committee to consider in making their decision and shall be recorded within the CDC Form 128-G.

(7) The SA, if one is assigned, shall be at the hearing even if the inmate is not present.

(b) The primary purpose of the initial ICC hearing is to determine the need for continued segregation. Consistent with the criteria set forth in section 3335, the ICC review shall be based on the documented case-specific circumstances of the CDC Form 144-D and any other disciplinary, IE report or other available information that may impact placement. The classification committee shall ensure that all applicable procedural safeguards are uniformly applied to each inmate placed in administrative segregation and record their findings on a CDC Form 128-G in accordance with subsection 3375(g), including any evidence or documentation relied upon, with a copy issued to the inmate.

(1) The classification committee shall consider all available information, including inmate comments, when determining the appropriate exercise yard group and any housing restrictions.

(2) The inmate's yard assignment and housing status shall be reviewed at each ICC appearance and modified as necessary.

(c) Any inmate retained in administrative segregation at the initial ICC hearing shall be presented to a CSR within 30 days of the hearing date for review and approval. Subsequent ICC reviews shall proceed in accordance with the following timelines, considering any applicable projected Minimum Eligible Release Date (MERD) as defined in Section 3000, until the inmate is released to the GP:

(1) At intervals of not more than 180-days: when a pending Security Housing Unit (SHU) assessable Rules Violation Report (RVR) is postponed pending a court proceeding, a referral to the District Attorney (DA) for possible prosecution, or pending completion of Security Threat Group (STG) validation investigation process pursuant to subsection 3341.3(a)(1)(D) & (E). Administrative segregation extension requests specific to pending disciplinary matters shall identify the inmate's intent to postpone the disciplinary hearing, as well as, the status of the pending DA referral. Upon resolution of such matters, an ICC shall review the inmate's case within 14 calendar days. Inmates who have postponed their RVR pending a court proceeding or a referral to the DA shall not be retained in ASU past the anticipated projected MERD unless ICC has reason to believe based on the inmate's disciplinary history, that administrative SHU status would be necessary for the safety and security of the institution or persons, following the adjudication of the RVR. In these cases a new CDC Form 114-D shall be immediately prepared and issued, clearly articulating the reasons for continued retention, in accordance with section 3335.

(2) At intervals of not more than 90 days: when an administrative segregation inmate is pending a GP transfer.

(3) At intervals of not more than 90 days: until a SHU assessable RVR is adjudicated and the matter is not pending referral for prosecution. Upon resolution of such matters, an ICC shall review the inmate's case within 14 calendar days.

(4) At intervals of not more than 90 days: pending completion of an investigation into the safety of any person, institutional security, serious misconduct or criminal activity, excluding STG validation. Should the completed investigation result in the issuance of a RVR and/or referral to the DA for criminal prosecution, the ICC shall review the case in accordance with the schedule set forth in subsections (1) or (3) above. Upon resolution of such matters, an ICC shall review the inmate's case within 14 calendar days.

(d) Subsequent ICC reviews shall be in accordance with subsection (c) of this section. All cases shall be presented to the CSR prior to the expiration of a previously approved CSR extension.

(e) Inmates in administrative segregation who have an approved SHU term, but are pending other unresolved case considerations, shall be reviewed by the ICC in accordance with subsection 3341.8, Security Housing Unit/Psychiatric Services Unit Classification Hearings.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code and *Wright v. Enomoto*, (1976) 462 F Supp 397; *Toussaint v. McCarthy* (9th Cir. 1986) 801 F2d 1080, cert. denied, 481 U.S. 1069).

Section 3338 is amended to read.

3338. Hearing on Segregated Housing Order Amendment to Reasons for Segregation

~~(a) A classification hearing for consideration and determination of the need to retain an inmate in segregated housing, for the reasons set forth in an segregation order, CDC Form 114-D, will be held as soon as it is practical and possible to do so, but in no case longer than 10 days from the date the inmate was initially placed in segregated housing, except for the following reasons:~~

~~(1) The segregation order, CDC Form 114-D, has been withdrawn and the inmate has been returned to general population status pursuant to Section 3339.~~

~~(2) The inmate has been afforded the procedural safeguards of a disciplinary hearing for a serious rule violation and the case has been referred to a classification committee for review, as provided in Section 3315(g). In such cases the classification committee may rely upon the findings of the disciplinary hearing in determining the inmate's need for segregated housing and in ordering such placement. A separate order and hearing on segregated housing is not required in such cases.~~

~~(3) The inmate is retained in segregated housing for any Administrative reasons or purposes after acquittal or dismissal of disciplinary charges for which the inmate was segregated pending a disciplinary hearing. In such cases, a segregated housing order shall be initiated and a hearing shall be held on the order within the time limits and under the procedural safeguards set forth in Section 3339(b).~~

~~(4) A continuing state of emergency exists within the institution, as described in Section 3383. Under such circumstances the hearing will be held as soon as it is safe and practical to do so.~~

~~(b) The hearing on an administrative segregation order, CDC Form 114-D, may be conducted by a single classification hearing officer (facility captain, correctional captain, correctional counselor III, or experienced correctional lieutenant, or correctional counselor II.) This does not preclude the use of classification committees or subcommittees of classification for such hearings if such committee hearings can be scheduled and conducted within the time constraints required for such hearings. This option is left to the discretion of each warden and superintendent.~~

~~(c) The inmate will be present at the initial hearing on an administrative segregation order except under the applicable conditions as described in section 3320 (g) of the Secretary's rules relating to disciplinary hearings. If the hearing is held without the inmate present, the reason will be documented on the segregation order form. Any staff member assigned to assist the inmate will also be present at the hearing.~~

~~(d) The primary purpose of the initial hearing on an administrative segregation order, CDC Form 114-D, is to determine the need for continued retention in administrative segregation pending criminal prosecution, disciplinary proceedings, the resolution of nondisciplinary issues or considerations, and reclassification by the institution's main classification committee for assignment to a specialized security housing unit, or an action on the main classification committee's recommendation for transfer to an institution with appropriate specialized security housing units.~~

~~(e) When the reason for an inmate's initial placement in administrative segregation is a disciplinary matter and likely to result in a formal report of violation of institution rules on a CDC Form 115, or a referral to the district attorney for possible criminal prosecution,~~

~~the hearing will assume the alleged misconduct or criminal activities to be factual as reported in the segregation order. The hearing will not consider evidence or information relating to the guilt or innocence of the inmate. The only determination to be made is whether the inmate needs to be retained in administrative segregation for the reasons given in subsection 3335 (a) and in the segregation order, CDC Form 114-D, pending resolution or disposition of disciplinary issues. If the hearing decision is to retain the inmate in administrative segregation, the case will be referred to the next scheduled meeting of the institution's main classification committee for review. The main classification committee may review the case in absentia and continue the inmate in administrative segregation pending resolution of the disciplinary issues, or schedule the inmate for a personal appearance to consider placement in a specialized security unit based upon other nondisciplinary reasons necessitating such placement.~~

~~(h) Based upon the finding of the investigative employee, the initial hearing or the main classification committee will permit the inmate to present witnesses and documentary evidence at the hearing unless the initial hearing officer or the chairperson of the committee determines in good faith that permitting such evidence will be unduly hazardous to the institution safety or correctional goals. The reason for disallowing witnesses or evidence will be documented in the "hearing" portion of the segregation order, CDC Form 114-D, and in the classification committee's report (CDC Form 128-G) depending upon the hearing at which the presentation of such evidence or witnesses would have otherwise been presented.~~

~~(i) The determinations arrived at in the classification hearing will be documented in the hearing portion of the segregation order, CDC Form 114-D, and in the classification committee report, CDC Form 128-G, depending upon the hearing at which the need for segregated housing is resolved. Such documentation will include an explanation of the reason and the information and evidence relied upon for the action taken. A copy of the completed CDC Form 114-D and any CDC Form 128-G resulting from hearings will be routed to the inmate's central file. The inmate will also be given copies of all completed forms and of all other documents relied upon in the hearing except those containing confidential information.~~

~~Note: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code; and *Wright v. Enomoto*, 462 F Supp 397 (1976).~~

(a) When the initial reason(s) for segregation has been resolved, but additional circumstances exist warranting continued administrative segregation placement, a new CDC Form 114-D shall be immediately prepared and issued, clearly articulating the reasons for continued retention, in accordance with section 3335.

(1) An CDC Form 114-D issued for purposes of retaining an inmate in segregated housing (ASU/SHU/Psychiatric Services Unit (PSU)) shall not require an Administrative Review.

(2) The official ordering retention shall ensure all procedural safeguards have been provided, in accordance with subsection 3336(c).

(3) The ICC shall be the sole authority permitted to effect a placement decision under the provisions of this section.

(b) For retention purposes, the CDC Form 114-D shall include:

- (1) The current reason(s) for segregation, and any resolution of such placement.
- (2) The new reason(s) for retention in segregated housing in accordance with section 3335.
- (3) When necessary, the official issuing the CDC Form 114-D for administrative segregation retention shall document the need for effective communication accommodation if any, as defined in section 3000, how it was provided, how it was achieved and how they were satisfied effective communication was accomplished.
- (c) ICC hearings on CDC Form 114-D's, retaining inmates in ASU/SHU/PSU shall be in accordance with section 3337.

Note: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code; and Taylor v. Rushen (N.D. Cal.) L-80-0139 SAW.

Section 3339 Release from Administrative Segregation and Retention in Administrative Segregation is amended to read:

Section 3339 Release from Administrative Segregation and Retention in Administrative Segregation. Release from Administrative Segregation.

- ~~(a) Release: Release from segregation status shall occur at the earliest possible time in keeping with the circumstances and reasons for the inmate's initial placement in administrative segregation. Nothing in this article shall prevent the official ordering an inmate's placement in administrative segregation, or a staff member of higher rank in the same chain of command, from withdrawing an administrative segregation order before it is acted upon or prior to a hearing on the order after consulting with and obtaining the concurrence of the administrator of the general population unit to which the inmate will be returned or assigned. Release from segregated housing after such placement shall be effected only upon the written order of an equal or higher authority.~~
- ~~(b) Retention: Subsections (b)(1) (b)(5) set forth procedural safeguards. These procedural safeguards apply to inmates retained for administrative reasons after the expiration of a definite term or terms of confinement for disciplinary reasons. Definite terms of confinement shall be set or reduced by classification or administrative action.~~
- ~~(1) A segregated housing order, CDC Form 114-D, shall be initiated, giving written notice of the reasons for such retention in sufficient detail to enable the inmate to prepare a response or defense. Except in case of a genuine emergency, a copy of the order shall be given to the inmate prior to the expiration of the determinate term or terms of confinement. In no case shall notice be given later than 48 hours after the expiration of the determinate term or terms.~~
- ~~(2) A fair hearing before one or more classification officials shall be held not more than 96 hours after the inmate is given a copy of the segregated housing order, unless the inmate requests, in writing, and is granted additional time to prepare a defense.~~
- ~~(3) Representation by a staff assistant shall be provided if institution officials determine that the inmate is illiterate or that the complexity of the issues make it unlikely that the inmate can collect or present the evidence necessary for an adequate comprehension of the case. The determination and designation is to be made at the time the segregated housing order is prepared and shall be included on the copy of the order given the inmate.~~
- ~~(4) The inmate shall be given a reasonable opportunity to present witnesses and documentary evidence unless institution officials determine in good faith that~~

~~presentation of the evidence would be unduly hazardous to institutional safety or correctional goals. The reason for disallowing designated evidence will be explained in writing by the hearing body on the segregated housing order.~~

~~(5) A copy of the completed segregated housing order containing a written decision, including references to the evidence relied upon and the reasons for retention in segregated housing beyond the expiration of the expired term of confinement, if so retained, shall be given the inmate upon completion of the hearing.~~

(a) Release from administrative segregation shall occur at the earliest possible time in keeping with the inmate's case factors and reasons for the inmate's placement in administrative segregation.

(b) When releasing or rescinding an initial administrative segregation placement prior to the initial ICC, prior to release, the releasing authority shall:

(1) Consult with the Captain or designee from the facility where the inmate is to be housed.

(2) Explain the basis and reasoning for the decision on the CDC Form 114-D.

(3) Provide the inmate a copy of the CDC Form 114-D.

(c) Inmates released from administrative segregation are considered GP inmates and are no longer subject to the requirements of this article. If immediate release to the GP is impractical for reasons identified in section 3335, a new CDC Form 114-D shall be issued and addressed in accordance with sections 3335, 3336 and 3337.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code; and *Taylor v. Rushen* (N.D. Cal.) L-80-0139 SAW

Existing section 3340 has been relocated and renumbered to new subsection 3335.5.

3340. Exclusions.

~~Separation from general population for the reasons and under the circumstances described in this section is not considered administrative segregation and is specifically excluded from the other provisions of this article.~~

~~(a) Medical. When an inmate is involuntarily removed from general inmate status for medical or psychiatric reasons by order of medical staff and the inmate's placement is in a hospital setting or in other housing as a medical quarantine, the inmate will not be deemed as segregated for the purpose of this article. When personnel other than medical staff order an inmate placed in administrative segregation for reasons related to apparent medical or psychiatric problems, that information will be immediately brought to the attention of medical staff. The appropriateness of administrative segregation or the need for movement to a hospital setting will be determined by medical staff. When medical and psychiatric reasons are involved, but are not the primary reasons for an inmate's placement in administrative segregation, administrative segregation status will be continued if the inmate is moved to a hospital setting and the requirements of this article will apply.~~

~~(b) Orientation and Lay-Over. Newly received inmates and inmates in transit or lay-over status may be restricted to assigned quarters for that purpose. Such restrictions should not be more confining than is required for institution security and the safety of persons, nor for a period longer than the minimum time required to evaluate the safety and security factors and reassignment to more appropriate housing.~~

~~(e) Disciplinary Detention. Placement in disciplinary detention as an ordered action of a disciplinary hearing is not subject to the provisions of this article except as provided in section 3338 (a)(2) and (3).~~

~~(d) Confinement to Quarters. Confinement to quarters as an ordered action of a disciplinary hearing is not subject to the provisions of this article.~~

~~(e) Segregated Inmates. When an inmate has been classified for segregated housing in accordance with this article and commits a disciplinary offense while so confined, or is returned to segregated housing upon completion of a disciplinary detention sentence for an offense committed in a segregated unit, the provision of this article will not apply.~~

~~Note: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.~~

New Section 3340 is adopted to read:

3340. Assistance to Inmates for Administrative Segregation Classification Hearings.

The Administrative Reviewer of the CDC Form 114-D, or official ordering an inmate retained in administrative segregation, shall determine the need for providing assistance to inmates placed or retained in administrative segregation. Such assistance may be in the form of a Staff Assistant (SA) or an Investigative Employee (IE). Only staff trained in the role and responsibilities of a SA or IE may be assigned. The duties and functions of a staff member assigned to assist an inmate in a classification hearing based upon a CDC Form 114-D will be separate from those described in section 3318 for a disciplinary hearing.

(a) A SA shall be assigned if:

(1) The inmate is illiterate.

(2) The inmate has difficulty reading, writing or speaking English. If a SA is necessary for the purpose of language interpretation, but is not fluent in the inmate's language, a certified interpreter shall also be provided.

(3) The issues are sufficiently complex to make it unlikely that the inmate can understand the issues or the ICC hearing process.

(4) The inmate is included in the Mental Health Services Delivery System (MHSDS), is Developmentally Disabled, or the circumstances surrounding administrative segregation placement involve behavior of a bizarre or unusual nature.

(A) The ICC shall assess the ongoing appropriateness for a SA assigned to inmates in the MHSDS Correctional Clinical Case Management System (CCCMS) level of care while housed in administrative segregation. In such cases the ICC shall determine whether the inmate is capable of comprehending the issues being presented based upon a clinical assessment in accordance with subsection 3375(g)(3), and presented at the time of the hearing.

(b) An inmate may refuse to accept the first SA at the time of assignment. If the inmate refuses the SA at the time of initial assignment, a second staff assistant shall be assigned. Any decision to substitute the assigned SA subsequent to the administrative review shall require notification to the inmate in writing.

(c) Inmates may refuse to accept the assignment of a second SA or waive a previous SA assignment unless:

(1) It is determined by the Administrative Reviewer that a fair hearing cannot otherwise be held.

- (2) The inmate meets criteria in accordance with subsection (a)(4) of this section.
- (d) The assigned SA shall:
- (1) Meet with the inmate at least 24 hours prior to the classification hearing, inform the inmate of the role of the SA, explain their rights and the purpose and procedure of the classification hearing.
 - (2) Address the need for effective communication, how it was provided, how it was achieved and how the SA was satisfied effective communication was accomplished, which shall be documented within the CDC Form 128-G in accordance to subsection 3375(g)(1)(E).
 - (3) Provide assistance to the inmate by being present during the IE's interview of the inmate.
 - (4) Inform the inmate of the following due process rights afforded during the classification hearing process:
 - A. The right to 72 hours time to prepare response for the ICC hearing;
 - B. The right to a fair and impartial hearing;
 - C. The right to request witnesses and documentary evidence;
 - D. The right to a written decision documenting the evidence or information relied upon for the decision.
 - (5) Advise and assist in the inmate's preparation for a classification hearing. However, the SA shall refrain from giving legal counsel or specifying the position the inmate should take in the classification hearing.
 - (6) Keep confidential any information the inmate may disclose concerning the charges for which the SA was assigned.
 - (7) Inform the inmate that all evidence and information obtained and considered or developed in the classification process may be used in court if the same charges have been or are to be referred to the district attorney for possible criminal prosecution.
 - (8) If the SA becomes aware that the inmate is contemplating future criminal conduct, the SA shall disclose this information if necessary to protect potential victims and prevent the contemplated crime.
 - (9) Assist the inmate in presenting the inmate's position, in person, at the hearing.
 - (10) Make reasonable effort to ensure that the inmate's position is understood.
 - (11) Make reasonable effort to ensure the inmate understands and comprehends the decision reached.
 - (12) Perform the above duties for inmates in conjunction with all classification reviews.
- (e) The SA assigned and assisting the inmate in the manner described above shall be the same staff member who appears with the inmate at the classification hearing.
- (f) Assignment of a SA shall not preclude assignment of an IE.
- (g) An IE may be assigned if:
- (1) The reasoning for an inmate's placement in administrative segregation is for non-disciplinary reasons and the inmate requests in writing the presence of witnesses or submission of documentary evidence at a classification hearing on the reason or need for retention in segregated housing.
 - (A) When an inmate's administrative segregation placement is for non-disciplinary reasons, the Administrative Reviewer will consider all available evidence or information relating to the validity of the reasons documented for administrative segregation placement. Denial of an IE, witnesses or evidence requested by the inmate shall be on the basis of legitimate penological interest and documented on the CDC Form 114-D.
 - (B) The reason for an inmate's placement in administrative segregation is a serious disciplinary matter resulting in the issuance of a CDCR Form 115 Rules Violation Report (Rev. 07/88) and/or a referral to the district attorney for criminal prosecution, the

classification committee will assume the alleged misconduct or criminal activity to be factual as documented. In such cases, the services of an IE, witnesses or additional evidence shall be reserved for the disciplinary hearing, but denied for purposes of the initial ICC.

(h) Based upon the findings of the investigative employee, the initial hearing shall permit the inmate to present witnesses and documentary evidence unless the chairperson of the committee determines in good faith that permitting such evidence will be unduly hazardous to the safety and/or security of the institution.

(i) Assignment of an IE shall not preclude assignment of a SA.

(j) The inmate may not select the investigative employee, but may object to the one assigned and provide, in writing to the Administrative Reviewer, the reasons for the objection. The Administrative Reviewer shall evaluate the inmate's objection(s) and, if determined to be reasonable, assign an alternate investigative employee to complete the investigation. If the Administrative Reviewer determines that the inmate's objections are not reasonable, the original investigative employee shall complete the investigation. The inmate's objection must be provided prior to the beginning of the investigation. The Administrative Reviewer shall note on the CDC Form 114-D the decision to deny or approve a request, and if denied, explain the reason(s) for denial.

(k) The assigned IE shall:

(1) If applicable, coordinate with the inmate's assigned SA to ensure the SA is present during any questioning by the IE.

(2) Document all effective communication efforts, as necessary; including the need for effective communication, how it was provided, how it was achieved and how they were satisfied effective communication was accomplished.

(3) Interview the inmate, to include the inmate's statement and any relevant questions for witnesses with first-hand knowledge of the circumstances warranting the inmate's segregation. An IE is not subject to the confidentiality provisions of the SA in accordance with subsection 3340(d)(6) and shall not withhold any information received from the inmate. The inmate's submission of questions for witnesses does not preclude the IE from asking other relevant questions of the witnesses that may be of assistance to the classification committee in making decisions regarding the reason(s) for segregation.

(4) It is the inmate's responsibility to provide information to the IE in order to assist in identifying any relevant witness(es) the inmate requests to be interviewed.

(5) Immediately document the investigative findings in a report, including the name of the SA and, if applicable, an interpreter present during interviews; and forward the completed report to the ICC.

(6) Provide the inmate a copy of the IE report, any non-confidential reports and information relevant to the segregation decision and/or administrative segregation placement, within 24 hours prior to the ICC.

(7) Witnesses and Evidence. The authority to grant or deny the appearance of witnesses shall be reserved for the ICC.

(8) When an IE provides assistance to an inmate, in lieu of or in addition to that provided by a SA the IE shall do so as a representative of the official who will conduct the classification hearing rather than as a representative of the inmate.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code *Coleman v. Wilson* 912 F. Supp. 1282 (E.D. Cal. 1995) and *Clark v. California* 123 F. 3d 1267 (9th Cir. 1997).

Existing Section 3341 is deleted in its entirety.

3341. Staff Assistance.

~~The duties and functions of a staff member assigned to assist an inmate in a classification hearing on a segregated housing order will be the same as described in section 3318 for a disciplinary hearing. When an inmate requests witnesses at a classification hearing on a segregation order and an investigative employee is assigned, the investigative employee's duties and functions will be essentially the same as described in section 3318 for predisciplinary hearing investigations. In screening prospective witnesses, the investigative employee will do so in accordance with the information to be considered in the classification hearing, as described in section 3338 (e) and (f).~~

~~Note: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code~~

New Section 3341 is adopted to read:

3341. Segregated Program Housing Units.

(a) Segregated Program Housing Units (SPHU) are designated for extended term programming of inmates not suited for housing in the general population. They are specialized programming units with established placement criteria. Placement into these units requires approval by a Classification Staff Representative (CSR), on the basis of classification committee recommendations and referrals.

(b) With the exception of Protective Housing Unit (PHU) and as otherwise specified in subsections section 3378.3(b)(1) through 3378.3(b)(3), SPHU placement for administrative SHU purposes shall be reviewed by ICC at least every 180 days, or sooner as directed by a CSR. For determinate SHU inmates, ICC reviews shall be no less frequently than every 180 days following their initial SHU annual review, or sooner as directed by a CSR. The purpose of such reviews is to evaluate the inmate's case factors to determine if specialized housing continues to be the most appropriate and least restrictive placement option commensurate with any existing threat to institutional security or the safety of any person.

(c) Special circumstances or exceptions to the placement criteria for SPHU must be referred to and decided by the Departmental Review Board (DRB) in accordance with section 3376.1.

(d) The ICC may release an inmate from PSU/SHU to an available and appropriate bed pending CSR review for alternate placement consideration at another institution. Unless otherwise specified in this section, if the current institution has other available and appropriate non SPHU housing, the ICC may release the inmate to that program pending C&PR review who has local endorsement authority in this circumstance.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 5054 and 5068, Penal Code; Sandin v. Connor (1995) 515 U.S. 472; Toussaint v. McCarthy (9th Cir. 1990) 926 F.2d 800; Toussaint v. Yockey (9th Cir. 1984) 722 F.2d 1490.

New Section 3341.1 is adopted to read:

3341.1 Protective Housing Unit.

Protective Housing Unit (PHU). A PHU houses inmates whose safety would be endangered by general population inmates and provides secure housing and care for inmates with safety concerns of such magnitude, that no other viable housing options are available.

(a) An inmate may be placed in PHU in accordance with the following criteria:

(1) The inmate does not require segregated housing placement for reasons other than protection.

(2) The inmate is not documented as an affiliate of an STG-I.

(3) A classification committee has determined that the inmate does not pose a threat to the safety or security of other inmates similarly housed in the PHU.

(4) The inmate has specific, documented and verified safety and/or enemy concerns, likely to and capable of causing the inmate great bodily injury if placed in the general population.

(5) The inmate has notoriety likely to result in great bodily injury to the inmate if placed in general population.

(6) There is no alternative placement available that can both ensure the inmate's safety and provide the level of custody required for the appropriate control of the inmate's movement.

(b) The inmate's uncorroborated personal report, the nature of their commitment offense or a record of prior protective custody shall not be the sole basis for protective housing unit placement.

(c) The DRB shall retain sole authority for the placement and removal of inmates from PHU.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 5054 and 5068, Penal Code.

New Section 3341.2 is adopted to read:

3341.2. Psychiatric Services Unit.

Psychiatric Services Unit (PSU). A PSU provides secure housing and care for inmates with diagnosed psychiatric disorders not requiring inpatient hospital care, but who require placement in housing equivalent to Security Housing Unit (SHU), as described in section 3341.3.

(a) An inmate shall be housed in a Psychiatric Services Unit (PSU), if:

(1) The inmate is included in the MHSDS at the Enhanced Outpatient Program (EOP) level of care and the inmate's conduct has resulted in either a determinate or administrative SHU term.

(2) The inmate is included in the Developmental Disability Program at DD3 and the inmate's conduct has resulted in either a determinate or administrative SHU term.

- (b) Staff shall not postpone a CSR referral for any inmate requiring placement in a PSU.
(c) The CSR shall document any pending issues, such as disciplinary matters, DA referrals or investigations, on the CDC Form 128-G identifying the sending institutions responsibility for resolving any outstanding concerns.
(d) Inmates assigned to PSU shall be classified pursuant to section 3341.8.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 2933.6, 5054 and 5068, Penal Code; *Madrid v. Gomez* (N.D. Cal. 1995) 889 F.Supp. 1146, 1278; *Coleman v. Wilson* 912 F. Supp. 1282 (E.D. Cal. 1995) and *Clark v. California* 123 F. 3d 1267 (9th Cir. 1997).

New Section 3341.3 is adopted to read:

3341.3. Security Housing Unit

An inmate whose conduct endangers the safety of others or the security of the institution shall be housed in a Security Housing Unit (SHU) for administrative reasons or for a determinate period of time if found guilty for serious misconduct pursuant to section 3341.9(e).

(a) Placement in SHU shall be based on the following criteria:

(1) Administrative SHU. An inmate may be assessed an administrative SHU term when:

(A) At a pre-MERD review, ICC identifies an inmate with a substantial disciplinary history, consisting of no less than three SHU terms within the past five years, which demonstrates an unwillingness to comply with departmental rules and behavior. ICC shall articulate substantive justification for the need of continued SHU placement due to the inmate's ongoing threat to the safety and security of the institution and/or others.

(B) The inmate's case factors are such that overwhelming evidence exists supporting an immediate threat to the security of the institution or the safety of others, where ICC shall articulate substantive justification for the need for SHU placement.

(C) The inmate has voluntarily requested continued retention in segregation, where ICC has carefully articulated and substantively justified support for retention and the inmate does not qualify for housing within the Protective Housing Unit.

(D) The inmate is a validated STG affiliate and placed in the Step Down Program by ICC or DRB in accordance with section:

1. STG-I Member: upon initial validation and Institutional Classification Committee Confirmation.

2. STG-I Associate: as part of initial validation, source items include serious documented STG behavior or activity as listed in section 3378.4(a) STG Disciplinary Matrix and which is also identified in Section 3341.9(e) SHU Term Assessment Chart.

3. STG-II Member or Associate: as part of initial validation, source items include two occurrences, both of which have occurred within four years of the validation date, of serious documented STG behavior or activity, as listed in section 3378.4(a) STG Disciplinary Matrix which are also identified in CCR Section 3341.9(e) SHU Term Assessment Chart.

(E) As provided in Section 3378.4(c), a validated STG affiliate shall be considered by ICC for initial placement in a SHU. ICC maintains discretion in evaluating an affiliate's overall disciplinary record and case factors in determining the need for placement in a

SHU/Step Down Program (SDP) for an administrative term when the following criteria are met:

1. STG-I Associate: the validated affiliate being found guilty of STG related behavior, as identified in section 3378.4(a) and subsequent to initial validation as follows: 1) two administrative rules violation reports within the preceding 12 months, or 2) one serious rules violation report.

2. Inactive Status or Inactive-Monitored Status Affiliate: the validated affiliate being found guilty of STG related behavior, as identified in section 3378.4(a) and subsequent to initial validation as follows: 1) two administrative rules violation reports within the preceding 12 months, or 2) one serious rules violation report.

3. STG-II Member or Associate: the validated affiliate being found guilty of two serious STG related rules violation reports as listed in section 3378.4(a) STG Disciplinary Matrix and which are also identified in section 3341.9(e) SHU Term Assessment Chart within the preceding four (4) years.

4. Monitored Status or Dropout Status Affiliate: the validated affiliate being found guilty of STG related behavior, as identified in section 3378.4(a) and subsequent to initial validation as follows: 1) two administrative rules violation reports within the preceding 12 months, or 2) one serious rules violation report.

(F) The DRB approves placement.

(2) Determinate SHU. An inmate shall be assessed a determinate SHU term when the inmate is found guilty of a CDC Form 115, Rules Violation Report for an offense specifically listed in subsection 3341.9(e) and ICC has determined the inmate presents a threat to the security of the institution and/or the safety of others.

(A) A determinate SHU term shall be computed using the SHU Term Assessment Chart, pursuant to subsection 3341.9(e), utilizing the SHU Term Assessment Worksheet. All determinate SHU terms shall be assessed at the expected term for the offense, in the absence of mitigating or aggravating factors, as listed in subsections 3341.9(b) & (c).

(B) The SHU term effective date shall be the date of placement in administrative segregation or upon the date of discovery of the information leading to the disciplinary charge, whichever occurs first.

(C) Inmates shall be assessed a determinate SHU term for serious misconduct occurring while on administrative SHU status provided the inmate is found guilty of an offense listed in subsection 3341.9(e). The administrative SHU status shall run concurrently to any/all assessed Determinate SHU terms, whether active or suspended, and upon the MERD the administrative status will continue.

(D) Only rule violations occurring within the past 5 years on an inmate's current CDCR number which warrant a SHU assessment shall be addressed by ICC and reviewed by the CSR. ICC shall assess the appropriate SHU term per 3341.9(e) and one of the following actions:

1. Impose/Re-impose
2. Impose/Re-impose and Suspend
3. Impose/Re-impose and Suspend in Entirety
4. Commute

Re-imposed SHU terms shall be addressed in accordance with section 3341.6.

(b) SHU terms shall be served in a departmentally approved SHU, or a facility specifically designated for that purpose, except under those circumstances where the term may be served in ASU or PSU. SHU terms may also be served in secure inpatient medical or mental health settings, when deemed clinically necessary. Inmates who are serving a SHU term in ASU shall be reviewed by a classification committee pursuant to section 3341.8.

(c) SHU classification decisions, including notification of the reasons for a classification hearing, SHU term assessment, housing restrictions, and yard assignment shall be documented on the CDC Form 128-G, with a copy provided to the inmate.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 2933.6, 5054 and 5068, Penal Code; Sandin v. Connor (1995) 515 U.S. 472; Madrid v. Gomez (N.D. Cal. 1995) 889 F.Supp. 1146; Toussaint v. McCarthy (9th Cir. 1990) 926 F.2d 800; Toussaint v. Yockey (9th Cir. 1984) 722 F.2d 1490; and Castillo v. Alameida, et al., (N.D. Cal., No.C94-2847).

New Section 3341.4 is adopted to read:

3341.4. Security Housing Unit Terms - Initial, Concurrent and Consecutive.

(a) An initial Security Housing Unit (SHU) term is the first established term that changes the inmate's status from administrative segregation to SHU and shall be calculated using the SHU Term Assessment Worksheet. The initial SHU term shall be the controlling term unless another SHU term is later assessed with a more distant MERD.

(b) Concurrent SHU terms are independent SHU terms running simultaneously to another SHU term(s) and shall be calculated using the SHU Term Assessment Worksheet. Concurrent SHU terms shall be assessed for any offenses eligible for SHU assessment that occur either prior to the initial SHU term and may also be assessed for those offenses eligible for SHU assessment that occur or after the initial SHU term.

(c) Consecutive SHU terms are successive SHU terms that begin following the maximum MERD of an initial or previously assessed SHU term and shall be calculated using the SHU Term Assessment Worksheet. Consecutive SHU terms may be assessed for any offense committed after the assessment of a previous SHU term with an unexpired MERD.

(d) For SHU assessable violations that occur after a previously assessed SHU term, with an unexpired MERD, ICC shall have the discretion to assess either a Concurrent or Consecutive SHU term, in accordance with subsections 3341.4(b) and (c). Any ICC action to assess either a Concurrent or Consecutive SHU term shall clearly articulate substantive justification for the decision on the CDC Form 128-G.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 2933.6, 5054 and 5068, Penal Code; Sandin v. Connor (1995) 515 U.S. 472; Toussaint v. McCarthy (9th Cir. 1990) 926 F.2d 800; Toussaint v. Yockey (9th Cir. 1984) 722 F.2d 1490; (N.D. Cal., No. C94-2847).

Existing Section 3341.5 is deleted in its entirety

3341.5. Segregated Program Housing Units.

~~Special housing units are designated for extended term programming of inmates not suited for general population. Placement into and release from these units requires approval by a classification staff representative (CSR).~~

~~(a) Protective Housing Unit (PHU). An inmate whose safety would be endangered by general population placement may be placed in the PHU providing the following criteria are met:~~

~~(1) The inmate does not require specialized housing for reasons other than protection.~~

~~(2) The inmate does not have a serious psychiatric or medical condition requiring prompt access to hospital care.~~

~~(3) The inmate is not documented as an affiliate of a STG-I.~~

~~(4) The inmate does not pose a threat to the safety or security of other inmates in the PHU.~~

~~(5) The inmate has specific, verified enemies identified on CDC Form 812 likely to and capable of causing the inmate great bodily harm if placed in general population.~~

~~(6) The inmate has notoriety likely to result in great bodily harm to the inmate if placed in general population.~~

~~(7) There is no alternative placement which can ensure the inmate's safety and provide the degree of control required for the inmate.~~

~~(8) It has been verified that the inmate is in present danger of great bodily harm. The inmate's uncorroborated personal report, the nature of the commitment offense or a record of prior protective custody housing shall not be the sole basis for protective housing unit placement.~~

~~(b) Psychiatric Services Unit (PSU). A PSU provides secure housing and care for inmates with diagnosed psychiatric disorders not requiring inpatient hospital care, but who require placement in housing equivalent to Security Housing Unit (SHU), as described in subsection 3341.5(c), at the Enhanced Outpatient Program level of the mental health delivery system.~~

~~(c) Security Housing Unit (SHU). An inmate whose conduct endangers the safety of others or the security of the institution shall be housed in a SHU.~~

~~(1) Assignment criteria. The inmate has been found guilty of an offense for which a determinate term of confinement has been assessed or is deemed to be a threat to the safety of others or the security of the institution.~~

~~(2) Length of SHU Confinement.~~

~~(A) Administrative SHU Segregation.~~

~~1. An inmate assigned to a security housing unit on an administrative SHU term, who is not a validated STG affiliate, shall be reviewed by a classification committee at least every 180 days for consideration of release to the general inmate population. An investigative employee shall not be assigned at these periodic classification committee reviews.~~

~~A validated STG affiliate assigned to a security housing unit to participate in the Step Down Program (SDP) shall be reviewed by a classification committee on a schedule that is consistent with section 3378.3(b)(1) through 3378.3(b)(3) for consideration of program participation or movement to the next step of the SDP.~~

~~2. Except as provided at section 3335(a), a validated STG affiliate is deemed to be a severe threat to the safety of others or the security of the institution and will be placed in a SHU for an administrative term when the following criteria are met:~~

~~a. STG-I Member: upon initial validation and Institutional Classification Committee Confirmation.~~

~~b. STG-I Associate: as part of initial validation, source items include serious documented STG behavior or activity as listed in Section 3378.4(a) STG Disciplinary Matrix and which is also identified in Section 3341.5(c)(9) SHU Term Assessment Chart.~~

~~c. STG-II Member or Associate: as part of initial validation, source items include two occurrences, both of which have occurred within four years of the validation date, of serious documented STG behavior or activity, as listed in Section 3378.4(a) STG Disciplinary Matrix which are also identified in Section 3341.5(c)(9) SHU Term Assessment Chart.~~

~~3. As provided in Section 3378.4(c), a validated STG affiliate shall be considered by ICC for initial placement in a SHU. ICC maintains discretion in evaluating an affiliate's overall disciplinary record and case factors in determining the need for placement in a SHU/Step Down Program (SDP) for an administrative term when the following criteria are met:~~

~~a. STG-I Associate: the validated affiliate being found guilty of STG related behavior, as identified in Section 3378.4(a) and subsequent to initial validation as follows: 1) two administrative rules violation reports within the preceding 12 months, or 2) one serious rules violation report.~~

~~b. Inactive Status or Inactive Monitored Status Affiliate: the validated affiliate being found guilty of STG related behavior, as identified in Section 3378.4(a) and subsequent to initial validation as follows: 1) two administrative rules violation reports within the preceding 12 months, or 2) one serious rules violation report.~~

~~c. STG-II Member or Associate: the validated affiliate being found guilty of two serious STG related rules violation reports as listed in Section 3378.4(a) STG Disciplinary Matrix and which are also identified in Section 3341.5(c)(9) SHU Term Assessment Chart within the preceding four (4) years.~~

~~d. Monitored Status or Dropout Status Affiliate: the validated affiliate being found guilty of STG related behavior, as identified in Section 3378.4(a) and subsequent to initial validation as follows: 1) two administrative rules violation reports within the preceding 12 months, or 2) one serious rules violation report.~~

~~4. Administrative SHU terms suspended based solely on the need for inpatient medical or mental health treatment may be reimposed without subsequent misbehavior if the inmate continues to pose a threat to the safety of others or the security of the institution.~~

~~(B) Determinate SHU Segregation.~~

~~1. A determinate period of confinement in SHU may be established for an inmate found guilty of a serious offense listed in section 3315 of these regulations. The term shall be established by the Institutional Classification Committee (ICC) using the standards in this section, including the SHU Term Assessment Chart (see section 3341.5(c)(9)), Factors in Mitigation or Aggravation (see section 3341.5(c)(10)), SHU Term Assessment Worksheet CDC Form 629-A, Rev. 3/96, Assessment of Subsequent SHU Term Worksheet CDC Form 629-B, Rev. 9/90, and SHU Time Computation Table (see CDC Form 629-D, Rev. 7/88).~~

~~2. The term shall be set at the expected term for the offense in the absence of mitigating or aggravating factors. Deviation from the expected term shall be supported by findings pursuant to subsection (c)(7).~~

~~3. The terms shall be recorded on CDC Form 629-A, SHU Term Assessment Worksheet, using the SHU Time Computation Table which incorporates one-fourth clean conduct credit in the term. The computation shall establish a maximum release date and a minimum eligible release date (MERD). A copy of the CDC Form 629-A shall be given to the inmate.~~

~~4. Serious misconduct while in SHU may result in loss of clean conduct credits or an additional determinate term for an inmate serving a determinate term. Such additional term may be concurrent or consecutive and shall be recorded on CDC Form 629-B with a copy given to the inmate. Such cases shall be referred to a CSR for approval; however, all release and retention requirements of section 3339 shall remain in effect pending CSR approval.~~

~~5. Up to 45 days of a SHU inmate's clean conduct credits may be forfeited for disciplinary infractions that are not serious enough to warrant the assessment of a~~

subsequent or concurrent SHU term. Such forfeiture may be assessed against credits already earned or future credits.

6. ~~Consecutive SHU terms shall be assessed only for offenses occurring after commencement of a prior determinate SHU term.~~

7. ~~The ICC may commute or suspend any portion of a determinate term. Once commuted, the term shall not be reimposed. If suspended, the period of suspension shall not exceed the length of the original term imposed. When either action occurs, the case shall be referred to a classification staff representative (CSR) with a placement recommendation.~~

8. ~~A SHU Term may be reimposed if an inmate placed in the Administrative Segregation Unit (ASU) is found guilty of a serious rule violation and the ICC concludes the inmate poses a threat to the safety of others or the security of the institution.~~

9. ~~Determinate SHU terms suspended based solely on the need for inpatient medical or mental health treatment may be reimposed without subsequent misbehavior if the inmate continues to pose a threat to the safety of others or the security of the institution.~~

10. ~~The Unit Classification Committee shall conduct hearings on all determinate cases at least 30 days prior to their MERD or during the eleventh month from the date of placement, whichever comes first.~~

~~(C) Anytime a SHU term is reimposed, ICC shall record the basis of their decision in the GDC Form 128-G, Classification Chrono (Rev. 10/89), which is incorporated by reference, clearly articulating the inmate's continued threat to the safety of others or the security of the institution.~~

~~(3) Release from SHU. An inmate shall not be retained in SHU beyond the expiration of a determinate term or beyond 11 months, unless the classification committee has determined before such time that continuance in the SHU is required for one of the following reasons:~~

~~(A) The inmate has an unexpired MERD from SHU.~~

~~(B) Release of the inmate would severely endanger the lives of inmates or staff, the security of the institution, or the integrity of an investigation into suspected criminal activity or serious misconduct.~~

~~(C) The inmate has voluntarily requested continued retention in segregation.~~

~~(4) A validated STG affiliate shall be considered for release from a SHU, as provided above, after the inmate is verified as a STG dropout through a debriefing process.~~

~~(5) A validated STG affiliate shall be considered for release from SHU upon successful completion of steps 1 through 4 of the STG Step Down Program (SDP), pursuant to section 3378.3. Successful inmates shall be transferred to the general population of a Level IV facility for a 12 month period of observation that shall be considered step 5 of the SDP. Upon completion of step 5, the inmate shall be housed in a facility commensurate with his or her safety needs. In the absence of safety needs, the inmate shall be housed in a facility consistent with his or her classification score.~~

~~(6) An affiliate on monitored status, inactive-monitored status, inactive status, or validated as a dropout of a STG and placed in general population may be returned to segregation based upon STG activity/behavior pursuant to section 3378.4(c) identifying the inmate as a currently active affiliate of the STG with which the inmate was previously validated. Current activity is defined as any documented STG activity or behavior within the past four (4) years. The procedures described in Sections 3335 through 3345, and in Article 10, Classification, shall be utilized for the removal of the offender from the general population, the review of the initial segregation order, and all periodic reviews of the STG SHU term.~~

~~(7) SHU terms shall be served in a departmentally approved SHU or a facility specifically designated for that purpose, except under those circumstances where the term may be served in ASU. SHU terms may also be served in secure inpatient medical or mental health settings, when deemed clinically necessary.~~

~~(8) When an inmate is paroled while serving a determinate term, the remaining time on the term is automatically suspended. When an inmate returns to prison, either as a parole violator or with a new prison commitment, ICG shall evaluate the case for reimposition of the suspended determinate term. If reimposed, the term shall not exceed the time remaining on the term at the time of parole.~~

~~(9) SHU Term Assessment Chart (fixing of determinate confinement to SHU).~~

Notice to Printer

PICTURE OF SHU TERM ASSESSMENT CHART IS DELETED

~~(10) Factors in mitigation or aggravation of SHU term. The SHU term shall be set at the expected range unless a classification committee finds factors exist which warrant the imposition of a lesser or greater period of confinement. The total period of confinement assessed shall be no less than nor greater than the lowest or highest months listed for the offense in the SHU Term Assessment Chart. In setting the term, the committee shall determine the base offense. If the term being assessed includes multiple offenses, the offense which provides for the longest period of confinement shall be the base offense. Lesser offenses may be used to increase the period beyond expected term. After determining the base offense, the committee shall review the circumstances of the disciplinary offense and the inmate's institutional behavior history using the factors below. The committee shall then determine that either no unusual factors exist or find that specific aggravating or mitigating factors do exist and specify a greater or lesser term. The reasons for deviation from the expected term shall be documented on a CDC 128-G, Classification Chrono, and SHU Term Assessment Worksheet, a copy of which shall be provided to the inmate.~~

~~(A) Factors in Mitigation.~~

- ~~1. The inmate has a minor or no prior disciplinary history.~~
- ~~2. The inmate has not been involved in prior acts of the same or of a similar nature.~~
- ~~3. The misconduct was situational and spontaneous as opposed to planned in nature.~~
- ~~4. The inmate was influenced by others to commit the offense.~~
- ~~5. The misconduct resulted, in part, from the inmate's fear for safety.~~

~~(B) Factors in Aggravation.~~

- ~~1. The inmate's prior disciplinary record includes acts of misconduct of the same or similar nature.~~
- ~~2. The misconduct was planned and executed as opposed to situational or spontaneous.~~
- ~~3. The misconduct for which a SHU term is being assessed resulted in a finding of guilty for more than one offense.~~

~~(11) A validated STG affiliate who was paroled or discharged from CDCR jurisdiction and returns to custody shall be addressed as follows:~~

~~(A) An inmate who was previously paroled or discharged with Maximum (MAX) custody while pending validation and is returned to CDCR's custody shall be placed in ASU. The STG Investigator shall obtain the validation package to determine the status of~~

validation and housing at time of parole/discharge. The validation process shall be completed, as necessary. After review by the STG Unit Classification Committee is completed, the inmate will be referred to ICC for appropriate housing determination.

(B) A validated STG affiliate who was previously paroled or discharged with MAX custody and is returned to CDCR's custody shall be placed in ASU and afforded all procedural safeguards for segregated inmates. The STG Investigator will determine if there has been STG related behavior while the inmate was outside CDCR jurisdiction. The inmate will be referred to the STG Unit Classification Committee in accordance with section 3376(d)(5) or ICC, as appropriate.

1. While outside of CDCR jurisdiction, the inmate had no documented STG related behavior, ICC shall place the inmate at the beginning of the step that they were in at the time of parole/discharge.

2. While outside of CDCR jurisdiction, the inmate had a documented STG related conviction or good cause finding by a court, ICC shall place the inmate in Step 1 of the SDP.

(C) A validated STG affiliate who was previously paroled or discharged and was designated either inactive, inactive-monitored, monitored, or dropout status and returns to the custody of the CDCR shall be assigned housing based upon current case factors. The STG Investigator will determine if there has been STG related behavior while the inmate was outside CDCR jurisdiction. The inmate will be referred to the STG Unit Classification Committee in accordance with section 3376(d)(5) or ICC, as appropriate. ICC shall complete a case-by-case criteria review to determine if placement into the SDP Step 1 is appropriate. This review shall consist of commitment offense or good cause finding circumstances which were specifically related to the same STG with which the inmate was previously validated and occurred within the past four years from the date of arrest for this conviction or good cause finding.

NOTICE TO PRINTER

Picture of CDC Form CDCR 629-D is deleted.

~~Note: Authority cited: Section 5058, Penal Code. Reference: Sections 314, 5054 and 5068, Penal Code; *Sandin v. Connor* (1995) 515 U.S. 472; *Madrid v. Gomez* (N.D. Cal. 1995) 889 F.Supp. 1146; *Toussaint v. McCarthy* (9th Cir. 1990) 926 F.2d 800; *Toussaint v. Yockey* (9th Cir. 1984) 722 F.2d 1490; and *Castillo v. Alameida, et al.*, (N.D. Cal., No. C94-2847).~~

New Section 3341.5 is adopted to read:

3341.5 Suspending Security Housing Unit Terms.

(a) ICC may commute or suspend any portion of a Determinate SHU term. Once commuted, the term shall not be re-imposed. ICC may suspend a Determinate and/or end an Administrative SHU term any time it is determined an inmate no longer poses a threat to the safety of any person or the security of the institution. Additionally, ICC may suspend a Determinate or end an Administrative SHU term for purposes of inpatient medical or mental health treatment when deemed clinically necessary. Any ICC action

to suspend or commute a SHU term shall clearly articulate substantive justification for the decision on the CDC Form 128-G.

(1) ICC shall suspend any portion of a SHU term during any time the inmate was not on segregation status.

(2) The remaining time of the suspended SHU term continues to run while the inmate is no longer in segregated housing as long as the inmate remains in custody.

(3) The ICC action to suspend a SHU term may require CSR review for placement consideration and/or audit. ICC has the authority to release an inmate to a GP or ASU within the same institution pending placement review, as appropriate. . If multiple SHU terms are suspended, the SHU term with the most distant MERD need only be addressed. In this circumstance, any remaining SHU terms with unexpired MERD's shall be considered suspended.

(b) If an inmate paroles while serving a determinate SHU term, the remaining time on the SHU term is automatically suspended and any remaining time stayed. Any remaining SHU time shall be recalculated and assessed should the inmate return to custody, so long as the inmate maintains the same CDCR identification number.

(c) If an inmate paroles prior to assessment of a determinate SHU term, the ICC shall address the unresolved term should the inmate return to CDCR custody with the same CDCR identification number, in accordance with subsection 3341.3(a)(6).

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 2933.6, 5054 and 5068, Penal Code; Sandin v. Connor (1995) 515 U.S. 472; Madrid v. Gomez (N.D. Cal. 1995) 889 F.Supp. 1146; Toussaint v. McCarthy (9th Cir. 1990) 926 F.2d 800; Coleman v. Wilson 912 F. Supp. 1282 (E.D. Cal. 1995)

Section 3341.6 is adopted to read:

3341.6. Re-imposed Security Housing Unit Terms.

New subsections 3341.6(a) through 3341.6(a)(2) are adopted to read:

(a) A suspended SHU term may be re-imposed if an inmate is placed in administrative segregation immediately following an RVR for serious misconduct that occurred prior to the expiration of a previously established MERD. In this circumstance, the inmate must be found guilty of the serious misconduct and the ICC determines that the inmate poses a threat to the safety of any person or to the security of the institution. SHU terms re-imposed based on subsequent serious misconduct shall be effective the date of the misconduct. SHU terms suspended based solely on the need for inpatient medical or mental health treatment may be re-imposed without subsequent misconduct if the inmate continues to pose a threat to the safety of others or the security of the institution.

(1) If the SHU term is re-imposed, the ICC shall record the decision and the reasons for the decision on the CDC Form 128-G. If multiple SHU terms are eligible for re-imposition, the SHU term with the most distant MERD need only be addressed. In this circumstance, any remaining SHU terms with unexpired MERD's shall be considered re-imposed.

(2) Upon a guilty finding of subsequent serious misconduct, the ICC may elect to re-impose the current unexpired MERD, impose a forfeiture of clean conduct credits or impose a subsequent SHU term. ICC may impose a forfeiture of clean conduct credit or a concurrent/consecutive SHU term, where appropriate, upon those cases where the

subsequent and serious misconduct occurred prior to the expiration of the established MERD; however, adjudication did not occur until after.

(b) If an inmate paroled with an active Determinate or Administrative SHU term and subsequently returns to CDCR custody as a parole violator or with a new prison commitment under the same CDCR number, ICC shall evaluate the case for re-imposition. Re-imposed Administrative SHU terms shall be in accordance with subsection (a)(1), except as otherwise provided in subsection 3341.6(c)(1)-(3)(A). Re-imposed Determinate SHU terms shall be calculated utilizing the SHU Term Assessment Worksheet. Any unexpired SHU term shall be recalculated and addressed by ICC. If multiple CSR approved SHU terms are eligible for re-imposition, the SHU term with the most distant MERD need only be addressed. In this circumstance, any remaining SHU terms with unexpired MERD's shall be considered re-imposed. ICC retains the authority to impose or suspend any remaining time based upon the safety of persons or security of the institution.

(1) If re-imposed, the SHU term shall not exceed the period of time remaining on the original SHU term at the time of parole.

(2) Re-imposition of the SHU term following return to custody shall be documented on the appropriate CDC Form 128-G.

(3) SHU terms reassessed under the provisions of this subsection shall be audited and approved by a CSR.

(c) A validated STG affiliate who paroled or discharged from CDCR jurisdiction and returns to custody shall be addressed as follows:

(1) An inmate who previously paroled or was discharged with Maximum (MAX) custody while pending validation and is returned to CDCR's custody shall be placed in ASU. The STG Investigator shall obtain the validation package to determine the status of validation and housing at time of parole/discharge. The validation process shall be completed, as necessary. After review by the STG Unit Classification Committee is completed, the inmate will be referred to ICC for appropriate housing determination.

(2) A validated STG affiliate who previously paroled or was discharged with MAX custody and is returned to CDCR's custody shall be placed in ASU and afforded all procedural safeguards for segregated inmates. The STG Investigator will determine if there has been STG related behavior while the inmate was outside CDCR jurisdiction. The inmate will be referred to the STG Unit Classification Committee in accordance with section 3376(d)(5) or ICC, as appropriate.

(A) While outside of CDCR jurisdiction, the inmate had no documented STG related behavior, ICC shall place the inmate at the beginning of the step that they were in at the time of parole/discharge.

(B) While outside of CDCR jurisdiction, the inmate had a documented STG related conviction or good cause finding by a court, ICC shall place the inmate in Step 1 of the SDP.

(3) A validated STG affiliate who previously paroled or was discharged and was designated either inactive, inactive-monitored, monitored, or dropout status and returns to the custody of the CDCR shall be assigned housing based upon current case factors. The STG Investigator will determine if there has been STG related behavior while the inmate was outside CDCR jurisdiction. The inmate will be referred to the STG Unit Classification Committee in accordance with section 3376(d)(5) or ICC, as appropriate.

(A) ICC shall complete a case by case criteria review to determine if placement into the SDP Step 1 is appropriate. This review shall consist of commitment offense or good cause finding circumstances which were specifically related to the same STG with

which the inmate was previously validated and occurred within the past four years from the date of arrest for this conviction or good cause finding.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 314, 2933.6, 5054 and 5068, Penal Code; Sandin v. Connor (1995) 515 U.S. 472; Madrid v. Gomez (N.D. Cal. 1995) 889 F.Supp. 1146; Toussaint v. McCarthy (9th Cir. 1990) 926 F.2d 800; Toussaint v. Yockey (9th Cir. 1984) 722 F.2d 1490; Coleman v. Wilson 912 F. Supp. 1282 (E.D. Cal. 1995); and Castillo v. Alameida, et al., (N.D. Cal., No.C94-2847).

New Section 3341.7 is adopted to read:

3341.7. Forfeiture of Clean Conduct Credit.

(a) Serious misconduct not warranting a SHU term, occurring at any time following the commission of any offense listed in subsection 3341.9(e), but prior to a projected/established MERD, may result in a forfeiture of clean conduct credits.

(1) Up to 45 days of clean conduct credit may be forfeited as a result of a guilty finding for a serious misconduct not listed in subsection 3341.9(e). Such forfeiture shall be calculated utilizing the SHU Term Assessment Worksheet.

(2) If the SHU term has not yet been assessed or has been suspended in accordance with section 3341.5 at the time of the subsequent serious misconduct, the forfeiture of clean conduct credit is permitted should the SHU term be imposed or re-imposed.

(b) For inmates on segregation status, the ICC shall review any serious misconduct which may result in forfeiture of clean conduct credit and clearly articulate in the CDC Form 128-G the basis for their decision.

(c) Forfeitures of clean conduct credit may be assessed against credits already earned or future clean conduct credits, but shall not be assessed in periods exceeding the maximum MERD for the controlling offense.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 2933.6, 5054 and 5068, Penal Code; Sandin v. Connor (1995) 515 U.S. 472; Madrid v. Gomez (N.D. Cal. 1995) 889 F.Supp. 1146; Toussaint v. McCarthy (9th Cir. 1990) 926 F.2d 800; Toussaint v. Yockey (9th Cir. 1984) 722 F.2d 1490.

New Section 3341.8 is adopted to read:

3341.8. Security Housing Unit/Psychiatric Services Unit Classification Hearings.

The ICC shall conduct all classification hearings of SHU/PSU status inmates.

(a) SHU/PSU Status Reviews. Except as otherwise provided, inmates on Administrative SHU status, shall be reviewed by the ICC no less frequently than every 180 days for release consideration to a GP. Inmates on Determinate SHU status shall be reviewed by the ICC no less frequently than every 180 days following their initial SHU annual review for release consideration to a GP. The ICC review shall include, but not be limited to, the availability of alternative housing, demonstrated evidence of behavioral change and expressed willingness to conform to CDCR rules in accordance with California Code of Regulations, Division 3, Title 15. A validated STG affiliate assigned

to a security housing unit to participate in the Step Down Program (SDP) shall be reviewed by a classification committee on a schedule that is consistent with section 3378.3(b)(1) through 3378.3(b)(3) for consideration of program participation or movement to the next step of the SDP.

(1) Any inmate expected to be retained on SHU status beyond 360 days shall be provided a CDC Form 114-D documenting the SHU annual review, which shall be issued in accordance with section 3338(a)(1)-(3), 3338(b) and 3338(c), prior to the inmate's SHU annual review. Administrative SHU inmates shall require CSR referral and placement review following each SHU annual review.

(2) An inmate shall not be retained on SHU status beyond the expiration of a determinate term or beyond 360 days, unless the ICC has determined before such time that continuance in the SHU is required for one of the following reasons:

(A) The inmate has an unexpired MERD from SHU/PSU.

(B) Release of the inmate would severely endanger the lives of inmates, staff, or the security of the institution.

(C) The inmate has voluntarily requested continued retention in segregation and the ICC has substantively justified retention.

(3) A validated STG shall be considered for release from a SHU, as provided above, after the inmate is verified as a STG dropout through a debriefing process.

(4) A validated STG affiliate shall be considered for release from SHU upon successful completion of Steps 1 through 4 of the STG Step Down Program (SDP), pursuant to section 3378.3. Successful inmates shall be transferred to the general population of a Level IV facility for a 12 month period of observation that shall be considered Step 5 of the SDP. Upon completion of Step 5, the inmate shall be housed in a facility commensurate with his or her safety needs. In the absence of safety needs, the inmate shall be housed in a facility consistent with his or her classification score.

(5) An affiliate on monitored status, inactive-monitored status, inactive status, or validated as a dropout of a STG and placed in general population may be returned to segregation based upon STG activity/behavior pursuant to section 3378.4(c) identifying the inmate as a currently active affiliate of the STG with which the inmate was previously validated. Current activity is defined as any documented STG activity or behavior within the past four (4) years. The procedures described in Sections 3335 through 3345, and in Article 10, Classification, shall be utilized for the removal of the offender from the general population, the review of the initial segregation order, and all periodic reviews of the STG SHU term

(b) Pre-MERD Hearing. A Pre-MERD hearing shall be held by ICC 120 days prior to the expiration of a MERD. The ICC review shall include, but not be limited to, the availability of alternative housing, demonstrated evidence of behavioral change and expressed willingness to conform to CDCR rules, as well as determination of the housing and program assignment following completion of the SHU term, or sooner, if appropriate.

(1) If before the Pre-MERD hearing, there is any indication the inmate may be retained in segregation beyond the MERD for reasons specified in section 3335, the inmate shall be issued an CDC Form 114-D in accordance with section 3338.

(2) If ICC retains the inmate in segregation beyond the expiration of the MERD, the inmate's status then becomes administrative segregation, where future classification hearings shall be conducted in accordance with section 3337.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 2933.6, 5054 and 5068, Penal Code; Sandin v. Connor (1995) 515 U.S. 472; Madrid v. Gomez (N.D. Cal.

1995) 889 F.Supp. 1146; Toussaint v. McCarthy (9th Cir. 1990) 926 F.2d 800; Toussaint v. Yockey (9th Cir. 1984) 722 F.2d 1490; and Castillo v. Alameida, et al., (N.D. Cal., No.C94-2847). Coleman v. Wilson 912 F. Supp. 1282 (E.D. Cal. 1995) and Clark v. California 123 F. 3d 1267 (9th Cir. 1997).

New Section 3341.9 is adopted to read:

3341.9. Security Housing Unit Term Calculation and Assessment.

(a) The SHU term shall be set at the expected range unless the ICC finds factors exist which warrant the imposition of a lesser or greater period of confinement.

(1) Both aggravating and mitigating factors shall be considered for behavior occurring prior to the current serious rules violation. Aggravating and mitigating factors shall be considered for behavior occurring during an inmate's current term, prior term, discharged term or other verifiable incarcerated period, which have occurred during the past 5 calendar years.

(2) The total period of confinement assessed shall be no less than nor greater than the lowest or highest months listed for the offense in subsection 3341.9(e), the SHU Term Assessment Chart. In setting the term, the ICC shall determine the expected term for the offense, review the circumstances of the disciplinary offense, and consider the inmate's institutional behavior history using the factors below. The ICC shall then determine that either no unusual factors exist, or find that specific aggravating and/or mitigating factors exist which specify a greater or lesser term. The reasons for the specific amount of time assessed or deviation from the expected term shall be clearly documented on a CDC Form 128-G, and SHU Term Assessment Worksheet, with a copy provided to the inmate.

(3) When calculating a SHU term, ICC shall address all aggravating and mitigating factors. Any single aggravating and/or mitigating factor shall be considered. If aggravating or mitigating factors exist, ICC shall adjust the SHU term in consideration of such factors. Should both aggravating and mitigating factors exist, ICC shall adjust the SHU term by uniformly applying each factor.

(b) Factors in Mitigation.

(1) The inmate has no serious RVR's within 12 months of the behavior or no disciplinary history during the first year of CDCR incarceration.

(2) The inmate has not been involved in prior serious misconduct of the same or similar nature, as listed in subsection 3341.9(e), within the last five calendar years.

(3) The serious misconduct was situational and spontaneous, as documented and referenced.

(4) The inmate was influenced by others to commit the offense, as documented and referenced.

(5) The serious misconduct resulted, in part, from the inmate's fear for safety, as documented and referenced.

(6) The serious misconduct resulted, in part, from the inmate's mental health, as documented and referenced on the CDCR Form 115-MH.

(c) Factors in Aggravation.

(1) The inmate has been involved in prior serious misconduct of the same or similar nature, as listed in subsection 3341.9(e), within the last five calendar years.

(2) The serious misconduct was planned and executed, as documented and referenced.

(3) The serious misconduct was committed on behalf of an STG, as documented and referenced.

(4) The inmate influenced others to commit serious misconduct at the time of the offense, as documented and referenced.

(5) The serious misconduct directly resulted in injury to more than one victim, as documented and referenced.

(d) ICC decisions to assess a SHU term and/or referral for segregated housing placement, shall be referred to a CSR for review and approval. In auditing and endorsing cases, the CSR shall ensure that any SHU term assessment is consistent with the specific disciplinary violation that was charged and the subsequent findings as confirmed by the Chief Disciplinary Officer (CDO) and ICC.

(e) SHU Term Assessment Chart (Calculating determinate confinement to SHU).

<u>OFFENSE</u>	<u>TYPICAL TERM (Mos)</u>		
	<u>Low</u>	<u>Expected</u>	<u>High</u>
<u>(1) Homicide:</u>			
<u>(A) Murder, attempted murder, solicitation of murder, or voluntary manslaughter of a non-inmate.</u>	<u>36</u>	<u>48</u>	<u>60</u>
<u>B) Murder, attempted murder, solicitation of murder, or voluntary manslaughter of an inmate.</u>	<u>24</u>	<u>36</u>	<u>48</u>
<u>(2) Violence Against Persons:</u>			
<u>A) Battery on a non-inmate with a weapon capable of causing serious or mortal injury; caustic substance or other fluids capable of causing serious or mortal injury; or physical force causing serious injury.</u>	<u>18</u>	<u>30</u>	<u>42</u>
<u>(B) Assault on a non-inmate with a weapon, capable of causing serious or mortal injury; caustic substance or other fluids capable of causing serious or mortal injury.</u>	<u>09</u>	<u>15</u>	<u>21</u>
<u>(C) Rape, sodomy, or oral copulation on a non-inmate, or any attempt.</u>	<u>18</u>	<u>30</u>	<u>42</u>
<u>(D) Battery on an inmate with a weapon capable of causing serious or mortal injury; caustic substance or other fluids capable of causing serious or mortal injury or physical force causing serious injury.</u>	<u>12</u>	<u>18</u>	<u>24</u>
<u>(E) Assault on an inmate with a weapon capable of causing serious or mortal injury; caustic substance or other fluids capable of causing serious or mortal injury.</u>	<u>6</u>	<u>9</u>	<u>12</u>
<u>(F) Rape, sodomy, or oral copulation on an inmate accomplished against the inmate's will, or any Attempt.</u>	<u>12</u>	<u>18</u>	<u>24</u>
<u>(G) Battery on a non-inmate without serious injury.</u>	<u>6</u>	<u>12</u>	<u>18</u>
<u>(H) Assault on a non-inmate</u>	<u>3</u>	<u>6</u>	<u>9</u>
<u>(I) Battery on an inmate without serious injury. (2 or more offenses within a 12 month period or 1 with direct STG nexus).</u>	<u>2</u>	<u>4</u>	<u>6</u>

<u>(3) Threat to Kill or Assault Persons:</u>			
<u>(A) To take or use a non-inmate as a hostage.</u>	<u>18</u>	<u>30</u>	<u>42</u>
<u>(B) Threat of violence to non-inmate.</u>	<u>2</u>	<u>5</u>	<u>8</u>
<u>(4) Possession of a Weapon:</u>			
<u>(A) Possession of a firearm or possession or manufacturing of an explosive device.</u>	<u>18</u>	<u>30</u>	<u>42</u>
<u>(B) Possession or manufacture/manufacturing of a Weapon including materials altered from their original manufactured state or purpose and which can be made into a weapon—other than a firearm or explosive device and which has been manufactured or modified so as to have the obvious intent or capability of inflicting serious injury, and which is under the immediate or identifiable control of the inmate.</u>	<u>4</u>	<u>8</u>	<u>12</u>
<u>(5) Distribution of Controlled Substances as defined in section 3000.</u>	<u>6</u>	<u>12</u>	<u>18</u>
<u>(6) Escape:</u>			
<u>(A) With force or Attempted Escape with force against a person.</u>	<u>12</u>	<u>24</u>	<u>36</u>
<u>(B) Or attempted Escape from any departmental prison or institution other than a camp, MSF or reentry facility.</u>	<u>6</u>	<u>12</u>	<u>18</u>
<u>(7) Disturbance, Riot, or Strike:</u>			
<u>(A) Leading a disturbance, riot or strike.</u>	<u>6</u>	<u>12</u>	<u>18</u>
<u>(B) Active participation in a disturbance, riot or Strike (2 or more offenses within a 12 month period or 1 with direct STG nexus).</u>	<u>3</u>	<u>6</u>	<u>9</u>
<u>(C) Inciting conditions likely to threaten institution security</u>	<u>3</u>	<u>6</u>	<u>9</u>
<u>(8) Harassment of another person, group, or entity either directly or indirectly through the use of the mail or other means.</u>	<u>6</u>	<u>12</u>	<u>18</u>
<u>(9) Theft or destruction of State property by any means where the loss or potential loss exceeds \$10,000 or threatens the safety of others.</u>	<u>2</u>	<u>8</u>	<u>12</u>
<u>(10) Extortion or Bribery:</u>			
<u>(A) Extortion or bribery of a non-inmate.</u>	<u>4</u>	<u>8</u>	<u>12</u>
<u>(B) Extortion or bribery of an inmate.</u>	<u>2</u>	<u>3</u>	<u>4</u>
<u>(11) Sexual Misconduct:</u>			
<u>(A) Indecent Exposure.</u>	<u>3</u>	<u>6</u>	<u>9</u>
<u>(B) Sexual Disorderly Conduct (two or more offenses within a twelve month period).</u>	<u>3</u>	<u>6</u>	<u>9</u>
<u>(12) Except as otherwise specified in this section or identified as an assault, proven attempts to</u>			

commit any of the above listed offenses shall receive one-half (1/2) of the term specified for that offense.

(13) Any inmate who conspires to commit or solicits another person to commit any of the offenses above shall receive the term specified for that offense.

(f) Staff shall apply the appropriate amount of time to calculate the maximum and minimum eligible release date of the SHU term, pursuant to subsection 3341.9(e). Both the maximum and minimum eligible release dates from SHU shall be established by assessing the appropriate number of months, followed by any remaining calendar days.

(1) SHU MOS refers to the maximum number of months assessed for a specific determinate term pursuant to subsection 3341.9(e).

(2) MERD TERM means a combination of months, followed by days which represent the minimum amount of time that must pass before a SHU term expires and is also referred to as the MERD. The MERD initially represents 50% or one-half of the maximum SHU term, as it incorporates 50% or one-half clean conduct credit. The MERD may be adjusted based upon subsequent serious misconduct.

(A) Unless previously suspended, the established MERD is the date the SHU term ends and the date on which the inmate is no longer on SHU status. When multiple MERD's exist, the most distant MERD shall be the controlling MERD.

(3) CLEAN CONDUCT CREDIT means a combination of months, followed by days which represent credits that shall be applied to the maximum determinate SHU term, as long as the inmate remains free of any subsequent serious misconduct through the MERD. Clean conduct credit is calculated as one-half or 50% of the assessed maximum SHU term.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 314, 530, 532, 646.9, 653m, 932, 2081, 2933.6, 5054 and 5068, Penal Code; Sandin v. Connor (1995) 515 U.S. 472; Madrid v. Gomez (N.D. Cal. 1995) 889 F.Supp. 1146; Toussaint v. McCarthy (9th Cir. 1990) 926 F.2d 800; Toussaint v. Yockey (9th Cir. 1984) 722 F.2d 1490; and Castillo v. Alameida, et al., (N.D. Cal., No.C94-2847). Coleman v. Wilson 912 F. Supp. 1282 (E.D. Cal. 1995) and Clark v. California 123 F. 3d 1267 (9th Cir. 1997).

3342. Case Review

Existing Subsection 3342(a) is amended to read:

(a) The case of every inmate assigned to a segregated housing unit will be continuously reviewed and evaluated by custodial and casework staff assigned to the unit. Staff will confer on each case no less frequently than once a week during the first two months of the inmate's segregated status. Such case reviews will not be necessary during any week in which the inmate's case is reviewed by a regular or special classification committee or by staff who are authorized to take classification actions. Any significant observations, determinations or recommendations, will be documented on the inmate's Detention/Segregation Record, CDC Form 114-A, Inmate Isolation Segregation Record (rev: 10/98), which is hereby incorporated by reference.

Note: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.

Existing Section 3343 is amended to read:

3343. Conditions of Segregated Housing.

New section 3343 Presentence is adopted to read:

For the purposes of this section, special purpose segregated housing includes, but is not limited to, Administrative Segregation Units (ASU) and Segregated Program Housing Units (SPHU).

Existing Subsection 3343(a) through 3343(m) are amended to read:

a) Living Conditions. In keeping with the special purpose of an Administrative Segregation Unit (ASU) or Segregated Program Housing Unit (SPHU), and with the degree of security, control and supervision required to serve that purpose, the physical facilities conditions of special purpose segregated housing ASU and SPHU will approximate those of the general population, with the exception of the physical layout of the building itself and necessary security measures that must be enforced to provide the level of security, control, and supervision required to serve that special purpose.

(b) Restrictions. Whenever an inmate in administrative segregation ASU or SPHU is deprived of any usually authorized item or activity and the action and reason for that action is not otherwise documented and available for review by administrative and other concerned staff, a report of the action will be made and forwarded to the unit administrator as soon as possible.

(c) Clothing. No inmate in administrative segregation ASU or SPHU ~~will~~ shall be required to wear clothing that significantly differs from that worn by other inmates in the unit, except that temporary adjustments may be made in an inmate's clothing as is necessary for security reasons or to protect the inmate from self-inflicted harm. No inmate ~~will~~ shall be clothed in any manner intended to degrade the inmate.

(d) Meals. Inmates assigned to administrative segregation, including those housed in special purpose segregated housing ASU or SPHU, ~~shall~~ will be fed the same meal and ration as is provided for inmates of the general population, except that a sandwich meal may be served for lunch. Deprivation of food will not be used as punishment.

(e) Mail. Inmates assigned to administrative segregation, including special purpose segregated housing ASU or SPHU, ~~shall~~ will not be restricted in their sending and receiving of personal mail, except that incoming packages may be limited in number, and in content to that property permitted in the segregated unit to which an inmate is assigned.

(f) Visits. Inmates assigned to ASU, SHU and PSU segregated housing, ~~except for inmates assigned to security housing units in accordance with Sections 3341.5 shall be permitted non contact visits, unless otherwise specified in section 3170.1(f), General Visiting, to visit under the same conditions as are permitted inmates of the general population. Inmates assigned to security housing units shall be prohibited from physical contact with visitors.~~

(g) Personal Cleanliness. Inmate's assigned to administrative segregation ASU or SPHU, ~~including special purpose segregated housing~~, will be provided the means to keep themselves clean and well-groomed. Haircuts will be provided as needed. Showering and shaving ~~shall~~ will be permitted at least three times a week. Clothing, bedding, linen and other laundry items ~~shall~~ will be issued and exchanged no less often than is provided for general population inmates.

(h) Exercise. Inmates assigned to ~~special purpose segregation housing~~ ASU or SPHU ~~will~~ shall be permitted a minimum of one hour per day, five days a week, of exercise outside their rooms or cells unless security and safety considerations preclude such activity. When ~~special purpose segregated housing units~~ ASU or SPHU are equipped with their own recreation yard, the yard periods may substitute for other out of cell exercise periods, providing the opportunity for use of the yard is available at least three days per week for a total of not less than 10 hours a week.

(i) Reading Material. Inmates assigned to ~~administrative segregation, including special purpose segregated housing,~~ ASU or SPHU, ~~shall~~ will be permitted to obtain and possess the same publications, books, magazines and newspapers as are inmates of the general population, except that the quantity may be limited for safety and security reasons. Library services ~~will~~ shall be provided and will represent a cross-section of material available to the general population.

(j) Telephones. Institutions ~~will~~ shall establish procedures for the making of outside telephone calls by inmates in ~~administrative segregation,~~ ASU or SPHU. Such procedures will approximate those for the work/training incentive group to which the inmate is assigned, except that individual calls must be specifically approved by the supervisor in charge or the administrator of the unit before a call is made.

(k) Institution Programs and Services. Inmates assigned to ASU or SPHU segregated housing units ~~will~~ shall be permitted to participate and have access to such programs and services as can be reasonably provided within the unit without endangering security or the safety of persons. Such programs and services ~~will~~ may include, but are not limited to: education, commissary, library services, social services, counseling, religious guidance and recreation.

(l) Visitation and Inspection. Inmates assigned to ~~administrative segregation, including those placed in special purpose segregated units,~~ ASU or SPHU ~~will~~ shall be seen daily by the custodial supervisor in charge of the unit and by a physician, registered nurse or medical technical assistant, and, by request, members of the program staff. A timely response should be given to such requests whenever reasonably possible. Any indication of medical or mental health distress, shall be immediately referred for further evaluation.

(m) Management Disruptive Cases. Inmates assigned to ASU or SPHU segregated housing who persist in disruptive, destructive, ~~or~~ dangerous behavior and who will not heed or respond to orders and warnings to desist, are subject to placement in a management cell, as provided in Section 3332(f).

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 2601(d) and 5054, Penal Code.

3344. Administrative Segregation Records.

Subsection 3344 is amended to read:

(a) ~~An Administrative Segregation Log, CDC Form 114, Isolation Log (rev: 3/03),~~ will ~~shall~~ be maintained in each ASU administrative segregation unit, and SPHU including special purpose segregated units. One Disciplinary Detention/Segregation-Isolation Log may serve two or more special purpose units which are administered and supervised by the same staff members.

(b) A separate record ~~will~~ shall be maintained for each inmate assigned to administrative segregation, including SHU and PSU special purpose segregated units.

This record ~~shall~~ will be compiled on CDC Form 114-A, ~~Detention/Segregation Record~~. ~~In addition to the~~ including all identifying information required on the form.; Additionally, all significant information relating to the inmate during the course of segregation, from reception to release, including, but not limited to, documentation of all programs, activities, and services afforded the inmate while segregated and note any significant staff observations, determinations or recommendations regarding unusual behavior displayed by the inmate during this period ~~will~~ shall be entered ~~on the form~~ in chronological order.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.