



Department of Corrections and
Rehabilitation

NOTICE OF CHANGE TO REGULATIONS

Sections: 3310, 3317, 3317.1, and 3317.2

Number:

15-11

Publication Date:

December 25, 2015

Effective Date:

November 17, 2015

INSTITUTION POSTING AND CERTIFICATION REQUIRED

This Notice announces the amendment to Sections 3310 and 3317, and the adoption of Sections 3317.1 and 3317.2 of the California Code of Regulations (CCR), Title 15, Crime Prevention and Corrections, to incorporate into the CCR, provisions concerning Inmate Discipline.

IMPLEMENTATION: TO BE ANNOUNCED.

These regulations are in temporary emergency effect pending completion of the public comment period and final certification of adoption per Penal Code Section 5058.3.

PUBLIC COMMENT PERIOD

Any person may submit written comments about the proposed regulations to the California Department of Corrections and Rehabilitation, Regulation and Policy Management Branch (RPMB), P.O. Box 942883, Sacramento, CA 94283-0001, by fax to (916) 324-6075, or by e-mail to RPMB@cdcr.ca.gov. All written comments must be received by the close of the public comment period, **February 16, 2016**.

PUBLIC HEARING INFORMATION

A public hearing regarding these proposed regulations will be held February 16, 2016, from 10:00 a.m. to 11:00 a.m. in the Kern/Colorado Room, located at 1515 S Street, North Building, Sacramento, CA 95811. The purpose of the hearing is to receive oral comments about this action. It is not a forum to debate the proposed regulations. No decision regarding the permanent adoption of these regulations will be rendered at this hearing. Written or facsimile comments submitted during the prescribed comment period have the same significance and influence as oral comments presented at the hearing. This hearing site is accessible to the mobility impaired.

POSTING

This Notice shall be posted immediately upon receipt at locations accessible to inmates, parolees, and employees in each department facility and field office. Also, facilities shall make this Notice available for review by inmates in segregated housing who do not have access to the posted copies and shall distribute it to inmate law libraries and advisory councils. Certification should be provided by the institution's Rules Coordinator and returned to RPMB on a CDCR Form 621-A, Certificate of Posting, by e-mail or by FAX. See Department Operations Manual 12010.12.1 and 12010.12.2 for posting and certification of posting procedures.

CONTACT PERSON

Inquiries regarding this notice should be directed to Timothy M. Lockwood, Chief, RPMB, California Department of Corrections and Rehabilitation, P.O. Box 942883, Sacramento, CA 94283-0001, by telephone (916) 445-2269 or e-mail, RPMB@cdcr.ca.gov. Inquiries regarding the subject matter of these regulations may be directed to Eric Hobbs, DAI at (916) 322-1725.

Original signed by:

SCOTT KERNAN

Undersecretary, Operations

California Department of Corrections and Rehabilitation

Attachments

NOTICE OF PROPOSED REGULATORY ACTION

California Code of Regulations Title 15, Crime Prevention and Corrections Department of Corrections and Rehabilitation

NOTICE IS HEREBY GIVEN that the Secretary of the California Department of Corrections and Rehabilitation (CDCR), pursuant to the authority granted by Government Code Section 12838.5 and Penal Code (PC) Section 5055, and the rulemaking authority granted by PC Section 5058 and 5058.3, proposes to amend Sections 3310, and 3317 and adopt Sections 3317.1 and 3317.2 of the California Code of Regulations (CCR), Title 15, Division 3 concerning Inmate Discipline.

PUBLIC HEARING:

Date and Time: **February 16, 2016 – 10:00 a.m. to 11:00 a.m.**
Place: Department of Corrections and Rehabilitation
Kern Room
1515 S Street – North Building
Sacramento, CA 95811
Purpose: To receive comments about this action.

PUBLIC COMMENT PERIOD:

The public comment period will close **February 16, 2016, at 5:00 p.m.** Any person may submit public comments in writing (by mail, by fax, or by e-mail) regarding the proposed changes. To be considered by the Department, comments must be submitted to the CDCR, Regulation and Policy Management Branch, P.O. Box 942883, Sacramento, CA 94283-0001; by fax at (916) 324-6075; or by e-mail at RPMB@cdcr.ca.gov before the close of the comment period.

CONTACT PERSON:

Please direct any inquiries regarding this action to:

Timothy M. Lockwood, Chief
Regulation and Policy Management Branch
Department of Corrections and Rehabilitation
P.O. Box 942883, Sacramento, CA 94283-0001
Telephone (916) 445-2269

In the event the contact person is unavailable, inquiries should be directed to the following back-up person:

R. Ruiz
Regulation and Policy Management Branch
Telephone (916) 445-2244

Questions regarding the substance of the proposed regulatory action should be directed to:

Eric Hobbs
Division of Adult Institutions, Coleman Team
Telephone (916) 322-1725

AUTHORITY AND REFERENCE:

Penal Code (PC) Section 5000 provides that commencing July 1, 2005, any reference to the Department of Corrections in this or any code, refers to the CDCR, Division of Adult Operations.

PC Section 5050 provides that commencing July 1, 2005, any reference to the Director of Corrections, in this or any other code, refers to the Secretary of the CDCR. As of that date, the office of the Director of Corrections is abolished.

PC Section 5054 provides that commencing July 1, 2005, the supervision, management, and control of the state prisons, and the responsibility for the care, custody, treatment, training, discipline, and employment of persons confined therein are vested in the Secretary of the CDCR.

PC Section 5058.3 authorizes the Director to adopt, amend, or repeal emergency regulations conducted pursuant to GC Section 11340.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW:

Current regulations provide for inmate discipline to maintain the safety and security of the institution, and administer disciplinary sanctions for the action committed. However, the regulations do not include agreed-to policies and procedures concerning mental health input into the inmate disciplinary process in CDCR prisons established between the *Coleman* Special Master and CDCR in 2011.

The proposed regulations establish the agreed-to procedures to include clinical input in each step of the disciplinary process for inmates who have a mental illness and/or developmental disability/cognitive or adaptive functioning deficits. This clinical input includes recommendations for appropriate disciplinary sanctions based on the individual inmate and for the appropriate disposition of the RVR. Additionally, clinical staff now has the ability to recommend documenting an inmate's behavior in an alternate manner when the inmate's behavior was strongly influenced by mental illness and/or developmental disability/cognitive or adaptive functioning deficits. In addition to the clinical input, custody staff must receive training on mental health assessments prior to conducting a disciplinary hearing. This training identifies the importance of considering information offered through mental health assessments. This ensures the fair treatment of all inmates and prevents administering punitive measures without regard for the inmates mental illness and/or developmental disability/cognitive or adaptive functioning deficits.

This action provides the following:

- Establishes that employees who serve over disciplinary proceedings must have received training in mental health assessment requirements.
- Establishes the criteria for an inmate to automatically receive a mental health assessment when issued an RVR.
- Establishes the circumstances surrounding the behavior under which the inmate will not be issued an RVR.

DOCUMENTS INCORPORATED BY REFERENCE:

CDCR 115-MH-A (Rev. 12/15), Rules Violation Report: Mental Health Assessment

CDCR 128-MH5 (Rev. 05/14), Mental Health Referral Chrono

CDCR 1154 (Rev. 03/08), Disciplinary Action Log

These documents are incorporated by reference into these regulations and will be made available to the public along with the Notice of Proposed Regulations, Text of Proposed Regulations, and Initial Statement of Reasons.

SPECIFIC BENEFITS ANTICIPATED BY THE PROPOSED REGULATIONS:

The Department anticipates the proposed regulations will benefit the Department and inmates by establishing new disciplinary procedures for inmates with a mental illness and/or developmental disability/cognitive or adaptive functioning deficits, allowing for disciplinary actions to be applied more evenly and fairly, and preventing further decompensation of inmates as a result of assessed disciplinary sanctions. The proposed regulations will also benefit the public health and safety as inmates who suffer from mental health issues will receive appropriate medical treatment while incarcerated, minimizing the risk to society upon their release. Applying disciplinary

regulations more appropriately and fairly will also reduce inmate-staff physical altercations resulting from issued RVRs, benefiting worker safety.

EVALUATION OF CONSISTENCY / COMPATIBILITY WITH EXISTING REGULATIONS:

The Department has reviewed existing statutes and regulations governing the discipline of prisoners with mental health issues, and determined that this action is not inconsistent or incompatible with existing State laws and regulations.

LOCAL MANDATES:

The proposed regulatory 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.

FISCAL IMPACT STATEMENT:

- Cost to any local agency or school district that is required to be reimbursed: *None*
- Cost or savings to any state agency: *None*
- Other nondiscretionary cost or savings imposed on local agencies: *None*
- Cost or savings in federal funding to the state: *None*

EFFECT ON HOUSING COSTS:

The Department has made an initial determination that the proposed action will have no significant effect on housing costs.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT AFFECTING BUSINESS:

The Department has initially determined that the proposed regulations will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES:

The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

EFFECT ON SMALL BUSINESSES:

It is determined that this action has no significant adverse economic impact on small business as these regulations describe Department procedure concerning inmate discipline for inmates with mental health issues, and the prison population does not have a significant impact on small businesses.

RESULTS OF ECONOMIC IMPACT ASSESSMENT:

The Department has determined that the proposed regulations will not have an impact on the creation of new or the elimination of existing jobs or businesses within California, or affect the expansion of businesses currently doing business in California as the proposed regulations relate only to the internal management of CDCR institutions. Existing Department staff will perform the actions described in the proposed regulations through their current duties.

Clinical input is applied during the disciplinary process, and allows for the proposed regulations to be applied fairly and consistently which promotes fairness and social equality, and helps to avoid further decompensation of inmates as a result of assessed disciplinary sanctions when it is discovered they suffer from a mental illness and/or developmental disability/cognitive or adaptive functioning deficits. The proposed regulations also provide for the protection of public health and safety as inmates with a mental illness and/or development disability/cognitive or adaptive functioning deficits will be identified and reported for appropriate treatment, minimizing the risk to society upon their release. In addition, applying disciplinary actions more fairly and consistently will potentially reduce the number of inmate-staff physical altercations, improving worker safety within the institutions.

CONSIDERATION OF ALTERNATIVES:

The Department must determine that no reasonable alternative considered by the Department, or that has otherwise been identified and brought to the attention of the Department, would be more effective in carrying out

the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. Interested persons are accordingly invited to present statements or arguments with respect to any alternatives to the changes proposed at the scheduled hearing or during the written comment period.

AVAILABILITY OF PROPOSED TEXT AND INITIAL STATEMENT OF REASONS:

The Department has prepared, and will make available, the text and the Initial Statement of Reasons (ISOR) of the proposed regulations. The rulemaking file for this regulatory action, which contains those items and all information on which the proposal is based (i.e., rulemaking file) is available to the public upon request directed to the Department's contact person. The proposed text, ISOR, and Notice of Proposed Action will also be made available on the Department's website <http://www.cdcr.ca.gov>.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS:

Following its preparation, a copy of the Final Statement of Reasons may be obtained from the Department's contact person.

AVAILABILITY OF CHANGES TO PROPOSED TEXT:

After considering all timely and relevant comments received, the Department may adopt the proposed regulations substantially as described in this Notice. If the Department makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department adopts the regulations as revised. Requests for copies of any modified regulation text should be directed to the contact person indicated in this Notice. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

INITIAL STATEMENT OF REASONS

The California Department of Corrections and Rehabilitation (CDCR) proposes to amend sections 3310, and 3317 and adopt new sections 3317.1 and 3317.2 of the California Code of Regulations (CCR), Title 15, Division 3. These regulations are necessary to provide clarity for staff, inmates, and the public concerning inmate discipline.

The class action lawsuit, *Coleman v. Brown (Coleman)* was filed in 1990, and plaintiffs argued that the mental health care the Department provided to its inmates did not meet constitutional standards. In June 1994, the district court found that CDCR's delivery of mental health care to class members violated the Eighth Amendment of the United States Constitution. Additionally, the district court found mentally ill inmates who act out are typically treated with punitive disciplinary measures without regard to their mental status. As a result, on September 13, 1995, the court issued a permanent injunction and ordered that a Special Master be appointed to monitor compliance with the court-ordered injunctive relief.

The Department implemented several policy and procedural changes concerning the specific issues raised by the *Coleman* Plaintiffs, and established the Mental Health Services Delivery System (MHSDS) to ensure that mentally ill inmates receive agreed-upon mental health services. In 1998, the Department further implemented changes to its regulations and procedures concerning the adjudication of Rules Violation Reports (RVR) for inmate participants in the MHSDS.

The *Coleman* class action case was consolidated with another class action, and subsequently assigned a Three-Judge Panel to hear and rule over the consolidated case. The Three-Judge Panel found that the Department's mental and medical health care fell below constitutional level largely due to the prison's high inmate population. In 2010, the Three-Judge Panel ordered the Department to significantly reduce its prison population within two years. The Department and *Coleman* attorneys reviewed the Department's disciplinary regulations as they relate to inmates who are suffering from a mental illness. The parties reached an agreement concerning the revisions that were needed to provide clinical input when reviewing RVRs and assessing appropriate disciplinary sanctions. At the direction of the court, the *Coleman* Special Master issued a status report concerning the Department's compliance with this agreement. The *Coleman* Special Master toured each institution to report on whether CDCR had adequately implemented the RVR regulations and issued a report on January 30, 2015, that included his findings and recommendations. Based on these recommendations, between February and April 2015, the Division of Adult Institution, in collaboration with the Division of Health Care Services and the Office of Legal Affairs, renewed its efforts to create and implement a sustainable, constitutionally adequate program for administering disciplinary proceedings that considers mental illness and clinical input during each stage of the process.

While developing this process, it became clear to the Department that inmates whose developmental disability/cognitive or adaptive functioning deficits contribute to their misconduct would also benefit from these regulations. This class of inmates receives treatment and services pursuant to the *Clark v. Brown (Clark)* class action case. The *Clark* class members also receive federal court oversight, and are participants in the Department's Developmental Disability Program (DDP). The DDP is the Department's plan, policies, and procedures to ensure identification, appropriate classification, housing, protection, and nondiscrimination of inmates/parolees with developmental disabilities. Department records show that approximately 90% of inmates who are DDP participants are also participants in the MHSDS.

CDCR has amended its policies and training modules in order to implement a meaningful process by which an inmate's mental illness and/or developmental disability/cognitive or adaptive functioning deficits are considered, along with clinical input regarding the relationship between mental illness and

misconduct, during each stage of the disciplinary process. The amendments were negotiated with and approved by the *Coleman* Special Master and *Coleman* and *Clark* attorneys.

The district court approved of the changes and on May 4, 2015, and issued an order requiring CDCR, under the guidance of the Special Master, to implement these amended regulations, policies and on-going training, within 243 days. The proposed regulations are needed for CDCR to comply with this court order.

CONSIDERATION OF ALTERNATIVES:

The Department must determine no reasonable alternatives considered, or that have otherwise been identified and brought to the attention of the Department, would be more effective in carrying out the purpose for which this action is proposed, would be as effective and less burdensome to affected private persons than the action proposed, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Currently, no reasonable alternatives have been brought to the attention of the Department that would alter the Department's initial determination.

ECONOMIC IMPACT ASSESSMENT:

In accordance with Government Code Section 11346.3(b), the CDCR has made the following assessments regarding the proposed regulations:

Creation of New, or Expansion or Elimination of Existing Jobs within the State of California

The Department has determined the proposed regulations will not have an impact on the creation of new or the elimination of existing jobs within California as the proposed regulations affects the internal management of prisons only.

Creation of New, or Expansion or Elimination of Existing Businesses within the State of California

The Department has determined the proposed regulations will not have an impact on the creation of new or the elimination of existing businesses within California, or affect the expansion of businesses currently doing business in California as the proposed regulations affect the internal management of prisons only.

Significant Adverse Economic Impact on Business

The Department has made an initial determination the regulatory action will not have a significant adverse economic impact on business. The proposed regulations do not have a direct impact on California businesses as the proposed regulations affect the internal management of prisons only.

Local Mandates

The Department has determined 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.

Benefits of the Regulations:

The proposed regulatory action will benefit CDCR staff and inmates by ensuring an inmate's mental illness and/or developmental disability/cognitive or adaptive functioning deficits are considered when

addressing misconduct, including assessing appropriate penalties. These changes provide for thoughtful, comprehensive clinical input regarding the root causes of the inmate's behavior, which will decrease the likelihood of decompensation and disruption of their treatment program. In addition, the proposed regulations foster an environment in which inmates are not unnecessarily and unfairly treated with punitive measures when clinically-confirmed mental illness and/or developmental disabilities/cognitive or adaptive functioning deficits contributed to the misconduct while at the same time empowering staff to identify and address instances in which inmates attempt to manipulate staff by avoiding responsibility for legitimate misconduct. Finally, the proposed regulations provide CDCR staff with a better understanding of the signs and symptoms of mental illness and/or developmental disabilities/cognitive or adaptive functioning deficits, and are guided in ways to more effectively manage their responses to misconduct committed by these specialized populations.

Materials Relied Upon:

1. Coleman v. Brown, 2:90-cv-00520-KJM-DAD, Order dated April 14, 2014, (ECF No. 5131).
2. Coleman v. Brown, 2:90-cv-00520-KJM-DAD, Stipulated Response and Order, dated May 4, 2015, (ECF No. 5305).
3. Coleman v. Brown, 2:90-cv-00520-KJM-DAD, Special Master's Report on the California Department of Corrections and Rehabilitation's Implementation of Policies and Procedure on Rules Violation Reports, dated January 30, 2015
4. Mental Health Delivery System Program Guide, 2009 Revision

Copies of these documents are available for review as a part of the rulemaking file.

Specific Purpose and Rationale for each Section, per Government Code 11346.2(b)(1):

3310. Definitions.

Subsections 3310(a) through 3310(c) are unchanged.

Subsection 3310(d) is amended to establish that an employee must have received training in mental health assessment requirements to be certified as an experienced employee of the Department. This change is necessary to ensure the fair treatment of inmates in discipline proceedings because these employees serve as hearing officers or senior hearing officers in disciplinary hearings and requiring this training will ensure hearing officers or senior hearing officers are knowledgeable in the mental health assessment requirements, which allows them to better assess the information provided by mental health staff concerning the behavior that resulted in the RVR.

Subsections 3310(e) through 3310(f) are unchanged.

**3317. Mental Health Assessments for Disciplinary Proceedings
(formerly Mental Health Evaluations for Disciplinary Hearings)**

The title is updated for accuracy as procedure in regards to the mental health assessment in the disciplinary process is updated.

For additional clarity and reader-ease, the section is reformatted. Original text that was provided in a block paragraph is deleted and reformatted into individual subsections, new subsections (a) - (g). Reorganizing this section allows for the Department to provide information in regards to the process by which inmates receive a mental health assessment as part of the disciplinary process in a step-by-step and

detailed format that is easier to follow. The Department is able to draw out the individual levels of care that were referenced in the original text and include additional details for these categories, such as descriptions of the acronyms that are utilized, and provide cross-references to existing sections in the Title 15 where appropriate. New subsections (d), (e), (f), and (g) are also added to this section to include new procedural steps for the mental health assessment.

New subsection 3317(a) is adopted to establish that a mental health assessment is a means of incorporating clinical input into the disciplinary process. This provision is necessary to ensure that inmates who may be suffering from mental illness and/or a developmental disability/cognitive or adaptive functioning deficits receive an assessment to identify how these conditions may or may not have contributed to the behavior at the time of the offense. This helps safeguard inmates from being the subject of punitive disciplinary measures without regard for their mental illness and/or developmental disability/cognitive or adaptive functioning deficits.

New subsections 3317(b) through 3317(b)(7) are adopted to establish the circumstances or case factors under which an inmate alleged to have committed a rules violation shall receive a mental health assessment. This provision is necessary to identify each qualifying level of care for participants in the MHSDS and DDP as well as those inmates displaying possible signs of mental illness who are required to receive a mental health assessment.

Subsection 3317(b) also introduces CDCR Form 115-MH-A (Rev. 12/15), Rules Violation Report: Mental Health Assessment. This form is incorporated into the regulations by reference and has been made available to the public for review. In addition, a detailed review and explanation of CDCR Form 115-MH-A is included at the end of this document.

New subsection 3317(c) is adopted to establish Mental Health Services shall be contacted immediately if an inmate is suspected of attempted suicide or self-mutilation. This provision is necessary to protect inmates who are a danger to themselves and ensures they receive needed care.

The CDC Form 115 (07/88), Rules Violation Report, and the CDC Form 128-B (Rev. 04/74), General Chrono, are referenced as forms used. Both forms are already established in Title 15, Division 3 regulations. Therefore, no copy has been made available for public review.

New subsection 3317(d) is adopted to establish if the mental health clinician determines the inmate's actions were an attempt to manipulate staff, a CDC 115, Rules Violation Report, will be issued. This provision is necessary to establish consistency with subsection 3315 (a)(3)(W).

New subsection 3317(e) is adopted to establish that an inmate who displayed bizarre or uncharacteristic behavior at the time of the offense shall receive a mental health assessment. This provision is necessary to ensure that inmates are treated fairly during the disciplinary process by ensuring that inmates displaying these forms of behavior are seen by mental health staff to identify possible treatment needs as they may be suffering from a mental illness and/or developmental disability/cognitive adaptive functioning deficit(s).

New subsection 3317(f) is adopted to establish that when a mental health assessment is required the reviewing custody supervisor shall submit a CDCR Form 115-MH-A, to the institution's mental health program within two calendar days of the charges being discovered by staff. Text specifies mental health staff must complete the assessment and return the report to the reviewing custody supervisor within eight calendar days of date of receipt. These timelines were agreed upon by the *Coleman* and *Clark* Plaintiffs and the Department as sufficient time frames to ensure expediency of necessary procedural steps, while at the same time not compromising quality of the mental health assessment.

New subsection 3317(g) is adopted to ensure the hearing officer or senior hearing officer considers the mental health assessment and any recommendations provided by mental health staff prior to determining innocence or guilt and employing disciplinary sanctions. This provision is necessary to ensure contributory factors are considered prior to taking a disciplinary action and avoids assessing penalties that may have an adverse effect on their well-being. As an example, suspension of phone privileges might have no impact on the inmate's behavior in some cases; whereas, suspension of phone privileges in other cases might cut off the only positive outside contact the inmate has and may cause further deterioration. The inmate's treatment plan might include contact with his/her family and/or friends via the telephone. The suspension of this privilege could result in a decline in the inmate's stability which identifies the importance of considering such information.

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

New Section 3317.1 is adopted to establish that, at the discretion of the Captain, an RVR may be documented in an alternate manner when mental health staff identifies the inmates behavior was strongly influenced by symptoms of mental illness and/ or developmental disability/cognitive or adaptive functioning deficits at the time of the offense. This provision is necessary to provide an alternative to the RVR and allows for appropriate documentation of behavior in lieu of possible adverse action assessed through the disciplinary hearing process.

New subsection 3317.1(a) is adopted to establish that mental health staff may recommend the inmate's behavior is documented in an alternate manner if the assessment provides that the inmate's behavior was strongly influenced by his or her symptoms of mental illness and/or developmental disability/cognitive or adaptive functioning deficits. In other words, if not for the symptoms of the mental illness and/or developmental disability/cognitive or adaptive functioning deficits, the behavior would likely not have occurred, or would not have occurred with the severity it did.

This provision is necessary to ensure inmates who meet this criterion are not treated with punitive measures for behavior that may be beyond their control. In the event mental health staff identifies a clear link between the symptoms and behavior resulting in the RVR a recommendation shall be made to the Captain who will be responsible for taking the appropriate action.

New subsections 3317.1(b) through 3317.1(c) are adopted to establish new procedures that shall be followed regarding the Captain's decision to document an inmate's behavior in an alternate manner. These subsections are necessary to ensure proper documentation of the Captain's decision and the notification of staff and the inmate involved have been made.

The CDC Form 128-A (08/87), Custodial Counseling, is already established in Title 15, Division 3 regulations. Therefore, no copy has been made available for public review.

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

New subsections 3317.2(a) through 3317.2(b) are adopted to establish specific circumstances surrounding an inmate's behavior in which the resulting behavior is excluded from being issued an RVR, and instead documenting in an alternate manner. These provisions are necessary to define the exclusionary criteria for inmate behavior that would result normally result in an RVR as inmates who meet these conditions may suffer from mental illness and/or developmental disability/cognitive or adaptive functioning deficit symptoms requiring inpatient care. Documenting behavior in an alternate

manner avoids taking adverse action against inmates due to the severity of symptoms brought about by the temporary condition, avoiding possible further decompensation.

New subsection 3317.2(c) is adopted to establish that when an inmate commits a serious rules violation constituting a Division A-1 offense for an assault or battery, including for an assault or battery on a peace officer or non-prisoner under the circumstances described above, in subsections 3317.2(a)(1)–(a)(4), a CDC Form 115, shall be completed and processed. This provision is necessary to ensure the safety and security of CDCR staff the institution and of the public by taking appropriate disciplinary action for serious and/or dangerous behavior placing individuals at risk of serious injury or death as a result of the inmate’s behavior.

Explanation in regards to the CDCR 115-MH-A (Rev. 12/15), Rules Violation Report: Mental Health Assessment.

The parties agreed to delete the CDCR Form 115-MH that was previously used as the Department’s form for completing a mental health assessment, and to create a new, more thorough and detailed form for conducting a mental health assessment. The parties created CDCR Form 115-MH-A, Rules Violation Report: Mental Health Assessment. The information requested on the CDCR Form 115-MH-A is largely the same information that was previously collected through the CDCR Form 115-MH, but the stipulated form now provides for greater detail in the specific categories, and requests a more thorough assessment from the clinical staff within each category in regards to the inmate’s mental illness and/or developmental/cognitive or adaptive functioning deficits. In addition, CDCR 115-MH-A also asks questions that were not previously included in the original CDCR 115-MH-A. This section of the ISOR discusses each component of the new CDCR 115-MH-A, including the new questions that have been added. The medical terms referenced in this form are established medical terms and are utilized by Department medical staff as detailed in The Mental Health Services Delivery System Program Guide. This document is available for review as part of the rulemaking file.

Section 1 of the CDCR 115-MH-A is designed to be completed by the custody supervisor initially reviewing the rules violation report (RVR). This section provides inmate-specific information such as the inmate’s name; CDCR #; the inmate’s current housing; the specific act the inmate is charged with, and whether that offense could result in a Security Housing Unit (SHU) term; the RVR log number and date of the violation.

This section also identifies the timelines for both submitting and returning the mental health assessment. The original CDCR Form 115-MH provided for reviewing clinicians to complete a mental health assessment for Correctional Clinical Case Management System (CCCMS) and non-MHSDS inmates in five days, and 15 days for inmates at the Enhanced Outpatient Program (EOP), Mental Health Crisis Bed (MHCB), Psychiatric Inpatient Program (PIP), Acute Psychiatric Program (APP) or Intermediate Care Facility (ICF) levels of care. With the introduction of the CDCR Form 115-MH-A, custody now has two days from the date information leading to the charges is discovered by staff to submit an assessment request to mental health. Mental health staff will have eight days from the date of receipt to complete the assessment and return it to custody. These timelines were agreed upon by the *Coleman* and *Clark* Plaintiffs and the Department as sufficient time frames to ensure for expediency of necessary procedural steps, while at the same time not compromising quality of the mental health assessment.

Section II identifies six specific questions, if applicable, in regards to the inmate’s mental health and/or developmental disability/cognitive or adaptive functioning deficits to be addressed by the reviewing clinician completing the mental health assessment.

Question 1 CCCMS/NON-MHSDS only. Are there any mental health factors that would cause the inmate to experience difficulty in understanding the disciplinary process and representing his/her interests in the hearing that would indicate the need for assignment of a staff assistant (do not rely on TABE score alone)?

This question remains unchanged from the original CDCR 115-MH. This question is necessary to ensure the reviewing clinician identifies any difficulty the inmate may experience regarding the disciplinary process or representing their interest in the hearing. Inmates meeting this criterion would be assigned a staff assistant to ensure effective communication and fair representation during the disciplinary hearing.

Inmates assigned to the EOP, MHCB, PIP, APP, ICF and DDP are automatically assigned a staff assistant based on their current level of care and are ineligible to waive or refuse assignment of a staff assistant as established in subsection 3315(d)(2)(E)(1).

Question 2 In your opinion, was the inmate's behavior so strongly influenced by symptoms of a (a) mental illness and/or (b) developmental disability/cognitive or adaptive functioning deficits that the inmate would be better served by documenting this behavior in an alternate manner? If yes: (1) provide a rationale that establishes a nexus between mental health symptoms or developmental disability/cognitive or adaptive functioning deficits and the behavior, (2) consult with the program supervisor, and (3) consult with the Chief of Mental Health, when applicable. If no, go to Question 3.

This is a new question. It asks the assessing clinician to determine if the inmate's mental illness and/or developmental disability/cognitive or adaptive functioning deficits strongly influenced the inmate's behavior resulting in the alleged violation. It is necessary for clinical staff to review and analyze this information to determine inmate's mental illness and/or developmental disability/cognitive or adaptive functioning deficits was the leading factor in the inmate's behavior that lead to the RVR. If such a determination is reached, clinical staff can recommend an alternative to the RVR, allowing for appropriate documentation of the inmate's behavior in lieu of possible adverse action assessed through the disciplinary hearing process.

There are separate spaces on the form to indicate if it was symptoms of mental illness and/or a developmental disability/cognitive or adaptive functioning deficits which strongly influenced the behavior. The assessing clinician shall respond to every question applicable to the inmate. During this step, the CDCR Form 115-MH-A goes through several levels of clinical review when applicable. This clinical review by the different clinical levels within mental health is necessary to reach a consensus of clinical opinion concerning the connection between the inmate's mental health and behavior resulting in the RVR.

This question will also include the Captain in the decision making process. Each time a recommendation for documenting behavior in an alternate manner has been made, the Captain shall identify the alternate manner to be utilized or order for the hearing officer or senior hearing officer to proceed with conducting the disciplinary hearing.

Question 3 In your opinion, is there evidence to suggest that (a) mental illness or (b) developmental disability/cognitive or adaptive functioning deficits contributed to the behavior that led to the RVR?

Like Question 2, this question also asks if there is a link between the inmate's mental illness and/or developmental disability/cognitive or adaptive functioning deficits and the behavior resulting in the RVR. However, this question sets a lower threshold than the previous question. If the answer is "Yes," the clinician shall document their rationale. It is necessary to review all information in regards to an inmate's behavior that resulted in an RVR and the inmate's mental health and/or developmental

disability/cognitive adaptive functioning deficits provide the hearing officer or senior hearing officer with relevant information regarding contributing factors to the inmate's behavior. In cases where the condition(s) have been found to have contributed it allows for mitigation of penalties that may result in a lesser penalty based on mental health input.

Also as in Question 2, there are separate spaces on the form to indicate if it was symptoms of mental illness and/or developmental disability/cognitive or adaptive functioning deficits which contributed to the behavior. The assessing clinician must respond to every question applicable to the inmate.

Question 4 If the inmate is found guilty of the offense, what mental health factors or developmental disability/cognitive or adaptive functioning deficits should the hearing official consider when assessing the penalty, such as penalties that may have an adverse impact on the inmate's stability?

This question is necessary to ensure clinicians provide the hearing officer or senior hearing officer with specific penalties they believe would have an adverse impact on the inmate's mental stability and/or cause a decrease in cognitive and/or adaptive functioning. Examples of penalties may include loss of yard, loss of day room, loss of entertainment appliances, limited or loss of canteen, loss of personal property and/or loss of visits.

The clinician's recommendation must explain how the penalty would negatively impact the inmate. These recommendations should be based on information gathered from the inmate's record, as well as consultation with the inmate's Primary Clinician and any other staff knowledgeable of the inmate's care. The clinician will document rationale for why the recommendation is being made

Question 5 SHU OFFENSE ONLY (see box above to determine if applicable). If the inmate is found guilty of the offense, are there any mental health factors and/or developmental disability/cognitive or adaptive functioning deficits the Institutional Classification Committee should consider when assessing a SHU term?

This new question is necessary to provide the Institutional Classification Committee (ICC) with valuable information if the inmate is being retained in segregated or restricted housing, or any other custodial and clinical issues which may have an impact on inmate's mental health treatment and/or developmental disability/cognitive or adaptive functioning deficits. ICC is required to document consideration of the mental health input, and must address any action taken as a result of this input within the Classification Committee Chrono.

Question 6 DDP PARTICIPANTS ONLY. Does the inmate exhibit on-going behavior leading to disciplinary infractions that appears related to cognitive or adaptive functioning deficits? If "Yes," refer the inmate to the Developmental Disability Program (DDP) clinician for assistance in assessing the causes of the behavior and creating an intensive behavior modification plan.

This new question is necessary as it serves to alert the assessing clinician to refer the inmate to their DDP clinician for further assessment and to determine if the need exists for the creation of an intensive behavior modification plan.

TEXT OF PROPOSED REGULATIONS

In the following, underline indicates new or additional text and ~~strikethrough~~ indicates deleted text.

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

Chapter 1, Rules and Regulations of Adult Operations and Programs

Subchapter 4. General Institution Regulations

Article 5. Inmate Discipline

3310. Definitions.

Subsections (a) through (c) are unchanged.

Subsection (d) is amended to read:

(d) Experienced means a permanent employee at the designated level, certified by the Chief Disciplinary Officer (CDO) or designee as competent to serve as a senior hearing officer or hearing officer, as specified. Requirements for certification shall include in-service or on-the-job training in disciplinary procedures, mental health assessment requirements, and observation of five serious/administrative disciplinary hearings. A probationary, limited term, or training and development employee at the designated staff level may be certified as experienced. Acting staff whose permanent position is at a level lower than that required shall not be assigned senior hearing officer/hearing officer responsibility.

Subsections (e) through (f) are unchanged.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 5054, 6252 and 6260, Penal Code.

3317. Mental Health Evaluations for Disciplinary Hearings.

Section 3317 title is amended to read:

Mental Health Evaluations Assessments for Disciplinary Hearings Proceedings.

Existing language is deleted:

~~Inmates in the Mental Health program or any inmate showing signs of possible mental illness may require a CDC 115 MH (Rev. 06/06), Rules Violation Report: Mental Health Assessment. All inmates at the EOP, MHCB, and DMH level of care, who receive a CDC 115, Rules Violation Report shall be referred for a Mental Health Assessment. All inmates in CCCMS or non MHSDS inmates who receive a CDC 115 Rules Violation Report, and who exhibit bizarre, unusual or uncharacteristic behavior at the time of the rules violation shall be referred for a Mental Health Assessment. An inmate shall be referred for a mental health evaluation prior to documenting misbehavior on a CDC Form 115, Rules Violation Report, in any case where the inmate is suspected of self mutilation or attempted suicide. If the mental health evaluation determines that it was an actual suicide attempt, a CDC Form 115 shall not be written and the behavior shall be documented on a CDC Form 128B(Rev.4/74), General Chrono, for inclusion in the inmate's central file.~~

New subsections (a) through (g) are adopted to read:

(a) A Mental Health Assessment is a means to incorporate clinical input into the disciplinary process when mental illness and/or developmental disability/cognitive or adaptive functioning deficits may have contributed to behavior resulting in a Rules Violation Report. Mental Health Assessments shall be considered by the hearing officer or senior hearing officer during disciplinary proceedings when determining whether an inmate shall be disciplined and when determining the appropriate method of discipline.

(b) Inmates who are alleged to have committed a Rules Violation shall receive a Mental Health Assessment, via completion of CDCR Form 115-MH-A (12/15), Rules Violation Report: Mental Health Assessment, which is incorporated by reference., for any of the following reasons:

(1) Inmate is a participant in the Mental Health Services Delivery System (MHSDS) at the Enhanced Outpatient Program (EOP) level of care.

(2) Inmate is a participant in the MHSDS at the Mental Health Crisis Bed (MHCB) level of care.

(3) Inmate is a participant in the MHSDS at the Psychiatric Inpatient Program, Acute Psychiatric Program or Intermediate Care Facility level of care.

(4) Inmate is a participant in the MHSDS at the Correctional Clinical Case Management System (CCCMS) level of care and has been charged with a Division A, B or C offense or any other rules violation which may result in the assessment of a Security Housing Unit term as defined in Section 3341.9, subsection (e).

(5) Inmate is a participant in the Developmental Disability Program (DDP) designated as DD1, DD2 or DD3.

(6) Inmate engaged in Indecent Exposure or Sexual Disorderly Conduct.

(7) Inmate displayed behavior that was bizarre or unusual for any inmate or uncharacteristic for the particular inmate at the time of the offense.

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

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

(e) A CDCR Form 128-MH5 shall be completed for any inmate who displayed behavior that was bizarre or unusual for any inmate or uncharacteristic for the particular inmate at the time of the offense.

(f) When a mental health assessment is required, the reviewing custody supervisor shall request an assessment by completing a CDCR Form 115-MH-A and delivering it to the institution's mental health program within two calendar days of the information leading to the charges being discovered by staff. The mental health program shall complete the assessment and return it to the reviewing custody supervisor within eight calendar days of receipt.

(g) The hearing officer or senior hearing officer shall consider mental health staff's assessment, as documented on the CDCR Form 115-MH-A, and any other relevant information, when determining whether the inmate should be disciplined or the appropriate method of discipline when mental illness and/or developmental disability/cognitive or adaptive functioning deficits contributed towards the inmates behavior. If an inmate is found guilty of the charge, the hearing officer or senior hearing officer shall consider any dispositional recommendations provided by mental health staff as documented on CDCR Form 115-MH-A or any other relevant information regarding the relationship between the inmate's mental illness and/or developmental disability/cognitive or adaptive functioning deficits, and his or her misconduct, when assessing penalties.

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

New Section 3317.1 is adopted to read:

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

(a) If the inmate's behavior was so strongly influenced by symptoms of mental illness and/or developmental disability/cognitive or adaptive functioning deficits at the time the rules violation occurred, mental health staff may recommend via the CDCR Form 115-MH-A, Rules Violation Report: Mental Health Assessment, that the inmate would be better served by having the behavior documented in an alternate manner. Upon receipt of a completed CDCR Form 115-MH-A recommending documentation in an alternate manner by mental health staff, the reviewing custody supervisor shall forward the CDC Form 115, CDCR Form 115-MH-A and all other documents and information relevant to the charge to the Captain. The Captain shall review all documentation and return their decision to the hearing officer or senior hearing officer as soon as possible, but no later than five calendar days from the date of receipt.

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

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

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

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

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

New Section 3317.2 is adopted to read:

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

(a) Inmates shall not be issued a Rules Violation Report for behavior that constitutes a Rule Violation under the circumstances described in subsections (1)-(4) below.

(1) The behavior occurred in connection with a cell extraction for the administration of involuntary medication, as defined in Penal Code Section 2602, or involuntary medical treatment, as defined in Probate Code Section 3208.

(2) The behavior occurred in connection with a cell extraction for transfer of the inmate to a mental health inpatient unit or between mental health inpatient units.

(3) The behavior occurred in connection with being placed in mental health restraints and/or seclusion.

(4) The behavior is determined to be an act of self-mutilation or attempted suicide.

(b) The inmate's conduct shall be documented on a CDC Form 128-B for inclusion in the inmate's central file.

(c) If the inmate commits a Serious Rules Violation pursuant to Section 3315 while participating in the behavior noted above, which constitutes a Division A-1 offense as defined in Section 3323, subsection

(b), an assault or battery as defined in Section 3323, subsections (d)(1), (d)(2), and (d)(3), or an assault on a peace officer or non-prisoner as defined in Section 3323, subsections (f)(11) and (f)(12), a CDC Form 115 shall be completed and processed in accordance with this Section.

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

~~Delete~~

RULES VIOLATION REPORT: MENTAL HEALTH ASSESSMENT REQUEST

REVIEWING CUSTODY SUPERVISOR

A CDC 115, Rules Violation Report (RVR), has been written on the following inmate, who requires a mental health assessment.

Inmate Name: _____ CDC Number: _____

RVR Log Number: _____ Date of Violation: _____ Housing: _____

Specific Act Charged: _____

The inmate's current Mental Health Level of Care is: (check one)

NOT IN MHSDS PROGRAM* CCCMS* EOP MHCB DMH

***CCMS AND NON-MHSDS PROGRAM PARTICIPANTS WILL BE REFERRED FOR A MENTAL HEALTH ASSESSMENT FOR BEHAVIOR THAT IS BIZARRE OR UNUSUAL FOR ANY INMATE, OR THAT IS UNCHARACTERISTIC FOR THIS INMATE.**

Sent to Mental Health: _____ Date _____ By: _____ Print Name _____ Signature _____

Return this form to: _____ Print Name _____ *By: _____ Date _____

*(CCMS and non-MHSDS, 5 working days; EOP/MHC/DMH, 15 calendar days)

MENTAL HEALTH CLINICIAN

Conducted non-confidential interview: _____ Date _____ (Inmate informed of non-confidentiality).

1. CCCMS/NON-MHSDS only. Are there any mental health factors that would cause the inmate to experience difficulty in understanding the disciplinary process and representing his/her interests in the hearing that would indicate the need for the assignment of a Staff Assistant? Yes No

Explain "yes" response: _____

2. In your opinion, did the inmate's mental disorder appear to contribute to the behavior that led to the RVR? Yes No Explain "yes" response: _____

3. If the inmate is found guilty of the offense, are there any mental health factors that the hearing officer should consider in assessing the penalty? Yes No Explain "yes" response: _____

INSTITUTION:	CLINICIAN NAME (Print)	SIGNATURE	DATE
RECEIVED BY:	CUSTODY STAFF NAME (Print)	SIGNATURE	DATE

DISTRIBUTION:
 Original : Central File With Adjudicated RVR
 Blue : 115 Unit Health Record
 Pink : Inmate

CDC NUMBER, NAME (LAST, FIRST, MI) AND DATE OF BIRTH

RULES VIOLATION REPORT: MENTAL HEALTH ASSESSMENT REQUEST

Delete

INSTRUCTIONS

Use this form to assess an inmate/patient whose behavior resulted in a CDC 115, Rules Violation Report (RVR) to determine: 1) if the inmate needs a staff assistant, 2) if a mental disorder contributed and/or influenced the behavior, and 3) if there are factors that should be considered in assessing the penalty.

Enhanced Outpatient Program (EOP) inmate/patient, Mental Health Crisis Bed (MHCB) inmate/patient and the Department of Mental Health (DMH) inmate/patient will always be assigned a staff assistant. Inmate/patients in the Correctional Clinical Case Management System (CCCMS), or those not included in the Mental Health Services Delivery System (MHSDS) who exhibit behavior that is bizarre or unusual for any inmate, or uncharacteristic for this inmate, shall receive a RVR mental health assessment.

Reviewing Custody Supervisor Responsibilities

A CDCR 115-MH, Mental Health Assessment Request, will be initiated for any inmate/patient in the below listed groups whose misconduct has been documented on an RVR. Attach a copy of the RVR to this request and forward to Mental Health Services.

- Inmate/patient not in the Mental Health Services Delivery System (MHSDS) who exhibits "bizarre, unusual, or uncharacteristic" behavior.
- Correctional Clinical Case Management System (CCCMS) inmate/patient who exhibits "bizarre, unusual, or uncharacteristic" behavior.
- All Enhanced Outpatient Program (EOP) inmates/patients.
- All Mental Health Crisis Bed (MHCB) inmates/patients.
- All Department of Mental Health (DMH) inmates/patients.

The reviewing supervisor will complete all areas of the top portion of the form, under the area designated for the Reviewing Custody Supervisor, prior to forwarding to mental health. The Reviewing Custody Supervisor should contact mental health to ascertain the inmate/patient's level of care. If inmate/patient meets criteria for a mental health assessment, the Reviewing Custody Supervisor shall forward the request, a copy of the RVR and all supplements to the RVR, to mental health staff as soon as possible.

Mental Health Clinician Responsibilities

The mental health clinician evaluating the inmate/patient shall review the relevant portions of the Unit Health Record (UHR) and any other records deemed appropriate. The clinician will also interview the inmate/patient, who is the subject of the RVR, inform him/her that the interview is non-confidential and that information obtained may be used in adjudicating the RVR.

- Determine if there is a need for a staff assistant. (EOP, MHCB, DMH will automatically be assigned a staff assistant). Evaluate inmate/patient referred from CCCMS and non-MHSDS to determine if he/she has symptoms of a mental disorder that would impair his/her ability to understand the proceedings and to act in his/her own interests in the hearing process.
- Make a determination whether the inmate/patient's mental disorder appeared to contribute to the behavior that led to the RVR and mark the appropriate box. If "yes", explain using "lay terms". If additional space is required for the explanation, please attach an additional sheet of paper.
- Make a determination whether there are any mental health factors that should be considered in mitigating the penalty should the inmate be found guilty. If "yes", explain using "lay terms". If additional space is required for the explanation, please attach an additional sheet of paper.
- Sign, date, and return form to the requesting custody supervisor within five (5) working days for CCCMS and non-MHSDS and within fifteen (15) calendar days for EOP, MHCB and DMH.

Custody supervisor receiving the completed form shall forward to the classifying official after signing and dating the form at bottom.

Rules Violation Report:
Mental Health Assessment
 CDCR 115-MH-A (Rev. 12/15)

Adopt

Form: Page 1 of 6
 Instructions: Page 7 - 12

A CDC 115, Rules Violation Report (RVR), has been written on the following inmate, who requires a mental health assessment.

Section I.

Inmate Name: _____ CDCR #: _____ Housing: _____

Specific Act:

Could this offense result in a SHU term? Yes No RVR Log #: _____ Date of Violation: _____

The inmate's mental health level of care at the time of the offense (check one):

Not in MHSDS Program ¹ CCCMS ^{1,2} EOP MHCB ICF/Acute/PIP

The inmate's current mental health level of care (check one):

Not in MHSDS Program ¹ CCCMS ^{1,2} EOP MHCB ICF/Acute/PIP

1 Non-MHSDS and CCCMS program participants will be referred for a mental health assessment for behavior that is bizarre or unusual for any inmate, or is uncharacteristic for this inmate.

2 CCCMS program participants will be referred for a mental health assessment for Division A, B, or C offenses or any offense that may result in a Security Housing Unit (SHU) term.

Developmental Disability Program Designation (check one):

NCF NDD DD1 DD2 DD3

The inmate was referred for a mental health assessment for the following reason(s) (check all that apply):

MHSDS participant at the EOP or higher level of care (MHCB, ICF/Acute/PIP).

DDP participant at the DD1, DD2, or DD3 level of care.

Alleged behavior involved indecent exposure or sexual disorderly conduct.

Alleged behavior was bizarre or unusual for any inmate.

Alleged behavior was uncharacteristic for this inmate.

Alleged behavior represents a Division A, B, or C offense or any offense that may result in a SHU term (CCCMS inmates only).

Date sent to mental health: _____ By (print name/signature): _____

Date received by mental health: _____ By (print name/signature): _____

Return this form by (date): _____

Timelines: Custody has two (2) calendar days from the date information leading to the charges is discovered by staff to submit this CDCR 115-MH-A to mental health; mental health has eight (8) calendar days to return this completed CDCR 115-MH-A to custody.

**Rules Violation Report:
 Mental Health Assessment
 CDCR 115-MH-A (Rev. 12/15)**

DISTRIBUTION - Original: Case Records with Adjudicated RVR Copy: Inmate

SCANNING LOCATION - Outpatient; MHN/TxPIn - Evaluations/Reports

Adopt

Section II

The interview was conducted in a private location: Yes No Date: _____
If No, explain:

The inmate was informed of the purpose of the assessment and the information shared during the interview is **not** confidential and will be used in adjudicating the RVR. Yes No

If No, explain:

Data source(s) for this evaluation:

- Health Care Record Adaptive Supports form PC Consultation SOMS ERMS
- Other: _____ Staff Consultation: _____

1. CCCMS/NON-MHSDS ONLY. Are there any mental health factors that would cause the inmate to experience difficulty in understanding the disciplinary process and representing his/her interests in the hearing that would indicate the need for assignment of a staff assistant (do not rely on TABE score alone)?

Yes No

Provide rationale:

1. Disability Code:

- TABE score ≤ 4.0
- DPH DPV LD
- DPS DNH
- DNS DDP
- Not Applicable

2. Accommodations:

- Additional Time
- Equipment SLI
- Louder Slower
- Basic Transcribe
- Other*

3. Effective Communication:

- P/I asked questions
- P/I summed information
- Please check one:**
- Not Reached* Reached

*See chrono/notes

CDCR #:

Last Name:

MI:

First Name:

DOB:

4. Comments:

**Rules Violation Report:
Mental Health Assessment
CDCR 115-MH-A (Rev 12/15)**

Adopt

Section II. (continued)

2. In your opinion, was the inmate's behavior so *strongly influenced* by symptoms of a (a) *mental illness* and/or (b) *developmental disability/cognitive or adaptive functioning deficits* that the inmate would be better served by documenting this behavior in an alternate manner? If Yes: (1) provide a rationale that establishes a nexus between mental health symptoms or developmental disability/cognitive or adaptive functioning deficits and the behavior; (2) consult with the Program Supervisor; and (3) consult with the Chief of Mental Health (or designee), when applicable. If No, go to Question 3.

a) Mental illness:

Yes No
Assessing clinician's rationale:

I agree with the assessing clinician's recommendation: Yes No

Consulting Program Supervisor's rationale:

Title:	Print Name:	Date:	Signature:
Consulting Program Supervisor			

I recommend documenting this behavior in an alternate manner: Yes No

Chief of Mental Health's (or designee) rationale:

Title:	Print Name:	Date:	Signature:
Chief of Mental Health (or designee)			

Final determination: Yes No

<p>Rules Violation Report: Mental Health Assessment CDCR 115-MH-A (Rev. 12/15)</p> <p>Confidential Inmate Information</p>	<p>CDCR #:</p> <p>Last Name: MI:</p> <p>First Name:</p> <p>DOB:</p>
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Rules Violation Report:
Mental Health Assessment
CDCR 115-MH-A (Rev. 12/15)

Adopt

Form: Page 4 of 6
Instructions: Page 7 -12

Section II. (continued)

b) Developmental disability/cognitive or adaptive functioning deficits:

Yes No

Assessing clinician's rationale:

I agree with the assessing clinician's recommendation: Yes No

Consulting Program Supervisor's rationale:

Title:	Print Name:	Date:	Signature:
Consulting Program Supervisor			

I recommend documenting this behavior in an alternate manner: Yes No

Chief of Mental Health's (or designee) rationale:

Title:	Print Name:	Date:	Signature:
Chief of Mental Health (or designee)			

Final determination: Yes No

<p>Rules Violation Report: Mental Health Assessment CDCR 115-MH-A (Rev. 12/15)</p> <p>Confidential Inmate Information</p>	<p>CDCR #:</p> <p>Last Name: _____ MI:</p> <p>First Name:</p> <p>DOB:</p>
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**Rules Violation Report:
Mental Health Assessment
CDCR 115-MH-A (Rev. 12/15)**

Adopt

Form: Page 5 of 6
Instructions: Page 7 - 12

Section II. (continued)

3. In your opinion, is there evidence to suggest that (a) *mental illness* and/or (b) *developmental disability/cognitive or adaptive functioning deficits* contributed to the behavior that led to the RVR? If Yes, establish a nexus between mental health symptoms or developmental disability/cognitive or adaptive functioning deficits and the behavior.

a) Mental illness:

Yes No

Provide rationale:

b) Developmental disability/cognitive or adaptive functioning deficits:

Yes No

Provide rationale:

4. If the inmate is found guilty of the offense, what mental health factors and/or developmental disability/cognitive or adaptive functioning deficits should the hearing officer or senior hearing officer consider when assessing the penalty, such as penalties that may have an adverse impact on the inmate's stability?

Examples of penalties include, but are not limited to, changes and reduction in, phone calls, visits (when permissible), day room, confined to quarters, loss of packages; loss of yard time, loss of appliances, etc.

Provide your recommendation and rationale:

**Rules Violation Report:
Mental Health Assessment
CDCR 115-MH-A (Rev 12/15)**

Confidential Inmate Information

CDCR #:

Last Name:

MI:

First Name:

DOB:

Rules Violation Report:
Mental Health Assessment
CDCR 115-MH-A (Rev. 12/15)

Adopt

Form: Page 6 of 6
Instructions: Page 7 - 12

Section II. (continued)

5. SHU OFFENSE ONLY (see box on pg. 1 to determine if applicable). If the inmate is found guilty of the offense, are there any mental health factors and/or developmental disability/cognitive or adaptive functioning deficits that Institutional Classification Committee should consider when assessing a SHU term?

Provide your recommendation and rationale:

6. DDP PARTICIPANTS ONLY. Does the inmate exhibit on-going behavior leading to disciplinary infractions that appears related to developmental disability/cognitive or adaptive functioning deficits? If Yes, refer inmate to the DDP Clinician for assistance in assessing the causes of the behavior and creating an intensive behavior modification plan.

Yes No If Yes, complete a CDCR Form 128 MH-5, Mental Health Referral Chrono.

Did you consult with the DDP Clinician? Yes No Document consultation on a Developmental Disabilities Progress Note.

Provide rationale:

Title:	Phone Ext.:	Print Name:	Date:	Signature:
Clinician				
Received by (Custody staff)				

Rules Violation Report:
Mental Health Assessment
CDCR 115-MH-A (Rev. 12/15)

Confidential Inmate Information

CDCR #:
Last Name: MI:
First Name:
DOB:

Reviewing Custody Supervisor

A CDCR 115-MH-A, Rules Violation Report: Mental Health Assessment is initiated for any inmate in the groups listed above and whose misconduct has been documented on a RVR.

The Reviewing Custody Supervisor will complete Section I of the CDCR 115-MH-A, Rules Violation Report: Mental Health Assessment. If the inmate meets criteria for a mental health assessment, the Reviewing Custody Supervisor shall forward the request, and a copy of the RVR as well as all supplements to the RVR, to mental health staff as soon as possible but no later than two (2) calendar days from the date information leading to the charges is discovered by staff.

Mental Health Clinician

Section I

The mental health clinician must review the CDCR 115-MH-A, Rules Violation Report: Mental Health Assessment, Section I, completed by Custody. This information includes the inmate's name, CDCR #, housing, specific act charged, if the offense could result in a SHU term, the RVR log #, date of the violation, mental health level of care, DDP designation, reason(s) for the assessment request, date the form was sent to mental health and by whom, date the form was received by mental health and by whom, and the return date for the form. The mental health clinician will return the completed CDCR 115-MH-A, Rules Violation Report: Mental Health Assessment to the Reviewing Custody Supervisor as soon as possible but no later than eight (8) calendar days.

Section II

Interview the inmate who is the subject of the RVR in a private setting. Indicate if the interview was conducted in a private location by checking the appropriate box and type in the date the interview occurred. If the interview was not conducted in a private setting or the inmate refused the interview, explain why.

Explain to the inmate the purpose of the interview and inform him or her that the interview is non-confidential and information obtained during the interview may be used in adjudicating the RVR. Check the appropriate box indicating disclosure of the non-confidential nature of interview was explained. If "No", explain why not.

Data sources: Review the relevant portions of the health care record and any other records (Adaptive Supports form formally known as the CDC 128 C-2, Recommendation for Adaptive Support, ERMS, SOMS, staff consultation, and/or archived files) deemed appropriate and check the corresponding boxes on the form. Relevant staff may be interviewed as appropriate and necessary.

Adopt

Effective Communication: The Effective Communication section must be completed any time there is a clinically relevant encounter in which meaningful information is exchanged between the licensed clinician and the inmate. For further information and examples of some encounters in which effective communication is required, see IMSP&P, Volume 2, Ch. 4.

<p>1. Disability: a. Check all boxes that apply regarding the inmate's disability. Disability Codes: TABE score ≤ 4.0 DPH - Permanent Hearing Impaired DPV - Permanent Vision Impaired LD - Learning Disability DPS - Permanent Speech Impaired DNH - Permanent Hearing Impaired; improved with hearing aids. DNS - Permanent Speech Impaired; can communicate in writing. DDP - Developmental Disability Program N/A - Not applicable</p>	<p>2. Accommodation: a. Check all boxes that apply to the special accommodations made to facilitate effective communication: <u>Additional time</u> - P/I (inmate) was given additional time to respond or complete a task. <u>Equipment</u> - Special equipment was used to facilitate effective communication. Note the type of equipment used in the comments section. <u>SLI</u> - Sign Language Interpreter. <u>Louder</u> - The provider spoke louder. <u>Slower</u> - The provider spoke slower. <u>Basic</u> - The provider used basic language. <u>Transcribe</u> - Communication was written down. <u>Other</u> - Any other tool that was used to facilitate effective communication.</p>	<p>3. Effective Communication: a. Check all boxes that apply that summarize how it was verified that effective communication was reached. <u>P/I asked questions</u> - The inmate asked questions regarding the interaction. <u>P/I summed information</u> - The inmate summarized information regarding the interaction. b. Check one box to indicate if effective communication was or was not reached. ONE of these boxes must be checked.</p>
<p>4. Comments: Provide any additional information regarding effective communication.</p>		

DO NOT USE JARGON OR DIAGNOSTIC TERMS. USE LAY TERMS THAT CAN BE EASILY UNDERSTOOD BY NON-MENTAL HEALTH STAFF.

Section II continued:

Question 1

1. Only answer question 1 if the inmate is either **not** a participant in the MHSDS or is in the CCCMS level of care. Are there any mental health factors that would cause the inmate to experience difficulty in understanding the disciplinary process and representing his/her interests in the hearing that would indicate the need for assignment of a staff assistant? (Do not rely on TABE Score alone) Check the box Yes or No.

Determine the need for a staff assistant (EOP, DDP, MHCB or Acute Psychiatric or Intermediate level of care inmates are automatically assigned a staff assistant). Indicate your response by checking the appropriate Yes or No box and provide rationale for why a staff assistant is or is not needed.

**Rules Violation Report:
Mental Health Assessment**
CDCR 115-MH-A (Rev. 12/15)Adapt

Instructions: Page 10

Question 2

2. In your opinion, was the inmate's behavior so *strongly influenced* by symptoms of a (a) mental illness and/or (b) developmental disability/cognitive or adaptive functioning deficits that the inmate would be better served by documenting this behavior in an alternate manner? If Yes: (1) provide a rationale that establishes a nexus between mental health symptoms and/or developmental disability/cognitive or adaptive functioning deficits and the behavior; (2) consult with the Program Supervisor; and (3) consult with the Chief of Mental Health (or designee), when applicable. If No, go to Question 3.

If Yes:

- Check the "Yes" box(es) under the appropriate section (a) mental illness and/or (b) developmental disability/cognitive or adaptive functioning deficits and document your rationale in language easily understood by non-mental health staff in the first space below.
- The rationale will include a clear nexus between the mental health symptoms and/or developmental disability/cognitive or adaptive functioning deficits and the behavior.
- Complete the remainder of the assessment, through Question 6.
- Once completed, forward the CDCR 115-MH-A, Rules Violation Report: Mental Health Assessment, to the Consulting Program Supervisor over the mental health unit the inmate was in at the time the alleged behavior occurred. The supervisor reviews the rationale provided and indicates agreement or disagreement with the assessing clinician's response by checking the appropriate box. (If the Program Supervisor over the mental health unit the inmate was in at the time the alleged behavior occurred is not available, consult with the Program Supervisor where the inmate is currently housed.)
- The supervisor shall provide his/her rationale in the space above the signature block.
- The supervisor prints name, signs and dates the form.
- If the supervisor and clinician are in agreement, the completed CDCR 115-MH-A, Rules Violation Report: Mental Health Assessment is forwarded to custody.
- If the supervisor and clinician are not in agreement, the supervisor forwards the CDCR 115-MH-A, Rules Violation Report: Mental Health Assessment to the Chief of Mental Health (CMH), or designee, for final determination.
- The CMH reviews the rationale provided by the assessing clinician and supervisor and indicates agreement or disagreement with the assessing clinician's response by checking the appropriate box.
- The CMH provides his/her rationale in the space above signature block and checks the Final Determination box Yes or No.
- The CMH prints name, signs and dates the form.
- The CMH forwards the completed CDCR 115-MH-A, Rules Violation Report: Mental Health Assessment to custody within the eight (8) calendar day timeframe.

Adapt

If No:

- If mental health symptoms and/or developmental disability/cognitive or adaptive functioning deficits did not strongly influence the behavior, mark "No" in the appropriate places and go directly to Question 3. No consultation with the Program Supervisor is necessary.

Question 3

3. In your opinion, is there evidence to suggest that (a) mental illness and/or (b) developmental disability/cognitive or adaptive functioning deficits *contributed* to the behavior that led to the RVR? If "Yes", establish a nexus between mental health symptoms or developmental disability/cognitive or adaptive functioning deficits and the behavior.

Determine if mental illness and/or developmental disability/cognitive or adaptive functioning deficits contributed to the behavior that led to the RVR and check the appropriate box "Yes" or "No" under either (a) mental illness and/or (b) developmental disability/cognitive or adaptive functioning deficits. Provide rationale for your decision. If the answer is "Yes", establish a nexus between mental health symptoms or developmental disability/cognitive or adaptive functioning deficits and the behavior. If the answer to Question 3 is "No", you still need to provide a rationale. If you indicated "Yes" to Question 2, also check "Yes" on Question 3 and provide the same or similar rationale as you did on Question 2.

Question 4

4. If the inmate is found guilty of the offense, what mental health factors and/or developmental disability/cognitive or adaptive functioning deficits should the hearing officer or senior hearing officer consider when assessing the penalty, such as penalties that may have an adverse impact on the inmate's stability? Provide your recommendation and rationale.

Examples of penalties include, but are not limited to, changes and reduction in:

- Phone calls
- Day room
- Confined to quarters
- Loss of packages
- Yard time
- Loss of appliances
- Visits (when permissible)

(Example of mandated sanctions: Violations of California Code of Regulations, Title 15, Sections 3323(c)(6), 3323(d)(8) and 3323(f)(6) shall result in loss of visits.)

Consideration of penalties can occur even if the inmate's mental health and/or developmental disability/cognitive or adaptive functioning deficits were not thought to be related to the commission of the offense. Consider what protective factors (for general decompensation, as well as self-harm) are present for this inmate and if possible what penalties would impact these protective factors. Examine what factors have contributed to decompensation in the past. Document any anticipated impact loss of privileges may have on the inmate's mental health. If loss of privileges is not thought to impact mental health, provide a brief justification.

Question 5

5. SHU OFFENSE ONLY (see box on pg. 1 to determine if applicable). If the inmate is found guilty of the offense, are there any mental health factors and/or developmental disability/cognitive or adaptive functioning deficits that Institutional Classification Committee should consider when assessing a SHU term?

Provide your recommendation and rationale.

Determine if the offense could result in a SHU term (the box at the top of the CDCR 115-MH-A, Rules Violation Report: Mental Health Assessment completed by custody staff contains this information). Address this question only if the "Yes" box is checked above. Mental health factors and/or developmental disability/cognitive or adaptive functioning deficits may have significant implications for the inmate's functioning while serving a SHU term. These factors must be considered. As noted in Question 4, consider protective factors and other factors that have contributed to decompensation in the past. Document any anticipated impact a SHU term may have on mental health and/or developmental disability/cognitive or adaptive functioning deficits and any recommended strategies to mitigate the anticipated impact. If a SHU term is not thought to impact mental health or developmental disability/cognitive or adaptive functioning deficits, provide a brief justification.

Question 6

6. DDP PARTICIPANTS ONLY. Does the inmate exhibit on-going behavior leading to disciplinary infractions that appears related to developmental disability/cognitive or adaptive functioning deficits? If "Yes", refer the inmate to the DDP Clinician for assistance in assessing the causes of the behavior and creating an intensive behavior modification plan. Check Yes or No and refer as needed on a CDCR 128 MH-5, Mental Health Referral Chrono.

Did you consult with the DDP Clinician? Check "Yes" or "No" and document consultation as needed on a Developmental Disabilities Progress Note.

Provide rationale.

Anytime the inmate is a participant in the DDP, the DDP Clinician will be consulted and that consultation will be documented on a corresponding Developmental Disabilities Progress Note (Progress Notes formally known as the CDCR MH-7230-L, Interdisciplinary Progress Note - Developmental Disability). Check "Yes" in the appropriate box. If for some reason consultation with the DDP Clinician cannot be obtained, check the "No" box and provide an explanation as to why the consultation did not occur in the space below.

Sign, date and return form to the requesting custody supervisor within eight (8) calendar days. The custody supervisor receiving the completed form shall forward to the classifying official after signing and dating the bottom of the form.

Inmate-Patient Name: _____ CDCR Number: _____ Housing: _____ Institution: _____

- Routine (Within 5 working days) Urgent (Within 24 hours) Emergency (Contact Mental Health Services immediately)
- Non English-speaking language: _____

REASON FOR REFERRAL: (Check the **primary reason(s)** and give an example or describe below under "Other.")

- | | |
|-------------------------------------------------------------------------------------|-----------------------------------------------------------------------|
| <input type="checkbox"/> History of psychiatric care need re-assessment | <input type="checkbox"/> Needs psychotropic medication review |
| <input type="checkbox"/> Expresses suicidal ideation or recent attempts (Emergency) | <input type="checkbox"/> Exhibits bizarre behavior (Describe below) |
| <input type="checkbox"/> Incapable of caring for self / poor grooming | <input type="checkbox"/> Poor appetite / sad / fearful / nervous |
| <input type="checkbox"/> Confused / disoriented / withdrawn | <input type="checkbox"/> Unpredictable / bothers others |
| <input type="checkbox"/> Hostile / assaultive / poor self-control | <input type="checkbox"/> Hears things / sees things / imagines things |
| <input type="checkbox"/> Taken advantage of by other inmates | <input type="checkbox"/> Insomnia / sleeps too much |
| <input type="checkbox"/> Poor attention span / difficulty following directions | <input type="checkbox"/> DDP Consult / re-evaluation |
| <input type="checkbox"/> Other/Additional (Describe): _____ | |

REFERRED BY (Print Name)	TITLE	PHONE / EXTENSION	TIME	DATE
Received in Mental Health Services by: _____		Time: _____ Date: _____	Assigned to: _____	
	Print Name			Print Name

For clinician only -- this was a referral for MHSDS DDP Inmate-Patient seen: Time: _____ Date: _____

Once complete, submit to mental health services.
Distribution: Scan into the eUHR, copy in C-file, copy to inmate.

Mental Health Referral Chrono
CDCR 128-MH5 (Rev. 05/14)**Instructions**

Purpose of Chrono: This chrono is to be used by any custody, clinical, or nursing staff to refer and inmate-patient for a Mental Health Evaluation. Blank chronos should be available in all clinics and housing units. Once Complete, submit to mental health services.

1. Complete the identifying information at the top of the chrono. If applicable, enter the inmate-patient's Non-English language.
2. Check box for level of urgency: Routine – see within five working days; Urgent – see within one working day; Emergency – see immediately. Danger to self and/or others.

Contact Mental Health Services immediately for and emergency evaluation if

- 1) **the inmate-patient is currently a danger to self or**
 - 2) **the inmate-patient is a danger to others and you suspect a mental illness is involved. In all cases, immediately initiate safety precaution.**
3. Describe the observed behavior or problem.
 4. Print name, title, and phone extension of the staff member making referral.
 5. Enter time and date referral was made; **indicate the date and time contact was made with the Mental Health Services as well as the name of the staff person contacted.**
 6. Mental Health Services shall enter the referral into the tracking system indicating time and date referral was made.
 7. The clinician should indicate whether the referral was for MHSDS and/or DDP, and the time and the date the inmate-patient was seen.
 8. A copy shall be filed in the Mental Health section of the electronic Unit Health Record, a copy filed in the central file, and a copy is provided to the inmate. Copies distributed according to local operating procedure.

DISCIPLINARY ACTION LOG

LOG NUMBER:	CCR SECTION #:	DIV:	CLASSIFIED BY:	MHS CCCMS EOP MHCB DMH	INVESTIGATIVE EMPLOYEE: Y / N	HEARING OFFICER/SENIOR HEARING OFFICER:	OFFENDER ETHNICITY: <input type="checkbox"/> W <input type="checkbox"/> B <input type="checkbox"/> H <input type="checkbox"/> O	HEARING DATE:
INMATE'S NAME:	SPECIFIC ACT:		CDCR 804 TO RECORDS:		STAFF ASSISTANT: Y / N	FINDING/DISPOSITION:	VIOLENCE RELATED TO: <input type="checkbox"/> RACE <input type="checkbox"/> GANG / DISRUPTIVE GROUP	CAPTAIN REVIEW DATE:
CDC NUMBER:			INITIAL COPY TO INMATE:	DDP 1 2 3	DATE MH REVIEW REQUESTED:		VIOLENCE OCCURRED: <input type="checkbox"/> IN-CELL <input type="checkbox"/> DORM <input type="checkbox"/> YARD <input type="checkbox"/> OTHER	CDO REVIEW DATE:
CDCR 115 DATE:	REPORTING EMPLOYEE:		FORCE USED: Y / N <input type="checkbox"/> OC <input type="checkbox"/> PHY <input type="checkbox"/> MEB <input type="checkbox"/> OTH:	DPP V H S	D.A. REFERRAL: Y / N		REFUSAL TO HOUSE: <input type="checkbox"/> RACE <input type="checkbox"/> GANG <input type="checkbox"/> OTHER	INMATE FINAL COPY DATE:
INCIDENT REPORT #:	LOCATION:	WATCH	DATE LAB RESULTS RECEIVED:	T. A. B. E.	D.A. ACCEPTED / REJECTED: DATE:	IN CELL ASSAULT REVIEW REQUIRED: Y / N DATE COMPLETED:	DISRUPTIVE GROUP/GANG AFFILIATION:	RECORDS/REGISTER:
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INSTITUTION:	UNIT/FACILITY:	MONTH/YEAR:	REVIEWED BY:	DATE REVIEWED:
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