

**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 CERTIFICATE OF
COMPLIANCE**

**Government Code Sections 11349.1 and
11349.6(d)**

OAL Matter Number: 2015-1019-02

**OAL Matter Type: Certificate of Compliance
(C)**

This certificate of compliance action makes permanent the adoption, amendment, and repeal of provisions governing methods for placement and housing of inmates in segregated housing arising out of emergency action OAL file no. 2015-0513-04EON.

OAL approves this regulatory action pursuant to section 11349.6(d) of the Government Code.

Date: December 3, 2015



**Mark Storm
Senior Attorney**

**For: DEBRA M. CORNEZ
Director**

**Original: Jeffrey Beard Ph. D.
Copy: Anthony Carter**

NOTICE PUBLICATION/REGULATIONS SUBMISSION

CERT

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-2015-0604-02	REGULATORY ACTION NUMBER 2015-1019-02C	EMERGENCY NUMBER
For use by Office of Administrative Law (OAL) only			
NOTICE		REGULATIONS	

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

DEC 03 2015

1:53 PM

2015 OCT 19 P 3:19
OFFICE OF
ADMINISTRATIVE LAW

AGENCY WITH RULEMAKING AUTHORITY Corrections and Rehabilitation	AGENCY FILE NUMBER (if any) 15-0040
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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 Disapproved/Withdrawn	NOTICE REGISTER NUMBER 2015, 25-2	PUBLICATION DATE 6/19/2015	

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Segregated Housing	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) 2015-0513-04EON
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.)	TITLE(S)
ADOPT 3340, 3341, 3341.11, 3341.2, 3341.3, 3341.4, 3341.5, 3341.6, 3341.7, 3341.8, 3341.9;	15 per agency request
AMEND 5000, 3044, 3269, 3269.1, 3335, 3336, 3337, 3338, 3339, 3340 (renumber to 3335), 3341.5, 3342, 3343, 3344-	SEE ATTACHED
REPEAL 3341, 3341.5	
3. TYPE OF FILING	
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input checked="" 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"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §511349.3, 11349.4)	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print
	<input type="checkbox"/> Other (Specify) _____
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) _____
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"/> Other (Specify) _____	<input type="checkbox"/> State Fire Marshal
7. CONTACT PERSON Anthony Carter	TELEPHONE NUMBER (916) 445-2220
FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional) Anthony.Carter@cdr.ca.gov

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 10-12-15
TYPED NAME AND TITLE OF SIGNATORY Scott Kernan, Undersecretary- Operations, Cal. Dept. of Corrections and Rehabilitation	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

DEC 03 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 REGULATIONS AS FINALLY ADOPTED

**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	Administrative Review of Administrative Segregation Unit Placement
§ 3337	Classification Hearing of Administrative Segregation Placement
§ 3338	Change of Reason for Segregation
§ 3339	Release from Administrative Segregation
§ 3340	Assistance to Inmates for Administrative Segregation Hearings.
§ 3341	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	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. 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.

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) remains unchanged.

Subsection 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.

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. Refusal to participate will result in the issuance of a Rules Violation Report (RVR) for Conduct, section 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)(67)). 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. Administrative Segregation.

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 MHSDDS, 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 (Rev.10/98), 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)

(e) 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:

3335.5. Exclusions.

Removal of an inmate from the General Population(GP) for the reasons 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 removed from the GP for medical or psychiatric reasons by order of healthcare staff and the inmate's placement is in a medical setting or in other housing as a medical quarantine, the inmate will not be deemed as segregated for the purpose of this article. Administratively segregated inmates with healthcare concerns shall remain on administrative segregation status, regardless of housing.

(b) Lay-Over. Newly received 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.

(d) Disciplinary Detention. Placement in disciplinary detention as an ordered action of a disciplinary hearing is not subject to the provisions of this article.

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

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

Section 3336. Segregation Order is amended to read:

3336.. Administrative Review of Administrative Segregation Unit Placement

(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, Penal Code.

3337. Review of Segregation Order is amended to read:

3337. Classification Hearing of Administrative Segregation Placements.

(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 (Rev. 10/89).

(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 (Rev. 10/89).

(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 (Rev. 10/89).

(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 114-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 (Rev. 10/89) 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. Amendment to Reasons for Segregation

(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) A 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.

(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.

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 (Rev. 10/89) 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 CDC 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.

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 (Rev. 10/89) 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 (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.

(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 (Rev. 10/89), 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 (Rev. 10/89).

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; and Castillo v. Alameida, et al.,(N.D. Cal., No. C94-2847).

Existing Section 3341.5 is deleted in its entirety

Notice to Printer

PICTURE OF SHU TERM ASSESSMENT CHART IS DELETED

NOTICE TO PRINTER

Picture of CDC Form CDCR 629-D is deleted.

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 (Rev. 10/89).

(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 paroled 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 paroled 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 (Rev. 10/89). 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 (Rev. 10/89).

(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 (Rev. 10/89) 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 (Rev. 10/89), 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-A(Rev. 09/15).
- (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).

OFFENSE	TYPICAL TERM (Mos)		
	Low	Expected	High
(1) Homicide:			
(A) Murder, attempted murder, solicitation of murder, or voluntary manslaughter of a non-inmate.	36	48	60
B) Murder, attempted murder, solicitation of murder, or voluntary manslaughter of an inmate.	24	36	48
(2) Violence Against Persons:			
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.	18	30	42
(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.	09	15	21
(C) Rape, sodomy, or oral copulation on a non-inmate, or any attempt.	18	30	42
(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	12	18	24

injury.			
(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.	6	9	12
(F) Rape, sodomy, or oral copulation on an inmate accomplished against the inmate's will, or any Attempt.	12	18	24
(G) Battery on a non-inmate without serious injury.	6	12	18
(H) Assault on a non-inmate	3	6	9
(I) Battery on an inmate without serious injury. (2 or more offenses within a 12 month period or 1 with direct STG nexus).	2	4	6
(3) Threat to Kill or Assault Persons:			
(A) To take or use a non-inmate as a hostage.	18	30	42
(B) Threat of violence to non-inmate.	2	5	8
(4) Possession of a Weapon:			
(A) Possession of a firearm or possession or manufacturing of an explosive device.	18	30	42
(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.	4	8	12
(5) Distribution of Controlled Substances as defined in section 3000.			
	6	12	18
(6) Escape:			
(A) With force or Attempted Escape with force against a person.	12	24	36
(B) Or attempted Escape from any departmental prison or institution other than a camp, MSF or reentry facility.	6	12	18
(7) Disturbance, Riot, or Strike:			
(A) Leading a disturbance, riot or strike.	6	12	18
(B) Active participation in a disturbance, riot or Strike (2 or more offenses within a 12 month period or 1 with direct STG nexus).	3	6	9
(C) Inciting conditions likely to threaten institution security	3	6	9
(8) Harassment of another person, group, or entity either directly or indirectly through the use of the mail or other means.			
	6	12	18

(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.	2	8	12
(10) Extortion or Bribery:			
(A) Extortion or bribery of a non-inmate.	4	8	12
(B) Extortion or bribery of an inmate.	2	3	4
(11) Sexual Misconduct:			
(A) Indecent Exposure.	3	6	9
(B) Sexual Disorderly Conduct (two or more offenses within a twelve month period).	3	6	9
(12) Except as otherwise specified in this section or identified as an assault, proven attempts to 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 CDC Form 114-A, ~~Inmate Isolation Segregation Record (rev: 10/98)~~ Detention/Segregation Record, 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), the physical 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 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 ASU or SPHU 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 shall be clothed in any manner intended to degrade the inmate.

(d) Meals. Inmates assigned to ASU or SPHU, shall 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 ASU or SPHU, shall 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 shall be permitted non contact visits, unless otherwise specified in section 3170.1(f), General Visiting.
- (g) Personal Cleanliness. Inmate's assigned to ASU or SPHU, shall be provided the means to keep themselves clean and well-groomed. Haircuts will be provided as needed. Showering and shaving shall be permitted at least three times a week. Clothing, bedding, linen and other laundry items shall be issued and exchanged no less often than is provided for general population inmates.
- (h) Exercise. Inmates assigned to ASU or SPHU 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 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 ASU or SPHU, shall be permitted to obtain and possess the same publications, books, magazines and newspapers as are inmates of the general population, except the quantity may be limited for safety and security reasons. Library services shall be provided and will represent a cross-section of material available to the general population.
- (j) Telephones. Institutions shall establish procedures for the making of outside telephone calls by inmates in 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 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 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 ASU or SPHU 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 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) CDC Form 114, Isolation Log (rev: 3/03), shall be maintained in each ASU and SPHU. One Isolation Log may serve two or more special purpose units which are administered and supervised by the same staff members.

(b) A separate record shall be maintained for each inmate assigned to administrative segregation, including SHU and PSU. This record shall be compiled on CDC Form 114-A Detention/Segregation Record, 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 shall be entered in chronological order.

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

FINAL STATEMENT OF REASONS:

The Initial Statement of Reasons (ISOR) is incorporated by reference.

UPDATES TO THE INITIAL STATEMENT OF REASONS:

The Notice of Regulations was published in the California Regulatory Notice register on June 19, 2015, which began the public comment period. The Notice of Change to Regulations 15-04 was mailed out the same day and also posted on the Department's Internet and Intranet websites. The public hearing was held August 7, 2015. No one provided public comments. During the 45-day public comment period eight comments were received. These comments are discussed below under the heading "*Summaries and Responses to Written Public Comments.*"

DETERMINATION:

The Department has determined that no alternative considered would be more effective in carrying out the purpose for which the regulation is proposed, would be as effective and less burdensome to affected private persons than the adopted regulation, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

PUBLIC HEARING COMMENTS:

A public hearing was held on August 7, 2015, at 10:00 a.m. No public comments were received during the public hearing.

SUMMARIES AND RESPONSES TO WRITTEN PUBLIC COMMENTS:

Commenter # 1

Comment 1A- Commenter agrees that the recent population reductions have mitigated the impact of inmates refusing housing assignments thus requiring a less restrictive punishment for refusal; however objects to the manner it is implemented. Commenter states that while a willful refusal to integrated housing without precluding case factors pursuant to Section 3269.1 is reasonable, the amendments affect inmates refusing integrated housing based on other reasons pursuant to Section 3269 (i.e. fear of the inmate to be housed with) are objectionable.

Commenter states the Department's claims of "less restrictive alternative than presently imposed" is not true based on the permissive nature of the present rules, which allow but do not require more restrictive housing upon a second refusal. Commenter claims the revisions require "C" status to be imposed without allowing for discretion in cases of genuine fear. Commenter believes that the assessment of "C" status in cases not involving "race-based" refusals should be discretionary rather than mandatory.

Response to Comment 1A:

This progressive corrective action process for misconduct is intended to address an inmate found guilty for a second violation of refusal to accept assigned housing. The implemented process offers inmates an opportunity to continue to participate in rehabilitative programs while providing a deterrent to violations of the Title 15. As such, placing an inmate on “Privilege Group C” is less restrictive than placement in an Administrative Segregation Unit (ASU).

In order for an inmate to be subject to “Privilege Group C” for refusing to accept assigned housing pursuant to CCR 3044(f)(1)(A), he/she must first be found guilty of two Rules Violation Report’s (RVR) by a Senior Hearing Officer (SHO) for a violation of CCR 3005(c), specifically, “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)(7)).

During the RVR hearing process for each separate offense, the inmate would have the opportunity to provide a statement, call witnesses to support his/her defense, present information/evidence and/or mitigating factors (i.e. fear of the inmate to be housed with); and would be afforded all due process rights. The SHO would evaluate the available evidence and apply his/her discretion to determine the guilt or innocence of the inmate. The SHO determination is then reviewed by a Captain and by the Chief Disciplinary Officer. The RVR adjudication process is the method by which the facts surrounding the charge are meaningfully reviewed.

Comment 1B- Commenter suggests that while “ASU/SHU are physically more restricting than “C” Status”, ASU/SHU housing allows for the possession of an entertainment appliance, while “C” status does not. Commenter contends that inmates would rather fight an assigned cellmate rather than refuse to cell with him to maintain possession of their entertainment appliance. Commenter states that this would set a preference of violence over conflict resolution which is contrary to the mission of CDCR.

Response to Comment 1B:

The California Department of Corrections and Rehabilitation (CDCR) disagrees with the commenter’s position. CDCR affirms that possession of a television is a privilege and not a right. The purpose of the regulatory change is to eliminate unnecessary ASU placement for rule violations that do not require ASU placement while providing a deterrent to violations of the Title 15.

The commenter’s position is speculative and assumes an inmate would rather engage in further criminal activity which may result in administrative charges and possibly criminal charges. The commenter also states that inmates would risk their own safety or the safety of another inmate rather than face a disciplinary hearing where he/she **may** lose his/her television.

Additionally, being charged for refusing to accept assigned housing does not automatically result in a guilty finding of the specified charge. (See response to Comment 1A)

Commenter #2

Comment 2A- Commenter states that SHU is not humane or American and questions how individuals that have been confined for years with no human touch can become productive

citizens. Commenter additionally states that this is the reason our justice system has become a revolving door as our politicians and officials have become brain dead with a Hitler mentality.

Response to Comment 2B:

This comment does not directly address the proposed regulations; therefore the Department is unable to accommodate the comment. However, the Department notes that the measures taken in this regulatory change were designed to reduce the amount of time spent in segregated housing for inmates found guilty of a SHU assessable RVR. Additionally, the following major components will result in the reduction of the SHU and ASU inmate population:

- Increase of clean conduct credit from 25 percent to 50 percent
- Decrease in length of time of several SHU terms
- Removal of several offenses from the SHU term assessment chart

Comment 2C –Commenter states that gang charges have become an easy conviction and a scare tactic for the jury and the public, and that half of the SHU inmates were teenagers when records started and they were not emotionally grown up yet.

Response to Comment 2C:

This comment does not directly address the proposed regulations as measures taken in this regulatory change do not impact CDCR Security Threat Group (STG) Identification, Prevention, and Management regulations; but instead merely includes Institution Classification Committee (ICC) review timeframes for this population. Therefore, the Department is unable to accommodate the comment.

Commenter #3

Comment 3A-Commenter does not agree with the solitary confinement policy of the Secured Housing Unit. It is cruel and inhumane to be kept in the SHU for years at a time.

Response to Comment 3A:

This comment does not directly address the proposed regulations; therefore the Department is unable to accommodate the comment. However, the Department notes that it does not have a solitary confinement policy and the SHU is not solitary confinement. The measures taken in this regulatory change are designed to reduce the length of time that an inmate found guilty of a SHU term assessable RVR will be housed in segregated housing.

Comment 3B-

Commenter states they have a family member who has been confined in the SHU and would like to see this policy abolished or at least reconsider modifying the policy so there is a limit to the length an inmate can be held in solitary confinement without the ability to interact with another human being for an extended period of time and not even being able to make a phone call to a family member.

Response to Comment 3B:

This comment does not directly address the proposed regulations; therefore the Department is unable to accommodate the comment. However, the Department notes that it does not have a solitary confinement policy and the SHU is not “solitary confinement without the ability to

interact with another human being.” The length of time an inmate could potentially spend in segregated housing is dependent upon his/her behavior.

Commenter 4

Comment 4A- Commenter states that the Pilot Program concerning Security Threat Groups dramatically increased the violence on Non-STG inmates by STG inmates and is currently costing the taxpayers thousands of dollars in medical/ hospital costs. Commenter contends that the removal of Administrative Segregation Housing eliminates a deterrent to violence committed by STG affiliated inmates upon non STG affiliated inmates and violence will increase.

Response to Comment 4A:

This comment does not directly address the proposed regulations as the amendments do not eliminate Administrative Segregation Housing and do not seek to make changes to CDCR’s existing STG management regulations; therefore the Department is unable to accommodate the comment.

Comment 4B- Commenter suggests an alternative which will reduce exorbitant medical costs resulting from the assaultive violence by STG inmates on “true Sensitive Needs Yard” inmates is to enhance the punishment provided for in Section 3323- Disciplinary Credit Forfeiture Schedule. Commenter suggests a Division A-1 offense changed from maximum 360 days forfeiture to a maximum 720 days and the Division A-2 offenses changed from maximum 180 days to 360 day. Commenter further contends that any “brutalistic assaults causing any great bodily injury be referred for criminal prosecution pursuant to Section 3316.

Response to Comment 4B:

This comment does not directly address the proposed regulations as the amendments do not include modifications to the credit forfeiture schedule set forth in existing Section 3323; therefore the Department is unable to accommodate the comment. However, the Department notes that all inmates (including those with STG association) shall continue to be held accountable for their actions; for example, an RVR for Battery Resulting in Serious Bodily Injury (SBI) remains a SHU assessable RVR. Furthermore, the threshold for referral to a District Attorney for prosecution has not changed and battery resulting in SBI meets the established threshold. The forfeiture of good conduct credit is aligned with provisions set forth by Penal Code Section 2932.

Comment 4C- Commenter suggests that STG “gang drop outs” do not consider themselves “PC” (Protective Custody) inmates and can simply assault a non STG inmate to get preferred housing lifestyle of cell living with little repercussion.

Response to Comment 4C:

This comment does not directly address the proposed regulations; therefore the Department is unable to accommodate the comment. The commenter is speculating about what he/she believes “gang drop outs” think. However, the Department notes that all inmates will continue to be held accountable for their actions and subject to the CCR disciplinary dispositions and penalties.

Comment 4D- Commenter states that the STG Pilot Program particularly at Deuel Vocational Institution (DVI) on the “Sensitive Needs Yard” (SNY) significantly and adversely impacts the state economically due to hospital and emergency treatment costs; and that enhancing Section 3323 Disciplinary Credit Forfeiture would be a logical means of mitigating the Administrative Segregation closures, and the already egregious situation of “brutalistic assaults being perpetuated by the ill-conceived and ineffective STG Pilot Program”.

Response to Comment 4D:

This comment does not directly address the proposed regulations therefore the Department is unable to accommodate the comment. See also the Response to Comment 4B.

Commenter #5

Comment 5A- Commenter contends that the regulations make it difficult to understand how they will interface with the Step Down Program (SDP) and that the claim of correcting “unwieldy practices” resulting from earlier changes institute policies that seem equally discretionary and contradictory.

Response to Comment 5A:

The SHU/ASU regulatory changes do not affect the existing STG regulations. The proposed update of the SHU/ASU regulations incorporates and codifies policies that thoroughly align CDCR with the California Penal Code. Furthermore, the incorporation of previous changes in the California Code of Regulations (CCR) is solely to improve the organization of the regulations and to eliminate the possibility of inconsistent direction.

Comment 5B- Commenter states that The American Friends Service Committee takes strong exception to the claim that the summary of changes announced in that “there is no solitary confinement in California” and specifically, Segregated Housing Units are not solitary. Commenter claims that though some SHU inmates have cell-mates who may or may not ease their isolation, that the majority of SHU inmates have no friendly human contact, no opportunity for touch, no phone calls, and virtually no programming, and that this is “solitary confinement” by any definition.

Response to Comment 5B:

This comment does not directly address the proposed regulations; therefore the Department is unable to accommodate the comment. However, the Department notes that it does not have a solitary confinement policy and the SHU is not solitary confinement. The measures taken in this regulatory change were, among other things, designed to reduce the duration of time an inmate found guilty of a SHU term assessable RVR will spend in segregated housing and thereby, reduce the number of inmate’s housed in segregated housing.

Comment 5C- Commenter claims that no one is in state prison if they have not been convicted of a felony so the claim that “segregated housing is necessary as a result of felonious behavior” is broad and does very little to explain the need for such isolation.

Response to Comment 5C:

The CDCR has a responsibility to ensure the safety of the public, staff and inmates alike. The CDCR is charged with maintaining the safety of staff and inmates and the security of all

institutions. As such, segregated housing is at times necessary, as a result of further felonious behavior perpetrated by some inmates while housed within the CDCR.

Comment 5D- Commenter contends that the regulations attempt to say that there is no “indeterminate segregation”, except that the regulations allow unlimited extensions if certain procedures are followed with issues of behavior and/or security are present. Commenter admits that removing some behaviors from the list, such as refusing to be housed with a particular person, would not be grounds for keeping someone isolated, is an improvement; however generally, the reasons are quite broad and do not require what used to be called a “gang-nexus”.

Response to Comment 5D:

The CDCR disagrees with the commenter’s position. The SHU/ASU regulations do indicate there are administrative SHU terms (identified as an indeterminate SHU term prior to October 2014). The CCR 3341.3 clearly articulates when an administrative SHU term may be imposed. Administrative SHU term assessments are dictated by an inmate’s continued pattern of violating department rules, or his/her behavior presents an immediate threat. Furthermore, a review of the SHU assessment chart identifies SHU assessable RVR’s which are specifically tied to violations with an STG nexus.

Comment 5E- Commenter states that the revisions are an improvement in that the prisoner will receive “segregation placement notice immediately upon placement instead of 48 hours later. Additionally, commenter states revisions are an improvement in that people with medical or psychiatric problems will no longer be placed in ASU but will retain the ASU status. Commenter states it is not clear if this revision extends to SHU.

Response to Comment 5E:

CCR 3341.5 states in part, “ICC may suspend a Determinate or end an Administrative SHU term for purposes of inpatient medical or mental health treatment when deemed clinically necessary.”

Comment 5F- Commenter states that the regulations are confusing in that they imply that the only programming available in the Segregated Program Housing Units (SPHU) is the Step Down Program (SDP), which is only effective in Step 4, and that STG-1 inmates are excluded from SPHUs thought they would not be excluded from the SDP.

Response to Comment 5F:

The CDCR disagrees with the commenter’s position. CCR 3343 states in part, “Inmates assigned to ASU or SPHU 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.” Additionally, STG inmates are not excluded from Segregated Program Housing Units (SPHU). STG inmates in steps 1 through 4 of the SDP are housed in a SPHU. Any STG regulations included in this package have not been modified, but relocated unedited solely for purposes of organization.

Comment 5G- Commenter objects to the addition of an extra year of Disciplinary Violations from 4 years to 5 in case by case reviews. Commenter states that the additional year creates a new normal that comes close to the 6 years average people have been spending in SHU and

because it contradicts other time frames in the regulation that seem to call for a 360 day maximum. Commenter contends that the timeframes in the regulations are confusing as there are different standards in play (i.e. MERDs, Term Assessment, and Clean Conduct) so that they cannot understand when the 360 day “rule” would apply.

Response to Comment 5G:

The CDCR disagrees with the commenter’s position. The commenter appears to confuse the assessment of an administrative SHU term for a substantial disciplinary history (no less than three SHU terms within the past five years); with case by case reviews of STG behavior (STG related behavior within the past four years). The four year review of STG related behavior has not been affected by this proposed regulatory change.

Comment 5H- Commenter welcomes the expectation that SHU would run concurrently, however existing provisions for consecutive and extending terms seem confusing.

Response to Comment 5H:

The CDCR disagrees with the commenter’s position. CCR 3341.4 clearly articulates the definition, details the imposition of, and specifies the ICCs requirement to document the justification of the assessment of concurrent and consecutive SHU terms. CCR 3341.7 states in part, “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 projected or established MERD, may result in forfeiture of clean conduct credits.” However, the determinate SHU term for a SHU assessable offense has a definite expiration date and cannot be “extended” past the highest range of the term.

Comment 5I- Commenter states that CDCR gives out with one hand and takes back with the other as the regulations allow the ICC to commute determinate SHU terms which cannot be then re-imposed; however, allows for suspension which can be reinstated any time. Commenter states that these regulations give CDCR broad discretion to follow people on the streets, decide when certain activities are gang related whether or not the courts has found them to be, and punish them accordingly.

Response to Comment 5I:

The CDCR disagrees with the commenter’s position. The criteria for re-imposing a suspended SHU term are clearly articulated in CCR 3341.5. Once a SHU term is suspended by ICC 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.” Furthermore, this regulatory change does not impact STG (gang) regulations. An STG affiliated inmate who paroled while on Administrative SHU term shall be subject to all provisions set forth by CCR 3341.6.

Comment 5J- Commenter states that the regulations spell out how a SHU term can be re-imposed for serious misconduct and the ICC can determine if the person poses a threat. Commenter states this language is broad and does not require a “gang nexus”.

Response to Comment 5J:

The CDCR disagrees with the commenter’s position. An Institution Classification Committee (ICC) retains the discretion to determine that an inmate does/does not pose a threat to the safety

of staff or inmates and security of the institution. As articulated in CCR 3341.5, the ICC must articulate the reasons in either event. The ICC action is reviewed by a Classification Staff Representative (CSR) who acts to ensure the action is within departmental policy. Furthermore, these proposed amendments govern all inmates who's in-custody misconduct results in a SHU term, therefore the finding of a "gang nexus" is not a requirement as these regulations do not modify the STG management policy that are found in separate regulations. Any STG regulations included in this package have not been modified, but relocated unedited solely for purposes of organization.

Comment 5K- Commenter states that there continues to be little or no distinction between members and affiliates and that the language used is interchangeable. Commenter implies that if a person's activities on the outside are not found to be STG related; however they were profiled as SHU when previously in CDCR custody, they would be placed in the Step they were on when they were released. Additionally, if the behavior is found to be STG related, they would be placed on Step 1, regardless of the seriousness of the offense. Commenter states it is unclear how Step 1 and 360 days interact within the regulations.

Response to Comment 5K:

The SHU/ASU regulations are separate from the STG regulations. The SHU/ASU regulatory changes do not affect the STG regulations. Any STG regulations included in this package have not been modified, but relocated unedited solely for purposes of organization.

Comment 5L- Commenter welcomes the concept of Clean Conduct Credit; however states the regulations are unclear in how it is calculated compared to good time credits (currently not available for SHU). Commenter states it appears that just being "validated" could invalidate credits, regardless of behavior. Commenter strongly opposes the notion of forfeiture of credits in the future as it does not provide for incentives for people to change.

Response to Comment 5L:

Clean Conduct Credits are clearly defined and the calculation method is identified in the revision of CCR 3000. Clean Conduct Credit is calculated as 50 percent of the assessed SHU term (e.g. the Clean Conduct Credit of a six month SHU term would be three months). Clean Conduct Credit is intended to be an incentive for inmates to follow rules while serving a SHU term. Forfeiture of these credits is only initiated when an inmate commits an offense classified as serious misconduct that does not warrant a SHU term. Inmates who have been assessed an Administrative SHU term are not eligible for Clean Conduct Credit. These proposed changes do not impact established STG regulations.

Comment 5M- Commenter states that the processes of classification hearings have some good features; however the broad discretion given to ICC for retaining people contradicts the intentions. Commenter states that prisoners could do all they were expected to do and remain in isolation.

Response to Comment 5M:

The overall objective of the CDCR is to provide a safe and rehabilitative environment for all inmates. As such, the intent of the SHU/ASU regulatory change is to further standardize the operation of SPHUs statewide. The consideration of a wide range of mitigating and aggravating

factors requires some administrative discretion. However, all ICC actions are reviewed by a CSR, the departmental employee designated to represent the Director in the classification process, to ensure actions are within departmental policy. SHU terms and SHU retention is dependent upon an inmate's behavior.

Comment 5N- Commenter states that the language is unclear in 3341.8(b) in regards to the criteria in how housing and program assignment is determined (availability of alternate housing). Commenter contends that a person could languish well past their release date for reasons unrelated to behavior.

Response to Comment 5N:

The CDCR disagrees with the commenter's position. The provisions as stated in CCR 3341.8 require institutions to review an inmate's case factors 120 days prior to the expiration of a determinate SHU term (Pre-Minimum Eligible Release Date (MERD) Hearing). This mandate ensures the inmate appears before the ICC earlier than previously required, at which time ICC may consider an inmate for release or retention in segregated housing, or placement in alternative housing. This requirement is intended to benefit the inmate and does not, as the commenter suggests, increase the likelihood that an inmate would be retained indefinitely while a housing determination is made.

Comment 5O- Commenter states that in Section 3341.9 the majority of the mitigating factors looks fine, yet believes the time frame of five years should be shortened. Commenter additionally questions the relevancy of factoring the disciplinary history during the first year of incarceration, as a person's first year is the most unstable and shouldn't follow them around forever.

Response to Comment 5O:

The CDCR disagrees with the commenter's position. The most accurate tool in assessing an inmate's future behavior is the inmate's entire behavioral history. The review of the inmate's recent (past five years) behavioral history allows for a reasonable period of assessment. CCR 3341.9 (b) lists factors in mitigation and states, "The inmate has no serious RVR's within 12 months of the behavior or no disciplinary history during the first year of CDCR incarceration". An inmate's lack of disciplinary history during the first year of CDCR incarceration is used in this subsection as an important factor in assessing mitigating factors, which is intended to work in favor of inmates who have positively programmed. Disciplinary behavior within the first year of incarceration is not similarly listed as a factor in aggravation.

Comment 5P- Commenter states that the aggravating factors only include one reference to STG behavior, and that most decisions to continue to keep people in SHU will not be based on "gang behavior". Commenter states that this is a significant retreat from last set of policies and presents contradiction. Commenter contends that veteran staff could just "wait it out" until more changes come along.

Response to Comment 5P:

The SHU/ASU regulations are distinct from the STG regulations. The proposed SHU/ASU regulatory changes do not affect the STG regulations and any STG regulations included in this package have not been modified, but relocated unedited solely for purposes of organization.

CCR 3341.9 (c)(3) does speak to aggravating factors, when assessing a SHU term for misconduct committed on behalf of an STG as documented, and referenced. The commenter is speculating about what he/she thinks “veteran staff” could do; all CDCR staff is required to abide by the law.

Comment 5Q- Commenter questions the clarity of the SHU Assessment chart and states it makes no distinction between violent and non-violent activities, such as a hunger strike. Commenter contends that though they disrupt routine significantly, hunger strikes are a time honored non-violent tactic that should not be treated as a serious disciplinary issue. Commenter further contends that the Department’s idea of leadership is flawed in that they just want to punish people in SHU because others take up the cause. Commenter states that though an amount of coercion may exist, the department has been poor at distinguishing the source of coercion, and instead holds anyone they deem a “leader” responsible for all actions. Commenter states this occurs even when they (leader(s)) have specifically advised people to follow their own consciences.

Response to Comment 5Q:

The CDCR disagrees with the commenter’s position. The CDCR does distinguish between violent and nonviolent offenses; a guilty finding of an RVR for a violent offense carries a longer SHU term than a guilty finding of an RVR for a nonviolent offense. Hunger Strikes are considered a serious rule violation because they pose a significant disruption to essential services. Commenter states that CDCR’s determination of “leadership” is flawed. However, allegations of “leadership” are thoroughly investigated to arrive at an impartial determination in accordance with policy. Additionally, SHU terms are not “punishment”; SHU terms are a management tool designed to segregate inmates, deemed to be a threat to individuals or the safety and security of the institution based upon inmate behavior.

Comment 5R- Commenter states that subsection (13) in the SHU Assessment Chart is a conspiracy clause which is difficult to prove but allows the Department to hold people responsible for behavior, even when they have not committed it. Commenter again contends that every time the rules change, it throws the lives of those people they affect in disarray. Commenter states that the broader the criteria becomes for retaining people in isolation, the less effective reform efforts become. Commenter hopes the department can scale back inconsistencies and contradictions within these regulations.

Response to Comment 5R:

This comment does not directly address the proposed regulations as the conspiracy charge is pre-existing regulatory language (CCR 3341.5(c)(9)(N)) that is not being amended. Therefore the Department is unable to accommodate the comment. However, the Department notes that it is required to establish, by a preponderance of evidence, that an inmate has committed the disciplinary charge in order to find an inmate guilty of conspiracy. It is not CDCR’s intent to retain inmates in segregated housing if segregated housing placement is unwarranted. Also, Section (13) is not a new regulation.

Commenter # 6

Comment 6A- Commenter references page 2 of the Initial Statement of Reason (ISOR) and states that there is enough evidence in the means of international dialogue, testimony from

psychologists, and other esteemed experts that there *is* “solitary confinement within the California prison system.” Commenter states that confinement in isolation is solitary confinement and quotes UC Santa Cruz Distinguished Professor Craig Haney that solitary confinement places persons at “serious risk of psychological harm”. Commenter states that there is plenty of published literature from the American Civil Liberties Union, Amnesty International, the United Nations and other esteemed organizations about the permanent effects of long-term isolated confinement. Commenter states that having a cellmate does not mitigate the effects of a lack of real rehabilitation or self-improvement programming, lack of sensory stimulation and human touch, the lack of true educational opportunities, and the lack of humane living conditions including adequate and nutritious food and proper medical care.

Response to Comment 6A:

This comment does not directly address the proposed regulations; therefore the Department is unable to accommodate the comment. However, the Department notes that it does not have a solitary confinement policy and the SHU is not solitary confinement.

Comment 6B- Commenter questions the benefits statement in the ISOR and requests clarification / explanation of the stated benefits. Specifically:

- Commenter inquires if the increased guidance pertains to training; and, if so, which kinds, the amount, and if there is any costs to provide this training.
- Commenter wants clarification of the term “operational refinements”, and desires to know what the “discretionary options” are that are available to the institution heads.
- Commenter asks if there is any oversight mechanisms guaranteed at each facility to guarantee standardization.
- Commenter asks about a measurable amount of reduction in time or reduced segregation.
- Commenter ask what the procedural safeguards to efficient transition are, as the Step Down Program is inefficient and currently does not measure up to the regulations as stated.
- Commenter asks the qualifications for Institutional Classification Committee and the means in which fairness is ensured.

Response to Comment 6B:

- Training regarding the SHU/ASU regulatory changes has been provided to institutional staff by way of on-the-job training. There is no additional cost associated with the training.
- “Operational refinements” refer to the incorporation of policies and procedures that make segregated housing criteria more clear while making that process more efficient for both inmates and correctional administrators. An example of a “discretionary option” for institutional heads is the ICCs discretion to assess a concurrent or consecutive SHU term.
- CSR’s are the departmental employee that is designated to represent the Director in the classification process. CSRs review ICC actions to ensure actions are within departmental policies.
- It is premature to evaluate this regulatory change for impact to the ASU inmate population.
- This comment does not directly address the proposed regulations as neither the Step Down Program nor transitional programming are included as part of the proposed regulations; therefore the Department is unable to accommodate the comment.

- The commenter is referred to CCR 3376 (c)(2)(A)-(I), which sets forth the composition of the ICC. Fairness is addressed via procedural due process and the administrative appeals process.

Comment 6C- Commenter inquires if there are guarantees of oversight and accountability for the procedural safeguards afforded inmates as explained in the ISOR in reference to Section 3336(c). Commenter also asks what training ICC and staff will have and clarification for “effective communication accommodation”.

Response to Comment 6C:

SHU/ASU classification actions are reviewed by a CSR to ensure departmental policy is followed. CSR’s are the departmental employee that is designated to represent the Director in the classification process. CSRs review ICC actions to ensure actions are within departmental policies. Effective Communication training is, and will continue to be provided to staff in the form of On-the-Job (OJT) training and In-Service Training (IST).

Comment 6D- In reference to page 10 of the ISOR regarding the initial ICC following ASU placement; Commenter asks what standardization ensures the statement, “as early as possible”.

Response to Comment 6D:

Proposed CCR 3337 (a)(1) states, “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”.

Comment 6E- Commenter asks if the voice of each inmate has a power to constitute “hearing fairness”, or if decisions of placement and assessment are predetermined before the hearing. Commenter asks what safeguards and oversights are in place to prevent arbitrary or personal interpretation of the regulations, or prevent unethical vendettas by staff towards inmates.

Response to Comment 6E:

Assigned classification staff work on each individual case prior to the scheduled committee date and taking all case factors into consideration, make a recommendation to the ICC. However, ASU placement decisions are made by the ICC and are not determined prior to a hearing. All procedural safeguards are adhered to in accordance with CCR 3375. SHU/ASU classification actions are independently reviewed by a CSR, the Director’s representative to ensure departmental policy is followed.

Comment 6F- Commenter disagrees with the following statement regarding section 3341.5: “active participation in a riot has become an increasingly serious problem, often resulting in the serious injury of others”. Commenter contends that there were no incidents of violence reported in any of the three hunger strikes from 2011 through 2013. Commenter states that if the above statement is related to the nonviolent protests, the regulations seem targeted against the constitutional right to a non-violent protest and is a further abrogation of prisoner rights.

Response to Comment 6F:

The CDCR disagrees with the commenter's position; perhaps the commenter is referring to CCR 3341.9, which incorporates the SHU term calculation and assessment. The proposed regulatory changes modify the previously existing charge of active participation in a disturbance, riot, or strike so that it only becomes a SHU assessable charge if the inmate is found guilty of the offense two or more times in a 12 month period or unless an STG nexus is identified. The commenter also misapplies to inmate hunger strikes the Department's statement regarding serious injuries resulting from a riot.

Commenter #7

Comment 7A- Commenter challenges the Department's statement of "there is no solitary confinement" and states that the California SHU and other housing units fall squarely within the accepted definition of "solitary confinement".

Response to Comment 7A:

This comment does not directly address the proposed regulations; therefore the Department is unable to accommodate the comment. However, the Department notes that it does not have a solitary confinement policy and the SHU is not solitary confinement.

Comment 7B- Commenter objects to portions of the SHU Assessment Chart.

- Commenter states that the additions of "rape, sodomy, or oral copulation on a non-inmate or any attempt" as a SHU offense should be changed to include the term "without consent". Commenter contends that since sodomy and oral copulation are not by definition, "unconsensual", they should be eliminated from the list or the term "without consent" should be included to narrow the behavior which warrants a SHU term.
- Commenter contends that the active participation or leadership of a peaceful strike, such as hunger strike or work stoppage should not be a SHU-able offense. Commenter contends that prisoner leadership towards prison reform, quelling violence is a good thing and should not be penalized. Commenter added recognition that hunger strikes and work stoppages are a tactic used as a last resort and that CDCR should provide less disruptive forums for prisoners to express their concerns and grievances. Commenter states the existing Inmate Appeal process is lacking viable resources in resolving issues. Commenter states that penalties should not be different and greater for those activities with a "STG nexus".
- Commenter states that "Harassment" as a new SHU-able offense is too broad and appears to replace "threat to kill or assault person: threat to an inmate" should be redefined to limit its scope to serious forms of harassment, such as repeated threats.
- Commenter states that language regarding the possession of "materials altered from their original manufactured state or purpose and which can be made into a weapon" is too broad and should be eliminated as it could result in a SHU term for an innocent activity. Commenter suggests an intent requirement such as "intent to make them item into a weapon" should be added.
- Commenter states that the regulations regarding battery of an inmate create two differing punishments; one with an STG nexus and one without. Commenter states that there should be no difference as SHU Terms will be longer anyway with the mandatory Step Down Program.

- Commenter states that the offense of “inciting conditions that threaten institution security” is too vague and subject to abuse.
- Commenter states that the penalty (SHU term) for a single incident of indecent exposure should be eliminated. Commenter states that the current penalty should remain (two or more incidents within a 12 month period). Commenter suggests as an alternative that it should not be a SHU-able offense at all as it is likely related to a mental illness or disability that should be treated rather than punished.

Response to Comment 7B:

- The CDCR disagrees with the commenter’s position. CCR 3007, Sexual Behavior, states, “Inmates may not participate in illegal sexual acts. Inmates are specifically excluded in laws, which remove legal restraints from acts between consenting adults. Inmates must avoid deliberately placing themselves in situations and behaving in a manner, which is designed to encourage illegal sexual acts” (See also Penal Code 286(e)). Additionally, sexual conduct is forbidden with non-inmates in the following existing regulations: CCR section 3401.5, regarding sexual misconduct, states that “the legal concept of “consent” does not exist between departmental staff and inmates/parolees.” Similarly, existing subsection 3175(g) forbids any bodily contact between an inmate and his or her visitors, other than the contact described in subsections (d), (e), and (f).
- The CDCR disagrees with the commenter’s position. Hunger Strikes pose a significant disruption to essential services and therefore, are considered serious rule violations. An inmate must be found guilty of 2 or more offenses within a 12 month period or 1 with a direct STG nexus in order for the charge to be SHU assessable.
- The CDCR disagrees with the commenter’s position. Harassment, as a SHU assessable offence, is restricted to the willful harassment of another person, group, or entity in the free society, either directly or indirectly. Further, the charge of harassment is not a new SHU assessable charge, but is pre-existing; it has merely been renumbered and relocated from Section 3341.5(c)(9)(H).
- The CDCR disagrees with the commenter’s position. CCR 3341.9 (e)(4)(B) states, “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.” Therefore, the statement “which has been manufactured or modified so as to have the obvious intent or capability of inflicting serious injury” is included in the regulation.
- The CDCR disagrees with the commenter’s position. The SHU term for Battery on an Inmate applies to two (or more) guilty finding for the offense in a 12 month period or one with an STG nexus. The SHU term is the same in either scenario. Determinate SHU terms for rules violations are distinctly separate from the SDP.
- The CDCR disagrees with the commenter’s position. The addition of the offense of “inciting conditions that threaten institution security” is considered a necessary improvement in recognizing a pattern of behavior rather than a single isolated incident. CCR 3341.9 (e)(7), Subsection (C), distinguishes those inmates whom volitionally act out in such a way as to incite others and/or escalate the magnitude of the event to a point of threatening institutional security and safety.
- The CDCR disagrees with the commenter’s position. The proposed SHU/ASU regulatory changes do not affect the existing regulations for CCR Section 3341.9

(e)(11)(A)(B). California Penal Code Section 314 classifies Indecent Exposure as a sex crime. As such, CDCR is mandated to address the offense appropriately. The ICC shall conduct a classification review to assess a possible SHU term and shall take all case factors into consideration in determining SHU placement to include an inmate's mental health concerns.

Comment 7C- Commenter states that these regulations do not provide sufficient social contact nor sufficient meaningful activities during SHU confinement. Commenter states that contact visits with families should be allowed.

Response to Comment 7C:

This comment does not directly address the proposed regulations; therefore the Department is unable to accommodate the comment. However, the Department notes that the SHUs are the most secure environment within the CDCR and that programming and visiting are provided in as safe a manner as possible, taking into consideration the need to maintain order, the safety of persons, and the security of the institution/facility.

Comment 7D- Commenter states that the regulations are difficult to understand for both staff and prisoners. Specifically, commenter state that Sections 3341.4 and 3341.5, referring to concurrent and commuted SHU terms are difficult to understand and should be rewritten into "common English, organized logically, and renumbered."

Response to Comment 7D:

The CDCR disagrees with the commenter's position. The CDCR believes CCR Sections 3341.4 and 3341.5 are written in language common to the classification of inmates within a California prison. Furthermore, the aforementioned sections are organized and properly numbered in accordance with their specific nature.

Commenter #8

Comment 8A- Commenter(s) consist of a group of inmates at San Quentin. Commenter opposes these regulations and alleges that the institution failed to post the notice in a timely manner.

Response to Comment 8A:

As confirmed by the San Quentin State Prison Warden's Office, NCR 15-04 (regarding these proposed regulations) was posted on the bulletin board inside the North Block housing unit on June 25, 2015.

Comment 8B- Commenter objects to the increase of SHU terms as the Department submitted no evidence to support increased punishment which serves no legitimate purpose under "Government Code 11340". Commenter contends that the terms are excessive now and longer SHU terms will result in more litigation. Commenter states "prisoners challenge almost every decision, instead of accepting responsibility", thus, "undermining the "corrective" part of corrections".

Response to Comment 8B:

The CDCR disagrees with the commenter's position. While some SHU terms have increased (those considered violent), other SHU terms have decreased, others have been eliminated, and clean conduct credits have been increased from 25 percent to 50 percent. The regulatory process, i.e. the review and approval of proposed California regulations by the Office of Administrative Law (OAL) satisfies the provisions of Government Code 11340. The Department has no comment on prisoners propensity to "challenge almost every decision" or their unwillingness to accept responsibility for their actions.

Comment 8C- Commenter states that an alternative is to keep SHU terms the same, or reduce them to achieve the "acceptance" the public desires.

Response to Comment 8C:

This comment does not directly address the proposed regulations; therefore the Department is unable to accommodate the comment. However, the Department notes that the measures taken in this regulatory change were designed to reduce the amount of time spent in segregated housing for inmates who are found guilty of a SHU term assessable RVR. The increase of clean conduct credit from 25 percent to 50 percent, the decrease in length of time of some SHU terms, as well as the removal of some offenses from the SHU term assessment chart, will result in the reduction of the SHU and ASU inmate population.

Comment 8D- Commenter states that these regulations will have an impact on both businesses and the environment:

- Businesses will lose purchases of quarterly packages due to the ineligibility of inmates to purchase quarterly packages and special purchases.
- Inmates will simply elect to destroy the disallowed property in the SHU resulting in unnecessary landfill space consumption and poisoning of the earth.

Response to Comment 8D:

The CDCR disagrees with the commenter's position. The CDCR believes the proposed regulations will decrease the number of inmates in SHU and therefore, may result in the purchase of more quarterly packages and Special Purchase Orders (SPO). Commenter makes the unsupported assumption that inmates will destroy their own property. The Department asserts that it is uncommon for an inmate to simply destroy his or her property when housed in SHU.

Comment 8E- Commenter contends that inmates should be able to choose a cellmate instead of forced integration which increases violence and rejection of public policy. Commenter suggests that inmates should simply be allowed to choose their cellmate. "Thus, no issues, compliance, and peace".

Response to Comment 8E:

This comment does not directly address the proposed regulations as Section 3291.1, Integrated Housing, is not being amended as part of this regulations package, therefore the Department is unable to accommodate the comment. However, the Department notes that, as stated in section 3291.1, "housing assignments will be determined in a manner that will ensure that the safety, security, treatment, and rehabilitative needs of the inmate are considered, as well as the safety and security of the public, staff and institutions."

Addendum to Final Statement of Reason

The Department updated references to CDC Form 114, with revision date and without substantive effect.

The Department added revision dates in text to CDC Form(s) 128-G, 114-A1, and 115 as cross references to previously adopted forms.

The department withdraws the text title change of Form 114 A, back to original title to avoid substantive changes.

The Department cross references Form 114 D to previously adopted form, and is not incorporating by reference in text.

The Department is correcting the form version of CDCR Form 115-MH- A to previously adopted form.

Subsection 3337(b) was revised to correct typo of reference to CDC Form 114-D.

Subsection 3269.1(e) was corrected to reflect the appropriate cross reference.

DETERMINATION:

The Department has determined that no alternative considered would be more effective in carrying out the purpose for which the regulation is proposed, would be as effective and less burdensome to affected private persons than the adopted regulation, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. No reasonable alternatives have been brought to the attention of the Department that would alter the Department's initial determination.

The Department has made an initial determination that the action will not have a significant adverse economic impact on business. Additionally, there has been no testimony or other evidence provided that would alter the CDCR's initial determination.

The Department has determined that this action imposes no mandates on local agencies or school districts, or a mandate which requires reimbursement pursuant to Part 7 (Section 17561) of Division 4 of the Government Code.

The Department has determined that no reasonable alternatives to the regulation have been identified or brought to the attention of the Department that would lessen any adverse impact on affected private persons or small business than the action planned.

The Department, in proposing the adoption of these regulations, has not identified nor has it relied upon any technical, theoretical, or empirical study, report, or similar document. The Department has relied upon the results of the Economic Impact Assessment, which can be found in the Notice of Proposed Regulations and is available for review as part of the rulemaking file.