

**REGULATION AND POLICY MANAGEMENT BRANCH**

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



February 26, 2020

**NOTICE OF CHANGE TO RULEMAKING ACTION AS ORIGINALLY PROPOSED**

Pursuant to the provisions of Government Code Sections 11346.8(c) and 11349.4, and Section 44 of Title 1 of the California Code of Regulations (CCR), the California Department of Corrections and Rehabilitation (CDCR) is providing notice of proposed changes made to CCR Sections 3000, 3335, 3336, 3338, and 3340, regarding Effective Communication.

You are receiving this notice because you provided written comment (including comments sent via email or fax), commented at the public hearing held on July 26, 2019, or requested notice of changes.

To provide notice of the proposed changes to the public, this Notice will be posted on the CDCR Internet website at: [Notice of Change to Rulemaking Action as Originally Proposed](#).

The proposed regulatory text is not amended as part of this renounce. The Initial Statement of Reasons (ISOR) is amended to include additional explanatory and necessity statements regarding two forms adopted as part of this rulemaking action.

**Administrative Segregation Unit Placement Notice**

The CDC Form 114-D (Order and Hearing on Segregated Housing) is being repealed. As described in the ISOR, this form is being replaced by an automated form (the Administrative Segregation Unit Placement Notice) in the Department's Strategic Offender Management System (SOMS). As required by the Administrative Procedure Act, the Department included a copy of the repealed form and an example of the newly adopted form with Notice of Change to Regulations (NCR) 19-03. The form included with the NCR has a revision date of 10/98 and has been in use by the Department since that date. The form currently in the text of the CCR has no revision date. The Department is unable to locate a copy of this original form and therefore included a copy of the form currently in use.

This form is used to inform inmates that they are being placed in Administrative Segregation. Part A of the form includes a checklist of reasons for the placement, a space to describe the circumstances which support the placement, and signature blocks for staff and the inmate. These provisions are necessary to document and provide to the inmate the reasons for their placement in Administrative Segregation.

Another checklist is used to document any disability the inmate may have, the method used to confirm communication with the inmate, and any assistance provided to the inmate. This is necessary to ensure effective communication, particularly because in this instance a matter regarding due process is involved.

Part B includes a checklist that allows staff to document any communication needs the inmate may have prior to the administrative review and whether a staff assignment will be assigned, and a checklist to document whether an investigative employee will be assigned. This is necessary to ensure the inmate has the resources needed for the administrative review available to him/her prior to the review. Another checklist allows the inmate to choose to waive preparation time before the administrative review, waive or decline an interview with the administrative reviewer, and/or waive a request for witnesses, all of which the inmate may elect to do. If the inmate would like to request witnesses, the form has space to list the witnesses requested. The next section of the form includes a checklist of the decisions available to the administrative reviewer and space to document the reason for the decision, along with space for the administrative reviewer's signature. This is necessary to document this information and provide it to the inmate.

The next section of the form repeats the checklist used to document any disability the inmate may have, the method used to confirm communication with the inmate, and any assistance provided to the inmate. This is necessary to ensure effective communication with the inmate during the administrative review of the Administrative Segregation placement.

The last section of the form has space for the correctional administrator's signature following his/her review.

#### Classification Committee Chrono

In subsections 3335(a)(1)(D)2. and 3340(d)(2), CDC Form 128-G (10/89), Classification Chrono, is being repealed. In its place, a new automated Classification Committee Chrono (05/19) is being adopted. The Department erroneously included a copy of the wrong form with the original NCR. A Classification Review form was included rather than the correct Classification Committee Chrono. The correct form is included with this Notice of Change to Rulemaking Action as originally proposed.

The repealed Form 128-G is a largely blank form used to document classification-related and case factor information about specific inmates, as well as information regarding decisions made by classification committees. The new automated form will be used for the same purposes as the repealed form but includes specific headings that will be used as necessary, including: Static Case Factors, which may include unchanging factors such as when the inmate arrived at prison, commitment offense, and criminal history; and Critical Case Factors, which may include information subject to change such as the inmate's security level, custody designation, and housing placement. The form also has space for comments from a clinician and the classification committee, and a summary of the committee action taken. This is necessary to document the wide variety of classification-related statuses that may apply to an inmate, or classification-related actions that may have been taken in regard to an inmate.

#### Contact Person

Inquiries regarding this notice should be directed to Joshua Jugum, Regulation and Policy Management Branch, California Department of Corrections and Rehabilitation, P.O. Box 942883, Sacramento, CA 94283-0001, by telephone at (916) 445-2266, or e-mail at [RPMB@cdcr.ca.gov](mailto:RPMB@cdcr.ca.gov). In the event the contact person is unavailable, inquiries should be directed to Ying Sun, Associate Director, RPMB, at (916) 445-2269.

### **Submission of Public Comments**

The comment period for these revisions will close on Friday, March 13, 2020. Please submit comments by e-mail to [RPMB@cdcr.ca.gov](mailto:RPMB@cdcr.ca.gov); in writing to Joshua Jugum, Regulation and Policy Management Branch, Department of Corrections and Rehabilitation, P.O. Box 942883, Sacramento, CA, 94283-0001, before the close of the public comment period. Comments must be received or postmarked no later than Friday, March 13, 2020. Only those comments relating directly to the enclosed amendments indicated in this Notice of Change to Rulemaking Action as Originally Proposed will be considered.

*Original Signed By:*

YING SUN, Associate Director  
Regulation and Policy Management Branch  
Department of Corrections and Rehabilitation

Attachment

## TEXT OF PROPOSED REGULATIONS

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

### Title 15, Crime Prevention and Corrections, Division 3, Adult Institutions, Programs and Parole

#### Chapter 1. Rules and Regulations of Adult Operations and Programs.

##### Article 1. Behavior

##### Section 3000. Definitions.

Section 3000 is amended to alphabetically merge the definition below with existing definitions in this section.

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Effective communication means providing the inmates, to the extent possible or as required by federal law, the ~~means~~ communication assistance necessary to allow them to understand and participate in the disciplinary process to the best of their ability programs, services and activities. For inmates with disabilities, staff may provide assistive devices or other methods of accommodation. For inmates with other communications needs (including limited English proficiency (LEP)), staff are responsible for providing other forms of assistance. This may be accomplished through reasonable accommodation or assignment of a staff assistant. If the inmate's Test of Adult Basic Education (TABE) score is 4.0 or lower, employees are required to query the inmate to determine whether or not assistance is needed to achieve effective communication. For due process events, staff are subject to additional requirements: If the inmate is LEP, has a verified disability or has a Test of Adult Basic Education (TABE) reading score of 4.0 or lower, ~~the~~ employee is also required to accurately identify the communication need, to document the provision of any assistance provided that is consistent with the inmate's communication need, and to document the method staff used to determine the inmate understood. on appropriate CDCR forms his/her determination of whether the inmate appeared to understand, the basis for that determination and how it was made. For contacts involving due process, employees shall give priority to the inmate's primary means of communication, which may include but is not limited to; auxiliary communication aids, sign language interpreter, and bilingual interpreter. In instances where a staff member cannot achieve effective communication, despite the provision of relevant accommodations or assistance, staff shall document their efforts and their inability to achieve effective communication and shall notify the facility's ADA/LEP Coordinator.

\*

\*

Note: Authority cited: Sections 243(f)(4), 2717.3, 3000.03, 5058, 5058.3 and 1170.05, Penal Code; Section 10115.3(b), Public Contract Code; and Sections 4525(a), 4526

and 14837, Government Code. Reference: Sections 186.22, 243, 314, 530, 532, 600, 646.9, 653m, 832.5, 1170.05, 1203.8, 1389, 2080, 2081.5, 2600, 2601, 2700, 2717.1, 2717.6, 2932.5, 3003.5(a), 3020, 3450, 3550, 4570, 4576, 5009, 5050, 5054, 5068, 7000 et seq., 11180 and 11191, Penal Code; Sections 1132.4, 1132.8, and 1203(b)(1), Labor Code; Sections 10106, 10108, 10108.5, 10115, 10115.1, 10115.2, 10115.3 and 10127, Public Contract Code; Section 999, Military and Veterans Code; Section 391, Code of Civil Procedure; Section 297.5, Family Code; Sections 8550, 8567, 12838 and 12838.7, Government Code; Governor's Prison Overcrowding State of Emergency Proclamation dated October 4, 2006; *In re Bittaker*, 55 Cal.App. 4th 1004, 64 Cal. Rptr. 2d 679; Section 11007, Health and Safety Code; *Madrid v. Cate* (U.S.D.C. N.D. Cal. C90-3094 TEH); *Sassman v. Brown* (E.D. Cal. 2015) 99 F.Supp.3d 1223; *Mitchell v. Cate*, USDC ED 2:08-CV-01196-TLN-EFB; *In re Garcia* (2012) 202 Cal.App.4th 892; and *Quine v. Beard*, No. C 14-02726 JST.

## **Subchapter 4. General Institution Regulations**

### **Article 7. Segregated Housing**

#### **Section 3335. Administrative Segregation**

**Section 3335 initial paragraph is unchanged.**

**Subsections 3335(a) and 3335(a)(1) are unchanged but are shown for reference.**

(a) Non Disciplinary Segregation.

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

**Subsection 3335(a)(1)(D)2. is amended.**

2. The facility shall assign such inmates to NDS only until an alternative means of separation from likely abusers can be arranged, and such an assignment shall not ordinarily exceed a period of 30 days. If the period of segregation exceeds 30 days, reasoning shall be documented on an ~~CDC Form 128-G (Rev. 10/89)~~, automated Classification Committee Chrono (05/19).

**Subsections 3335(a)(1)(D)3. through 3335(a)(2)(A) are unchanged.**

**Subsections 3335(b) and 3335(b)(1) are amended.**

(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)~~, automated Administrative Segregation Unit Placement Notice (05/19) by the initial segregating authority.

(1) The ~~CDC Form 114-D~~ Administrative Segregation Unit Placement Notice 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.

**Subsection 3335(b)(2) is unchanged.**

**Subsection 3335(b)(3) through 3335(c) are amended.**

(3) A printed copy of the ~~CDC Form 114-D~~ Administrative Segregation Unit Placement Notice 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 accurately document whether the inmate has limited English proficiency (LEP), or has a disability or communication need requiring effective communication, whether there is a need for an accommodation or assistance 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. document the provision of any assistance provided that is consistent with the inmate's communication need, and document the method staff used to determine the inmate understood.

(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~~ Administrative Segregation Unit Placement Notice 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~~ Administrative Segregation Unit Placement Notice, 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.

**Subsections 3335(d) and (e) are unchanged.**

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 5054 and 5068, Penal Code; 28 CFR Sections 115.42 and 115.43; *Wright v. Enomoto*, (1976) 462 F.Supp. 397; and *Toussaint v. McCarthy* (9th Cir. 1986) 801 F.2d 1080, cert. denied, 481 U.S. 1069.

## **Section 3336. Administrative Review of Administrative Segregation Unit Placement**

**Subsections 3336(a) through 3336(b)(2) are unchanged.**

**Subsection 3336(b)(3) is amended to read:**

(3) When required, the Administrative Reviewer shall document the need for effective communication accommodation or assistance, the provision of any assistance provided that is consistent with the inmate's disability or communication need, the method staff used to determine the inmate understood, and documentation of the presence of a Staff Assistant (SA) when required. ~~how it was provided, how it was achieved, and how they were satisfied effective communication was accomplished.~~

**Subsections 3336(b)(4) and 3336(b)(5) are unchanged.**

**Subsection 3336(b)(6) is amended.**

(6) The decision rendered shall be documented on the ~~CDC Form 114-D~~ automated Administrative Segregation Unit Placement Notice (05/19).

**Subsection 3336(c) is unchanged.**

**Subsections 3336(c)(1), (c)(2), and (c)(3) are amended.**

(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~~ Administrative Segregation Unit Placement Notice.

(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~~ Administrative Segregation Unit Placement Notice.

(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~~ Administrative Segregation Unit Placement Notice, pursuant to subsection 3337(a)(2).

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

**Section 3338. Amendment to Reasons for Segregation**

**Subsections 3338(a) and 3338(a)(1) are amended.**

(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~~ automated Administrative Segregation Unit Placement Notice (05/19) shall be immediately prepared and issued, clearly articulating the reasons for continued retention, in accordance with Section 3335.

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

**Subsections 3338(a)(2) and 3338(a)(3) are unchanged.**

**Subsection 3338(b) is amended.**

(b) For retention purposes, the ~~CDC Form 114-D~~ Administrative Segregation Unit Placement Notice shall include:

**Subsections 3338(b)(1) and 3338(b)(2) are unchanged.**

**Subsections 3338(b)(3) and 3338(c) are amended.**

(3) When necessary, the official issuing the ~~CDC Form 114-D~~ Administrative Segregation Unit Placement Notice for administrative segregation retention shall document the need for effective communication accommodation if any, as defined in Section 3000, the provision of any assistance provided that is consistent with the inmate's disability or communication need, and the method staff used to determine the inmate understood. 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~~ Administrative Segregation Unit Placement Notices, 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 3340. Assistance to Inmates for Administrative Segregation Classification Hearings.**

**Section 3340 initial paragraph is amended.**

The Administrative Reviewer of the ~~CDC Form 114-D~~ automated Administrative Segregation Unit Placement Notice (05/19), 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 ~~CDC Form 114-D~~ an Administrative Segregation Unit Placement Notice will be separate from those described in Section 3318 for a disciplinary hearing.

**Subsections 3340(a) through 3340(d)(1) are unchanged.**

**Subsection 3340(d)(2) is amended to read:**

(2) Address the need for effective communication. The provision of any assistance provided that is consistent with the inmate's disability or communication need and the method the SA used to determine the inmate understood shall be documented in the ~~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) automated Classification Committee Chrono (05/19) in accordance to subsection 3375(g)(1)(E).~~

**Subsections 3340(d)(3) through 3340(g)(1) are unchanged.**

**Subsection 3340(g)(1)(A) is amended.**

(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~~ Administrative Segregation Unit Placement Notice.

**Subsections 3340(g)(1)(B) through 3340(i) are unchanged.**

**Subsection 3340(j) is amended.**

(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~~ Administrative Segregation Unit Placement Notice the decision to deny or approve a request, and if denied, explain the reason(s) for denial.

**Subsections 3340(k) through 3340(k)(1) are unchanged.**

**Subsection 3340(k)(2) is amended.**

(2) Document all effective communication efforts, as necessary; including the assistance provided consistent with the inmate's disability or communication need, and the method the SA used to determine the inmate understood. ~~need for effective communication, how it was provided, how it was achieved and how they were satisfied effective communication was accomplished.~~

**Subsections 3340(k)(3) through 3340(k)(8) are unchanged.**

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).

EXAMPLE

**ADMINISTRATIVE SEGREGATION UNIT PLACEMENT NOTICE**

INSTITUTION NAME

INMATE'S NAME

CDC NUMBER

**REASON(S) FOR PLACEMENT (PART A)**

- PRESENTS AN IMMEDIATE THREAT TO THE SAFETY OF SELF OR OTHERS
- JEOPARDIZES INTEGRITY OF AN INVESTIGATION OF ALLEGED SERIOUS MISCONDUCT OR CRIMINAL ACTIVITY
- ENDANGERS INSTITUTION SECURITY       RETAINED IN A.S.U AS NO BED AVAILABLE IN GENERAL POPULATION

DESCRIPTION OF CIRCUMSTANCES WHICH SUPPORT THE REASON(S) FOR PLACEMENT:

IF CONFIDENTIAL INFORMATION USED, DATE INFORMATION DISCLOSED:

DATE OF A.S.U SEGREGATION PLACEMENT	AUTHORITY NAME	PRINTED	SIGNATURE	TITLE
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DATE NOTICED SERVED	TIME SERVED	PRINTED NAME OF STAFF SERVING A.S.U NOTICE	SIGNATURE	STAFF'S TITLE
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<input type="checkbox"/> INMATE REFUSED TO SIGN	INMATE SIGNATURE	CDC NUMBER
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You were identified with a disability of:

- Hearing Vision Speech Learning Disability TABE under 4.0/no TABE
- Development Disability CCCMS EOP Foreign Language Speaking

**METHOD**

- reiterated in his own words, what was explained
- provided appropriate substantive responses to questions asked
- asked appropriate questions regarding the information provided
- did not appear to understand the communication, even though the primary method of communication was used
- Other

Assistance Provided

- Use of Full Page Magnifier
- Read aloud Documents

- Sign Language Interpreter
- Lip Reading (spoke facing the inmate)
- Written Notes
- Language Interpreter
- Simple English spoken slowly and clearly
- was wearing his/her hearing aid(s)
- stated he did not need any assistance for Effective Communication
- Gave additional time
- Rephrased sentence
- Other

**PROVIDER**

Name: \_\_\_\_\_ Title: \_\_\_\_\_

**ADMINISTRATIVE REVIEW (PART B)**

**The following to be completed during the administrative review by Captain or higher on the first working day following placement**

STAFF ASSISTANT (SA)                      INVESTIGATIVE EMPLOYEE (IE)

IS THIS INMATE:

- LITERATE?  YES  NO
- FLUENT IN ENGLISH?  YES  NO
- ABLE TO COMPREHEND ISSUES?  YES  NO
- FREE OF MHSDS NEEDS  YES  NO
- DECLINED FIRST STAFF ASSISTANT ASSIGNED?  YES  NO
- Any "NO" requires SA assignment  NOT ASSIGNED

- A.S.U IS FOR DISCIPLINARY REASONS  YES  NO
- EVIDENCE COLLECTION BY IE IS UNNECESSARY  YES  NO
- INMATE DECLINED ANY IE  YES  NO
- DECLINED FIRST IE ASSIGNED  YES  NO
- Any "NO" may require IE assignment  NOT ASSIGNED

STAFF ASSISTANT'S NAME    TITLE                      INVESTIGATIVE EMPLOYEE'S NAME                      TITLE

**INMATE WAIVERS**

- INMATE WAIVES RIGHT TO 72 HOURS PREPARATION TIME
- INMATE WAIVES OR DECLINES INTERVIEW WITH ADMINISTRATIVE REVIEWER
- NO WITNESSES REQUESTED BY INMATE

INMATE SIGNATURE                                              CDC NUMBER                                              DATE

**WITNESS REQUESTED FOR ICC HEARING**

WITNESS' NAME                      TITLE/CDC NUMBER                      WITNESS' NAME                      TITLE/CDC NUMBER

WITNESS' NAME

TITLE/CDC NUMBER

WITNESS' NAME

TITLE/CDC NUMBER

**DECISION**

- RELEASED TO UNIT/FACILITY
- RETAIN PENDING ICC REVIEW
- DOUBLE CELL
- SINGLE CELL PENDING ICC

REASON FOR DECISION:

Administrative Reviewer's Printed Name	Title	Administrative Reviewer's Signature	Review Date	Time
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You were identified with a disability of:

- Hearing Vision Speech Learning Disability TABE under 4.0/no TABE
- Development Disability CCCMS EOP Foreign Language Speaking

**METHOD**

- reiterated in his own words, what was explained
- provided appropriate substantive responses to questions asked
- asked appropriate questions regarding the information provided
- did not appear to understand the communication, even though the primary method of communication was used
- Other

Assistance Provided

- Use of Full Page Magnifier
- Read aloud Documents
- Sign Language Interpreter
- Lip Reading (spoke facing the inmate)
- Written Notes
- Language Interpreter
- Simple English spoken slowly and clearly
- was wearing his/her hearing aid(s)
- stated he did not need any assistance for Effective Communication
- Gave additional time
- Rephrased sentence
- Other

Provider

Name: Title:

Correctional Administrator's Printed Name (if necessary - same date of review)	Co-Signature	Date of Review
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(05/19)

# ADOPT



CALIFORNIA DEPARTMENT of  
Corrections and Rehabilitation

## CLASSIFICATION COMMITTEE CHRONO

Inmate Name: [REDACTED]	Date: [REDACTED]
CDC#: [REDACTED]	Date of Birth: [REDACTED]
Control Date: [REDACTED]	Control Date Type: [REDACTED]

Hearing Date: [REDACTED]	Hearing Type: [REDACTED]
Committee Type: [REDACTED]	Correctional Counselor: [REDACTED]

**STATIC CASE FACTORS**

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**CRITICAL CASE FACTORS**

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**CLINICIAN COMMENTS**

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**COMMITTEE ACTION SUMMARY**

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**COMMITTEE COMMENTS**

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**RECORDER**

[REDACTED]	Date _____
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CDCR SOMS ICCT162 - Classification Committee Chrono

# REPEAL

STATE OF CALIFORNIA  
ADMINISTRATIVE SEGREGATION UNIT PLACEMENT NOTICE  
CDC 114-D (Rev 10/98)

DEPARTMENT OF CORRECTIONS

DISTRIBUTION  
WHITE - CENTRAL FILE  
BLUE - INMATE 2ND COPY  
GREEN - ASU  
CANARY - WARDEN  
PINK - HEALTH MANAGER  
GOLDENROD - INMATE 1ST COPY

INMATE'S NAME \_\_\_\_\_ CDC NUMBER \_\_\_\_\_

### REASON(S) FOR PLACEMENT (PART A)

- PRESENTS AN IMMEDIATE THREAT TO THE SAFETY OF SELF OR OTHERS
- JEOPARDIZES INTEGRITY OF AN INVESTIGATION OF ALLEGED SERIOUS MISCONDUCT OR CRIMINAL ACTIVITY
- ENDANGERS INSTITUTION SECURITY      UPON RELEASE FROM SEGREGATION, NO BED AVAILABLE IN GENERAL POPULATION

DESCRIPTION OF CIRCUMSTANCES WHICH SUPPORT THE REASON(S) FOR PLACEMENT

CONTINUED ON ATTACHED PAGE (CHECK IF ADDITIONAL) CONFIDENTIAL INFORMATION USED, DATE OF DISCLOSURE     / /

DATE OF ASU PLACEMENT	SEGREGATION AUTHORITY'S PRINTED NAME	SIGNATURE	TITLE
DATE OF NOTICE SERVED	TIME SERVED	PRINTED NAME OF STAFF SERVING ASU PLACEMENT NOTICE	SIGNATURE
			STAFF'S TITLE

INMATE REFUSED TO SIGN     INMATE SIGNATURE \_\_\_\_\_     CDC NUMBER \_\_\_\_\_

### ADMINISTRATIVE REVIEW (PART B)

The following to be completed during the initial administrative review by Captain or higher by the first working day following placement

STAFF ASSISTANT (SA)		INVESTIGATIVE EMPLOYEE (IE)	
STAFF ASSISTANT'S NAME	TITLE	INVESTIGATIVE EMPLOYEE'S NAME	TITLE

**IS THIS INMATE:**

LITERATE?	<input type="checkbox"/> YES <input type="checkbox"/> NO	EVIDENCE COLLECTION BY IE UNNECESSARY	<input type="checkbox"/> YES <input type="checkbox"/> NO
FLUENT IN ENGLISH?	<input type="checkbox"/> YES <input type="checkbox"/> NO	DECLINED ANY INVESTIGATIVE EMPLOYEE	<input type="checkbox"/> YES <input type="checkbox"/> NO
ABLE TO COMPREHEND ISSUES?	<input type="checkbox"/> YES <input type="checkbox"/> NO	ASU PLACEMENT IS FOR DISCIPLINARY REASONS	<input type="checkbox"/> YES <input type="checkbox"/> NO
FREE OF MENTAL HEALTH SERVICE DELIVERY NEEDS?	<input type="checkbox"/> YES <input type="checkbox"/> NO	DECLINED 1ST INVESTIGATIVE EMPLOYEE ASSIGNED	<input type="checkbox"/> YES
DECLINING FIRST STAFF ASSISTANT ASSIGNED?	<input type="checkbox"/> YES <input type="checkbox"/> NO		

Any "NO" requires SA assignment     Any "NO" requires IE assignment

NOT ASSIGNED      NOT ASSIGNED

### INMATE WAIVERS

INMATE WAIVES OR DECLINES INTERVIEW WITH ADMINISTRATIVE REVIEWER      INMATE WAIVES RIGHT TO 72 HOURS PREPARATION TIME

NO WITNESS REQUESTED BY INMATE     INMATE SIGNATURE \_\_\_\_\_     DATE \_\_\_\_\_

### WITNESSES REQUESTED FOR HEARING

WITNESS' NAME	TITLE/CDC NUMBER	WITNESS' NAME	TITLE/CDC NUMBER
WITNESS' NAME	TITLE/CDC NUMBER	WITNESS' NAME	TITLE/CDC NUMBER

**DECISION:**     RELEASE TO UNIT/FACILITY     RETAIN PENDING ICC REVIEW     DOUBLE CELL     SINGLE CELL PENDING ICC

ADMINISTRATIVE REVIEWER'S PRINTED NAME	TITLE	DATE OF REVIEW	TIME	ADMINISTRATIVE REVIEWER'S SIGNATURE
CORRECTIONAL ADMINISTRATOR'S PRINTED NAME (if necessary)		CORRECTIONAL ADMINISTRATOR'S CO-SIGNATURE (if necessary)		DATE OF REVIEW

See Chronological Classification Review document (CDC 128-G) for specific hearing information

# REPEAL

STATE OF CALIFORNIA CDC-128-G ( 10/89) CLASSIFICATION CHRONO DEPARTMENT OF CORRECTIONS

CDC NUMBER	NAME	CLASSIFICATION SCORE	TYPE AND RELEASE DATE
CUSTODY	ASSIGNMENT	WG:PG	NEXT CLASSIFICATION
OTHER COMMITTEE ACTIONS		HOUSING	RECOMMENDATION TO CSR

COMMENTS

INSTITUTION	CLASSIFICATION	DATE	SIGNATURE
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STATE OF CALIFORNIA CDC- 128-G ( 10/89) CLASSIFICATION CHRONO DEPARTMENT OF CORRECTIONS

CDC NUMBER	NAME	CLASSIFICATION SCORE	TYPE AND RELEASE DATE
CUSTODY	ASSIGNMENT	WG:PG	NEXT CLASSIFICATION
OTHER COMMITTEE ACTIONS		HOUSING	RECOMMENDATION TO CSR

COMMENTS

INSTITUTION	CLASSIFICATION	DATE	SIGNATURE
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## **INITIAL STATEMENT OF REASONS**

The California Department of Corrections and Rehabilitation (CDCR) proposes to amend Sections 3000, 3335, 3336, 3338, and 3340 of the California Code of Regulations (CCR), Title 15, regarding effective communication. The CDCR is committed to ensuring communication between inmates and staff is effective, and that assistance will be provided when necessary to ensure inmates are able to understand and participate in programs, services, and activities, including all interactions involving a liberty interest.

The reason for these amendments is to provide a clear definition of effective communication, which addresses the need to provide assistive devices or other methods of communication for inmates with disabilities or other communication needs. The CDCR is committed to making prisons safer by promoting education, rehabilitation, and good conduct through credit-earning incentives and earned privileges through positive programming. The proposed regulatory action affords inmates the opportunity to communicate effectively with staff, other inmates, and where applicable, the public. Communication needs that may require an accommodation or assistance to ensure effective communication include, but are not limited to, inmates with hearing, speech, and vision impairments, inmates with learning or developmental disabilities, and inmates with limited English proficiency.

Effective communication shall be provided for all interactions. However, effective communication for due process and other liberty interest encounters are especially critical and shall be documented when an inmate has a verified disability or communication need that may inhibit effective communication. Inmates with low cognitive functioning and inmates who have a low reading score will also have their liberty interest encounters documented. The Fourteenth Amendment provides that no citizen may be deprived of life, liberty, or property without due process of law. This Constitutional Amendment applies to inmates as well. The inmate also has a right to be present at any administrative proceeding that may adversely affect his or her liberty interests. Being able to effectively communicate during such encounters is of paramount importance to ensure equal access. Liberty interest encounters that shall be documented include, but are not limited to, the disciplinary process, confinement to segregated housing, and classification committee actions which could result in an adverse effect upon the inmate's confinement. An adverse effect includes, but is not limited to, involuntary placement in segregated housing, and transfer to a more restrictive institution or program.

## **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:

### **Significant Adverse Economic Impact on Business**

The Department has made an initial determination that the proposed regulations will not have a significant statewide adverse economic impact on business, including the ability of California businesses to compete with businesses in other states, because the proposed regulations affect only the internal management of CDCR institutions.

### **Creation of New or the Elimination of Existing Jobs within the State of California**

The Department has determined that the proposed regulations will not have an impact on the creation of new, or the elimination of existing jobs within California. The proposed regulations place no requirements or restrictions on businesses inside or outside of California, as they affect only the internal management of CDCR institutions.

### **Creation of New or the Elimination of Existing Businesses within the State of California**

The Department has determined that the proposed regulations will not have an impact on the creation, expansion or elimination of new or existing business within California. The proposed regulations place no requirements or restrictions on businesses inside or outside of California, as they affect only the internal management of CDCR institutions.

### **Expansion of Businesses Currently Doing Business in the State of California**

The Department has determined that the proposed regulations will not have an impact on the expansion of businesses currently doing business in California. The proposed regulations place no requirements or restrictions on businesses inside or outside of California, as they affect only the internal management of CDCR institutions.

### **BENEFITS OF THE REGULATIONS:**

The proposed regulatory action will help ensure effective communication is provided for all inmate interactions, especially when a due process or liberty interest is involved. The rulemaking action affords inmates the opportunity to communicate effectively with staff, other inmates, and where applicable, the public, to ensure inmates are able to understand and participate in programs, services, and activities. These regulations may benefit the welfare of California residents by helping to improve rehabilitative outcomes for inmates.

### **MATERIALS RELIED UPON:**

The Department, in proposing amendments to these regulations, has not identified nor has it relied upon any technical, theoretical, or empirical study, report, or similar document.

### **SPECIFIC PURPOSE AND RATIONALE FOR EACH SECTION, PER GOVERNMENT CODE 11346.2(B)(1):**

#### **3000. Definitions.**

Section 3000 is amended to define Effective communication. The amended definition identifies the need to provide accommodations or assistance to achieve effective communication, including documentation of encounters involving a liberty interest, the method staff used to determine whether the inmate understood the communication, and steps that shall be taken when staff cannot achieve effective communication. It is necessary to amend the definition of this term in order to provide a clear definition of effective communication, which also addresses the need to provide assistive devices or other methods of communication for inmates with disabilities or other communication needs so they can access programs, services, and activities, to include liberty interests.

### **3335. Administrative Segregation.**

**Subsection 3335(a)(1)(D)2. is amended** to repeal the CDC Form 128-G. Information formerly entered onto a hard-copy CDC Form 128-G is now entered electronically into CDCR's Strategic Offender Management System (SOMS) as the Classification Committee Chrono. Several Department forms have been automated in recent years. The Department's practice when automating a form as part of a rulemaking action has been to include a printout of the automated form and a copy of the repealed form with the rulemaking documents noticed to the public. The automated version of this form has been given a revision date of (05/19) in the amended text.

**Subsections 3335(b), (b)(1), and (b)(3) are amended** to repeal the CDC Form 114-D and replace it with the "Administrative Segregation Unit Placement Notice". Information formerly entered onto a hard-copy CDC Form 114-D is now entered electronically into CDCR's SOMS as the Administrative Segregation Unit Placement Notice. Several Department forms have been automated in recent years. The Department's practice when automating a form as part of a rulemaking action has been to include a printout of the form with the rulemaking documents noticed to the public. The automated version of this form has been given a revision date of (05/19) in the amended text.

Note: The CDC Form 114-D repealed as part of this rulemaking action has a revision date of 10/98, while the reference to this form in the CCR text does not have a revision date. The 10/98 version of the form is included here because that is the version of the form currently in use that will be replaced by direct data entry into SOMS.

**Subsection 3335(b)(3)(A) is amended** to expand what the official ordering administrative segregation placement shall document concerning effective communication, when necessary. Documentation shall include the need for an accommodation or assistance to ensure effective communication, the provision of any assistance that is provided to accommodate the inmate's disability or communication need, and the method staff used to determine whether the inmate understood the communication. Administrative segregation is the temporary removal of an inmate from the inmate general population while staff address unresolved safety, security, or disciplinary matters. An inmate may be placed in administrative segregation if they commit a crime in prison, are victims of a crime, or are pending the completion of an investigation into their potential involvement in an incident. Administrative segregation generally houses inmates who pose a threat to institutional security. It is necessary to make these amendments to this subsection in order to ensure inmates with a communication need, including inmates with limited English proficiency (LEP), are provided the necessary assistance, and that the assistance is documented.

**Subsections 3335(b)(4) and 3335(c) are amended** to repeal the CDC Form 114-D and replace it with the "Administrative Segregation Unit Placement Notice" as described under subsection 3335(b) above.

### **3336. Administrative Review of Administrative Segregation Unit Placement.**

**Subsection 3336(b)(3) is amended** to expand what the Administrative Reviewer shall document concerning effective communication, when required. Documentation shall include the need for an accommodation or assistance to ensure effective communication, the provision of any assistance that is provided to accommodate the inmate's disability or communication need, and the method staff used to determine whether the inmate understood the communication. The Administrative Reviewer shall also document the presence of a Staff Assistant, when

required. A Staff Assistant is provided to an inmate when he or she requires assistance to understand and participate in processes associated with administrative segregation placement, the disciplinary process, and classification committee hearings. It is necessary to make these amendments to this subsection in order to ensure inmates with a communication need are provided the necessary assistance, including documentation that records the presence of a Staff Assistant when required.

**Subsections 3336(b)(6), 3336(c)(1), (c)(2), and (c)(3) are amended** to repeal the CDC Form 114-D and replace it with the “Administrative Segregation Unit Placement Notice” as described under subsection 3335(b) above.

### **3338. Amendment to Reasons for Segregation.**

**Subsections 3338(a), (a)(1), and 3338(b) are amended** to repeal the CDC Form 114-D and replace it with the “Administrative Segregation Unit Placement Notice” as described under subsection 3335(b) above.

**Subsection 3338(b)(3) is amended** to expand what the official issuing the Administrative Segregation Unit Placement Notice for administrative segregation retention shall document concerning effective communication, when necessary. Documentation shall include the need for an accommodation or assistance to ensure effective communication, the provision of any assistance that is provided to accommodate the inmate’s disability or communication need, and the method staff used to determine whether the inmate understood the communication. This subsection is also amended to repeal the CDC Form 114-D and replace it with the “Administrative Segregation Unit Placement Notice” as described under subsection 3335(b) above.

**Subsection 3338(c) is amended** to repeal the CDC Form 114-D and replace it with the “Administrative Segregation Unit Placement Notice” as described under subsection 3335(b) above.

### **3340. Assistance to Inmates for Administrative Segregation Classification Hearings.**

**Subsection 3340 initial paragraph is amended** to repeal the CDC Form 114-D and replace it with the “Administrative Segregation Unit Placement Notice” as described under subsection 3335(b) above.

**Subsection 3340(d)(2) is amended** for clarity and consistency with amended language incorporated into these regulations. Specifically, when addressing the need for effective communication, the staff assistant shall document the provision of any assistance that is provided to accommodate the inmate’s disability or communication need, and the method staff used to determine whether the inmate understood the communication. The information is documented within the Classification Committee Chrono. The CDC Form 128-G referenced in this subsection is repealed, as described under subsection 3335(a)(1)(D)2 above.

**Subsections 3340(g)(1)(A) and 3340(j) are amended** to repeal the CDC Form 114-D and replace it with the “Administrative Segregation Unit Placement Notice” as described under subsection 3335(b) above.

**Subsection 3340(k)(2) is amended** for clarity and consistency with amended language incorporated into these regulations. Specifically, when addressing the need for effective communication, an investigative employee shall document the provision of any assistance that is provided to accommodate the inmate’s disability or communication need, and the method

staff used to determine whether the inmate understood the communication. An investigative employee is a staff person designated to gather information for a senior hearing official or the committee conducting an Administrative Segregation Classification Hearing.