

REGULATION AND POLICY MANAGEMENT BRANCH

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



March 6, 2025

2nd NOTICE OF CHANGE TO TEXT AS ORIGINALLY PROPOSED

Pursuant to the provisions of Government Code Section 11346.8(c) and Section 44 of Title 1 of the California Code of Regulations (CCR), the California Department of Corrections and Rehabilitation (CDCR or the department) hereby provides this 2nd notice of proposed changes made to CCR sections regarding the Developmental Disability Program. The department proposes to amend sections 3000, 3317.1, 3369.6, 3369.7, 3369.13, and CDCR Form 0201 within the CCR, Title 15, Division 3, Chapter 1.

You are receiving this notice because you provided comments or expressed an interest in receiving notice of changes to the proposed regulations concerning the Developmental Disability Program (DDP).

Notice of Change to Regulations 24-03 was noticed to the public on April 26, 2024. The full text of the originally proposed amendments is shown in its original single underline and ~~striketrough~~ format. The changes provided in the first Notice of Change to Text as Originally Proposed are indicated by **bold double underline** for additional added text, and ~~**bold double striketrough**~~ for additional deleted text to the originally proposed text.

The changes provided in this 2nd Notice of Change to Text as Originally Proposed are indicated by ~~**dotted bold underline**~~ or ~~**dotted bold striketrough**~~. Changes also appear in ~~**dotted bold underline in italics**~~ and ~~**dotted bold striketrough in italics**~~ for revisions to the first 15-Day Re-Notice text which appears in **bold double underline** and ~~**bold double striketrough**~~.

Only those comments relating directly to the amendments indicated by ~~**dotted bold underline**~~ and ~~**dotted bold striketrough**~~, or ~~**dotted bold underline in italics**~~ and ~~**dotted bold striketrough in italics**~~, or as described below for the CDCR Form 0201, will be considered.

In the attached text:

Section 3000 is amended to remove the last sentence in the definition of “Certificate of Attendance and Participation (CAP).” The department determined that the language explaining how a CAP is to be awarded would be more appropriate in section 3369.13(e).

Subsection 3317.1(e) is amended to remove language regarding “a Captain ensuring they address the specific adaptive functioning deficits noted by the clinician when documenting their rationale for concluding that the adaptive functioning deficits did not strongly contribute to the rules violation.” This amendment is made to keep the regulation text succinct yet still provides guidance to the Captain in their decision making process.

Subsection 3369.6(a)(1) is amended to reflect the new date of the CDCR Form 0201, which is amended in this 2nd 15-Day Re-Notice, and as described below.

Subsection 3369.7(a)(1) is amended to clarify who makes the determination when incarcerated persons with an IQ above 75 may be included in the DDP. Additionally, new language is added to clarify factors that mental health staff shall consider when deciding whether to include an incarcerated person with an IQ above 75 in the DDP.

Subsection 3369.13(e) is amended for clarity purposes. The word "may" is replaced with "shall" in the first sentence, and the acronym "SST" is provided for the Student Study Team. Additional language in this subsection is added to clarify how a SST shall approve whether a CAP is appropriate for an incarcerated person in the DDP, and specifies that both the SST and the incarcerated person shall agree to the CAP option, and once the CAP is approved the incarcerated person in the DDP shall be awarded program completion and Milestone Completion Credit in accordance with the Milestone Completion Credit Schedule in subsection 3043.3(d). Language in this subsection which referred to unassignment and reassignment of the incarcerated person in the DDP to an appropriate program or waitlist is removed because the department is pursuing changes to this process in a separate regulatory action.

Subsection 3369.13(e)(1)(B) is amended for correction purposes to replace "DDP teacher" with "RSP teacher" as the Resource Specialist Program teacher is the correct teacher that should have been referenced.

Revisions to CDCR Form 0201, Condemned Incarcerated Persons – Waiver of Developmental Disability Program Screening and Inclusion:

After further review, the department determined that additional revisions to the CDCR Form 0201 were necessary for clarity and corrective purposes.

In the fourth bullet, the language which previously stated "screen me for DDP inclusion" is replaced with "accommodate me in the DDP" for more appropriate language and clarity, as condemned incarcerated persons that need accommodations for a disability are still provided similar assistance, however they will not be included in the DDP if they have signed the waiver.

The comment period on these changes shall close on **March 21, 2025**. Please submit comments to Regulation and Policy Management Branch, Department of Corrections and Rehabilitation, P.O. Box 942883, Sacramento, CA, 94283-0001; or e-mail to rmb@cdcr.ca.gov before the close of the comment period. Only those comments relating directly to the enclosed changes indicated by ~~dotted bold underline~~ or ~~dotted bold strikethrough~~, or ***dotted bold underline in italics*** or ~~***dotted bold strikethrough in italics***~~, or as described for the CDCR Form 0201, will be considered.



Ying Sun, Associate Director
Regulation and Policy Management Branch
Department of Corrections and Rehabilitation

Attachment(s)

2nd 15-DAY RE-NOTICE TEXT OF PROPOSED REGULATIONS

In the following, the originally proposed text appears in single underline and single ~~striethrough~~ format. The 1st 15-Day Re-Notice text changes appear in **bold double underline** and ~~**bold double striethrough**~~. The 2nd 15-Day Re-Notice text changes appear in ~~**dotted bold underline**~~, which indicates additional added text, and ~~**dotted bold striethrough**~~ which indicates additional deleted text to the originally proposed text. Additionally, revisions to the 1st 15-Day Re-Notice text appear in ***dotted bold underline in italics*** and ~~***dotted bold striethrough in italics***~~ format.

All instances of the terms “inmate(s),” “inmate’s,” and “parolee(s),” in the *existing text* were replaced in Office of Administrative Law (OAL) matter 2024-0521-02N with the new terms “incarcerated person(s),” “incarcerated person’s,” and “supervised person(s)” effective 7/1/24. These changes to the existing text are not indicated here by ~~**bold double striethrough**~~ and **bold double underline** because they have already been changed in the California Code of Regulations by OAL matter 2024-0521-02N. Any instances of the terms “inmate(s),” “inmate’s,” and “parolee(s)” not affected by OAL matter 2024-0521-02N, but which were changed in the 1st 15-Day Re-Notice, are illustrated using **bold double underline** and ~~**bold double striethrough**~~.”

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

Chapter 1. Rules and Regulations of Adult Operations and Programs

Article 1. Behavior

3000. Definitions.

[Section 3000 is amended to alphabetically merge the definitions below with those that exist in the regulations.]

Adaptive Functioning Deficits are cognitive impairments that impact the abilities necessary to care for oneself or to access programs, services, and activities in a correctional setting. Participants in the Developmental Disability Program (DDP) with adaptive functioning deficits require adaptive services to help them program effectively.

Adaptive Support Needs are needs a participant in the DDP may have that require adaptive support services to help them program effectively in the correctional setting. Specific adaptive support needs vary from person to person and are unique to each individual. They can include, but are not limited to: prompts to perform self-care or activities of daily living; assistance with reading or writing; the use of slower or simple communication; and the need for staff to remind or explain rules and procedures.

Adaptive Support Services are services provided to ~~**inmates incarcerated persons**~~ with low cognitive functioning (usually Intelligence Quotient [IQ] of 75 or below) and

concurrent deficits or impairments in adaptive functioning, to help the **inmate incarcerated person** program effectively and safely in the correctional setting. Adaptive support services include, but are not limited to: monitoring, prompting, coaching, or assisting with activities of daily living.

Certificate of Attendance and Participation (CAP) is a certificate of educational completion that may be awarded to eligible **inmates incarcerated persons** in the Developmental Disability Program (DDP) with severe cognitive disabilities who have not made educationally expected progress on formative, summative, and standardized educational assessments pertaining to their enrolled classes. The CAP is not an academic credential. For purposes of work and program assignments within the department, it validates that the **inmate incarcerated person** in the DDP has satisfactorily completed a prescribed high school alternative course of study for employment applications, Department of Rehabilitation services, and graduation participation. **A CAP may be approved by the Classification Committee on a case-by-case basis, if the inmate incarcerated person meets eligibility criteria as outlined in subsection 3369.13(e)(1).**

Developmental Disability is defined as a disability that continues, or can be expected to continue, indefinitely, and constitutes a substantial disability for that individual, regardless of the age of onset. It includes intellectual disability, cerebral palsy, epilepsy, and autism. It also includes disabling conditions associated with mild or moderate memory deficits and also those found to be closely related to intellectual disability or to require treatment similar to that required for individuals with an intellectual disability, but does not include other disabling conditions that are solely physical in nature.

Developmental Disability Program (DDP) is the department's plan, policies, and procedures to assure identification, classification, housing, protection, and nondiscrimination of **inmates incarcerated persons** with developmental disabilities and those with cognitive and concurrent adaptive functioning deficits meeting the established inclusion criteria.

Disability is a physical, mental, cognitive, or developmental condition that impairs or limits one or more major life activities of a person. Major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, writing, communicating, interacting with others, working, and the operation of a major bodily function, including but not limited to digestive, bowel, and bladder control.

Out-to-Medical means an **inmate incarcerated person** is temporarily removed from their assigned institution for medical treatment.

Predatory Case Factors are factors that may place an inmate incarcerated person in the Developmental Disability Program at risk of injury or other serious harm if housed with an inmate incarcerated person with a history of predatory behavior.

~~including manipulative behavior against an individual with a disability, especially when this behavior occurred while in custody.~~

Qualified ~~Inmate~~ Incarcerated Person with a Disability means an ~~inmate incarcerated person~~ with a disability, who with or without a reasonable accommodation, meets the ~~essential~~ eligibility requirements for participation in programs, services, or activities provided by the department. An ~~inmate incarcerated person~~ who cannot meet the ~~essential~~ eligibility requirements, even with a reasonable accommodation, is not considered qualified for the program, service, or activity.

Reasonable Accommodations are modifications to programs, services, or activities, or assistive devices provided, which make it possible for a qualified ~~inmate incarcerated person~~ with a disability to achieve equal access to the department's programs, services, or activities, without imposing an undue hardship on the department, or posing a direct threat to the health, safety, or security of the ~~inmate incarcerated person, parolee supervised person~~, staff, institution, or anyone else.

Note: Authority cited: Sections 243(f)(4), 2717.3, 3000.03, 5058, 5058.3 and 1170.05, Penal Code; Section 10115.3(b), Public Contract Code; and Sections 4525(a), 4526 and 14837, Government Code. Reference: Sections 186.22, 243, 314, 530, 532, 600, 646.9, 653m, 832.5, 1170.05, 1203.8, 1389, 2080, 2081.5, 2600, 2601, 2700, 2717.1, 2717.6, 2932.5, 3003.5(a), 3020, 3450, 3550, 4570, 4576, 5009, 5050, 5054, 5068, 7000 et seq. and 11191, Penal Code; Sections 1132.4 and 1132.8, Labor Code; Sections 10106, 10108, 10108.5, 10115, 10115.1, 10115.2, 10115.3 and 10127, Public Contract Code; and Section 999, Military and Veterans Code; Section 391, Code of Civil Procedure; Section 297.5, Family Code; Section 4512, Welfare and Institutions 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; *Quine v. Beard*, No. C 14-02726 JST; and *Clark v California* (2002) USDC-ND (No. C-96-1486-CRB); Americans with Disabilities Act, Public Law 101-336, July 26, 1990, 104 Stat. 328.

3004. Rights and Respect of Others.

[Subsections 3004(a) through (b) are unchanged.]

[Subsection 3004(c) is amended to read:]

(c) Inmates, parolees, and employees will not subject other persons to any form of discrimination because of race, religion, nationality, sex, political belief, age, ~~physical or mental handicap~~ disability, or other forms of discrimination prohibited by law.

Note: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code; Americans with Disabilities Act, Public Law 101-336, July 26, 1990, 104 Stat. 328.

Article 2. State-Issued Clothing and Linen

3031. Neatness and Laundry Exchange.

[Subsection 3031(a) is amended to read:]

- (a) Inmates shall be appropriately clothed at all times consistent with the specific unit, work or program activities, and as directed by staff. Inmate clothing shall be worn in the manner in which it was manufactured to be worn.

[New subsection 3031(b) is adopted to read:]

(b) Staff shall provide reminders, and assistance, as necessary, to **inmates incarcerated persons** in the Developmental Disability Program (DDP), and monitor them to ensure they are wearing clean clothing, they have clean linens, and their laundry is being exchanged, if indicated on the **inmate's incarcerated person's** automated CDCR Form 200-A (~~01/24~~ **09/24**), Developmental Disability Program Adaptive Support Log – Housing Unit, which is incorporated by reference, and is located in the Strategic Offender Management System (SOMS).

[Existing subsection 3031(b) is renumbered to (c) but is otherwise unchanged.]

~~(b)~~(c) Each inmate shall maintain issued clothing and linen as neat and clean as conditions permit. Weekly laundry exchange shall be provided on a one-for-one basis limited as follows:

- (1) Shirts or blouses, two.
- (2) Jeans or slacks, two.
- (3) Undershirts, three.
- (4) Undershorts or panties, three.
- (5) Sheets, two.
- (6) Pillow case, one.
- (7) Socks, three pairs.
- (8) Towels, two.

[New subsection 3031(d) is adopted to read:]

(d) Adjustments to the above limits shall be made on a case-by-case basis for **inmates incarcerated persons** with special clothing needs, including those with medical or disability needs.

Note: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code. Clark v California (N.D.Cal. 2002) No. C-96-1486-CRB; In re Armstrong (N.D. Cal. 1998)

No. C 94-02307 and Remedial Plan (amended January 3, 2001); *Plata v. Newsom* (N.D.Cal. 2001) No. C-01-1351-JST.

Article 3. Work and Education

3040. Participation.

[Subsection 3040(a) is amended to read:]

(a) It is the department's policy to ensure that all ~~inmates~~ **incarcerated persons**, regardless of disability, are afforded equal access to participate in programs, services, and activities. Every ~~able-bodied~~ individual committed to the custody of the Secretary of the Department of Corrections and Rehabilitation, with the exception of those individuals meeting the criteria established in section 3044.1(d)(2)(B), is obligated to work as assigned by department staff and by personnel of other agencies to whom the inmate's custody and supervision may be delegated. Assignment may be up to a full day of work, education, other programs, or a combination of work, education, or other programs. ~~Inmates~~ **Incarcerated persons** shall not be denied an assignment solely on the basis of their disability as long as they, with or without a reasonable accommodation, meet the ~~essential~~ eligibility requirements for participation.

[Subsections 3040(b) through (e) are unchanged.]

[Subsection 3040(f) is amended to read:

(f) Any staff request for removal of an inmate from a program shall be submitted to the inmate's correctional counselor on a CDC General Chrono Form. The counselor shall refer the request to a classification committee for consideration and action. If a request is for cause, defined as behavior that would result in loss of participation credit pursuant to section 3043.2(a), the inmate may be temporarily relieved of the position and denied pay (if a paid position), pending classification committee action. ~~Inmates~~ **Incarcerated persons** shall not be removed due to their disability if they are able to complete the essential functions of the job, with or without reasonable accommodation.

[Subsections 3040(g) through (l) are unchanged.]

Note: Authority cited: Sections 2700 and 5058, Penal Code. Reference: Section 1182, Labor Code; and Sections 502, 2933, 5054 and 5068, Penal Code.

3041. Performance.

[Subsection 3041(a) is unchanged.]

[Subsection 3041(b) is amended to read:]

(b) Inmates must report to their place of assignment at the time designated by the institution's schedule of activities and as instructed by their assignment supervisor. Inmates may not leave an assignment without permission to do so. ~~Inmates~~ **Incarcerated persons** in the DDP may require prompts or reminders to attend their assignments.

[Subsections 3041(c) through (e)(2) are unchanged.]

[New subsection 3041(f) is adopted to read:]

(f) ~~Inmates~~ **Incarcerated persons** shall be afforded a reasonable accommodation based on their identified disability for any work or program assignment, as long as the ~~inmate~~ **incarcerated person** does not meet the criteria for medically disabled under section 3044.1(d)(2)(B).

[New subsection 3041(g) is adopted to read:]

(g) For ~~inmates~~ **incarcerated persons** in the Developmental Disability Program (DDP), evaluation for removal from a program assignment shall be done on a case-by-case basis as outlined in sections 3041.1(e), 3044.1(d)(2)(B), and 3376.2(e).

Note: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code; and Sections 2297, 2318, 2320 and 1798 et seq., Civil Code. Clark v California (2002) USDC-ND (No. C-96-1486-CRB); Americans with Disabilities Act, Public Law 101-336, July 26, 1990, 104 Stat. 328.

3041.1. Paid Incarcerated Person Work/Training Assignment Criteria.

[Subsections 3041.1(a) through (d) are unchanged.]

[New subsection 3041.1(e) is adopted to read:]

(e) An ~~inmate's incarcerated person's~~ **inmate incarcerated person** Developmental Disability Program (DDP) status may not be used as the sole basis to disqualify or remove an ~~inmate incarcerated person~~ **inmate incarcerated person** from a position. An ~~inmate incarcerated person~~ **inmate incarcerated person** in the DDP may be disqualified or removed on a case-by-case basis as outlined in sections 3044.1(d)(2)(B), and 3376.2(e). Consideration for disqualification or removal from a position shall take into account factors, including but not limited to: the ~~inmate's incarcerated person's~~ **inmate's incarcerated person's** ability to perform the essential functions of the program with or without a reasonable accommodation, the ~~inmate's incarcerated person's~~ **inmate's incarcerated person's** documented disciplinary behavior, or the ~~inmate's incarcerated person's~~ **inmate's incarcerated person's** documented refusal to work as directed.

Note: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code. Clark v California (2002) USDC-ND (No. C-96-1486-CRB); Americans with Disabilities Act, Public Law 101-336, July 26, 1990, 104 Stat. 328.

Article 3.4. Incarcerated Person Work and Privileges

3044.1. Special Assignments.

[Subsections 3044.1(a) through (d)(2)(A) are unchanged.]

[Subsection 3044.1(d)(2)(B) is amended to read:]

(B) Medically disabled. When an inmate is unable to participate in any ~~assigned work, academic, Career Technical Education program, or other such program activity~~ assigned work or program, even with reasonable accommodation, because of a medically determinable physical, or mental impairment that is expected to result in death or last six months or more, the classification committee shall place the inmate on medically disabled status. The inmate work group status shall be in accordance with section 3044(b)(1), Work Group A-1 and Privilege Group A, unless the inmate is assigned Work Group M in accordance with subsection 3044(b)(8).

[Subsections 3044.1(e) through (h) are unchanged.]

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 2933, 2933.05, 2933.3, 2933.6, 5054 and 5068, Penal Code

Subchapter 2. Incarcerated Person Resources

Article 3. Confidentiality and Privacy

3120. Incarcerated Person Library Requirements.

[Subsections 3120(a) through (c) are unchanged.]

[New subsections 3120(d) through (g) are adopted to read:]

(d) Notwithstanding reasonable circumstances for delay, library staff shall provide orientation to ~~inmates incarcerated persons~~ in the Developmental Disability Program (DDP) for Law Library and other library services within 30 calendar days of the ~~inmate's incarcerated person's~~ arrival at an institution. Circumstances that may warrant delay include, but are not limited to: ~~inmate incarcerated person~~ refusal, modified programming at the institution, or situations that pose a threat or jeopardize the safety or security of the ~~inmate incarcerated person~~, staff, the institution, or others.

(e) Staff shall ensure an ~~inmate incarcerated person~~ with a disability or an ~~inmate incarcerated person~~ in need of assistance with communication is provided the necessary assistance to access library services, including, but not limited to: reading; writing; scribing departmental, court, and Board of Parole Hearings forms or related documents; explaining departmental, court, and Board of Parole Hearings processes or

documents; identifying research materials; and accessing electronic readers, assistive devices, and ~~inmate incarcerated person~~ assistants.

(f) Staff shall not provide legal advice ~~or conduct legal research to incarcerated persons.~~ Staff may provide assistance to incarcerated persons to help them identify legal resources. For an ~~inmate incarcerated person~~ with a disability impacting their ability to communicate, staff shall assist, when necessary, with the completion of ~~the~~ a letter to the court requesting assistance, due to the ~~inmate's incarcerated person's~~ developmental disability.

(g) The letter to the court should include the ~~inmate's incarcerated person's~~ claim that they have a disability that makes it difficult to read, write, or understand the process or legal material regarding the case.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 2600, 2601 and 5054, Penal Code; Toussaint v. McCarthy, 801 F.2d 1080 (9th Cir. 1986); and Bounds v. Smith, 97 S.Ct. 1491 (1977), 430 U.S. 817. *Clark v California* (2002) USDC-ND (No. C-96-1486-CRB); Americans with Disabilities Act, Public Law 101-336, July 26, 1990, 104 Stat. 328.

Article 9. Personal Property and Religious Personal Property

3192. Possession and Exchange.

[Initial paragraph is numbered 3192(a) but is otherwise unchanged.]

(a) An inmate's right to inherit, own, sell or convey real and/or personal property does not include the right to possess such property within the institutions/facilities of the department. An inmate may not exchange, borrow, loan, give away or convey personal property to or from other inmates. Violation(s) of this rule may result in disciplinary action, and confiscation and/or disposal of the personal property.

[New subsections 3192(b) and (c) are adopted to read:]

(b) For ~~inmates incarcerated persons~~ who are participants in the Developmental Disability Program (DDP) and identified with potential victimization concerns, staff are required to meet privately with the ~~inmate incarcerated person~~ and query for possible victimization concerns, including but not limited to theft or destruction of property, manipulation, pressuring, and undue influence regarding their property.

(c) Staff shall meet with the ~~inmate incarcerated person~~ privately, and as frequently as listed on their automated CDCR Form 200-A (~~01/24~~ **09/24**), Developmental Disability Program Adaptive Support Log - Housing Unit, which is incorporated by reference and is located within SOMS.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 2601 and 5054, Penal Code. Clark v California (2002) USDC-ND (No. C-96-1486-CRB).

Subchapter 3. Incarcerated Person Activities

Article 2. Recreational and Physical Education Programs

3220. Recreational and Physical Education Program Participation.

[Subsection 3220(a) is amended to read:]

(a) All interested inmates shall be provided an equal opportunity to participate in constructive recreational and physical education programs under safe and secure conditions, consistent with the inmate's custodial classification, work/ or training assignment, privilege group, and security requirements. Reasonable accommodations shall be afforded to inmates incarcerated persons with disabilities to facilitate their participation in recreational and physical education programs.

[Subsections 3220(b) through (g) are unchanged.]

Note: Authority cited: section 5058, Penal Code. Reference: Sections 5010 and 5054, Penal Code; Americans with Disabilities Act, Public Law 101-336, July 26, 1990, 104 Stat. 328.

Subchapter 4. General Institution Regulations

Article 1.6. Incarcerated Person Housing

3269. Incarcerated Person Housing Assignments.

[Subsection 3269(a) is unchanged.]

[Subsection 3269(b) is unchanged but is shown for reference.]

(b) Upon arrival at an institution, facility, or Reception Center, a designated screening authority shall screen an inmate for an appropriate housing assignment in a private setting. The screening authority reviewing and approving an inmate's housing assignment shall evaluate all factors to be considered when completing the Initial Housing Review (IHR), including but not limited to:

[Subsections 3269(b)(1) through (19) are unchanged.]

[New subsection 3269(b)(20) is adopted to read:]

(20) Participation in the Developmental Disability Program.

[Subsections 3269(c) through (h) are unchanged.]

[Subsection 3269(i) is amended to read:]

(i) If an inmate refuses a housing assignment, the inmate shall be subject to the disciplinary process. Refusal to accept a housing assignment shall result in the issuance of a RVR for Conduct, subsection 3005(c), Refusing to Accept Assigned Housing, for the Specific Act of Willfully Resisting, Delaying, or Obstructing any Peace Officer in the performance of Duty (subsection 3323(f)(6)). Subsequent refusals shall result in additional disciplinary action. When the refusal involves an ~~inmate~~ **incarcerated person** in the DDP, staff shall follow the direction set forth in section 3312.1(b).

Note: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code; and *Quine v. Beard*, No. C 14-02726 JST.

[New section 3269.5 is adopted to read:]

3269.5. Developmental Disability Program Housing.

(a) Nothing in this section shall preclude staff from making informed and sound custody and classification decisions, especially when there may be circumstances that may place an ~~inmate~~ **incarcerated person** in the Developmental Disability Program (DDP) at risk.

(b) ~~Inmates~~ **Incarcerated persons** in the DDP shall be referred to a Classification and Parole Representative (C&PR) or Classification Staff Representative (CSR) for review and endorsement to a designated DDP institution or facility appropriate for the ~~inmate's~~ **incarcerated person's** DDP designation (e.g., DD1, DD2, or DD3, as specified in section 3369.7), within 14 working days of designation or change in case factors, including change in DDP designation.

(c) If an ~~inmate's~~ **incarcerated person's** DDP designation changes, the Mental Health Clinician that performed the ~~inmate's~~ **incarcerated person's** assessment shall update the ~~inmate's~~ **incarcerated person's** identified adaptive supports, as applicable, and the ~~inmate~~ **incarcerated person** shall be referred to the C&PR or CSR for review and endorsement to a designated DDP institution or facility appropriate for the ~~inmate's~~ **incarcerated person's** new DDP designation. ~~Inmates~~ **Incarcerated persons** with predatory case factors, as explained in section 3269.5(f), shall not be housed in DDP-designated housing areas unless the minimum exclusionary periods identified in subsection 3269.5(h) have been met. **Predatory case factors, as referenced for incarcerated persons in the DDP, are factors that may place an incarcerated person in the DDP at risk of injury or other serious harm if housed with an incarcerated person with a history of predatory behavior, including manipulative behavior against an individual with a disability, especially when this behavior occurred while in custody.**

(d) Custody or classification staff shall screen all ~~inmates~~ **incarcerated persons** prior to being housed in a DDP-designated housing unit. During the intake process at receiving institutions, prior to housing ~~inmates~~ **incarcerated persons**, custody staff are required to screen all ~~inmates~~ **incarcerated persons** for single-cell status and compatibility as part of the Initial Housing Review (IHR). Classification staff shall review the IHR for single-cell status and housing restrictions during initial classification.

(e) In specialized housing areas (e.g., Restricted Housing Units, Enhanced Outpatient Program (EOP), Correctional Treatment Center (CTC), or Reception Centers), custody or classification staff shall screen potential ~~inmates~~ **incarcerated persons** that may be considered for sharing a living area with an ~~inmate~~ **incarcerated person** in the DDP. ~~Inmates~~ **Incarcerated persons** with predatory case factors that have not met the established minimum exclusionary period outlined in subsection 3269.5(h), shall not be housed with ~~inmates~~ **incarcerated persons** in the DDP with victimization concerns.

(f) Bed Assignments. The existence of predatory case factors precludes an ~~inmate~~ **incarcerated person** from being assigned to DDP-designated housing areas unless they have met the minimum exclusionary periods identified in subsection 3269.5(h). The following are predatory case factors that preclude an ~~inmate~~ **incarcerated person** from being assigned to DDP-designated housing areas unless minimum exclusionary periods have been met:

- (1) Found guilty of an in-custody sexual offense, or an attempt of an in-custody sexual offense.
- (2) New commitments with documented incident(s) of sexual offenses against individuals with a disability.
- (3) Single-cell status due to in-cell violence.
- (4) Documented in-custody conduct that demonstrates ~~victimization~~ **victimizing** or manipulative behavior against an individual with a disability, including when an ~~inmate~~ **incarcerated person** is found guilty of a Rules Violation Report (RVR) for any of the following charges against a person with a disability:
 - (A) Battery.
 - (B) Assault.
 - (C) Criminal Threats.
 - (D) Extortion.
 - (E) Stalking.
 - (F) Theft.

(g) Additional exclusionary factors for housing ~~inmates~~ **incarcerated persons** in DDP housing may be determined on a case-by-case basis **if the classification committee identifies predatory case factors not listed in subsection 3269.5(f), but which meet the definition of predatory case factors in subsection 3269.5(c).**

(h) The following chart provides the minimum exclusionary periods for predatory factors that are to be considered when housing other ~~inmates~~ **incarcerated persons** with an ~~inmate~~ **incarcerated person** in the DDP:

<u>Predatory Case Factor</u>	<u>Minimum Exclusionary Period</u>
<u>Found guilty of an in-custody sexual offense, or an attempt (e.g., rape, forcible sodomy, oral copulation, sexual battery with aggravating factors, etc.).</u>	<u>Permanently excluded from DDP-designated housing and housing with an inmate incarcerated person in the DDP.</u>
<u>New commitments to CDCR with documented incident(s) of sexual offenses against individuals with a physical, mental, or developmental disability.</u>	<u>Excluded from DDP-designated housing and housing with an inmate incarcerated person in the DDP for five years from date of reception to CDCR.</u>
<u>Single-cell status due to in-cell violence.</u>	<u>Must be double-celled during the previous 2 two years without in-cell violence.</u>
<u>Documented in-custody conduct (e.g., substantiated information in confidential C-File) that demonstrates victimization victimizing or manipulative behavior against an individual with a physical, mental, or developmental disability, including when an inmate incarcerated person is found guilty of an RVR for any of the following offenses against a person with a disability:</u> <ul style="list-style-type: none"> • <u>Battery</u> • <u>Assault</u> • <u>Criminal Threats</u> • <u>Extorting</u> • <u>Stalking</u> • <u>Theft</u> 	<u>Three years has passed from most recent date of documentation.</u> <u>Staff should use discretion and sound correctional judgement when determining appropriate housing for inmates incarcerated persons in the DDP. Each decision made on the basis of this exclusionary factor shall be evaluated on a case-by-case basis. An inmate incarcerated person may have committed one of the listed offenses, but it may have not been against an individual with a disability, or the circumstances surrounding the violation may lead the reviewer to believe the offense was not predatory in nature.</u>

(i) **Inmates Incarcerated persons**, including those in the DDP, who have any of the identified predatory case factors specified in subsection 3269.5(f), and who have not met the established exclusionary period in subsection 3269.5(h), shall not:

- (1) Be housed in a designated DDP building, unit, or wing.
- (2) Share a non-DDP designated cell, bay, wing, or pod in a dorm with an **inmate incarcerated person** in the DDP that has victimization noted on their automated CDCR Form 128C-2 (Rev. ~~01/24~~ **09/24**), Developmental Disability Program Adaptive

Supports Screening Results (Adaptive Support Form), located in SOMS, which is incorporated by reference.

(j) ~~Inmates Incarcerated persons~~ in the DDP with any of the above-mentioned predatory case factors specified in subsection 3269.5(f) who have not met the established exclusionary period in subsection 3269.5(h), and who also have victimization concerns noted on their Adaptive Support Form can be housed in a non-designated DDP building, but cannot share a cell, bay, wing, or pod in a dorm with another ~~inmate incarcerated person~~ in the DDP with victimization noted on their Adaptive Support Form, or with any ~~inmate incarcerated person~~ who has predatory case factors that have not met the established exclusionary period in subsection 3269.5(h).

(k) An ~~inmate incarcerated person~~ in the DDP with any of the existing predatory case factors specified in subsection 3269.5(f) who has not met the established exclusionary period in subsection 3269.5(h), shall be excluded from housing with ~~inmates incarcerated persons~~ in the DDP who are prone to victimization.

(l) Custody staff, when reviewing double-celling eligibility, shall conduct an assessment to determine if the ~~inmate incarcerated person~~ meets any of the predatory criteria, as specified in subsection 3269.5(f).

(1) Assessments to determine the existence of predatory factors shall include, but not be limited to, review of the following documents: CDC Form 128-B, General Chrono (Rev. 04/74), incorporated by reference; Classification Committee Notes; CDC Form 804 (08/00), Notice of Pending CDC-115, incorporated by reference; Rules Violation Reports (RVRs); Initial Housing Reviews; Confidential Files; and the Probation Officer's Report.

(2) Custody staff shall document their double-celling determination by noting either of the following in the comments section of the automated Classification Committee Chrono (Rev. 05/19), incorporated by reference, and the Initial Housing Review:

(A) Approved to cell with ~~inmates incarcerated persons~~ in the DDP.

(B) Not approved to cell with ~~inmates incarcerated persons~~ in the DDP.

(m) ~~Inmates Incarcerated persons~~ in the DDP shall be housed in designated DDP housing facilities or areas unless overriding medical, mental health, or predatory case factors exist. These factors take precedence over placement in a DDP designated setting. Separate designated DDP housing areas are not required for ~~inmates incarcerated persons~~ housed in medical or mental health settings, as long as the predatory case factors referenced in subsection 3269.5(f) have been reviewed, and the minimum exclusionary periods referenced in subsection 3269.5(h) have been met. Once the overriding case factors have been addressed and the ~~inmate incarcerated person~~ in the DDP no longer requires housing in a specialized setting, the ~~inmate incarcerated person~~ shall be endorsed and transferred to a DDP designated institution or facility, as described in subsection 3269.5(b).

(n) ~~Inmates Incarcerated persons~~ in the DDP shall be provided required adaptive support services while housed at a non-DDP-designated housing area due to medical, mental health, or predatory case factors.

Note: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code; and *Quine v. Beard*, No. C 14-02726 JST, *Clark v. California* 123 F. 3d 1267 (9th Cir. 1997), *Clark v. California* (2002) USDC-ND (No. C-96-1486-CRB).

Article 4. Disorders and Emergencies

3303. Safety and Security.

[Subsections 3303(a)(1) through (a)(3) are unchanged.]

[Subsection 3303(a)(4) is amended to read:]

(4) Staff and inmates shall be familiar with fire evacuation routes, exits, and procedures. An evacuation drill shall be conducted quarterly on each watch. Where such drill would jeopardize personal safety or facility security, staff shall conduct a walk-through of the procedures. Local operating procedures shall be adopted at each institution to ensure the safe evacuation of ~~inmates incarcerated persons~~ with disabilities.

[Subsections 3303(a)(5) through (e) are unchanged.]

Note: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code; *Clark v California* (2002) USDC-ND (No. C-96-1486-CRB); Americans with Disabilities Act, Public Law 101-336, July 26, 1990, 104 Stat. 328.

Article 5. Incarcerated Person Discipline

[New section 3312.1 is adopted to read:]

3312.1 Disciplinary Methods for ~~Inmates Incarcerated Persons~~ in the Developmental Disability Program.

(a) ~~Inmates Incarcerated persons~~ in the Developmental Disability Program (DDP) are subject to discipline in accordance with this article. However, throughout the disciplinary process, staff must take into consideration each ~~inmate's incarcerated person's~~ adaptive support need(s) as it relates to the alleged misconduct.

(b) For ~~inmates incarcerated persons~~ in the DDP, staff shall monitor the ~~inmate's incarcerated person's~~ behavior, and except as provided in subdivision (c), shall address minor ~~misconduct misbehavior~~ informally, utilizing verbal counseling in accordance with section 3312(a)(1). Verbal counseling includes prompting, providing clear and specific instructions, utilizing effective communication, or all the above, commensurate with the ~~inmate's incarcerated person's~~ specific adaptive support need(s), and warning

the ~~inmate incarcerated person~~ of consequences of continued ~~misconduct~~ ~~misbehavior~~.

(c) Should verbal counseling not correct the ~~inmate's incarcerated person's~~ behavior or if the ~~inmate's incarcerated person's alleged~~ misconduct is serious in nature, staff shall utilize the disciplinary methods in section 3312(a)(2) and (3). Staff must take into consideration the severity of the ~~inmate's incarcerated person's~~ disability and the ~~inmate's incarcerated person's~~ need for adaptive support services when determining the method of discipline. **If informal intervention is successful and the incarcerated person in the DDP corrects their behavior, an RVR shall not be issued.**

(1) If circumstances at the time of the ~~alleged misconduct misbehavior~~ allow staff the opportunity to utilize verbal counseling, staff shall review the ~~inmate's incarcerated person's~~ adaptive support need(s) and provide relevant adaptive support(s). Staff must ensure the ~~inmate incarcerated person~~ understands, to the best of the ~~inmate's incarcerated person's~~ ability, the consequences of continued ~~misconduct misbehavior~~.

(2) The Rules Violation Report (RVR) shall include whether relevant adaptive support service(s) were provided to the ~~inmate incarcerated person~~, and the staff's assessment of whether the ~~inmate incarcerated person~~ understood, to the best of the ~~inmate's incarcerated person's~~ ability, the consequences of their behavior.

(3) Attempting to correct ~~misbehavior alleged misconduct~~ informally is not required if the circumstances at the time of the ~~alleged~~ misconduct did not allow staff the opportunity to provide verbal counseling to address the behavior.

(4) A CDCR Form 115-MH-A (Rev. 12/15), Rules Violation Report: Mental Health Assessment (MHA), incorporated by reference, shall be completed by a trained Mental Health Assessing Clinician (AC) for ~~inmates incarcerated persons~~ in the DDP, consistent with section 3317.

(5) When adjudicating an RVR, the hearing official shall take into account the ~~inmate's incarcerated person's~~ adaptive support need(s), as indicated on their automated CDCR Form 128C-2 (Rev. ~~01/24~~ **09/24**), Developmental Disability Program Adaptive Supports Screening Results, located within SOMS and incorporated by reference, at the time of the incident, and whether the need for adaptive support(s) contributed to the ~~alleged~~ misconduct. Victimization, when listed on the 128C-2, must always be considered. The hearing official shall document in the disability section of the RVR whether or not each of the ~~inmate's incarcerated person's~~ noted adaptive support need(s) contributed to the ~~alleged~~ misconduct, and **how, if at all, it contributed the hearing official shall also document their reasoning for their determination.**

(6) The hearing official shall consider the AC's evaluation, as documented on the MHA. The hearing official shall document their consideration of the AC's evaluation and take appropriate action to mitigate **any the** adverse impacts to the ~~inmate incarcerated person~~ if the ~~inmate's incarcerated person's alleged behavior misconduct~~ that led to the RVR was related to a cognitive or adaptive functioning deficit and was found to have contributed to the ~~inmate's incarcerated person's~~ behavior. The Senior Hearing Officer shall document the action taken in the Disciplinary Hearing Results section of the SOMS.

(7) The hearing official may mitigate penalties as recommended by the AC. If the hearing official does not mitigate penalties consistent with the AC's recommendation, they shall document the reasoning for their decision.

(8) ~~If the inmate is found guilty of a rules violation,~~ The Chief Disciplinary Officer (CDO) shall review all disciplinary methods and action in accordance with sections 3312~~(b)(c)~~(1) and ~~(b)(c)~~(2). **The CDO's determination shall be consistent with the primary objective of the DDP, as stated in section 3369.5(a).** For RVRs issued to **inmates incarcerated persons** in the DDP, the CDO shall be the ADA Coordinator, ~~or their designee.~~

(d) The Americans with Disabilities Act (ADA) Coordinator at DDP designated institutions shall review RVRs issued to **inmates incarcerated persons** in the DDP at least monthly to identify any patterns of **misbehavior misconduct** that may be related to the **inmate's incarcerated person's** developmental disability. If the ADA Coordinator determines the patterns of **misbehavior misconduct** may be related to the **inmate's incarcerated person's** developmental disability, they shall refer the **inmate incarcerated person** to the DDP Clinician or Interdisciplinary Support Team for review of appropriateness of all or any of the following: the **inmate's incarcerated person's** current DDP designation; classification; or program placement.

(e) If an **inmate incarcerated person** in the DDP exhibits ongoing behavioral problems, institution clinical staff shall refer the case to the designated DDP Clinician, or their designee, for assistance in assessing the causes of the behavior and creating a behavioral modification ~~treatment~~ plan, when appropriate.

Note: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code; CCR, Title 15, Division 3, Chapter 1, Subchapter 4, Article 5, Inmate Discipline; *Clark v California* (2002) USDC-ND (No. C-96-1486-CRB).

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

[Subsections 3317.1(a) through (d) are unchanged.]

[Subsection 3317.1(e) is adopted to read:]

(e) For incarcerated persons in the Developmental Disability Program, if the Captain disagrees with the clinician's recommendation to have the behavior documented in an alternate manner, the ~~Captain shall ensure they address the specific adaptive functioning deficits noted by the clinician when documenting their rationale for concluding that the adaptive functioning deficits did not strongly contribute to the rules violation.~~ The Captain's decision shall be consistent with the primary objective of the DDP, as stated in section 3369.5(a).

3318. Assistance to Inmates for Serious Rule Violations.

[Subsection 3318(a) is unchanged.]

[Subsection 3318(b) is amended to read:]

(b) Staff Assistant. The assignment of a Staff Assistant is mandatory for ~~inmates~~ **incarcerated persons** in the Developmental Disability Program (DDP).

[Subsection 3318(b)(1) is amended to read:]

(1) The assigned ~~s~~Staff ~~a~~Assistant shall:

[Subsections 3318(b)(1)(A) through 3318(b)(1)(C) are unchanged.]

[New subsections 3318(b)(2) through (b)(2)(C) are adopted to read:]

(2) For all ~~inmates~~ **incarcerated persons** in the DDP, the assigned Staff Assistant shall:

(A) Offer assistance reading relevant documents and completing necessary and related paperwork to prepare for the Rules Violation Report (RVR) hearing, if reading and writing is listed as an identified adaptive support need on the ~~inmate's~~ **incarcerated person's** automated CDCR Form 128C-2 (Rev. ~~01/24~~ **09/24**), Developmental Disability Program Adaptive Supports Screening Results, located within SOMS and incorporated by reference.

(B) Be present at the disciplinary hearing and all interviews related to the disciplinary process including any waiver of the Investigative Employee; be present during the interview with the assigned Investigative Employee and the DDP ~~inmate~~ **incarcerated person**; and consult with the DDP ~~inmate~~ **incarcerated person** and confirm their decision if the DDP ~~inmate~~ **incarcerated person** declines to postpone the RVR hearing pending the status of the referral to the District Attorney for possible criminal prosecution.

(C) Provide and assist with effective communication, to the extent possible, when carrying out duties in subsections 3318(b)(2)(A)-(B).

[Existing subsections 3318(b)(2) through (b)(4) are renumbered (b)(3) through (b)(5), and are amended to read:]

(~~2~~3) The inmate shall be informed that:

(A) The ~~s~~Staff ~~a~~Assistant shall keep confidential any sensitive information the inmate ~~may~~ discloses concerning the charges for which the ~~s~~Staff ~~a~~Assistant was assigned unless the ~~inmate~~ **incarcerated person** consents to disclosure or if disclosure is required by law or as described in section 3318(b)(4).

(B) All evidence and information obtained and considered or developed in the disciplinary process may be used in court if the violation has been or is to be referred for criminal prosecution.

(34) If the ~~s~~Staff ~~a~~Assistant becomes aware that the inmate is contemplating future criminal conduct, the ~~s~~Staff ~~a~~Assistant shall disclose this information if necessary to protect potential victims and prevent the contemplated crime.

(45) The ~~s~~Staff ~~a~~Assistant shall inform the inmate that all evidence and information obtained and considered or developed in the disciplinary process may be used in court if the same charges have been or are to be referred to the district attorney for possible criminal prosecution.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 2932 and 5054, Penal Code. Clark v California (2002) USDC-ND (No. C-96-1486-CRB).

Article 7. Restricted Housing

[Existing vacated section 3335.5 is re-purposed]

~~3335.5. Exclusions.~~

[New section 3335.5 is adopted to read:]

3335.5 Restricted Housing for ~~Inmates~~ Incarcerated Persons in the Developmental Disability Program.

(a) Notwithstanding section 3335, the following procedures shall apply to ~~inmates~~ **incarcerated persons** in the Developmental Disability Program (DDP) housed in a restricted housing unit:

(b) ~~Inmates~~ **Incarcerated persons** in the DDP shall be provided adaptive support services, regardless of their housing setting. Mental health staff shall interview an ~~inmate~~ **incarcerated person** in the DDP who is placed in a restricted housing unit within 24 hours of placement and notify custody staff if any changes to the ~~inmate's~~ **incarcerated person's** adaptive support services are required.

(c) The assigned Mental Health Clinician, or designee, shall monitor all ~~inmates~~ **incarcerated persons** in the DDP who are placed in a restricted housing unit, on a weekly basis, to determine if the ~~inmate's~~ **incarcerated person's** prescribed adaptive support services are adequate.

(d) Mental Health Services shall be contacted if the ~~inmate's~~ **incarcerated person's** condition deteriorates. The referral shall be documented on the CDCR Form 128-MH5 (Rev. 05/14), Mental Health Referral Chrono, incorporated by reference, identifying the specific reason(s) for the referral, including but not limited to recommendations for alternative placement, and adaptive support services.

(e) A psychiatric technician, or designee, shall make contact with each ~~inmate~~ **incarcerated person** in the DDP in a restricted housing unit, on a daily basis, to monitor the ~~inmate's~~ **incarcerated person's** adaptive functioning.

Note: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code; *Clark v California* (2002) USDC-ND (No. C-96-1486-CRB).

3344. Assistance to Inmates for Restricted Housing Classification Hearings.

[Subsection 3344(a) is amended to read:]

(a) The Administrative Reviewer of the automated Restricted Housing Unit Placement Notice (RHUPN) (11/23), which is incorporated by reference, or official ordering an inmate retained in restricted housing, shall determine the need for providing assistance to inmates placed or retained in restricted housing. 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 an SA or IE may be assigned. **For inmates incarcerated persons in the DDP, an SA is required to be present during the administrative review of the RHUPN when a RHUPN is required by this Article. The presence of the SA must be documented in those instances.** The duties and functions of a staff member assigned to assist an inmate in a classification hearing based upon an automated RHUPN (11/23) will be separate from those described in section 3318 for a disciplinary hearing.

[Existing subsection 3344(b) is unchanged but is shown for reference purposes.]

(b) A SA shall be assigned if:

[Existing subsections 3344(b)(1) through (b)(3) are unchanged.]

[Existing subsection 3344(b)(4) is amended to read:]

(4) The inmate is included in the Mental Health Services Delivery System (MHSDS); ~~is Developmentally Disabled in the Developmental Disability Program (DDP), with a DDP designation of DD1, DD2, or DD3;~~ or the circumstances surrounding restricted housing unit placement involve behavior of a bizarre or unusual nature.

[Existing subsection 3344(b)(4)(A) is unchanged.]

[Existing subsection 3344(c) is unchanged.]

[Existing subsections 3344(d) through (d)(2) are unchanged.]

[Existing subsections 3344(e) through (e)(5) are unchanged.]

[Subsection 3344(e)(6) is amended to read:]

(6) Keep confidential any sensitive information the inmate ~~may disclose~~ concerning the charges for which the SA was assigned unless the inmate incarcerated person consents to disclosure or if disclosure is required by law as described in section 3344(e)(8).

[Subsections 3344(e)(7) through (e)(12) are unchanged.]

[New subsection 3344(f) is adopted to read:]

(f) In addition to the duties set forth in subsections 3344(e)(1)-(12), for all inmates incarcerated persons in the DDP, the Staff Assistant shall also provide the following assistance:

(1) Offer assistance reading relevant documents and completing necessary and related paperwork to prepare for the classification hearing, if the adaptive support need is indicated on the inmate's incarcerated person's automated CDCR Form 128C-2 (Rev. ~~01/24~~ 09/24), Developmental Disability Program Adaptive Supports Screening Results, located within SOMS and incorporated by reference.

(2) Be present at the classification hearing and all interviews related to the classification process.

(3) Provide and assist with effective communication.

[Existing subsection 3344(f) is renumbered (g), but is otherwise unchanged, and is shown for reference purposes.]

(fg) The SA assigned and assisting the inmate in the manner described above shall be the same staff member who appears with the inmate at the classification hearing.

Existing subsections 3344(h) through (l)(8) are renumbered (i) through (m)(8) but are otherwise 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) (2002) USDC-ND (No. C-96-1486-CRB).

[New Article 9.1 is adopted to read:]

Article 9.1 ~~Research of Inmates/Parolees [Repealed]~~ Developmental Disability Program

[New sections 3369.5 through 3369.13 are adopted to read:]

3369.5. ~~Research. [Repealed]~~ Developmental Disability Program: General Policy.

(a) The primary objective of the Developmental Disability Program (DDP) is to provide equal access to programs, services, and activities to inmates incarcerated persons with

developmental disabilities and those with cognitive and concurrent adaptive functioning deficits meeting the established inclusion criteria. All departmental programs, services, and activities shall be equally accessible to participants in the DDP, and CDCR shall promote and facilitate participation consistent with legitimate penological interests.

3369.6. Reception Center Screening and Processing.

(a) With the exception of subsection 3369.6(a)(1), CDCR shall screen all ~~inmates~~ **incarcerated persons** at a Reception Center for potential inclusion into the Developmental Disability Program (DDP) and house ~~inmates~~ **incarcerated persons** in a manner that addresses their safety and security needs. The automated CDCR Form 200-A (~~01/24 09/24~~), Developmental Disability Program Adaptive Support Log – Housing Unit, located within SOMS and incorporated by reference, with a photograph of the ~~inmate~~ **incarcerated person** identified in the DDP, shall be maintained by custody staff in a secure location.

(1) CDCR will not screen any condemned ~~inmate~~ **incarcerated person** (those serving a death sentence) for potential inclusion into the DDP when a CDCR Form 0201 (~~01/24 09/24 02/25~~), Condemned Incarcerated Persons – Waiver of Developmental Disability Program Screening and Inclusion, incorporated by reference, signed by both the ~~inmate and their legal counsel~~ **incarcerated person and the California Appellate Project or designated conflict assisting counsel**, has been received by CDCR within 30 calendar days of the ~~inmate's~~ **incarcerated person's** arrival at a Reception Center.

(2) Existing waivers that are already in place prior to the adoption of section 3369.6(a)(1) will continue to be honored.

(2)(3) If at any time the condemned ~~inmate~~ **incarcerated person** with the waiver of DDP screening is no longer condemned, or serving a death sentence, or their death sentence has been overturned or commuted and their sentence is not subject to further appeals, the DDP waiver is no longer valid and CDCR shall screen the ~~inmate~~ **incarcerated person** pursuant to subsection 3369.6(a).

(4) Before initiating DDP screening of any condemned or formerly condemned incarcerated person, staff shall confirm with the department's Office of Legal Affairs that DDP screening is appropriate.

~~(b) Inmates in the DDP who parole and return to CDCR on a new term (new CDCR number), shall be re-screened for DDP placement consistent with subsection 3369.6(a).~~

~~(c) If an inmate in the DDP paroles and returns to CDCR five years or more from the date of their last term, the inmate shall be re-screened for DDP placement consistent with subsection 3369.6(a) incarcerated person previously designated NCF, NDD, DD1, DD2, or DD3 returns to CDCR, they shall be re-screened for DDP inclusion.~~

(dc) Within 30 calendar days of arrival at a designated DDP institution or facility, ~~inmates~~ **incarcerated persons** in the DDP shall be provided orientation by designated staff, consistent with section 3002 and as prescribed by local operating procedures.

(ed) The orientation process shall be documented on a CDC Form 128-B (Rev. 04/74), General Chrono, incorporated by reference, and retained in the ~~inmate's~~ **incarcerated person's** central file.

Note: Authority cited: Section 5058, Penal Code. Reference: Section 5054. Penal Code; *Clark v California* (2002) USDC-ND (No. C-96-1486-CRB).

3369.7. Developmental Disability Program Criteria and Categories.

(a) Criteria for inclusion in the Developmental Disability Program (DDP) requires both low cognitive functioning (IQ of 75 or below) and concurrent adaptive functioning deficits.

(1) On a case-by-case basis, ~~inmates~~ **incarcerated persons** with an IQ above 75 may be included in the DDP if ~~mental health staff determine~~ their adaptive functioning is poor and their needs are not met through another program, e.g., Disability Placement Program (DPP), Enhanced Outpatient Program (EOP), etc. **In making the determination, mental health staff shall take into consideration the incarcerated person's level of cognitive impairment, if any, and their ability to program effectively and safely in the correctional setting.**

(2) Cognitive or adaptive deficits entirely due to mental or physical illnesses requiring long-term hospital care are not criteria for inclusion in the DDP. ~~Inmates~~ **incarcerated persons** with severe mental or physical illnesses may exhibit deficits in cognitive and adaptive abilities. Such ~~inmates~~ **incarcerated persons may** shall be excluded from the DDP if they meet ~~both of the following~~ criteria **in both 3369.7(a)(2)(A) and (B) below; however, if they are already included in the DDP, they shall remain in the DDP.**

(A) Their mental or physical illness is entirely responsible for these deficits, i.e., they would not need the adaptive supports of the DDP except for their illness.

(B) Their illness is being treated in a medical setting, including but not limited to: EOP, Outpatient Housing Unit (OHU), Correctional Treatment Center (CTC), General Acute Care Hospital (GACH), Acute Care Hospital (ACH), Department of Mental Health (DMH), etc.

(b) Based on DDP screening results, mental health staff shall place ~~inmates~~ **incarcerated persons** into one of the following designations:

(1) Negative Current Finding (NCF) – ~~Inmate-Incarcerated person~~ has adequate cognitive functions, based on receipt of a passing score on a cognitive screening instrument; therefore does not require an adaptive functioning evaluation. An ~~inmate~~ **incarcerated person** designated NCF is not included in the DDP.

(2) Negative Disability Designation (NDD) – ~~Inmate-Incarcerated person~~ may have low cognitive functioning but was determined not to have adaptive support needs. An ~~inmate~~ **incarcerated person** designated NDD is not included in the DDP, but had an adaptive functioning evaluation completed.

(3) DD1 – ~~Inmate-Incarcerated person~~ can function successfully in a General Population (GP) setting in a designated DDP institution consistent with other case factors and usually does not require prompts to initiate activities of self-care and daily living. The ~~inmate incarcerated person~~ may need supervision or guidance and assistance when under unusual stress or in new situations. The ~~inmate incarcerated person~~ requires housing in a designated DDP building, unit, or wing.

(4) DD2 – ~~Inmate-Incarcerated person~~ can function successfully in a GP setting in a designated DDP institution consistent with other case factors. The ~~inmate incarcerated person~~ requires prompts to initiate self-care, daily living activities, or both, and may have victimization concerns, thereby requiring housing in a designated DDP building, unit, or wing.

(5) DD3 – ~~Inmate-Incarcerated person~~ requires placement in a highly structured, specialized program in a designated DDP institution capable of meeting the ~~inmate's incarcerated person's~~ needs. The ~~inmate incarcerated person~~ requires constant prompts and can likely not complete tasks without them. The ~~inmate incarcerated person~~ may have victimization concerns, thereby requiring housing in a designated DDP building, unit, or wing.

Note: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code; *Clark v California* (2002) USDC-ND (No. C-96-1486-CRB).

3369.8. Extended Reception Center Stay for ~~Inmates~~ Incarcerated Persons in the Developmental Disability Program.

(a) In accordance with section 3379(b), ~~inmates incarcerated persons~~ in the Developmental Disability Program (DDP) shall be processed and transferred to the endorsed institution or facility no more than 60 calendar days from the date they are received at the Reception Center (RC), unless the ~~inmate incarcerated person~~ is detained due to non-developmental disability related circumstances preventing the ~~inmate's incarcerated person's~~ transfer to another institution. Non-developmental disability related circumstances include, but are not limited to: medical necessity, court appearances, pending disciplinary proceedings, and no documented in-level bed availability system-wide. ~~Incarcerated persons in the DDP awaiting transfer to the endorsed institution or facility shall be provided adaptive support services, as identified on the incarcerated person's automated CDCR Form 200-A (09/24), Developmental Disability Program Adaptive Support Log - Housing Unit, which is incorporated by reference, and located within SOMS.~~

(b) Expedited Transfers.

~~(1) Once an inmate at a RC is placed into the DDP the Correctional Counselor (CC) III shall ensure the RC processing is completed by the CC I, approved and signed by the Committee Chairperson, and the case is presented to the Classification Staff Representative (CSR) within 14 working days.~~

~~(2) The CSR shall endorse inmates in the DDP to an appropriate designated DDP institution or facility.~~

~~(3) Inmates in the DDP, awaiting transfer to the endorsed institution or facility, shall be provided adaptive support services, as identified on the inmate's automated CDCR Form 200-A (01/24), Developmental Disability Program Adaptive Support Log Housing Unit, which is located within SOMS and is incorporated by reference.~~

(eb) Privileges.

(1) ~~Inmates Incarcerated persons~~ in the DDP who remain at a RC for more than 60 calendar days are entitled to privileges that are available to ~~inmates incarcerated persons~~ at general population institutions, as outlined in section 3044(d), Privilege Group A.

(2) When the Correctional Counselor (CC) III or Classification and Parole Representative (C&PR) responsible for tracking ~~inmates incarcerated persons~~ in the DDP determines that an ~~inmate incarcerated person~~ in the DDP will exceed 60 calendar days in a RC, the ~~inmate's incarcerated person's~~ case shall be presented to a classification committee on or before the 61st calendar day to determine if the ~~inmate incarcerated person~~ is entitled to extended stay privileges, consistent with section 3044(b)(8)(G).

(3) The committee's decision shall be documented in the automated Classification Committee Chrono (Rev. 05/19), incorporated by reference, and the appropriate custody staff shall be notified to ensure privileges are provided as required.

(4) If a classification committee denies extended stay privileges, the ~~inmate incarcerated person~~ in the DDP shall be returned to the classification committee every 30 calendar days thereafter to re-evaluate their case for extended stay privilege eligibility.

Note: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code; *Clark v California* (2002) USDC-ND (No. C-96-1486-CRB).

3369.9. Identification of Developmental Disability Program ~~Inmates Incarcerated Persons~~ within the Existing Population.

(a) Referrals.

(1) ~~Inmates Incarcerated persons~~ may be referred for consideration of placement into the Developmental Disability Program (DDP) at any time even if they were not included in the DDP during the initial screening process. Any staff member may submit a referral to the Mental Health Program by submitting a CDCR Form 128-MH5 (Rev. 05/14), Mental Health Referral Chrono, incorporated by reference. ~~Inmates Incarcerated persons~~ may also self-refer by notifying staff or submitting a CDCR Form 1824 (Rev. 09/17), Reasonable Accommodation Request, which is incorporated by reference.

(2) If an ~~inmate's incarcerated person's~~ adaptive support(s), listed on their automated CDCR Form 128C-2 (Rev. ~~01/24~~ **09/24**), Developmental Disability Program Adaptive Supports Screening Results, located within SOMS, and incorporated by reference, do not match their current level of functioning, staff shall document their observation on a CDCR Form 128-MH5 (Rev. 05/14), Mental Health Referral Chrono and submit the CDCR Form 128-MH5 to the Mental Health Program.

Note: Authority cited: Section 5058, Penal Code. Reference: Section 5054. Penal Code; *Clark v California* (2002) USDC-ND (No. C-96-1486-CRB).

3369.10. Adaptive Support Services.

(a) Mental health staff shall identify the specific adaptive support services the ~~inmate~~ **incarcerated person may** needs, for ~~inmates~~ **incarcerated persons** placed in the Developmental Disability Program (DDP). Mental health staff identify this information on the automated CDCR Form 128C-2 (Rev. ~~01/24~~ **09/24**), Developmental Disability Program Adaptive Supports Screening Results, which is located within SOMS and is incorporated by reference.

(b) Documenting Adaptive Supports.

(1) Staff shall provide ~~inmates~~ **incarcerated persons** in the DDP with adaptive support services, as listed, and at the frequency indicated, on the ~~inmate's~~ **incarcerated person's** automated CDCR Form 200-A (~~01/24~~ **09/24**), Developmental Disability Program Adaptive Support Log - Housing Unit (Adaptive Support Log), located within SOMS and incorporated by reference, in all institutions. Adaptive support services are provided to ensure ~~inmates~~ **incarcerated persons** in the DDP have equal access to programs, services, and activities.

(2) Supervisors shall ensure staff are providing ~~inmates~~ **incarcerated persons** in the DDP with adaptive support services, as listed, and at the frequency indicated, on the ~~inmate's~~ **incarcerated person's** Adaptive Support Log, and that staff are documenting this information on the automated CDCR Form 200-A, Developmental Disability Program Adaptive Support Log – Housing Unit, or automated CDCR Form 200-B (~~01/24~~ **09/24**), Developmental Disability Program Adaptive Support Log – Work/School, which is incorporated by reference and is located in SOMS (Adaptive Support Log).

(3) Supervisors shall conduct a weekly review of the ~~inmate~~ **incarcerated person** in the DDP's Adaptive Support Log (CDCR Forms 200-A and 200-B) in the housing, work, and education areas.

(c) Written materials.

(1) Staff shall provide assistance to all ~~inmates~~ **incarcerated persons** in the DDP ~~on a case-by-case basis as needed~~, to ensure that those who have difficulty reading or communicating in writing, or both, will be provided reasonable assistance with completing and reading departmental documents.

(d) Verbal Announcements.

(1) Staff shall ensure that effective communication is used with all ~~inmates~~ **incarcerated persons** in the DDP regarding public address announcements and reporting instructions, including but not limited to visiting, yard release and recall, count, lock-up, and unlock.

Note: Authority cited: Section 5058, Penal Code. Reference: Section 5054. Penal Code; Clark v California (2002) USDC-ND (No. C-96-1486-CRB).

3369.11. Interdisciplinary Support Team.

(a) The Interdisciplinary Support Team (IDST) is a multiple member team at institutions, and acts as the Institution Classification Committee, Unit Classification Committee, or both, for to assist inmates incarcerated persons in the DDP. The IDST reviews and determines program needs of inmates incarcerated persons in the DDP.

(b) The IDST is comprised of clinical, classification, custodial, and education staff. It must include, at a minimum, the following staff:

(1) The inmate's incarcerated person's assigned CC I.

(2) A Mental Health Clinician, or clinical staff assigned to monitor the inmate's incarcerated person's adaptive support needs.

(3) The Facility Captain or their designee.

(A) The correctional officer assigned to monitor the inmate's incarcerated person's daily activities, and educational and work staff, shall participate as an IDST member when requested by the committee.

(c) The IDST shall review and determine the inmate's incarcerated person's classification, custody, and program. Additionally, the IDST shall review the inmate's incarcerated person's adaptive support services, as indicated on the inmate's incarcerated person's automated CDCR Form 128C-2 (Rev. 01/24 09/24), Developmental Disability Program Adaptive Supports Screening Results, located within SOMS and incorporated by reference, to ensure the provision of adaptive support services, as indicated.

(1) With the exception of the initial IDST review, the IDST shall query the inmate incarcerated person to confirm that departmental staff are offering, providing, or assisting with adaptive support services, as indicated on the inmate's incarcerated person's automated CDCR Form 128C-2, and make recommendations to clinical staff, custody staff, or both, to address any identified gaps, including but not limited to modifying adaptive support services commensurate to the inmate's incarcerated person's current level of adaptive functioning, changes to the inmate's incarcerated person's DDP designation, or both, as appropriate.

(2) The initial IDST review after an inmate's incarcerated person's arrival at an institution or after a DDP designation change, shall inform the inmate incarcerated person that institutional staff will provide prescribed adaptive support services at the institution where the inmate incarcerated person is located.

(3) If the DDP designation changes, but the incarcerated person is not transferred, the IDST shall inform the incarcerated person that institutional staff will provide the newly prescribed adaptive supports. The IDST shall also query the incarcerated person to determine if staff are offering or providing assistance with adaptive supports that remain on the automated CDCR Form 128C-2.

(d) The initial IDST review shall be completed within 14 ~~calendar~~ working days of the ~~inmate's incarcerated person's~~ arrival at an institution, ~~or and within 14 working days~~ after a DDP designation change. The IDST shall act as the Institution Classification Committee, Unit Classification Committee, or both, for routine reviews of incarcerated persons in the DDP, as outlined in subsections 3369.11(d)(1)(A) through (d)(1)(C) below.

(1) The IDST shall conduct routine reviews based on the ~~inmate's incarcerated person's~~ DDP designation and individual needs, at the following frequency:

- (A) DD1: annually.
- (B) DD2: every six months.
- (C) DD3: every three months.

(e) The IDST may review a DDP case more frequently, if needed.

(f) All decisions, actions, and recommendations by the IDST shall be documented on the automated Classification Committee Chrono (Rev. 05/19), incorporated by reference.

(1) The names of participants in the IDST shall also be included on the automated Classification Committee Chrono.

Note: Authority cited: Section 5058, Penal Code. Reference: Section 5054. Penal Code; Clark v California (2002) USDC-ND (No. C-96-1486-CRB).

3369.12. ~~Inmate~~ Incarcerated Person Work and Program Assignments.

(a) All ~~inmates incarcerated persons~~ with disabilities are entitled to equal access to work and programs, as ~~inmates incarcerated persons~~ without disabilities.

(b) Once an ~~inmate incarcerated person~~ has been assigned to a program, ~~and staff are aware staff shall be made aware~~ the ~~inmate incarcerated person~~ has a disability and needs a reasonable accommodation(s). ~~†The staff administering the program shall make the necessary reasonable accommodation(s), where possible, to enable the inmate's incarcerated person's participation.~~

(1) Accommodations may include, but are not limited to the provision of adaptive supports, assistive devices, and modifications or adjustments to a program.

(c) An ~~inmate's incarcerated person's~~ disability ~~or Developmental Disability Program (DDP) designation~~ shall not be the sole basis for precluding a work or program assignment. An ~~inmate incarcerated person in the DDP who is disabled~~, who may be eligible for a work or program assignment, ~~but who cannot be reasonably accommodated~~, shall be referred to the Interdisciplinary Support Team (IDST) or Unit Classification Committee (UCC) for further placement consideration. Assignment shall be made on a case-by-case basis, taking into consideration the totality of the ~~inmate's incarcerated person's~~ case factors and the department's ability to reasonably accommodate the incarcerated person.

(d) When an ~~inmate incarcerated person in the DDP~~ who is disabled is disqualified or removed from a program or work assignment, the determination shall be documented on the automated Classification Committee Chrono (Rev. 05/19), incorporated by reference.

Note: Authority cited: Section 5058, Penal Code. Reference: Section 5054. Penal Code *Clark v California* (2002) USDC-ND (No. C-96-1486-CRB).

3369.13 Academic Assignments.

(a) Designated Developmental Disability Program (DDP) institutions shall provide student support during education assignments for ~~inmates incarcerated persons~~ in the DDP.

(b) Instructional staff shall have credentials issued by the California Commission on Teacher Credentialing. A minimum of one instructor at each designated DDP institution must have a Special Education Credential and be assigned as a Resource Specialist Program (RSP) teacher.

(c) Notwithstanding reasonable circumstances for delay, a Student Study Team comprised of the RSP teacher, the classroom teacher, an education supervisor, and the ~~inmate incarcerated person~~, shall meet within ten working days of an ~~inmate incarcerated person~~ in the DDP being assessed and placed in an education program. Thereafter, the Student Study Team shall meet at least once annually for review and assessment of the ~~inmate's incarcerated person's~~ placement. Circumstances that may warrant delay include, but are not limited to ~~inmate incarcerated person~~ refusal, modified programming at the institution, or situations that pose a threat or jeopardize the safety or security of the ~~inmate incarcerated person~~, staff, the institution, or others. A teacher may request a team meeting whenever there are behavioral issues that must be addressed to prevent removal from the assignment.

(d) All ~~inmates incarcerated persons~~ in the DDP who have been assigned to education programs shall be assessed in reading grade level and math. An Individually Tailored Education Plan (ITEP) shall be created for the ~~inmate incarcerated person~~ to establish goals, objectives, or accommodations, taking into consideration the individual's adaptive support needs. The ITEP shall be reviewed at least every six months.

(e) For ~~inmates incarcerated persons~~ in the DDP, with severe cognitive disabilities and who have not made educationally expected progress on formative, summative, and standardized educational assessments pertaining to their enrolled classes, the RSP teacher or designee ~~may shall~~ initiate a Student Study Team (~~SST~~) to consider the appropriateness of a Certificate of Attendance and Participation (CAP) for the ~~inmate incarcerated person~~. If the SST, as well as the incarcerated person in the DDP, agree that a CAP is the most appropriate option, and if the criteria in subsection 3369.13(e)(1)(A) through (E) are met, Aa CAP ~~may shall~~ be approved by the SST Classification Committee on a case-by-case basis.

If a CAP is approved, the ~~inmate incarcerated person~~ in the DDP shall be awarded a program completion and Milestone Completion Credit in accordance with the Milestone Completion Credit Schedule in subsection 3043.3(d) will be unassigned from the class and reassigned to an appropriate program or wait list if the program has a wait list.

(1) ~~Inmates Incarcerated persons~~ in the DDP meeting all of the following criteria are eligible for a CAP:

(A) Reading level of 4.0 or below.

(B) Assigned to a ~~DDP RSP~~ teacher or principal designee for a minimum of one year.

(C) Attended at least four years of education beyond the eighth grade, at an accredited secondary school (public, private, or CDCR).

(D) Satisfactorily met the Individually Tailored Education Plan (ITEP) goals and objectives as determined by the Student Study Team.

(E) Participated in an instructional program as prescribed in their ITEP.

Note: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code *Clark v California* (2002) USDC-ND (No. C-96-1486-CRB).

Article 9.5. Case Records

3370. Case Records File and Unit Health Records Material--Access and Release.

[Subsections 3370(a) through (e) are unchanged.]

[New subsection 3370(f) is adopted to read:]

(f) ~~Inmates Incarcerated persons~~ shall not have access to another ~~inmate's incarcerated person's~~ Developmental Disability Program (DDP) status.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 2081.5, 5054 and 6126.5, Penal Code; Sections 56.10, 1798.24 and 1798.40, Civil Code; and Code of Federal Regulations, Title 45, Sections 164.512 and 164.524; *Clark v California* (2002) USDC-ND (No. C-96-1486-CRB).

Article 10. Classification

[New section 3376.2 is adopted to read:]

3376.2. Classification of ~~Inmates Incarcerated Persons~~ in the Developmental Disability Program.

(a) Case management for all ~~inmates incarcerated persons~~ in the Developmental Disability Program (DDP) shall comply with established classification procedures.

(b) Classification procedures and committee decisions shall ensure that ~~inmates~~ **incarcerated persons** in the DDP are not exposed to a significant risk of harm, abuse, or harassment.

(c) The Interdisciplinary Support Team (IDST) at designated DDP institutions shall review and record in the classification committee notes, the continued appropriateness of an ~~inmate's~~ **incarcerated person's** placement in the DDP, including the ~~inmate's~~ **incarcerated person's** designated endorsement and any determination made regarding the ~~inmate's~~ **incarcerated person's** prescribed adaptive support needs.

(d) The IDST members shall:

(1) Conduct a housing review to ensure housing is commensurate with the ~~inmate's~~ **incarcerated person's** current case factors and DDP designation.

(2) With the exception of the initial IDST as described in subsection 3369.11(c)(2), ensure the ~~inmate's~~ **incarcerated person's** prescribed adaptive support services are being offered and provided, consistent with their DDP designation, and that those supports are appropriate given the ~~inmate's~~ **incarcerated person's** current adaptive functioning.

(3) Ensure work supervisors and school educators are aware of all the ~~inmate's~~ **incarcerated person's** adaptive support needs. A current list of the ~~inmate's~~ **incarcerated person's** adaptive supports is required to be kept in the work and education areas for all ~~inmates~~ **incarcerated persons** in the DDP assigned to a work or ~~program education~~ assignment. During the first two weeks of a work or school assignment, ~~and as needed thereafter,~~ staff shall ~~document on the CDCR Form 200-B (09/24), Developmental Disability Program Adaptive Support Log - Work/School, which is located within SOMS and is incorporated by reference,~~ **any unusual occurrences, and also provide document that** the adaptive support needs listed on the automated CDCR Form 200-B ~~(01/24), Developmental Disability Program Adaptive Support Log - Work/School, which is located within SOMS and is incorporated by reference~~ were provided to the incarcerated person in the DDP. ~~If any unusual occurrences are observed after the first two weeks of a new assignment, staff shall submit a CDCR Form 128-MH5 (Rev. 05/14), Mental Health Referral Chrono, incorporated by reference, to Mental Health Services. As needed, all other adaptive support needs as indicated on the automated CDCR Form 128C-2 (Rev. 01/24), Developmental Disability Program Adaptive Supports Screening Results, located within SOMS and incorporated by reference (Adaptive Support Form), shall be provided, and recorded on the automated CDCR Form 200-B (01/24) Developmental Disability Program Adaptive Support Log - Work/School.~~

(4) Review the CDCR Form 128C-2 at the initial and annual classification committees for all ~~inmates~~ **incarcerated persons** housed in a designated DDP building or unit, to identify whether the ~~inmate~~ **incarcerated person** has any case factors, including predatory case factors as set forth in subsection 3269.5(f), that would require a different housing placement.

(e) If an ~~inmate's incarcerated person's~~ individual circumstances demonstrate they are unable to benefit from specific educational programming despite efforts to enable the ~~inmate's incarcerated person's~~ meaningful participation in educational programming, the ~~inmate incarcerated person~~ will be considered for removal. The request can be made by the ~~inmate incarcerated person~~; educational, medical, or custody staff; or by a combination or all of these individuals.

(1) Consistent with section 3040.3(b), the classification committee, with an Educational Administrator as a committee member, shall review any requests for removal from educational programming.

(2) If removal from educational programming is approved, the ~~Inmate-Incarcerated Person~~ Assignment Office shall un-assign an ~~inmate incarcerated person~~ from the class and may reassign them to an appropriate alternate assignment or waitlist.

Note: Authority cited: Sections 5058 and 5058.3, Penal Code. Reference Sections 3020, 5054 and 5068, Penal Code. *Clark v California* (2002) USDC-ND (No. C-96-1486-CRB); Americans with Disabilities Act, Public Law 101-336, July 26, 1990, 104 Stat. 328.

**CONDEMNED INCARCERATED PERSONS - WAIVER OF DEVELOPMENTAL
DISABILITY PROGRAM SCREENING AND INCLUSION**

CDCR 0201 (09/24)

Page 1 of 1

Upon reception, the California Department of Corrections and Rehabilitation (CDCR) screens all incarcerated persons for potential inclusion into the Developmental Disability Program (DDP). DDP screening encompasses cognitive tests (Phase I and Phase II) and the *Clark* Adaptive Support Evaluation (Phase III), which may include an interview with the incarcerated person, staff, or both, and a review of relevant records.

CDCR will not initiate screening for inclusion into the DDP for any incoming condemned incarcerated person until thirty (30) calendar days after the incarcerated person's arrival in prison, to allow the California Appellate Project or designated conflict assisting counsel for the condemned incarcerated person to advise them and communicate to CDCR in writing any waiver of the DDP screening.

I _____, attest:

PRINT NAME OF INCARCERATED PERSON

- I am currently serving a death sentence at the CDCR; and
- I am electing to waive DDP screening; and
- By waiving the DDP screening process, I understand I am specifically waiving inclusion in the DDP and I will not be part of the DDP; and
- I understand that my waiver of DDP screening is a legal defense for CDCR, for any claims made, relief sought, or both, related to allegations that I may make against CDCR for failure to screen me for DDP inclusion; and
- I understand that by waiving DDP screening, this does not preclude CDCR from engaging in other departmental screening or processes intended to identify appropriate housing, services, or both, for condemned incarcerated persons; and
- I understand my waiver of DDP screening only applies if I am serving a death sentence (i.e., condemned); and
- At any point if I am no longer serving a death sentence while incarcerated at the CDCR (i.e., death sentence is overturned or commuted and is not subject to further appeals), this waiver of DDP screening is no longer valid and CDCR will screen me for potential inclusion into the DDP; and
- I understand I should consult with the California Appellate Project or designated conflict assisting counsel about the DDP screening process, and both the California Appellate Project or designated conflict assisting counsel and I shall sign this waiver agreement for it to be valid; and
- I understand I may withdraw my waiver of DDP screening at any time by submitting a written request, signed by both the California Appellate Project or designated conflict assisting counsel and myself, addressed to CDCR to withdraw this waiver.

I attest all above statements are true and correct and by signing this form, I am doing so voluntarily of my own free will to waive DDP screening and inclusion into the DDP.

PRINTED NAME/ CDCR NUMBER
(Incarcerated Person)

SIGNATURE (Incarcerated Person)

DATE

PRINTED NAME (California Appellate Project
or designated conflict assisting counsel)

SIGNATURE (California Appellate Project
or designated conflict assisting counsel)

DATE

Instructions: The completed form shall be transmitted to CDCR by email:

CDCRCCWFLitigationCoordinator@cdcr.ca.gov (for female institutions) and

CDCRSQLitigationCoordinator@cdcr.ca.gov (for male institutions).

**CONDEMNED INCARCERATED PERSONS - WAIVER OF DEVELOPMENTAL
DISABILITY PROGRAM SCREENING AND INCLUSION**

CDCR 0201 (02/25)

Page 1 of 1

Upon reception, the California Department of Corrections and Rehabilitation (CDCR) screens all incarcerated persons for potential inclusion into the Developmental Disability Program (DDP). DDP screening encompasses cognitive tests (Phase I and Phase II) and the *Clark* Adaptive Support Evaluation (Phase III), which may include an interview with the incarcerated person, staff, or both, and a review of relevant records.

CDCR will not initiate screening for inclusion into the DDP for any incoming condemned incarcerated person until thirty (30) calendar days after the incarcerated person's arrival in prison, to allow the California Appellate Project or designated conflict assisting counsel for the condemned incarcerated person to advise them and communicate to CDCR in writing any waiver of the DDP screening.

I _____, attest:

PRINT NAME OF INCARCERATED PERSON

- I am currently serving a death sentence at the CDCR; and
- I am electing to waive DDP screening; and
- By waiving the DDP screening process, I understand I am specifically waiving inclusion in the DDP and I will not be part of the DDP; and
- I understand that my waiver of DDP screening is a legal defense for CDCR, for any claims made, relief sought, or both, related to allegations that I may make against CDCR for failure to accommodate me in the DDP; and
- I understand that by waiving DDP screening, this does not preclude CDCR from engaging in other departmental screening or processes intended to identify appropriate housing, services, or both, for condemned incarcerated persons; and
- I understand my waiver of DDP screening only applies if I am serving a death sentence (i.e., condemned); and
- At any point if I am no longer serving a death sentence while incarcerated at the CDCR (i.e., death sentence is overturned or commuted and is not subject to further appeals), this waiver of DDP screening is no longer valid and CDCR will screen me for potential inclusion into the DDP; and
- I understand I should consult with the California Appellate Project or designated conflict assisting counsel about the DDP screening process, and both the California Appellate Project or designated conflict assisting counsel and I shall sign this waiver agreement for it to be valid; and
- I understand I may withdraw my waiver of DDP screening at any time by submitting a written request, signed by both the California Appellate Project or designated conflict assisting counsel and myself, addressed to CDCR to withdraw this waiver.

I attest all above statements are true and correct and by signing this form, I am doing so voluntarily of my own free will to waive DDP screening and inclusion into the DDP.

PRINTED NAME/ CDCR NUMBER
(Incarcerated Person)

SIGNATURE (Incarcerated Person)

DATE

PRINTED NAME (California Appellate Project
or designated conflict assisting counsel)

SIGNATURE (California Appellate Project
or designated conflict assisting counsel)

DATE

Instructions: The completed form shall be transmitted to CDCR by email:

CDCRCCWFLitigationCoordinator@cdcr.ca.gov (for female institutions) and

CDCRSQLitigationCoordinator@cdcr.ca.gov (for male institutions).

DEVELOPMENTAL DISABILITY PROGRAM
ADAPTIVE SUPPORTS SCREENING RESULTS

CDCR 128C-2 (Rev. 09/24) Institution: _____

Patient Name: _____ CDCR#: _____ Fin #: _____ DOB: _____ Age: _____

Height : _____ Weight : _____ Sex: _____ Admit Date: _____ CASE Date: _____

Admitting Diagnosis: _____ Completed By: _____ Patient Location: _____

Patient Type: ☐ Institutional Encounter ☐ Inpatient Encounter

Screening Results

Orderable: MH DDP Phase 3 Screen Results
Results: N/A / NCF / NDD / DD1 / DD2 / DD3

Referral to health care services staff shall occur at any time deterioration or change in daily functioning occurs. Adaptive support services shall be updated as needed.

Reading and Writing: _____

Communication: _____

Activities of Daily Living: _____

Behavior / Social Interactions: _____

Rules and Procedures: _____

Victimization: _____

**DEVELOPMENTAL DISABILITY PROGRAM
ADAPTIVE SUPPORTS SCREENING RESULTS**

CDCR 128C-2 (Rev. 09/24)

Page 2 of 2

DEFINITIONS

- NCF:** **Negative Current Finding** – Incarcerated person has adequate cognitive functions, based on receipt of a passing score on a cognitive screening instrument; therefore does not require an adaptive functioning evaluation. An incarcerated person designated NCF is not included in the DDP.
- NDD:** **Negative Disability Designation** – Incarcerated person may have low cognitive functioning but was determined not to have adaptive support needs. An incarcerated person designated NDD is not included in the DDP, but had an evaluation completed.
- DD1** **Developmental Disability 1** – Incarcerated person can function successfully in a General Population (GP) setting in a designated DDP institution consistent with other case factors and usually does not require prompts to initiate activities of self-care and daily living. The incarcerated person may need supervision or guidance and assistance when under unusual stress or in new situations.
- DD2** **Developmental Disability 2** – Incarcerated person can function successfully in a GP setting in a designated DDP institution consistent with other case factors. The incarcerated person requires prompts to initiate self-care, daily living activities, or both, and may have victimization concerns, thereby requiring housing in a designated DDP building, unit, or wing.
- DD3** **Developmental Disability 3** – Incarcerated person requires placement in a highly structured, specialized program in a designated DDP institution capable of meeting the incarcerated person's needs. The incarcerated person requires constant prompts and can likely not complete tasks without them. The incarcerated person may have victimization concerns, thereby requiring housing in a designated DDP building, unit, or wing.
- N/A** **Not Applicable** - Incarcerated person is currently condemned and has waived DDP screening.

Page 1 of 1

This form is to be printed out for staff to complete manually.

CDCR Number:		Name:		Housing:		Bed Number:		DDP Code:		Incarcerated Person Photo
Print Staff Initials & Name in Legend Below -Do not use Personnel Numbers (PERNR) on this form.										
Initials	Name		Initials	Name		Initials	Name			

Housing Unit Adaptive Support Log (ASL) Instructions: Staff shall maintain frequent contact with the incarcerated person to monitor and provide staff assistance consistent with the adaptive support needs of the incarcerated person. Staff shall initial and provide comments in the row of the corresponding date for any **monitoring, prompting, coaching, or assistance** they provide the incarcerated person, and document the outcome. **Staff shall never document, “No prompts needed” in the comments. Frequency of assistance is determined by the incarcerated person’s needs and may be required more frequently than the minimum frequencies listed in the Adaptive Support Type/Needs row. If more space is needed, staff shall document on the back of the log using the date and their initials.** In the event an incarcerated person in the Developmental Disability Program is transferred out of the institution, staff shall not send the Adaptive Support Logs. They shall be archived consistent with the Record Retention Schedule.

Adaptive Support Type/Needs:																		
Include Mandatory Minimums, if any																		
Check when provided:																		
Day of the Week	Initial																	
MON																		
TUE																		
WED																		
THU																		
FRI																		
SAT																		
SUN																		
General Comments:																		

Supervisor's Printed Name: _____ Signature: _____ Date of Supervisor's Review: _____

DISTRIBUTION: White: Housing Area

DEVELOPMENTAL DISABILITY PROGRAM
ADAPTIVE SUPPORT LOG - WORK/SCHOOL
 CDCR 200-B (09/24)

Page 1 of 1

This form is to be printed out for staff to complete manually.

CDCR Number:		Name:		Housing:		Bed Number:		DDP Code:		Incarcerated Person's Photo
Print Staff Initials & Name in Legend Below -Do not use Personnel Numbers (PERNR) on this form										
Initials	Name		Initials	Name		Initials	Name			
Hire Date:			Is Hire Date Within 2 Weeks:			Job/Position Number:			RDO's:	

Work/School Adaptive Support Log (ASL) Instructions: Staff shall maintain frequent contact with the incarcerated person to monitor and provide staff assistance as documented on the Work/School ASL and the CDCR Form 128C-2. Staff shall initial and provide comments in the row of the corresponding date for any monitoring, prompting, coaching, or assistance they provide the incarcerated person, and document the outcome. **Staff shall never use, "No prompts needed." Frequency of assistance is determined by the incarcerated person's needs and may be required more frequently than indicated in the Adaptive Support Type/Need row. If more space is needed, staff shall document on the back of the log using the date and their initials.** In the event an incarcerated person in the DDP is transferred out of the institution or into another Work/School Assignment, do not send the Adaptive Support Logs. They shall be archived consistent with the Record Retention Schedule.

Adaptive Support Type/Needs:		Learning new tasks: <i>Must be logged daily for first two weeks of assignment.</i>	Adjusting to new routines: <i>Must be logged daily for first two weeks of assignment.</i>	Extra time for completion of tasks: <i>Must be logged daily for first two weeks of assignment.</i>	Unusual Workplace Occurrences (e.g. Hygiene/Safety Concerns, etc.): Any time unusual occurrences are observed (even outside of first two weeks of assignment), contact shall be made with DDP Mental Health staff and DDP Custody staff, if available.	Check When Provided:											
Day of the Week	Initial																
MON																	
TUE																	
WED																	
THU																	
FRI																	
SAT																	
SUN																	
General Comments:																	

Supervisor's Review of Completed DDP Adaptive Support Log

Supervisor's Printed Name: _____ Signature: _____ Date of Supervisor's Review: _____

DISTRIBUTION White: Work or Education site