

P.O. Box 942883
Sacramento, CA 94283-0001



September 14, 2016

NOTICE OF CHANGE TO TEXT AS ORIGINALLY PROPOSED

The full text of the California Code of Regulations that concern the automation of Inmate Discipline is provided in its original single underline and strikethrough format. Changes to this original text, which are being proposed in this notice, are indicated by **bold double underline** for additional added text, and **bold double strikethrough** for additional deleted text to the originally proposed text. These proposed changes are being made available for public comment.

As determined by the California Department of Corrections and Rehabilitation, the attached text contains the following changes:

3000 Definitions

Electronic Records Management Systems (ERMS) is amended to properly define its main function of providing a repository for digitally scanned documents. This document management system (within SOMS) does not have the autopopulating capability.

Strategic Offender Management Systems (SOMS) has been amended to further define its purpose and capabilities as this system contains the autopopulation action misrepresented in the definition of the Electronic Records Management Systems (ERMS).

3084.7 Levels of Appeal Review and Disposition

3084.7(b)(1) is amended to reflect the correct (SOMS) screen name of a minor disciplinary action to "Counseling Only Violation Report".

3312 Disciplinary Methods

3312(a)(2) has been amended to accurately define the (SOMS) screen name and type of minor disciplinary action as a "Counseling Only Violation Report".

3312(a)(3) is amended to more clearly describe the Rules Violation Report screen to reflect misconduct not minor in nature or is a violation of law and the elements required to ensure the charged inmate has sufficient information to prepare for a subsequent administrative hearing regarding the alleged CCR, Title 15 violation.

3313 Classification of Rules Violation Report and Notice of Pending Charges.

3313(a)(1) and (a)(1)(A) is amended to more clearly define the method and time frame in which the CDC Form 804, Notice of Pending CDC-115 shall be forwarded and filed in the inmate's central file.

3313(c)(1) is being amended to further define and clarify that a change in the classification of a RVR may be done by the person initially classifying the violation or by a staff member at a higher level prior to the disciplinary hearing.

3314. Administrative Rule Violations.

Subsection 3314(f) is amended reflect the actual (SOMS) screen name of a minor disciplinary action to “Counseling Only Violation Report”.

3315 Serious Rule Violations.

3315(d) is being amended to clarify that the Chief Disciplinary Officer and not the classifying official of the RVR will assign an Investigative Employee when appropriate.

3315(d)(1)(B)(1) through (d)(1)(B)(3) is being deleted as the language reflected in 3312 better describes the RVR.

3315(d)(2)(E) is being amended to clarify that the Chief Disciplinary Officer and not the classifying official of the RVR will make a determination on assigning a staff assistant.

§ 3316. Referral for Criminal Prosecution

3316(c)(1)(A) is being amended to clarify that the Chief Disciplinary Officer and not the classifying official of the RVR will enter a “revoked postponement action” within SOMs.

The 15-day comment period on these changes shall close on October 5, 2016. Submit any comments to Timothy M. Lockwood, Chief, Regulation and Policy Management Branch, Department of Corrections and Rehabilitation, P.O. Box 942883, Sacramento, CA, 94283-0001; fax to (916) 324-6075; or by e-mail, at rpmb@cdcr.ca.gov before the close of the public comment period. Comments must be received no later than 5:00 p.m. on October 5, 2016.

Only those comments relating directly to the enclosed post-hearing changes that are indicated by **bold double underline** or **~~bold double strikethrough~~** will be considered.

// Original signed by //

TIMOTHY M. LOCKWOOD, Chief
Regulation and Policy Management Branch
Department of Corrections and Rehabilitation

Attachment

TEXT OF PROPOSED REGULATIONS- RE NOTICE

Changes to this original text, which are being proposed in this notice, are indicated by **bold double underline** for additional added text, and **~~bold double strikethrough~~** for additional deleted text to the originally proposed text. These proposed changes are being made available for public comment.

As determined by the California Department of Corrections and Rehabilitation, the attached text contains the following changes:.

California Code of Regulations, Title 15, Division 3, Adult Institutions, Programs and Parole

Chapter 1. Rules and Regulations of Adult Operations and Programs

Article 1. Behavior

3000 Definitions.

Section 3000 is amended to read:

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Disciplinary Free means without any finding of guilt of a disciplinary infraction filed on a ~~CDC Form 115, Rules Violation Report~~, classified as either administrative or serious.

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Electronic Records Management Systems (ERMS) is a document management system operating alongside the Strategic Offender Management System (SOMS) that provides a digitally scanned and uploaded central records repository. ~~ERMS is a cumulative data collection process that will autopopulate specific information on all documentation, such as an inmate's name and number, current date, county of last residence, institution/facility housing, etc.~~

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Strategic Offender Management System (SOMS) is an electronic automated offender management system that consolidates existing databases and records to a fully automated system and replaces certain manual paper processes. SOMS is a cumulative data collection process that will autopopulate specific information on all documentation, such as an inmate's name and number, current date, county of last residence, institution/facility housing, etc.

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Note: Authority cited: Sections 243(f)(4), 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, 600, 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; Sections 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); *Sassman v. Brown* (E.D. Cal. 2015) 99 F.Supp.3d 1223, and *Mitchell v. Cate*, USDC ED 2:08-CV-01196-TLN-EFB.

Article 8. Appeals

3084.7. Levels of Appeal Review and Disposition.

3084.7(a) through (a)(4) remains unchanged.

3084.7(b)(1) is amended to read:

(b) The second level is for review of appeals denied or not otherwise resolved to the appellant's satisfaction at the first level, or for which the first level is otherwise waived by these regulations. The second level shall be completed prior to the appellant filing at the third level as described in subsection 3084.7(c).

(1) A second level of review shall constitute the department's final action on appeals of disciplinary actions classified as "administrative" as described in section 3314, or of minor disciplinary infractions documented on the ~~CDC Form 128-A (rev. 4-74), Custodial Counseling~~ Only Rules Violation ReportChrono, pursuant to section 3312(a)(2), and shall exhaust administrative remedy on these matters.

3084.7(b)(2) through 3084.7(i)(5) remains unchanged.

Note: Authority cited: Sections 5058 and 10006(b), Penal Code. Reference: Sections 5054 and 10006(b), Penal Code; Americans With Disabilities Act, Public Law 101-336, July 26, 1990, 104 Stat. 328; Civil Rights of Institutionalized Persons Act; Title 42 U.S.C. Section 1997 *et seq.*, Public Law 96-247, 94 Stat. 349; and Section 35.107, Title 28, Code of Federal Regulations.

Subchapter 4. General Institution Regulations

Article 5. Inmate Discipline

§ 3312. Disciplinary Methods.

Section 3312(a) is amended to read to read:

(a) Inmate misconduct shall be handled by:

(1) Verbal Counseling. Staff may respond to minor misconduct by verbal counseling. When verbal counseling achieves corrective action, a written report of the misconduct or counseling is unnecessary.

(2) ~~Custodial Counseling~~ Only Rules Violation ReportChrono. When similar minor misconduct re~~oc~~ccurs after verbal counseling or if documentation of minor misconduct is needed, a description of the misconduct and counseling provided shall be documented on a ~~CDC Form 128-A, Custodial Counseling~~ Only Rules Violation ReportChrono. This ~~Chrono Counseling~~ Only Rules Violation Report is meant for documenting an event or misconduct on the part of the inmate; the Chrono is auto populated with the inmate's name number and date. A copy of the completed ~~Chrono Counseling~~ Only Rules Violation Report form shall be provided to the inmate. and the original placed in the inmate's central file. Disposition of any contraband involved shall also be

documented in the ~~Custodial~~ Counseling Only Rules Violation Report ~~Chrono~~ CDC Form 128-A.

(3) Rules Violation Report. When misconduct is believed to be a violation of law or is not minor in nature, it shall be reported on a Rules Violation Report (RVR)–CDC Form 145 (Rev. 7/88). ~~The inmate's name, CDC number, release date, and current institution of housing and cell number will be auto populated.~~ The RVR is a computer generated standard form with information inputted by staff. The RVR will be digitally signed by the reporting employee. The RVR shall contain, at a minimum, the following elements: The charged inmates name, number, release date, facility, housing assignment, violation date, violation time,(Violation date and time means discovery date and time) whether or not the misconduct was related to Security Threat Group activity, circumstances surrounding the misconduct, the reporting employee's; name, and title, RVR log number, the violated CCR, Title 15 rule number, specific act, level, division, whether or not the charge will be referred for prosecution, reviewing supervisors name and title, and the classifying official's name and title. The RVR shall include; a section for the inmate to indicate whether or not they wish to postpone the RVR process if felony prosecution is likely, a section to indicate if they wish to request or waive an assignment of a Staff Assistant or Investigative Employee. The RVR shall also include a basic list of disciplinary procedures and inmate disciplinary rights.

~~Current subsections 3312(a)(3)(A) and 3312(a)(3)(B) have been renumbered to 3312(a)(3)(I) and 3312(a)(3)(J)~~

~~Now subsections 3312(a)(3)(A) through 3312(a)(3)(H) are adopted to read:~~

~~(A)The Report writer shall enter the section number(s) of Title 15 that was/were violated, the name(s) of the specific act(s), location of the infraction(s), date(s) and time(s) of the infraction(s), as well as provide specific details of the infraction(s) and evidence relied upon.~~

~~(B) The reporting employee must print and sign their name and date the report, as well as detail their assignment and days off.~~

~~(C) The reviewing supervisor shall sign and date the report, and note if the inmate was located in segregated housing at the time of the hearing.~~

~~(D) The report shall be classified as either administrative or serious by a classifying official at the level of Associate Warden (AW) or designee, who shall sign and date the report the day it was classified. The AW must also determine what level the hearing shall be conducted at.~~

~~(E) Once classified, a copy of the report shall be provided to the inmate in advance of the hearing. Staff providing the copy will note the RVR log number, and the Incident Report log number if any. Staff shall also sign the Report, and note the date and time the Report was delivered and their title. The title of any supplemental reports shall also be accurately listed.~~

~~(F) Details of the hearing results must be provided on the report, as well as the referral of the RVR to either a Classification Committee or the Board of Prison Terms. The signature of both the hearing officer and the reviewer is required, as well as the date signed.~~

~~(G) The date and time the completed RVR, detailing the hearing results, is given to the inmate must be noted, as well as the serving staff's signature. The completed RVR shall be printed with this information annotated.~~

~~(H) The inmate's copy of the RVR provides a summary of disciplinary procedures on the back that details hearing and RVR disposition time frames for the inmate to be aware of and ensure the inmate's right to a fair hearing. Information as to the inmate appeal process and time frames is also provided, and abbreviations that appear on the form are spelled out.~~

(A) Unless an inmate charged with serious misconduct requires temporary administrative segregation pursuant to section 3335(b) pending adjudication of the disciplinary charges, the inmate may be retained in regularly assigned housing, work, and program assignments.

(B) If the inmate is placed in segregated housing pending the disciplinary proceedings, the official making the housing decision shall ensure compliance with the provisions of article 7 of this subchapter.

Subsection 3312(b) through 3312(b)(2) remain unchanged.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 2932 and 5054, Penal Code.

NOTE TO PRINTER- DELETE PICTURE OF CDC 115 (7/88) AND CDC 115-A (7/88)

§ 3313. Classification of Rules Violation Report and Notice of Pending Charges.

Section 3313 is amended to read:

(a) Each RVR CDC Form 115 shall be classified by designated staff not below the level required to conduct serious disciplinary hearings. Exception: In facilities with only one individual at the rank of correctional lieutenant or higher, an experienced correctional sergeant may classify rule violations.

Reports shall be classified as administrative or serious pursuant to sections 3314 and 3315.

(1) A CDC Form 804 (Rev. 08/00), Notice of Pending CDC-115, shall be completed by the classifying official and forwarded, ~~with a copy of the RVR CDC Form 115 attached,~~ to Case Records within 48 hours of the inmate being charged with a serious level offense (Division "F" through "A-1"). Case Records staff shall file the CDC Form 804 with an attached copy of the CDC Form 115 in the inmate's Central File (C-File) within one working day of receipt in the Case Records office.

(A) For parole violators who are charged with any Division "A", "B", or "C" offense, or any inmate who refuses to sign general and/or special conditions of parole or any form required by the Department of Justice explaining his/her responsibility to register under Penal Code section 290, Case Records staff shall ensure that the ~~C-File containing the CDC Form 804 and attached copy of CDC Form 115~~ be is expedited to the Classification and Parole Representative is noticed to ensure revocation or revocation extension processes are initiated.

(b) Staff who review or classify a RVR CDC Form 115 shall not serve as the disciplinary hearing official for that rule violation.

(c) The classification of a RVR CDC Form 115 may be changed as follows:

(1) Before the disciplinary hearing, the official who initially classified ~~at the RVR CDC Form 115~~ or a staff member at a higher level may change the classification of the RVR CDC Form 115.

(2) During the disciplinary hearing, the official conducting the hearing may reduce a serious classification to administrative as a finding of the hearing if the reduced charge meets the criteria of an administrative violation as described in section 3314.

(3) After the disciplinary hearing, the chief disciplinary officer may reduce a serious classification to administrative if the reduced charge meets the criteria of an administrative violation as described in section 3314.

(4) After the disciplinary hearing, an administrative classification shall not be changed to serious unless the chief disciplinary officer or director orders a rehearing of the charges as a serious rule violation.

(A) When a rehearing is ordered by the chief disciplinary officer or director, the inmate shall be provided all rights and procedural safeguards of a serious rule violation hearing.

(B) An order for a rehearing shall be in writing and shall include the reasons for the order. A copy of the order shall be provided to the inmate.

(C) Time limitations relative to the re-issued RVR CDC Form 115 shall commence on the date the chief disciplinary officer issues the order to re-hear pursuant to section 3320(a). Credit forfeiture will not be allowed if the time limitations were violated on the original RVR CDC Form 115 that was ordered re-issued/re-heard.

(5) If the RVR CDC Form 115 is reclassified from administrative to serious, the inmate shall receive written notice and shall be subject to the provisions of Section 3315 of these regulations.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 2079, 2932 and 5054, Penal Code; In re Hamilton(1991) 230 Cal.App.3d 1592, 281 Cal. Rptr. 900.

§ 3314. Administrative Rule Violations.

Section 3314(a) is amended to read:

(a) Inmate misconduct reported on a RVR CDC Form 115 shall be classified administrative if:

Subsections 3314(a)(1) through 3314(e)(10)(C) remain unchanged.

Subsection 3314(f) is amended to read:

(f) The hearing official may find the inmate guilty of the charge but, in the interest of justice or because of extenuating circumstances, dismiss the formal rule violation charge and report the misconduct as a custodial counseling on a Custodial Counseling Only Rules Violation Report ~~Chrono CDC Form 128-A~~ pursuant to section 3312. In such cases the RVR CDC Form 115 shall be processed pursuant to section 3326.

Subsection 3314(g) remains unchanged.

Subsection 3314(h) is amended to read:

(h) The hearing official may designate the rule violation serious if it is determined in the fact-finding phase of an administrative violation hearing that the misconduct is a serious rule violation. The disciplinary hearing official shall terminate the hearing and issue a serious RVR CDC Form 115 to the inmate.

Subsections 3314(i) through 3314(j) remain unchanged.

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

§ 3315. Serious Rule Violations.

Section 3315(a) is amended to read:

(a) Inmate misconduct reported on a RVR CDC Form 115 shall be classified serious if:

Subsections 3315(a)(1) through 3315(c) remain unchanged.

Subsection 3315(d) is amended to read:

(d) An inmate shall be assigned an employee to assist in the investigation of matters pertaining to a disciplinary action when the Classifying Official **chief disciplinary officer** or designee determines the necessity based on the following criteria.

Subsection 3315(d)(1) through 3315(d)(1)(A)(4) remain unchanged.

Subsection 3315(d)(1)(B) is amended to read:

(B) The inmate may choose to waive the assignment of an investigative employee as required by subsection (2) above. The inmate's request to waive assistance of an investigative employee under this subsection will be indicated in the "waived by inmate" checkbox on the RVR (formerly noted on the CDC Form 115-A) CDC Form 115-A and signed and dated by the inmate. The classifying official may choose to un-assign the investigative employee based on the inmate's signed waiver on the RVR CDC Form 115-A.

~~1. The inmate's name, number, rule violation #, date, current institution, and log number will be auto populated on this portion of the RVR.~~

~~2. The Correctional Counselor shall note if the RVR is sufficiently serious to warrant referral for felony prosecution.~~

~~3. The inmate has the option of postponing his CDGR disciplinary hearing pending the outcome of any referral for prosecution, or having his hearing within the requisite time frame. If referred for felony prosecution, the disposition and the date of the disposition shall be noted. The inmate's signature and date of signature is required regardless if the inmate postpones the hearing or revokes his request for postponement.~~

~~4. The inmate may request or waive a staff assistant. The inmate's signature and date is required as to their decision. If assigned, the name of the staff and date will be noted. If unassigned, the reason shall be provided.~~

~~5. The inmate also has the right to request or waive an Investigative Employee (IE). The inmate's signature and date are required as to their decision. If assigned, the staff's name and date shall be noted. If unassigned, the reason shall be noted. If the inmate does request an IE, the evidence or information requested by the inmate shall be noted. The IE's report shall be included on the RVR.~~

~~6. The inmate has the right to question witnesses. The inmate may request staff witnesses, such as the staff assistant, investigative employee, reporting employee, or other staff to attend the hearing. The inmate may also request other inmate witnesses. Whether or not the inmate's requests are granted shall be noted.~~

~~7. A printed copy of this portion of the SOMS RVR screen shall be provided to the inmate, noting staff's signature, and time and date delivered in the designated areas on the printed copy.~~

~~8. A summary of disciplinary procedures and inmate rights is also provided to the inmate explaining the administrative hearing time frames, the roles of both the staff assistant and the investigative employee, and the referral for prosecution is explained. The inmate's appeal rights are also explained.~~

Subsection 3315(d)(1)(C) remains unchanged.

Subsection 3315(d)(1)(D) is amended to read:

(D) The inmate may not select the investigative employee, but may object to the one assigned and provide, in writing to the classifying official, the reasons for the objection. The classifying official shall evaluate the inmate's objection(s) and, if determined to be reasonable, assign an alternate investigative employee to complete the investigation. If the classifying official determines that the inmate's objections are not reasonable, the original investigative employee shall complete the investigation. The inmate's objection must be expressed prior to the beginning of the investigation. The classifying official shall document within an Informative Chrono note on the CDC Form 115-A his/her decision to deny or approve a request for an alternate investigative employee, and if denied, explain the reason(s) for denial. The Informative Chrono shall be included in the Rules Violation Report documents.

Subsection 3315(d)(1)(E) through 3315(d)(2)(D) remain unchanged.

Subsection 3315(d)(2)(E) is amended to read:

(E) If the inmate refuses to accept the second staff assistant or withdraws acceptance of an assigned staff assistant, the assignment of another staff assistant shall not be required unless the Classifying Official chief disciplinary officer or designee determines that a fair hearing cannot be held without staff assistance.

(1) Inmate participants in the Mental Health Services Delivery System at the level of Enhanced Outpatient Program, Mental Health Crisis Bed, Department of ~~Mental Health~~ State Hospitals, or Developmentally Disabled Program participants at the level of DD1-DD3, are ineligible to waive or refuse the assignment of a staff assistant. The staff assistant shall perform his/her required duties to the extent possible despite a waiver or refusal by the ineligible inmate to cooperate.

Subsections 3315(d)(2)(F) and 3315(d)(2)(F)(1) remain unchanged.

Subsection 3315(e)(2) is amended to read:

(e) Witnesses. An inmate may request that friendly and adverse witnesses attend the hearing.

(1) Requested witnesses shall be called unless the official conducting the hearing denies the request for one of the following reasons:

(A) The appearance would endanger the witness.

(B) The official determines that the witness has no relevant or additional information.

(C) The witness is unavailable.

(2) If an inmate's request for a witness is denied, the reasons shall be documented on the RVR CDC Form 115.

Subsection 3315(e)(3) through 3315(f)(1) remains unchanged.

Subsection 3315(f)(2) is amended to read:

(f) Disposition. Upon completion of the fact-finding portion of the disciplinary hearing, the inmate may be found:

(1) Not guilty and the charges dismissed.

(2) Guilty of an administrative rather than a serious rule violation. In such case, the RVR CDC Form 115 shall be reduced to an administrative level offense and the inmate may be assessed only a disposition authorized in section 3314.

Subsections 3315(f)(3) through 3315(f)(4)(C) remains unchanged.

Subsection 3315(f)(4)(D) is amended to read:

(D) The inmate shall be informed that refusal to submit to a random test or any positive test result during the mandatory random drug testing period shall result in the issuance of a RVR CDC Form 115 and a new mandatory drug testing order.

Subsections 3315(f)(5) through 3315(f)(5)(P)(3) remain unchanged.

Subsection 3315(g) is amended to read:

(g) Classification Committee Review. Any serious disciplinary action requiring reconsideration of an inmate's program, work group, or housing assignment, shall be referred to the next reasonably scheduled classification committee for review. This review shall not occur until the chief disciplinary officer's audit of the RVR CDC Form 115 has been concluded. The classification committee shall affirm or modify the inmate's program, work group, or housing assignment.

Subsections 3315(h) through 3315(l) remains unchanged.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 295-300.3, 314, 530, 532, 646.9, 647, 653m, 2931, 2932, 2933, 4501.1, 4573.6, 4576, 5054, 5068 and 12020, Penal Code.

§ 3316. Referral for Criminal Prosecution.

Subsections 3316(a) through 3316(b) remain unchanged.

Subsections 3316(c) through 3316(c)(1)(A) are amended to read:

(c) Referral of an inmate's misconduct for prosecution shall not stay the time limits for a disciplinary hearing unless the inmate submits a written request to the chief disciplinary officer or signs and dates the RVR Form 115-A (Rev. 7/88), Serious Rules Violation Report, requesting postponement of the hearing pending the outcome of the referral.

(1) A postponed disciplinary hearing shall be held within 30 days after any one of the following events:

(A) The inmate has revoked a postponement request; an inmate may revoke a postponement request any time until the prosecuting criminal authority has filed an accusatory pleading against the inmate. The request shall be submitted in writing to the Classifying Official chief disciplinary officer or designee who shall enter a "Revoked Postponement" action in SOMS ~~complete the CDC Form 115-A~~ revoking the postponement request.

Subsections 3316(c)(1)(B) through 3316(c)(4) remain unchanged.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 2932 and 5054, Penal Code.

3317. Mental Health Assessments for Disciplinary Proceedings.

Subsection 3317(a) through 3317(b)(7) remain unchanged.

Subsection 3317(c) and 3317(d) are amended to read:

(c) Mental Health Services shall be contacted immediately for any inmate who is suspected of committing self-mutilation or attempted suicide. The emergency referral shall be documented via CDCR Form 128-MH5 (Rev. 05/14), Mental Health Referral Chrono, which is incorporated by reference, identifying the specific reason(s) for the referral. If Mental Health Services determines the behavior was an act of self-mutilation or attempted suicide or a clear determination could not be made, a ~~CDC Form 115 (07/88)~~, Rules Violation Report, shall not be issued. The behavior shall be documented on a CDC Form 128B (Rev. 04/74), General Chrono, for inclusion in the inmate's Central File.

(d) If the mental health clinician determines the inmate's actions were an attempt to manipulate staff, and were not an act of self-mutilation or attempted suicide, ~~CDC Form 115~~RVR shall be issued pursuant to Section 3315, subsection (a)(3)(W).

Subsections 3317(e) through 3317(g) remain unchanged.

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

3317.1. Documenting Rules Violations in an Alternate Manner for Inmates in the Mental Health Services Delivery System or the Developmental Disability Program.

Section 3317.1 is amended to read:

(a) If the inmate's behavior was so strongly influenced by symptoms of mental illness or developmental disability/cognitive or adaptive functioning deficits at the time the rules violation occurred, mental health staff may recommend via the CDCR Form 115-MH-A that the inmate would be better served by having the behavior documented in an alternate manner. The Captain shall review the Rules Violation Report (RVR) ~~CDC Form 115~~ and all other documents and information relevant to the charge, as well as the recommendation offered by the clinician on the CDCR Form 115-MH-A.

(b) Based on his or her review, the Captain shall do one of the following:

(1) If the Captain does not agree with the clinician's recommendation, the Captain shall document his or her reasoning for proceeding with the disciplinary hearing on a CDC Form 128-B. The hearing officer shall proceed with hearing the Rules Violation Report as serious or administrative based on the nature of the specific charge(s). A copy of the CDC Form 128-B shall be attached to the RVR ~~CDC Form 115~~ and forwarded to the hearing officer for adjudication. A copy of the CDC Form 128-B shall be issued to the inmate no less than 24 hours prior to a hearing.

(2) If the Captain agrees with the clinician's recommendation, the Captain shall ~~order the hearing officer to void either; reduce the level of the RVR CDC Form 115 and either document the behavior via a CDC Form 128-A (08/87), on a Custodial Counseling Chrono~~ for minor misconduct, or void the RVR and document the behavior via a CDC Form 128-B.

(c) If the Captain elects to void the RVR ~~CDC Form 115~~, the hearing officer shall document the decision via a memorandum and attach a copy to the CDCR Form 1154 (Rev. 03/08), Disciplinary Action Log, which is incorporated by reference.

(d) The Captain shall provide his or her decision and return the RVR ~~CDC Form 115~~ and supporting documentation to the hearing officer as soon as possible, but no later than five calendar days from the date of receipt.

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

3317.2. Behaviors Related to Mental Illness or Developmental Disability/Cognitive or Adaptive Functioning Deficits Excluded from Rules Violation Reports.

Subsection 3317.2(a) through 3317.2(b) remain unchanged.

Subsection 3317.2(c) is amended to read:

(c) If the inmate commits a Serious Rules Violation pursuant to Section 3315 while participating in the behavior noted above, which constitutes a Division A-1 offense as defined in Section 3323, subsection (b), an assault or battery as defined in Section 3323, subsections (d)(1), (d)(2), and (d)(3), or an assault on a peace officer or non-prisoner as defined in Section 3323, subsections (f)(11) and (f)(12), a Rules Violation Report CDC Form 115 shall be completed and processed in accordance with this Article.

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

§ 3320. Hearing Procedures and Time Limitations.

Subsections 3320(a) through 3320(c)(1) are amended to read:

(a) A classified copy of the RVR CDC Form 115 ~~containing per section 3313(a), CDC Form 115-A (Rev. 07/88), and any additional/supplemental information (formerly documented via~~ on the CDC Form 115-C (Rev. 5/95) containing detailing any elements of the violation charged shall normally be provided to the inmate within 15 days from the date the information leading to the charges is discovered by staff or, in the case of an escapee, within 15 days after the escapee's return to the department's custody, or in the case of an ACP Participant's removal from the community, within 15 days of the participant's return to an institution

(1) Any additional SOMS generated supplemental reports shall contain the standard auto populated information such as the inmate's name and number, housing, RVR log number, date of the RVR, violation rule number and title, and incident type. The purpose of the supplemental reports is to provide a continuation of the RVR circumstances, hearing, IE report, or other.

(24) Providing the inmate with a copy of the classified RVR CDC Form 115, ~~CDC Form 115-A, and CDC Form 115-C (if applicable)~~ may be delayed beyond 15 days, but no more than an additional 30 days for a total of 45 days, and shall not prohibit forfeiture of credits as a penalty for the misconduct when all of the following criteria are met:

(A) The misconduct could be prosecuted as murder, attempted murder, or battery on staff.

(B) An investigation is continuing to identify others involved in the misconduct.

(C) Within 15 days of discovering the misconduct, a written request to delay the inmate's notification, including the reasons for the delay, is approved by the chief disciplinary officer.

(32) Time limitations for a re-issued RVR CDC Form 115 shall commence on the date the chief disciplinary officer orders the re-hearing pursuant to Subsection 3320(a)(1) above.

(b) The charges shall be heard within 30 days from the date the inmate is provided a classified copy of the RVR CDC Form 115 unless the charges were referred for possible prosecution and the inmate has been granted a request for postponement of the disciplinary proceedings pending the outcome of the referral, if exceptional

circumstances exist pursuant to section 3000, or the inmate is transferred out of the custody of the department.

(1) The Hearing for a ~~RVR CDC Form 115~~ ordered re-issued/re-heard shall be conducted pursuant to Subsection 3320(b) above relative to the re-issued copy.

(c) A disciplinary hearing shall not be held until the inmate has been provided:

(1) A classified copy of the ~~RVR CDC Form 115~~ and all non-confidential reports containing information relative to the charge, including the investigative employee's report.

Subsections 3320(c)(2) through 3320(d) remain unchanged.

Subsections 3320(e) through 3320(g) are amended to read:

(e) If a hearing is postponed for any reason, such reason shall be documented in the findings section of the ~~RVR CDC Form 115~~.

(f) The following events shall preclude denial or forfeiture of credits:

(1) The inmate was not provided a copy of the ~~RVR CDC Form 115~~ within 15 days after the discovery of information leading to the charges except as other provided in (a).

(2) The official conducting the hearing did not establish that the information or evidence was not reasonably discoverable within 30 days or sooner or when the inmate is not provided a copy of the ~~RVR CDC Form 115~~ within 15 days of the misconduct, unless (a) is applicable.

(3) The disciplinary hearing was not held within 30 days of the date the inmate was provided a classified copy of the ~~RVR CDC Form 115~~, unless the inmate requested and was granted a postponement of the hearing pending outcome of the referral pursuant to section 3316, exceptional circumstances as defined in Section 3000 exist, or if the inmate is transferred out of the custody of the department.

(4) A disciplinary hearing was not held within 30 days after the chief disciplinary officer was notified of the outcome of a prosecution referral or within 30 days of the inmate's revoked request for postponement of the hearing, if an accusatory pleading was not filed against the inmate.

(5) The inmate was not provided a written explanation of the exceptional circumstances preventing a hearing within 30 days after the inmate was provided a copy of the ~~RVR CDC Form 115~~ and the official conducting the hearing did not establish in the findings of the hearing that the delay did not prejudice the inmate.

(g) The inmate shall normally be present at a disciplinary hearing. When a disciplinary hearing is held without the inmate present, the reason for the absence shall be documented during the hearing on the ~~RVR CDC Form 115~~. The inmate shall be present at a disciplinary hearing unless:

Subsections 3320(g)(1) through 3320(g)(2) remain unchanged.

Subsection 3320(g)(3) is amended to read:

(3) The inmate has waived the right to be present in writing, or in the case of a refusal to sign a waiver, the refusal was witnessed by a custody officer, documented on a CDC Form 128-B (Rev. 4/74), and attached to the ~~RVR CDC Form 115~~ for review by the Senior Hearing Officer at the disciplinary hearing and by the Chief Disciplinary Officer following adjudication of the rules violation report.

Subsections 3320(h) through 3320(k) remain unchanged.

Subsection 3320(l) is amended to read:

(l) The inmate may present documentary evidence in defense or mitigation of the charges. Any finding of guilt shall be based upon determination by the official(s) conducting the disciplinary hearing that a preponderance of evidence submitted at the hearing substantiates the charge. At the conclusion of the disciplinary hearing, the inmate shall be informed of the findings and disposition of the charge and of the right to and procedure for appeal of the action. Within five working days following review of the RVR CDC Form 115 and CDC Form 115-A by the chief disciplinary officer, the inmate shall be provided a copy of the completed hearing results CDC Form 115 containing the findings, disposition, and evidence relied upon in reaching the conclusions.

(m) When an inmate is charged with possession of unauthorized or dangerous items or substances, or when unauthorized or dangerous items or substances are associated with commission of the charged rule violation, the hearing official shall record the disposition of the item or substance in the disposition section of the RVR CDC Form 115.

Note: Authority cited: Sections 5058, 5058.3 and 1170.05, Penal Code. Reference: Sections 1170.05, 2932 and 5054, Penal Code.

§ 3322. Length of Confinement.

Subsection 3322(a) remains unchanged.

Subsection 3322(b) is amended to read:

(b) Time spent in segregation pending a disciplinary hearing shall normally be credited toward any disciplinary detention or confined to quarters sentence imposed. Reasons for not granting such credit shall be explained in the disposition section of the RVR CDC Form 115.

Subsection 3322(c) remains unchanged.

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

§ 3326. Records of Disciplinary Matters.

Subsection 3326(a) is amended to read:

(a) Upon conclusion of disciplinary proceedings, all documents relating to the disciplinary process, findings, and disposition shall be disposed of in the following manner:

(1) When an inmate is held responsible for the act charged, copies of all documents prepared for and used in the disciplinary proceedings shall be placed in the inmate's central file. A copy of the completed RVR CDC Form 115 shall be provided to the inmate. ~~A copy of the completed CDC Form 115 shall be filed in the Register of Institution Violations~~

(2) When the inmate is found not guilty of the act charged or when the charge is dismissed for any reason, a copy of the action taken shall be provided to the inmate. All electronic copies of documents prepared for and used in the disciplinary process shall be removed from general view and stored in SOMS, serving as the Register of Institutional Violations. All requests for review of or reports developed from the Register

~~of Institution Violations shall be submitted to SOMS in writing by the institution head or higher. the documents prepared for and used in the disciplinary process shall be not be placed in any file pertaining to the inmate. However, two copies of any CDC Form 115 used in the disciplinary process shall be completed as to findings and disposition. One copy of the completed report shall be filed in the Register of Institution Violations. The other completed copy shall be provided to the inmate. All other copies of the CDC Form 115 and all supplemental reports shall be destroyed.~~

(3) Unless information developed through the disciplinary process, such as enemy information, needs to be considered in future classification committee determinations affecting an inmate found not guilty of a rule violation or whose charges were dismissed, no other recording or document relating to the rule violation charge or disciplinary proceedings shall be placed in files pertaining to the inmate.

Subsection 3326(b) remains unchanged.

Subsection 3326(c) is amended to read:

(c) Provisions of this section shall also apply when a finding of guilt on disciplinary charges is reversed or dismissed on appeal, or when information reported on a ~~CDC Form 128-A, Custodial Counseling Chrono~~, is found on appeal to be incorrect or inappropriate.

Subsection 3326(d) remains unchanged.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 5054 and 2081, Penal Code.

Article 7. Segregated Housing

3340. Assistance to Inmates for Administrative Segregation Classification Hearings

Subsections 3340(a) through 3340(f) remain unchanged.

Subsection 3340(g)(B) is amended to read:

(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.

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).

Subsections 3340(h) through 3340 (k)(8) remain unchanged.

3341.3. Security Housing Unit.

Subsections 3341.3(a) through 3341.3(a)(1)(F) remain unchanged.

Subsection 3341.3(a)(2) is amended to read:

(2) Determinate SHU. An inmate shall be assessed a determinate SHU term when the inmate is found guilty of a ~~CDC Form 115 (Rev. 07/88)~~, 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.

Subsection 3341.3(a)(2)(A) through 3341.3(c) remain unchanged.

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).

Article 10. Classification

3376. Classification Committees.

Subsection 3376(a) through 3338(d)(5)(A) remain unchanged.

Subsection 3376(d)(5)(B) is amended to read:

(B) Review Dropout status affiliate's new disciplinary behavior for documented nexus to STG behavior as noted in the RVR ~~CDC Form 115 (07/88)~~ Rules Violation Report, which is incorporated by reference, or other source items of intelligence.

Subsection 3376(d)(5)(C) through 3376(d)(5)(D) remain unchanged.

NOTE: Authority cited: Sections 3303 and 3309, Welfare and Institutions Code; and Sections 5058 and 6252, Penal Code. Reference: Sections 2933, 5054 and 5068, Penal Code.

3378.6. Review and Action Following Receipt of Debrief Reports.

Subsection 3378.6(a) through 3378.6(a)(3) remain unchanged.

Section 3378.6(a)(4) is amended to read:

(4) Staff shall prepare an RVR ~~CDC Form 115 (07/88)~~, Rules Violation Report, which is incorporated by reference, as appropriate, documenting the information as received

from the confidential source and any pertinent information gleaned through the investigation.

Subsection 3378.6(a)(5) remains unchanged.

Subsection 3378.6(a)(6) is amended to read:

(6) Dependent upon the STG status/designation of the inmate, the completed RVR CDC Form 115 shall be referred to the STG Unit Classification Committee in accordance with section 3376(d)(5) or ICC in accordance with section ~~3341.5(e)(11)~~ 3378.6(c) for review of the inmate's activities/behavior.

Subsections 3378.6(b) through 3378.6(d) remain unchanged.

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