

## **FINAL STATEMENT OF REASONS:**

The Initial Statement of Reasons is incorporated by reference.

## **UPDATES TO THE INITIAL STATEMENT OF REASONS**

On January 21, 2014, the Department submitted to the Office of Administrative Law a notice of proposed regulations concerning Security Threat Groups. The proposed regulations were noticed to the public on January 31, 2014, and public comments were accepted through April 3, 2014. A public hearing was held on this date, at which three people provided comments. The Department received comments from over 300 people and/or organizations during this comment period.

As a result of these comments the Department recognized the need to amend and/or clarify certain provisions contained in the regulatory text. The amendments to the originally proposed text and the reasons for these revisions are explained below under the heading "*Changes to the Text of Proposed Regulations Initially Noticed to the Public.*"

A renote of the amended text was distributed on June 20, 2014, to the people/organizations who provided comments during the initial public comment period and was posted on the Department's websites the same day. The Department accepted public comments from this date through July 18, 2014. The Department received comments from 14 people and/or organizations during this comment period.

## **NOTE REGARDING CDCR FORMS IN THE CALIFORNIA CODE OF REGULATIONS (CCR)**

This note explains the Department's justification for incorporating forms by reference rather than printing them in the CCR text itself. The CDCR uses over 1,500 forms, most of which are regulatory. It would be unduly cumbersome, expensive and impractical to print all these forms in the Title 15, therefore the CDCR has always incorporated forms by reference, except in specific circumstances which no longer apply in the case of these regulations.

The revised and newly adopted forms included in this rulemaking action were made available to the public for review and were included in the notice of rulemaking sent to all parties who have requested notification.

## **DETERMINATIONS, ASSESSMENTS, MANDATES, AND FISCAL IMPACT:**

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

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

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

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

The Department has relied upon the results of the Economic Impact Assessment, which can be found in the Notice of Proposed Regulations and is available for review as part of the rulemaking file for this action.

### **DOCUMENTS RELIED UPON**

A listing and explanation of documents relied upon in the development of the proposed regulations may be found on pages 4-5 of the Initial Statement of Reasons, which is incorporated by reference into this document. The documents themselves may be found under Tab #10 of the Rulemaking File.

### **CHANGES TO THE TEXT OF PROPOSED REGULATIONS INITIALLY NOTICED TO THE PUBLIC**

#### **3023. Security Threat Group (STG) Activity.**

**Subsection 3023(c) is amended** to remove the word “knowingly” from the text. As a result of public comments, the Department determined that the text was not consistent with the language in section 3000.

**New subsection 3023(f) is adopted** to address public comments which questioned if the proposed regulations were applicable to the condemned inmate population. The Department determined which specific sections of the new regulations are applicable to the condemned inmate population. Condemned inmates are subject to specific housing and security requirements that prevent them from participation in the Step Down Program (SDP).

#### **Section 3044. Inmate Work Groups.**

**Subsection 3044(g)(1) is amended** to provide clarification as requested by public comments. The phrase “undergoing the Debriefing Process” is removed and clarification provided about how privileges will be assigned for those inmates who are completing the debriefing process while in the SDP.

**Subsections 3044(i) through 3044(i)(2)(D)8. are amended** to provide clarification as requested by public comments. Yard access is modified to refer to the section of regulations that speaks to SHU yard access. The term “personal property packages” is modified to “inmate packages” consistent with the recent changes in the Non-Disciplinary Segregation (NDS) regulations. Lastly, electrical appliances are modified to be consistent with the language incorporated in the Authorized Personal Property Schedule for SHU inmates.

**New subsections 3044(j) through 3044(j)(2)(H) are amended** to provide consistency as requested by public comments. Commenters pointed out that the privileges established through the NDS regulations were inconsistent for NDS inmates who were transitioned between the various types of segregated housing. This section is modified to more closely match the privileges in the NDS regulations.

#### **3314. Administrative Rule Violations.**

**Subsections 3314(a) through 3314(a)(3)(K) remain unchanged.**

**New subsection 3314(a)(3)(L) is amended** to remove the reference to “colors” in the STG contraband section of the administrative rule violations section. Existing regulations prescribe the color of clothing and other items that an inmate may possess; therefore, it is not necessary to address colors in this section.

### **3323. Disciplinary Credit Forfeiture Schedule.**

**Subsections 3323(h) through 3323(h)(10) remain unchanged.**

**New subsections 3323(h)(11) through (h)(13) are amended** to remove the word “active” from the text. The Department determined that the word “active” is redundant and not necessary to understand the meaning of the text.

### **3341.5. Segregated Program Housing Units.**

**New subsections 3341.5(c)(2)(A)2.a. through 3341.5(c)(2)(A)2.c. are amended** to address only those situations wherein the inmate is being assigned to the SDP as part of his/her initial validation. The previous version also included situations when an inmate was being sent to the SDP based on behavior which occurred after the initial validation. Situations wherein the inmate remains in general population at the time of the initial validation are eliminated from this section and placed in a new section. Additionally, the numbering convention has been corrected.

**New subsection 3341.5(c)(2)(A)3. Through 3341.5(c)(2)(A)3.d. are adopted** to provide the Institution Classification Committee (ICC) with discretion in determining appropriate housing for those inmates who were previously validated and remained in general population housing; but have since been found guilty of STG related behavior. During the STG pilot program, the Department determined that the behavioral criteria alone should not be the only consideration used by the ICC. They should have the authority to also consider the inmate’s overall disciplinary record and case factors in determining appropriate housing. Additionally, the numbering convention has been corrected.

**Subsections 3341.5(c)(2)(A)4. is renumbered and amended to** allow the previous section to be incorporated into the text.

**New subsection 3341.5(c)(6) is amended to** correct a typographical error. The reference should be 3378.4(c).

### **3376. Classification Committees.**

**Subsections 3376(d) through 3376(d)(3)(E) remain unchanged.**

**New subsection 3376(d)(3)(F)2. is amended** to provide the ICC with discretion in determining appropriate housing for those inmates who were previously validated and remained in general population housing but have since been found guilty of STG related behavior. During the STG pilot program, the Department determined that the behavioral criteria alone should not be the only consideration used by the ICC. They should have the authority to also consider the inmate’s overall disciplinary record and case factors in determining appropriate housing.

### **3376.1. Departmental Review Board.**

**Section 3376.1 Initial paragraph through subsection 3376.1(d)(2) remain unchanged.**

**New subsections 3376.1(d)(8) and (d)(9) are amended** to provide clarification. The previous sentence states “Referrals shall be made to the DRB when” and items 8 and 9 begin with “When.” The word “when” is not necessary in both places, therefore, it is removed.

**New subsection 3376.1(d)(10) is adopted** to provide clarification as requested by public comments. This change will create an avenue for an inmate who has demonstrated that they are not progressing through the SDP, and/or whose case factors, such as medical or mental health needs, have changed to warrant consideration of alternate custody/housing by the Department Review Board.

### **3378.1. Security Threat Group Certification Process.**

**New subsection 3378.1(c)(2) is amended** to clarify vague language, as requested by public comments. By removing the word “will” and replacing it with “may”, the Department is more clearly stating that the ICC has the authority to determine whether SHU placement for STG-I members is appropriate. The ICC is the highest institution-level classification entity. The Department determined that this entity should have the ultimate discretion to review an inmate’s entire case history in determining the most appropriate housing.

### **3378.2. Security Threat Group Validation Process.**

**New subsection 3378.2(b) is amended** to provide clarification as requested by public comments. The “single source rule” (i.e., the rule stating that multiple sources providing information about a single STG-related incident shall constitute a single source item) was previously specific to three source items; however, with this change, it will now be applied to all source items. In addition, the Department moved the expectation that staff will articulate the basis for determining an item is STG related from each source item to a separate paragraph, which will shorten and simplify the text.

**New subsections 3378.2(b)(11) is amended** to provide clarification as requested by public comments. This change will ensure that evidence of self-admission as an STG affiliate is more than implied or assumed, but rather the admission should be a direct admission and/or response to a direct question of affiliation, coupled with individual involvement in STG activities.

**New subsection 3378.2(c)(1) is amended** to provide clarification as requested by public comments. The text is modified to require staff to identify which of the source items is being used as the direct link to an STG affiliate. This was not previously a requirement. The CDCR Form 128-B4 Evidence Disclosure and Interview Notification is modified to also address this requirement. In addition, text is added that requires the identity of the individual being used as the direct link to be disclosed as long as it does not compromise that individual’s safety or the safety of others. This will provide additional information to inmates to help ensure due process during the validation process.

**New subsections 3378.2(d) is amended** to provide clarification as requested by public comments. The new text mirrors language provided elsewhere in the regulations for classification hearings; however, this is specific to the STG Unit Classification Committee hearing. The text makes assignment of an investigative employee mandatory and establishes the employee’s duties and functions.

### **3378.3. Security Threat Group Step Down Program.**

**New subsections 3378.3(a) through 3378.3(a)(5) are amended** to provide clarification as requested by public comments. The revised text identifies the criteria to be used by ICC for regression of an inmate in the SDP. It further addresses that failure to participate in the SDP will not, in and of itself, be cause to

generate a Rules Violation Report. Lastly, it documents that information obtained through inmate participation in program activities is not intended to be used to investigate or further validate the inmate. However, the new text provides that if the information is specifically intended to convey to staff the existence of STG threats, it will be evaluated and/or acted upon to maintain institutional and public safety.

**New subsections 3378.3(b) through (b)(3) are amended** to provide clarification as requested by public comments. The revised text refers to the CCR section that identifies the criteria for placement in the SDP. It further establishes that SDP participation is voluntary and delineates that participation is the only way to progress through the steps. Lastly, the revised text defines the requirements for an inmate to be eligible to move to the next step.

#### **3378.4 Security Threat Group Behavior or Activity.**

**New subsection 3378.4(a) is amended** to provide clarification as requested by public comments. The additional text notifies staff that if the STG nexus is not clearly identified, the regular disciplinary process will continue utilizing applicable sections of the CCR. In addition, the word “active” is removed from the text in the disciplinary matrix. The Department determined that the word “active” is redundant and not necessary to understand the meaning of the text.

In addition, verbiage is added to address public comments which questioned if the proposed regulations were applicable to the condemned inmate population. The Department determined that this section of the new regulations will apply to the condemned inmate population; however, due to housing and security requirements, the condemned population will not be eligible to participate in the SDP.

**New subsections 3378.4(b) through 3378.4(b)(7) are amended** to provide clarification as requested by public comments. The text is changed to address that placement into and/or regression within the SDP will be based upon an inmate being found guilty of STG related behavior. In addition, text is added to provide the ICC with discretion in determining appropriate housing for those inmates who were previously validated and remained in general population housing but have since been found guilty of STG related behavior. During the STG pilot program, the Department determined that the behavioral criteria alone should not be the only consideration for the ICC. They should have the authority to also consider the inmate’s overall disciplinary record and case factors in determining appropriate housing.

**New subsections 3378.4(c) through (c)(9) are amended** to provide the ICC with discretion in determining appropriate housing for those inmates who were previously validated and remained in general population housing; but have since been found guilty of STG related behavior. During the STG pilot program, the Department determined that the behavioral criteria alone should not be the only consideration for the ICC. They should have the authority to also consider the inmate’s overall disciplinary record and case factors in determining appropriate housing.

#### **3378.5 Debriefing Process.**

**New subsection 3378.5(e) is relocated and renumbered from existing section 3378.2 and is amended** to combine sections 3378.5 and 3378.6. These two sections were closely related to each other and it was determined that they should be combined to simplify the text and improve clarity.

**New subsection 3378.5(f) is adopted** to address public comments which questioned if the proposed regulations were applicable to the condemned inmate population. It was determined that this section of the new regulations will apply to the condemned inmate population.

### **3378.6 Review and Action Following Receipt of Debrief Reports.**

**New Section 3378.7 is being renumbered to 3378.6** to replace the previously numbered 3378.6 which was combined with section 3378.5 (see above).

**New Section 3378.6(d) is adopted** to address public comments which questioned if the proposed regulations were applicable to the condemned inmate population. The Department determined that this section of the regulations will apply to the condemned inmate population.

**An Authority and Reference Note is added** at the end of this new section. This was inadvertently omitted in the original proposed text noticed to the public.

### **3378.7. Transitional Housing Unit.**

**New Section 3378.8 is being renumbered to 3378.7** to replace the previously numbered 3378.7.

### **3378.8 Termination of Security Threat Group (STG) Validation Status.**

**New Section 3378.9 is being renumbered to 3378.8** to replace the previously numbered 3378.8.

**New subsection 3378.8(a)(1) is amended** to provide clarification as requested by public comments. The text is modified to include inmates who are inactive or dropout status and clarify that the housing can be on any type of general population yard. The text was further clarified to address that the behavior must be STG related and have been adjudicated through the disciplinary process.

**New subsection 3378.8(a)(1)(D) is adopted** to provide clarity as requested by public comments. The new subsection will establish a date upon which dropout status inmates shall begin counting the six years toward potential eligibility to have their validation status terminated, as described in subsection 3378.8(a)(1).

**New subsection 3378.8(b)(1) is amended** to provide clarification as requested by the public comments. The text is modified to include inmates who are inactive or dropout status and clarify that the housing can be on any type of general population yard. The text was further clarified to address that the behavior must be STG related and have been adjudicated through the disciplinary process.

### **Modifications to Forms**

**CDCR Form 128-B2** is being modified to add a line that allows the inmate to be provided with copies of the CDCR Form 128-B2 when it is initially received from the Office of Correctional Safety and again after it has been finalized by the STG Unit Classification Committee. These changes are consistent with section 3378.2. In addition, a signature block for the STG Unit Classification Committee chairperson is added.

**CDCR Form 128-B4** is being modified to address public comments that were captured in section 3378.2(c)(1). Modifications add the requirement to identify the source items being utilized as the direct link to an STG affiliate and requires the name of the direct link be provided, as long as release of the information does not jeopardize the individual or others.

**CDCR Form 128-B SDP1, CDCR Form 128-B SDP2, CDCR Form 128-B SDP3, and CDCR Form 128-B SDP4** are modified as requested through public comments. The changes are intended to more

clearly document the criteria for movement between SDP steps, as well as provide the validated affiliate with the expectation of the assigned step.

### **CHANGES TO THE FINAL TEXT AFTER PUBLIC COMMENT**

As a result of public comments, the Department has elected not to proceed with the amendment to Section 3023, subsection (c) which removed the word “knowingly” from the text. The previously existing text shall remain in effect.

### **PUBLIC HEARING COMMENTS AND TRANSCRIPT**

A public hearing was held on April 3, 2014. Three commenters provided comments at the hearing. A transcript of the public hearing may be found under Tab #6 of the Rulemaking File. Responses to the comments received at the hearing may be found under Summaries and Responses to Public Comments Received during the Initial Public Comment Period below.

### **SUMMARIES AND RESPONSES TO PUBLIC COMMENTS RECEIVED DURING THE INITIAL PUBLIC COMMENT PERIOD:**

Please see Exhibit 1 below this page.

### **SUMMARIES AND RESPONSES TO PUBLIC COMMENTS RECEIVED DURING THE RENOTICE PUBLIC COMMENT PERIOD:**

Please see Exhibit 2 below this page.

# EXHIBIT 1

## **RESPONSES TO PUBLIC COMMENTS – SECURITY THREAT GROUPS – INITIAL COMMENT PERIOD**

**Notes on Organization:** This document is arranged by individual comments received rather than by individual commenters. This was necessary because the Department received many form letters that made identical comments. Rather than listing, for example, 50 different commenters who made the same comment, the comment is listed, then after the comment the commenters who made that particular comment are listed by number. These numbers can be cross-referenced against the actual comments received which are Exhibit 3 in the rulemaking file.

For clarity and brevity, due to the volume of comments received, only those comments that received full or partial accommodation have an “accommodation” field. The remainder have only comment and response. Some comment numbers are omitted due to multiple, identical comments being received from the same commenter (e.g., the commenter sent their comments by email, regular mail, and fax) or due to comments that were later combined after the initial numbering.

### **Frequently used abbreviations:**

CDCR – California Department of Corrections and Rehabilitation

STG – Security Threat Group(s)

SDP – Step Down Program

SHU – Security Housing Unit

ICC – Institution Classification Committee

Comment #1: Releasing all of the inmates will not solve the problem. Stats show most will be back within the first year. I have the solution.

- S1

Response: Although the comment does regard some aspect of the subject proposed regulatory action and must be summarized pursuant to Government Code Section 11346.9(a)(3), the comment is insufficiently related to the specific action to the extent that no meaningful response can be formulated by the Department in refutation or accommodation of the comment.

Comment #2: I was told that Phase One of the debriefing process is 12 months and that Phase Two (THU) is 6 months. Is this true? I would like the full details on this, how each step is to be handled, along with time limits to process. I have been in phase one since June 11, 2012.

- S2

Response: This comment/letter is regarding an inmate’s individual case or the conditions in the institution in which he/she is housed. It does not directly address the proposed regulations, therefore the Department is unable to refute or accommodate the comment. The Department notes that existing regulations provide an appeal process, which is available to any inmate who seeks redress of any policy, decision, action, condition, or omission that has a material, adverse impact.

Comment #3: I’ve never seen any reliable information on the issue of how an inmate can escape or fight gang entrapment. You have to make it possible for an inmate to escape gang entrapment

- S3

Response: See Response to Comment #1.

Comment #4: New inmates must be told that there is no such thing as a convict who is not a “rat.” Unless you defeat that illusion, you stand no chance of encouraging an inmate to escape gang entrapment. And you also stand no chance of doing so with a “power at all costs” attitude.

- S3

Response: See Response to Comment #1.

Comment #5: The notice of proposed regulations states that benefits of the proposed regulations include due process and the opportunity to challenge validation. I challenge my validation! I was denied my interview and was validated on mere association based on confidential information and not behavior. At the CA Men’s Colony, they are impeding our appeal process. I would very much appreciate any assistance or information you may be able to provide.

- S4

Response: See Response to Comment #2.

Comment #6: The commenter asks how can the Department, and not the courts, be relied upon to validate an inmate.

- S4

Response: State agencies and courts can only act within the constitutional and statutory authority granted to them. The Legislature has delegated to the Department broad authority for the classification of inmates within its jurisdiction, which includes validation determinations. While courts have the authority to decide claims of violation of the law pertaining to conditions of confinement, they have not been granted the authority to make validation determinations.

Comment #7: Commenter asks what about establishing a previous four year time limit to the use of evidence used to establish Security Threat Group (STG) behavior.

- S4

Response: The proposed amendments establish a four year limit on the age of evidence used to establish STG behavior for consideration in housing determinations.

Comment #8: Inmates go to court because CDCR does not follow their own rules.

- S4

Response: See Response to Comment #1.

Comment #9: This is the perfect example of STGs: the staff of CA Institution for Women are security threatening the inmates, in groups.

- S5

Response: See Response to Comment #1.

Comment #10: Incarceration itself is sufficient. SHU does not rehabilitate anyone.

- S5, S54, S55

Response: See Response to Comment #1.

Comment #11: There is nothing worse than being locked up 24/7 with no phone or contact visits with loved ones. Putting holds on people's lives is cruel and unusual punishment. Inmates need more human rights and unity.

- S5, S59, S136

Response: See Response to Comment #1.

Comment #12: The commenter states that targeting people based on affiliation is unconstitutional. It sets people up for failure based on assumptions, inequality, stereotypes, rumors, prejudices, racism, gay-bashing, categorizing, or affiliation of family or friends.

- S5

Response: The Department's reliance on credible, substantiated evidence of association in its validation decisions has been upheld in both state and federal court cases and has therefore been found to be constitutional. The Department does not make its administrative decisions based on personal characteristics such as those listed by the commenter, nor does it apply its policies or procedures in a discriminatory fashion.

Comment #13: The commenter states that tracking of a validated STG individual after paroling and successful completion of the five-step program is wrong. It is an invasion of privacy.

- S5

Response: The Department is under the continuing obligation to maintain the safety and security of the inmates and staff within its institutions and to supervise parolees who, although they are no longer housed in an institution, remain under the Department's jurisdiction and supervision. In order to do so, the courts have recognized that inmates and parolees have a reduced expectation of privacy in that regard.

Comment #14: CDCR should focus on organizing more positive groups and clubs.

- S5

Response: See Response to Comment #1.

Comment #15: I somewhat agree with the 5-step program for inmates actually involved in gangs, but not for those who are just being targeted by staff as leaders or affiliates. Staff responsible for validation are inaccurate at times.

- S5

Response: The Department does not practice nor does it tolerate such "targeting". The proposed regulations contain additional steps of due process to ensure inmates have a meaningful opportunity to challenge their validation.

Comment #16: Commenter asks if the proposed STG regulations affect inmates currently undergoing the debriefing process, or who have been found inactive.

- S6

Response: The proposed regulations establish criteria and processes which debriefing and inactive inmates will be processed under and establishes behavioral criteria for which the inmate may be held accountable and considered for placement into the Step Down Program (SDP) (refer to Section 3378.4). With the establishment of the SDP, the Department plans to eliminate the active/inactive review process. The prior regulatory language associated with inactive reviews has been eliminated from the regulations.

Subsection 3044(i) through 3044(i)(2)(D)(8) establishes participant privilege groups and privileges for SDP participants. Inmates engaged in the debriefing process and not yet accepted into the program will receive privileges commensurate with the SDP step to which they were assigned. The proposed regulation also establishes the Inactive Monitored Status Affiliate, which means a validated affiliate who was released from the Security Housing Unit concurrent with the implementation of the SDP through a Departmental Review Board (DRB) hearing.

Comment #17: Are there programs that can assist me prior to discharging my CDC number?

- S6

Response: See Response to Comment #1.

Comment #19: The commenter asks what are your opinions regarding this enforcement of “discrimination, torture, and degrading treatment” that violates the CA Constitution and the First, Sixth, Eighth, and Fourteenth Amendments, which would create an “atypical and significant hardship”

- S7

Response: This comment asks for a general legal opinion regarding “discrimination, torture, and degrading treatment”. It does not directly regard the proposed regulations, therefore the Department is unable to refute or accommodate the comment. However, the Department notes that its individual classification decisions to house inmates in Security Housing Units have been upheld against challenges based on the First, Sixth, Eighth, and Fourteenth Amendments.

Comment #21: The commenter asks: what is the legal definition of “validated offenders” and “Security Threat Groups”? What’s the difference between the two?

- S7

Response: “Offender” is defined in proposed Title 15, section 3000 as “Offender means any inmate, ward, parolee, or other person currently under the jurisdiction of the CDCR”; “validation” is defined in proposed Title 15, section 3000 as “validation means the formal and objective process for identifying and documenting STG affiliates.” Therefore, a validated offender is any inmate, ward, parolee, or other person currently under the jurisdiction of the CDCR who has been identified and documented as an STG affiliate through the validation process. “Security Threat Group” is defined in proposed Title 15, section 3000 as “Security Threat Group (STG) means any ongoing formal or informal organization, association, or group of three or more persons which has a common name or identifying sign or symbol whose members and/or associates, individually or collectively, engage or have engaged, on behalf of that organization, association or group, in two or more acts which include, planning, organizing, threatening, financing, soliciting or committing unlawful acts, or acts of misconduct.” Therefore a validated offender is one who has been formally identified as a member or associate of a Security Threat Group.

Comment #22: I want the court to be informed that I want an order for relief dated back to January 2013. You have to rectify my concerns, per CCR 3086(f)(4)- (h)

- S7

Response: See Response to Comment #1.

Comment #23: I’ve appealed the issue of gangs operating on SNY yards, but it has been ignored or covered up. CDCR will not validate these inmates who are causing chaos, remove them from SNY, and

place them in the SHU to remove them from a population who wants to program. If you are not in a prison gang on SNY, you will not survive.

- S8

Response: The Department contends that the proposed regulations provide for the identification and validation of STGs without regard for their status as an SNY, the same criteria for validation is applied, the same weighted system is used to establish STG behavior, and the determination for housing within the SDP will be applied by the Institution Classification Committee (ICC).

Comment #24: ISU is understaffed and underpaid and work countless hours, while other corrections officers are arrested for criminal activity and gang involvement. This tarnishes the trust and dignity of decent officers. It's hard to win the fight against crime when no one cares.

- S8

Response: See Response to Comment #1.

Comment #25: It is incorrect to say that the STG management regulations utilizes a behavior based Step Down Program because it repeats a practice that CDCR implemented 30 years ago that was a failure.

- S9

Response: See Response to Comment #1.

Comment #26: Commenters statement, When the gang leadership was isolated, other leaders took their place and gang operations continued until the original leaders were released and resumed their role. The only way to deal with the STGs effectively is to isolate them from those they would victimize.

- S9

Response: The establishment of the SDP provides a path that allows an STG affiliate to participate in rehabilitative programs and make life changes that can lead to release from Security Housing Unit and possible disassociation with the STG, while maintaining the necessary tools to provide a reasonable level of safety to those who may be at risk.

Comment #27: The proposed regulations are vague and do not sufficiently address those inmates on a Sensitive Needs Yard (SNY) that are either previously classified dropouts or those that engage in new STG activities. Inmates on a SNY engaging in STG activities should not be allowed to return to an SNY as they present a threat to the safety and security of other SNY inmates and staff.

- S9

Response: See Response to Comment #23.

Comment #28: The language and forms used in the new validation and step down processes need to be changed to reflect current technology in that the forms may be completed electronically, rather than by hand.

- S9

Response: See Response to Comment #1.

Comment #29: CDCR needs to clarify the purpose of the Step Down Program workbook. Is it to demonstrate cooperation with the process? Is it to learn CDCR's way of thinking to survive within

prison? Is it just an act of submission? Is the information discussed with the inmate face to face in a therapeutic or helpful fashion?

- S10, S35, S43, S69, S83

Response: The workbooks utilized in the SDP are designed to provide the offender/participant the opportunity and learning materials to move towards positive social and life skills. Through journaling, these study tools allow the participant to focus and reflect on choices and consequences, family relationships, communication skills, and success strategies. Through this meaningful process, the participant will be better prepared to transition into a general population environment and/or community setting.

Comment #30: Inmates who have already spent years in the SHU should not still be required to spend two to three additional years there under the SDP.

- S10, S150, S334

Response: The time in the SDP is solely based on the inmate's STG related activity as an STG affiliate. If there is documented, recent (within the prior four years) history of STG related behavior, an inmate can be released and go directly into step 5 in a general population through the one-time case by case review process, unless the inmate has expressed safety concerns. As inmates are newly validated, they will be assessed by the ICC to determine if placement in the SDP is warranted.

Comment #31: The debriefing program should be ended.

- S10, S43, S78, S112, S124, H1/ S331

Response: The debriefing program is a very important, strictly voluntary, program for those who want to disassociate from an STG.

Comment #32: Art, literature, exercising with others, or even saying hello to another prisoner should not be used to prove gang membership.

- S10

Response: The regulation provides that only those items or activities that clearly demonstrate association with STG affiliates or STG behavior can be used in the process of establishing affiliation for purposes of validation.

Comment #34: The regulations do not end solitary confinement or other abusive practices such as strip cells, property control, leg and hand restraints, and insufficient recreation, diet, family contact, education, and vocational programs.

- S12

Response: The Department through the proposed regulations have provided the opportunity for the inmate to significantly shorten the time spent in a restricted housing environment due to STG affiliation. There continues to be a need for the restrictive measures which are necessary to provide a safe and secure environment for inmates and staff.

Comment #35: This proposal is about legalized torture.

- S12, S46, S77, S88, S93, S95, S107, S114, S120, S123, S314

Response: See Response to Comment #1.

Comment #36: Extreme solitary confinement is unconstitutional.

- S12, S107

Response: See Response to Comment #1.

Comment #37: We are men, good men that are treated worse than animals.

- S12

Response: See Response to Comment #1.

Comment #38: The regulations do not address the racial issues that are the major cause of these groups and of the violence within the prison system. This policy will not work until CDCR stops segregating inmates based on race and stops tolerating the racial segregation and violence by these groups. This policy should not be implemented until CDCR follows the federal mandate to desegregate the prison system. These regulations do nothing but cycle prisoners into a system rife with failure.

- S13

Response: The Department has met the integration goals put forth in the *Johnson* case dealing with racial segregation. The regulations address, as a part of the SDP, the process of reintegration and require that an inmate successfully participate in integrated programs as a necessary step prior to release to step 5 in the general population.

Comment #39: The policy does not address how these inmates will be reintegrated into a general population setting.

- S13, S112

Response: The Department's proposed regulation requires the inmates begin reintegrating during the sixth month of the step 4 of the SDP. This is a mandated six month period of successful integrated yard programming prior to release to step 5 in the general population. Also in Step 4, inmates will begin consuming meals in the dayroom or dining hall with other STG affiliates.

Comment #40: The Step Down Program fails to address the issue of race-related behavior

- S13

Response: See Response to Comment #38.

Comment #41: CDCR needs to incorporate additional rehabilitative programs, such as education, work training, parenting skills, social skills, drug and alcohol treatment, victim awareness, and anger management.

- S13, S43, S80

Response: The Department believes the programming provided has been tailored to this STG population and will provide the best opportunity for a successful transition into a general population environment where greatly expanded programs are available. In addition, the Department will continue to identify and/or develop programs that may be implemented as part of the SDP.

Comment #43: If CDCR is moving to a behavior-based process, then Title 15 sections 3043.4(c) needs to be changed. The D-2 non-credit earning status should only apply to those validated people who are in AdSeg [administrative segregation] for misconduct. If they are in AdSeg for non-disciplinary reasons, they should be allowed to retain NDS status and be kept at D-1 status for credits under Penal Code 2933.

- S14, S42

Response: The proposed regulations have been established with a behavior based component, primarily as a means of establishing a basis beyond simple association for placement/retention into restricted housing. In the development or revision of policy and procedures, the CDCR must legally operate within the boundaries of existing California statutes. California Penal Code section 2933.6 states that validated affiliates are ineligible to earn credits during placement in a Security Housing Unit, Psychiatric Services Unit, or Administrative Segregation Unit. Consideration for a revision to existing policy would require a revision to this statute in advance of such a policy change.

Comment #44: The STG disciplinary matrix sections (6)(g), 8(d), and 8(e) refer to STG-related written material, and STG emblems or certified symbols. Due process requires that CDCR specify what they consider to be STG written material, emblems or symbols for an inmate to receive advanced notice about what is considered a violation of the rules.

- S15

Response: The requested information is already contained in the proposed Departmental regulation in subsections 3323(h)(12)(E), 3375.3(a)(4)(B)(3), 3378.2(b)(5) and 3378.4(a)section 6 #9.

Comment #45: The STG disciplinary matrix section and 8(g) refers to possession of contact information for validated STG affiliates or individuals who have been confirmed to have assisted in STG illicit behavior. How is an inmate to know if a pen pal, family or friend is validated or has assisted in STG behavior? CDCR cannot rely on that contact information without giving an inmate notice about what addresses or telephone numbers can be used against them. The inmate should be given the opportunity to challenge the claims concerning the address, and be allowed to maintain contact if no illicit activity is taking place. CDCR must tie the inmate's personal use of that address to illicit STG behavior in order for it to count as points towards validation.

- S15

Response: The inmate is provided with multiple levels of due process, first they are given the opportunity during the disciplinary hearing to speak to their reasons or need for maintaining the contact information and if they are not satisfied with the outcome of the hearing they have the right to appeal through multiple departmental levels and access the courts.

Comment #46: SDP Placement options require that an offender who has previously completed the SDP and is being re-assigned, must normally spend 2 years at Step 1. This requirement of an extra year is solely for punishment, not rehabilitation as it serves no purpose.

- S15

Response: The Department believes that the additional observation period could be beneficial given the previous attempt's failure. The ability of ICC to advance the inmate through the program in six month increments may result in an SDP of only three and one half years for an inmate that was returned due to STG related behavior.

Comment #47: The proposed regulations are complex, arbitrary, vague, overgeneralized.

- S18, 89, 110, S69, S73, S79, S110, S125, S127, S146

Response: This comment isn't specific enough to respond to, other than to state that the Department disagrees with the commenter and believes the proposed regulations are no more complex than they need to be, and are fair, clear, and specific.

Comment #48: The commenter states that the proposed regulations do not provide inmates fair treatment, or full adequate investigations at each stage of the validation process. They do not rectify the abuse of authority when inmates are labeled as an STG affiliate and placed in segregated housing indefinitely without due process, fair treatment, equal protection, a right to challenge the decision, religious rights, and allowable property.

- S18, 89, 110, S67

Response: Due process to which inmates are entitled by law during the administrative decision to house them in a more segregated environment requires that they receive notice of the factual basis on which the decision is based and that they have a fair opportunity to be heard. The proposed regulations provide this level of due process at several steps both during the validation process and before a validated inmate can be housed in a segregated environment. See proposed sections 3376(d)(5)(A), 3378.2(a), 3378.2(c), 3378.2(d), and 3378.2(e).

Comment #49: The proposed regulations exclude or do not make it clear whether or not they apply to all death row, AdSeg, SHU, or BMU inmates.

- S18, 89, 110, S144

Accommodation: Partial

Response: New subsection 3023(f) has been added to address the Condemned inmate population. The Department believes that the regulations for AdSeg, SHU and BMU are clear and provide the necessary direction.

Comment #50: Condemned inmates have been denied fair treatment and equal protection in the regulations and in San Quentin's IP 608 procedure; condemned inmates and those in AdSeg and SHU all have a liberty interest to remain free from the punishment of being held indefinitely in solitary confinement.

- S18, 89, 110

Accommodation: Partial.

Response: New subsection 3023(f) has been added to address the Condemned inmate population and reads as follows: "Condemned inmates are subject to Security Threat Group Identification, Prevention, and Management, sections 3378.4(a), 3378.5, and 3378.6. All other provisions for the identification and management of security threat group affiliates within the condemned population will be governed by Penal Code section 3600(b)(1) and by local operating procedures"

Comment #51: These regulations serve no penological interest, merely continues the practice of housing inmates in long term / indefinite solitary confinement, and forces inmates to self-incriminate in violation of the 5<sup>th</sup> Amendment. This will have an adverse impact on death row inmate appeals or on inmates being considered for parole.

- S18, 89, 110

Response: The Step Down Program serves the penological interest of maintaining the safety and security of inmates and staff in the institutions by segregating those who participate in gang behavior, while providing them with rehabilitative programming that allows them to make their way back to the general population setting in as little as three years. Participation in the program does not require that inmates provide specific information about criminal activities and therefore does not violate the Fifth Amendment or adversely impact any inmate's appellate or parole considerations.

Comment #52: The Department discusses the benefits of these programs in length, greatly overpowering the unconstitutional effects of these regulations.

- S19

Response: See Response to Comment #1.

Comment #53: The Step Down Program gives officials the authority to discriminate and retaliate against individuals for religious characteristics, which are Eighth and First Amendment violations. It is a stepping stone for the misapplication of policy and law.

- S19

Response: The Department's policies and procedures for the management of security threat groups does not seek to impact the exercise of religion. The Department notes that state and federal courts have found that its reliance on credible gang symbols as sources of validation is permissible even where those symbols also may have religious significance.

Comment #54: The Step Down Program violates Title 15 sections 3367, 3368, 3369, 3369.5, 3400, 3378.3, 3413, 3375, 3077.3, 3354.1, 3293, 3391, 3021-23.

- S19

Response:

- Existing section 3367 relates to a ban on the performance of psychosurgery by the Department; the Step Down Program (SDP) does not include any form of psychosurgery.
- Existing section 3368 relates to a ban on the use of any drug, or electronic stimulation of the brain as part of a conditioning program; the SDP does not include the use of any drug or electronic stimulation.
- Existing section 3369 relates to the use of shock therapy; the SDP does not include any form of shock therapy.
- Existing section 3369.5 relates to the use of inmates as research subjects; the SDP does not include any provision for the research or study of inmates.
- Existing section 3400 relates to the discouragement of employee familiarity with offenders or offenders' family and friends; the SDP does not include any requirement that employees engage in personal/ non-professional relationships with offenders.
- Existing section 3378.3 relates to the transitional housing used during the observation phase of the debriefing program; this section has been amended and renumbered as proposed section 3378.7 and is not in conflict with the remaining provisions of the SDP.
- Existing section 3413 relates to the ban on incompatible activities by employees of the Department; the SDP does not include any requirement that employees engage in any impermissible activities listed and therefore is not in violation of section 3413.
- Existing section 3375 relates to the inmate classification process; this section has been amended to include the newly added classification processes that have been introduced as part of the SDP, therefore as proposed, this section is not in conflict with the remaining provisions of the Step Down Program.
- Existing section 3077.3 relates to the institutional community reentry program for nonviolent felony offenders; the SDP is designed to address a separate and distinct group of inmates from those who are eligible to participate in the community reentry program, such that an inmate found to be suitable for Step Down Program placement would not be eligible for the community reentry program.
- Section 3354.1 relating to elective surgery was repealed in 1996.

- Existing section 3293 relates to the polygraph examination of offenders and staff; the SDP does not include any requirement that polygraph examinations be administered.
- Existing section 3391 relates to expectations of professional employee conduct; the SDP does not condone, promote, or permit unprofessional employee conduct.
- Existing section 3021 relates to the ban on the falsification of records by inmates; the SDP does not include any provision regarding the falsification of records.
- Existing section 3022 relates to the prohibition of inmates from exercising control over other inmates; the SDP does not include any provision that condones, promotes, or permits inmates to exercise control over one another.
- Existing section 3023 relates to the prohibition of gang activity; this section has been amended to reflect the newly adopted security threat group management and therefore as proposed, this section is not in conflict with the remaining provisions of the SDP.

Comment #55: The Step Down Program contains clearance to administer electroconvulsive or organic therapy, which is prohibited.

- S19

Response: The proposed regulations deal with STG management and do not address electroconvulsive or organic therapy at all.

Comment #56: This policy does not prevent crime, it contributes to it.

- S19

Response: See Response to Comment #1.

Comment #57: I ask for a hearing with representatives of affected individuals before it is finalized.

- S19

Response: The Department held a public hearing regarding these proposed regulations on April 3, 2014, as required by the provisions of the Administrative Procedure Act (APA). Notification was provided more than 60 days prior to this hearing. Additionally, all comments received, whether at the hearing, in writing, via email etc., are treated equally.

Comment #59: The commenter states that all inmates should have the opportunity to challenge their validation through the courts with an attorney.

- S20

Response: Inmates have the opportunity to challenge their validations through the inmate appeals process and in court through the filing of a writ of habeas corpus. However, the law does not recognize the right to an attorney in non-criminal matters.

Comment #61: You are broadening your net to make it easy to validate more people while releasing a few. Instead of fixing the broken validation process, you're increasing the ability to put more people in the SHU.

- S22, S25, S35, S39, S40, S41, S43, S56, S64, S73, S78, S81, S83, S103, S120, S121, S125, S127, S129, S131, S151 – S321, S141, S347

Response: The definition of Security Threat Group and STG behavior is designed to be inclusive of the growing variants that have become prevalent in today's gang cultures. This change will allow the

department to address the groups who represent the greatest threat to the safety and security of the institution and public safety.

As of July 2014, 854 cases have been reviewed as a part of the one-time Departmental Review Board (DRB) case by case reviews associated with this proposed regulatory change. These case by case reviews have resulted in the release of 69% of the inmates reviewed to step 5 in the general population.

Comment #63: The Step Down Program is forcing inmates to document past crimes in a diary; forcing them to become informants as a requirement for participation.

- S22, S125

Accommodation: Partial

Response: The workbook materials provided are meant to help the inmate to reflect on the life style decisions they have made and how those may have adversely affected themselves and the other people in their lives. They don't require detailed specific information about previous criminal activities. In response to feedback received through the public comment period, the Department provided some additional language to address this concern. CCR Section 3378.3(a)(5) has been added to read: "Information gleaned through inmate participation in program activities is not intended to be used to validate an inmate, initiate an investigation into STG related behavior, or identify/corroborate the involvement of other STG participants. However, information specifically intended to convey to staff the occurrence of past, present, or future STG threats of violence or disruption may be evaluated to maintain institutional and public safety".

Comment #64: The coerced journaling requirement of the Step Down Program constitutes behavior modification that is considered torture by the Nuremberg Code.

- S23

Response: The Nuremberg Code is a set of research ethics and principles that govern human scientific experimentation. No component of the Step Down Program involves or requires human experimentation. The workbooks utilized in the SDP are designed to provide the participant the opportunity and learning materials to explore in part through journaling, positive social and life skills including, assessing consequences, family relationships, communication skills, and success strategies.

Comment #65: The policy is confusing as to how far back the DRB can review behavior by inmates they are reviewing, whether it's four years or six years under the old inactive review process. Inmates continue to be re-validated at their six-year inactive review based on confidential informants and documents not in their possession.

- S23

Response: The proposed regulations establish a four year limit on the age of evidence used to establish STG behavior for consideration in housing determinations. Sections 3341.5, 3378.2, and 3378.4, contain provisions used to establish this new four year criteria. The use of confidential documents for either initial validation or revalidation requires that the reliability of the information be established per section 3321.

Each inmate who was validated and assigned to the SHU utilizing the previous validation process will receive a Departmental Review Board (DRB) case by case review. These case by case reviews are scheduled based on the date of initial validation.

Comment #66: Everyone in SHU is eligible for this program, but CDCR needs to find a more effective way to speed up the DRB review process, so that everyone can be seen and be placed within a step, rather than languishing as they wait to be reviewed.

- S23

Response: The Department believes that while reviewing the cases in an expedient manner is important, it is more important to insure that the inmates being reviewed receive a thorough, fair and accurate evaluation of their STG related behavior/activity during the last 4 years in SHU.

Comment #67: This policy is just a revolving door to still keep people in the SHU. This new policy will not work if the Department continues to use the same tactics with different language.

- S23, S102, H2

Response: See Response to Comment #1.

Comment #68: It is not right to be confined in the SHU based on a hunch by these so-called experts.

- S23

Response: See Response to Comment #1.

Comment #69: The commenter states that the First Amendment guarantees freedom of speech, religion, and association; how is it not torture when you have to be careful about what you read, who you write, or what you say?

- S23

Response: This comment asks for a general legal opinion regarding the First Amendment and does not directly regard the proposed regulations, therefore the Department is unable to refute or accommodate the comment. However, the Department notes that while inmates do not lose their First Amendment rights upon incarceration, both state and federal courts recognize that the right may nevertheless be curtailed if particular expressions or associations are likely to cause the disruption of prison order, security or legitimate objectives.

Comment #70: Indefinite solitary confinement will continue under these regulations, allowing California's continued overuse of solitary confinement.

- S24, S103, S107, S109, S121, S130, S137, S141, S146, S347

Response: See Response to Comment #34.

Comment #71: As a SHU inmate and a primary stakeholder, I was left out of the review process.

- S25, S26, S41

Response: The Department held a public hearing regarding these proposed regulations on April 3, 2014, as required by the provisions of the APA. Notification was provided more than 60 days prior to this hearing. Additionally, all comments received, whether at the hearing, in writing, via email etc., are treated equally.

Comment #72: The Step Down Program is not a true alternative to debriefing.

- S25, S26, S41

Response: The Department believes that the SDP not only provides a viable alternate path for release from SHU, but does so while helping the inmate through the process of reintegration.

Comment #73: The commenter states that Title 15, sections 3043.4(b) and 3044(b)(7) continues to deny SHU inmates any sentence reduction credits.

- S25, S26, S41, S43, S112, S141

Response: Sections 3043.4(b) and 3044(b)(7) make specific Penal Code sections 2933, 2933.05, and 2933.6. These Penal Code sections prohibit SHU inmates who are validated members or associates from earning credits. The Department cannot provide these credits in violation of the Penal Code.

Comment #74: There is no independent review of CDCR decisions regarding validation and segregation.

- S25, S26, S39, S40, S41, S43, S47, S54, S55, S64, S67, S69, S73, S76, S78, S81, S83, S92, 101, S96, S102, S103, S107, S108, S109, S112, S116, S121, S125, S127, S129, S131, S141, S323, S324, S325, S326, S327, S146

Response: The Department does not have the statutory authority to require an independent agency or third party to review its administrative validation decisions. The Department notes, however, that inmates have the opportunity to challenge their validations through the inmate appeals process and in court through the filing of a writ of habeas corpus. The proposed regulation has added multiple layers of additional due process review to the validation/segregation process. In addition, it has built into this regulation a standardized disciplinary matrix to insure that the application of sanctions is equitably applied with discretion built in to reward active participation in the program.

Comment #75: The STG Disciplinary Matrix allows CDCR to place inmates in segregated housing based on behavior that does not qualify as requiring SHU confinement. (i.e., Disciplinary Matrix, section 6 (a)-(h), section 7, and section 8(a)(g)). Behavior in the STG disciplinary matrix should be addressed through the regular disciplinary process and inmates should be allowed to remain in general population if the behavior is not violent or the inmate does not present an immediate threat.

- S25, S26, S35, S41, S131, S135, S140, S141

Response: The STG Disciplinary Matrix is, by design, meant to address STG activity and behavior and its impact on staff and inmate safety and institutional security.

Comment #76: The regulations do not clearly distinguish between association and behavior.

- S25, S26, S28, S29, S41, S57, S81, S83, S127, S141, S150, H1, S331, S322, S146

Response: The Department believes the proposed regulation clearly distinguishes between association and behavior as it relates to STGs.

Comment #77: The new policy or Title 15 do not establish a review of statements made by confidential informants for accuracy or credibility – such information should first be proven to be true before it can be relied upon to validate another inmate.

- S25, S26, S41, S69, S73, S81, S92, S101, S102, S131, S135, S136, S141, S145

Response: The use of confidential documents for either initial validation or revalidation requires that the reliability of the information be established per CCR Section 3321 and the new proposed regulations provide additional levels of due process to further insure the inmate has every opportunity to challenge any information being used. Section 3321(b)(1) was modified as follows: “No decision shall be based upon information from a confidential source, unless other documentation corroborates information from

the source, or unless other circumstantial evidence surrounding the event and the documented reliability of the source satisfies the decision maker(s) that the information is true”.

Comment #78: The new regulations set no time limit on the maximum length of SHU confinement and fail to suggest a viable alternative to SHU placement.

- S25, S26, S41

Accommodation: Partial

Response: A review of comments lead to the addition of sub section 3376.1(d)(10) which reads: “The ICC has evaluated and determined a validated affiliate has demonstrated that they are not progressing through Steps 1 or 2 of the SDP, and/or case factors such as medical or mental health needs, have changed which would warrant consideration of alternate custody/housing. DRB will conduct a case by case review of all case factors to determine if continued SHU placement is warranted or if alternate placement options are appropriate.”

The time an inmate spends in the in the SDP is dependent on the inmate’s behavior. This regulation greatly reduces the minimum time spent in the SDP for validated STG behavior from six years to a possible three years without debriefing.

Comment #79: The new regulations fail to introduce contact visits for non-violent SHU inmates or otherwise lessen the extreme isolation of SHU confinement

- S25, S26, S41, S43, S92, S101, S123

Response: The Department believes that the proposed regulation best reflects the level of visitation that is appropriate for the population in question.

Comment #80: The only good thing about the Step Down program is its 5-year length, rather than the 7-year inactive review timeframe. However, the same questionable considerations are used.

- S 27

Response: See Response to Comment #1.

Comment #81: The broad definition of a “Security Threat Group” allows a wider net to be cast to label inmates and place them in the SHU. The program has various loopholes that work against inmates rather than for them.

- S27, S28, S43, S73

Response: The definition of Security Threat Group and STG behavior is designed to be inclusive of the growing variants that have become prevalent in today’s gang cultures. This change will allow the department to address the groups who represent the greatest threat to the safety and security of the institution and public safety.

Comment #82: Under the new policy, inmates previously considered part of a “street gang” will be given validation points. How can they be validated as a street gang member if they are in prison and no longer part of a criminal street gang.

- S28

Response: The Department does not believe that membership is a function of proximity. Validations will be based upon an inmate being involved in STG related behavior and/or activities. If the inmate comes to

prison and does not involve themselves in STG activities, they will not acquire the points necessary for validation.

Comment #83: A person in the pilot program is required to journal about his life, past, about any criminal activity of which he is aware, and his history: criminal, personal, etc. and has to regret it. If not, an RVR will be issued. That is equivalent to being forced to debrief. Those who have no knowledge of gang or criminal activity will be unable to progress to the next step and will falsify journal entries and get others in trouble so that they can progress.

- S28, S35, S125

Response: The proposed regulation does not establish a basis for the issuance of an RVR for non-completion of SDP journals nor do the journals require the inmate to provide his/her criminal history.

Comment #84: The STG program only makes it easier for CDCR to validate and warehouse a person who, in reality, presents no security threat.

- S28

Response: See Response to Comment #81.

Comment #85: To validate someone because of tattoos, pictures, literature, etc. is wrong.

- S28, S29, S35, S43, S45, S81

Response: Only those tattoos, pictures and literature that demonstrate STG affiliation can be used in the validation process.

Comment #86: These superficial changes do not address the core problem of segregation and human rights violations. This practice should not be modified, but be abolished and replaced with treatment and rehabilitation facilities.

- S29, S68, S74, S88, S138, S305, S313,

Response: See Response to Comment #1.

Comment #87: Inmates are still in constant danger of life-long torture based on arbitrary criteria at the whim of the institution and unchallenged confidential informants.

- S29, S52, S57, S69, S81, S83, S92, S101, S102, S108, S121

Response: The Department neither allows nor condones torture. Any confidential information used must meet the reliability standard set forth in CCR Section 3321.

Comment #88: Draconian punishment for behavior that is not against the law outside prison walls is unreasonable, counter-productive, and undemocratic.

- S29

Response: The Step Down Program is not a punitive measure, but is a program designed to maintain the safety of other inmates and staff while providing its participants the opportunity to develop positive social and life skills including, assessing consequences, strengthening family relationships, communication skills, and success strategies.

Comment #89: Because CDCR cannot distinguish between a political movement and a criminal gang, or because they grew up in the wrong neighborhoods or have the wrong friends or relatives, men are being

sentenced to isolation for the rest of their lives. As Assemblyman Ammiano pointed out at the February hearing, his committee could be defined as an STG under these regulations.

- S29

Response: The Department believes that the criteria established under these proposed regulations clearly identify the STG population. STGs are identified based on the activities of the group and several other criteria.

Comment #90: Coerced psychological therapy is against international law. The requirement to participate in the journal program is evil in its core and dangerous, psychologically and legally.

- S29

Response: No component of the Step Down Program involves or requires coerced psychological therapy. The workbooks utilized in the SDP are self-directed and designed to provide the participant the opportunity and learning materials to explore in part through journaling, positive social and life skills including, assessing consequences, family relationships, communication skills, and success strategies.

Comment #91: Debriefing, which continues to be crucial to release, like coerced cognitive therapy, is contrary to international law as coerced confession.

Response: Although debriefing remains as a strictly voluntary option for any inmate who wishes to completely disengage from involvement in a security threat group, debriefing is neither crucial nor required under the proposed regulations. The Department also notes that debriefing is a voluntary process and is not the only method by which an inmate can be released from the SHU; it is therefore not coerced.

- S29, S331 and Hearing comment H1

Comment #92: There is no evidence that extreme isolation is making California or its prisons any safer. The Agreement to End Hostilities is! Why are its authors and subscribers being punished?

- S29, S43

Response: See Response to Comment #1.

Comment #93: This change in the regulations will not be followed in practice and will not prevent the administration from abusing them and leading to more use of long term solitary confinement. What is needed are regulations that prevent corrupt practices and administration of the regulations that are already in place.

- S30, S121

Response: The Department requires all staff to enforce regulations as they are written. Failure to do so may result in disciplinary action. Extensive training is provided to ensure Department employees are aware of current regulations, policies, etc. and how to implement and enforce them properly.

Comment #94: The Step Down Program will psychologically torture prisoners and will allow and encourage abusive behavior by staff.

- S31

Response: See Response to Comment #1.

Comment #95: Tax dollars will need to be spent to build more prisons, SHU units, and hire staff for the thousands of prisoners who will need housing under the new policy

- S31, S334, S347

Response: See Response to Comment #1.

Comment #96: If an inmate will be classified as an associate or member of a prison gang based on a direct link (3378.2(b)), then the term “direct link” needs to be reviewed because this direct link can be established “unilaterally.” This is an oxymoron. Reciprocal direct link should replace that unilateral link.

- S32, S64, S322

Response: The California Supreme Court has noted that the Department’s reliance on unilateral conduct to establish the direct link to a validated gang affiliate is not clearly unreasonable.

Comment #97: This proposal falls entirely short of what is needed, which would be nothing less than an end to the misery and suffering to all who are placed in solitary confinement.

- S33, S71

Response: See Response to Comment #1.

Comment #98: In many respects the STG/ SDP is worse than the current practice. The program is based on the U.S. Bureau of Prisons model, which has been the subject of much criticism.

- S34, S35, S43, S72, S74, S83, S84, S131

Response: See Response to Comment #1.

Comment #99: California uses solitary confinement far more than any other government entity.

- S34, S35, S40, S46, S52, S66, S69, S72, S74, S83, S84, S102, S131, S133, S137, S141

Response: See Response to Comment #1.

Comment #101: I ask that an end to solitary confinement be put into law, or at least for those who committed no dangerous physical act.

- S34, S65, S72, S73

Response: See Response to Comment #1.

Comment #102: California is the only state that inflicts long term isolation based on alleged association. That should change immediately.

- S34, S35, S69, S73, S83, S103, S106, S115

Response: The proposed regulations establish weighted criteria to be used in identifying source items associated with the validation process. In addition, it significantly increases the due process components utilized in the validation process. Lastly, the minimum amount of time spent in the SDP for STG related behavior was reduced from 6 years (Inactive Review) to as little as 3 years without requiring the inmate to debrief.

Comment #103: Prison should be rehabilitative. Solitary confinement is punishment and is not rehabilitative.

- S34, S40, S63, S68, S108, S135, S137

Response: See Response to Comment #1.

Comment #104: Long term solitary confinement will continue in California under the new regulations. There is no cap on the length of time that a prisoner can be kept in isolation.

- S35, S52, S63, S69, S73, S74, S81, S83, S87, S91, S102, S109, S121, S127, S131, S132, S135, S140, S141, S322, S146, S330, S332, and Hearing comment H2

Accommodation: Partial

Response: A review of comments lead to the addition of sub section 3376.1(d)(10) which reads: “The ICC has evaluated and determined a validated affiliate has demonstrated that they are not progressing through Steps 1 or 2 of the SDP, and/or case factors such as medical or mental health needs, have changed which would warrant consideration of alternate custody/housing. DRB will conduct a case by case review of all case factors to determine if continued SHU placement is warranted or if alternate placement options are appropriate.”

The time an inmate spends in the in the SDP is dependent on the inmate’s behavior. This regulation greatly reduces the minimum time spent in the SDP for validated STG behavior from six (6) years to a possible three (3) years without debriefing.

Comment #105: Under the regulations, unconscionable conditions that violate basic human needs still exist: no sun, no phone calls, no contact visits, no programming, no view of the outdoors, no fresh air, enforced idleness, sensory deprivation, no human touch except for shackling, no colors, no vision of anything far away, bad smells, tasteless or disgusting food, annoying noises all the time, very cold or very hot cells, sleep deprivation, and uncomfortable concrete beds.

- S35, S69, S73, S78, S81, S83, S91, S102, S108, S131, S132, S135, S139, S140, S141, S332

Response: See Response to Comment #34.

Comment #106: CDCR has no plan to eliminate SHU beds under the regs.

- S35, S83, S91, S102, S109, S131, S141

Response: See Response to Comment #1.

Comment #107: Inmates who have been in isolation for decades without any physically threatening behavior have to participate in the 4-year SDP, rather than being released from solitary immediately.

- S35, S69, S73, S74, S83, S91, S102, S109, S122, S131, S135, S140

Response: The time in the SDP is solely based on the inmate’s STG related activity as an STG affiliate. If there is no documented, recent (within the prior four years) history of STG related behavior, an inmate can be released and go directly into step 5 in a general population through the one-time case by case review process, unless the inmate has expressed safety concerns. As inmates are newly validated, they will be assessed by the ICC to determine if placement in the SDP is warranted.

Comment #108: The length of the entire SDP as well as the length of its individual steps is too long.

- S35, S43, S52, S69, S73, S79, S83, S91, S92, S101, S102, S107, S109, S118, S129, S131, S141, S331, and Hearing comment H1

Response: The Department believes that the length of the program is appropriate and necessary to ensure each inmate has completed the instruction/work necessary to reintegrate into a general population setting.

Comment #109: The first 2 – 3 years in the SDP are spent purposefully in solitary confinement with no access to self-help, education or other programming.

- S35, S43, S63, S69, S73, S78, S79, S83, S91, S102, S109, S129, S131, S141

Response: The inmate is provided self-help workbooks, access to educational programs, and program facilitators that have been established at each of the SDP institutions.

Comment #110: Under the new regulations, there remains no due process for a prisoner facing or in solitary confinement: if validated as part of a Security Threat Group, when placed in SHU, or set back to a prior step.

- S35, S44, S52, S70, S78, S83, S84, S97, S102, S106, S115, S118, S131, S132, S141

Response: Due process to which inmates are entitled by law during the administrative decision to house them in a more segregated environment requires that they receive notice of the factual basis on which the decision is based and that they have a fair opportunity to be heard. The proposed regulations provide this level of due process at several steps both during the validation process, before a validated inmate can be housed in a segregated environment, and during each determination regarding the inmate's progression or retention in a particular Step. See proposed sections 3376(d)(5)(A), 3378.2(a), 3378.2(c), 3378.2(d), 3378.2(e), 3341.5(c)(2)(A)3, and 3378.3(b).

Comment #111: CDCR has too much discretion in sentencing, enforcing, administering, and reviewing its decisions regarding solitary confinement, progression through the SDP, and release from the SHU. There's no independent review or oversight.

- S35, S43, S48, S52, S69, S73, S76, S81, S83, S91, S102, S103, S107, S112, S116, S121, S125, S127, S129, S131, S141, S146, S148, S149, S347

Response: The Department does not have the statutory authority to require an independent agency or third party to review its administrative validation decisions. The Department notes, however, that inmates have the opportunity to challenge their validations through the inmate appeals process and in court through the filing of a writ of habeas corpus. The discretion that is built into the system is necessary as it provides for an accelerated release based upon program participation or regression should the inmate be found to be accountable for subsequent STG related behavior or activities. The proposed regulation has added multiple layers of additional due process review to the validation/segregation process. In addition, it has built into this regulation a standardized disciplinary matrix to insure that the application of sanctions is equitably applied with discretion built in to reward active participation in the program.

Comment #112: Prisoners may still be kept in SHU on the word of other anonymous prisoners. It is almost impossible to defend oneself against secret charges.

- S35, S73, S81, S83, S92, S101, S102, S106, S115, S119, S124, S125, S129, S131, S135, S136, S140, S141, S146, S347

Response: The use of confidential documents for either initial validation or revalidation requires that the reliability of the information be established per CCR Section 3321 and the new regulation provides additional levels of due process to further insure the inmate has every opportunity to challenge any information being used. Section 3321(b)(1) was modified as follows: "No decision shall be based upon information from a confidential source, unless other documentation corroborates information from the source, or unless other circumstantial evidence surrounding the event and the documented reliability of the source satisfies the decision maker(s) that the information is true".

Comment #113: The commenter states that the STG policy uses Homeland Security language to criminalize prisoners for interactions that have nothing to do with domestic terror or violence.

- S35, S73, S83, S131, S141, S150

Response: The comment is not specific enough with regard to the claim regarding the use of “Homeland Security language” to give the Department the ability to refute or accommodate the comment. However, the Department notes that the new terminology that it has adopted is consistent with national best practices and correctional trends.

Comment #114: The language of the new regulations further criminalizes “inmates” by now calling them “offender”.

- S35, S43, S83, S106, S115, S115, S131, S141

Response: The term offender, as described in CCR Section 3000 Definitions, is the single word used to identify inmates and parolees when the section could apply to either or both.

Comment #115: As few as 3 people can become a Security Threat Group and be put in solitary confinement

- S35, S141

Response: The Department believes that the criteria this regulation establishes clearly identifies the STG population. STGs are identified based on the activities of the group and several other criteria, not solely based on the numbers.

Comment #116: Obscure third level CDCR bureaucrats will decide for the State of California who are Security Threat Groups.

- S35, S73, S83, S131, S141

Response: See Response to Comment #1.

Comment #117: Validation will still mean punitive segregation without being guilty of anything

- S35, S83, S131, S141

Response: Segregation only occurs when a violation of regulation has occurred and the inmate has been found to be accountable for the behavior through a disciplinary hearing or when validation is as an STG-I member.

Comment #118: Validation as an associate may still mean a minimum of four years in SHU.

- S35, S83, S131, S141

Response: As a validated STG associate, the inmate may only be placed in SHU after being found to be accountable for STG related behavior through the disciplinary process.

Comment #119: CDCR is leaning toward using previously banned “laundry list identifications”, permitting confidential informants to claim an inmate is in a leadership capacity without having to detail the conduct at issue.

- S35, S83, S131, S141

Response: The use of confidential documents for either initial validation or revalidation requires that the reliability of the information be established per CCR Section 3321 and the new regulation provides additional levels of due process to further insure the inmate has every opportunity to challenge any

information being used. Section 3321(b)(1) was modified as follows: “No decision shall be based upon information from a confidential source, unless other documentation corroborates information from the source, or unless other circumstantial evidence surrounding the event and the documented reliability of the source satisfies the decision maker(s) that the information is true”. Use of “laundry lists” is not authorized under the proposed regulations.

Comment #120: Prisoners can be validated as a member of a prison gang or STG without breaking a prison rule.

- S35, S83, S131, S141, S146

Response: The regulation provides a stringent set of standards that must be met to establish validation as a member of a prison gang or STG-I.

Comment #121: Dangerous “behavior” is loosely and falsely defined in the new regulations.

- S35, S83, S131, S141

Response: The Department believes that the regulation appropriately identifies STG behavior as it relates to the management of security threat groups in California prisons.

Comment #122: Commenter states that section 3043.4(b) renders prisoners ineligible for good time credit simply because they are in the SHU, PSU, or ASU regardless of their behavior

- S331 and Hearing comment H1

Response: Section 3043.4(b) makes specific Penal Code sections 2931, 2932, 2933, 2933.05, and 2933.6. Together, these Penal Code sections prohibit SHU inmates who are validated members or associates from earning credits. The Department cannot provide these credits in violation of the Penal Code.

Comment #123: Possessing art work or political readings, having a tattoo, signing a greeting card, exercising with other prisoners, or saying hello to another prisoner under the new regulations can be labelled as evidence of gang “behavior” and if there is a “direct link” or “gang nexus”, any of these so called “behaviors” become serious enough to warrant being put in SHU.

- S35, S52, S73, S83, S85, S91, S92, S101, S127, S131, S141

Response: Those behaviors that qualify as STG behavior are clearly identified in the proposed regulation and the Department believes the regulation to be appropriate and well defined.

The Department has created an employee training program that will assist employees in identifying and articulating the necessary information. Supervisory staff is charged with evaluating the information being provided and determining if the nexus is clearly described in the written reports.

Comment #124: In addition to being placed in SHU for these “gang behaviors”, inmates can also be issued a rules violation and further punishment can be imposed, a SHU term extended, harm their chances of parole, and have their credit forfeited.

- S35, S73, S78, S83, S91, S92, S101, S131, S141

Response: Inmates actively involved in STG behavior are in violation of Department regulations and may be subject to disciplinary action and any appropriate sanctions as identified in these regulations.

Comment #125: Innocuous social interaction can be disciplined severely under the regulations.

- S35, S73, S78, S81, S83, S85, S91, S108, S127, S128, S131

Response: Only interaction that has a nexus to STG behavior and/or activities are subject to disciplinary action.

Comment #126: Activities such as engaging in a peaceful protest and in the “End the Hostilities” efforts to resolve gang conflict should not be grounds for discipline, gang validation, or SHU incarceration.

- S35, S43, S73, S78, S83, S91, S112, S115, S131, S135, S140, S141

Response: Only those activities that are connected to STG behavior, as defined in the STG Disciplinary Matrix, can be used for the purpose of validation or SHU placement, and only those violations that rise to the level of serious would be cause for SHU placement.

Comment #127: The “nexus” standard as defined and applied is very arbitrary; for example, the notion that two validated prisoners could have a relationship with each other separate from the threat group is not contemplated or accepted as a legitimate relationship.

- S35, S73, S83, S91, S131, S141

Response: The Department believes that the nexus standard set in the regulation is clear, accurate and defines what relationships are considered STG behavior. In general, the relationship is not being challenged, it is the behavior or activities that are occurring between the two individuals that will be identified as STG related behavior.

Comment #128: Gang investigators are not qualified to implement the validation process, yet continue to have that authority

- S35, S64, S73, S83, S91, S131, S141

Response: STG investigators receive training to become subject matter experts and are the first of many levels of review and due process prior to validation being affirmed.

Comment #129: Commenter complaints that there are no legal safeguards governing maintenance, use, or disclosure of information elicited in the SDP workbooks, that are degrading not uplifting, in CDCR classification hearings, in criminal prosecutions, civil litigation, and/or before the Board of Parole Hearings.

- S35, S43, S69, S73, S81, S83, S129, S131, S141, S144

Accommodation: Partial. The regulatory provisions have been clarified to address the commenter’s concern.

Response: In response to feedback received through the public comment period, the Department provided some additional language to address this concern. CCR Section 3378.3(a)(5) has been added to read: “Information gleaned through inmate participation in program activities is not intended to be used to validate an inmate, initiate an investigation into STG related behavior, or identify/corroborate the involvement of other STG participants. However, information specifically intended to convey to staff the occurrence of past, present, or future STG threats of violence or disruption may be evaluated to maintain institutional and public safety”. Inmates will retain their completed workbooks, which will not be placed in their central files.

Comment #130: Under the new regulations, there is no social interaction or socialization to help people get out of solitary.

- S35, S83, S131, S135, S141

Response: The SDP program promotes socialization and initiates integrated program activities beginning in Step 2, with ICC approval.

Comment #131: The new regulations do not allow prisoners to have yard interaction with other prisoners of diverse affiliations until the last half of Step 4. The enforced segregation reinforces group hostilities.

- S35, S73, S83, S131, S141

Response: The Department believes that it is important for the inmates to work on anger management and other social skills prior to attempting integration with inmates of other affiliations in a group yard setting.

Comment #132: Privileges for inmates in the SDP are inadequate: a single additional phone call per year, slightly greater access to canteen, or the taking of a single photograph. These are inadequate incentives, individually and cumulatively, to encourage participation in the SDP.

- S35, S69, S73, S79, S81, S83, S106, S115, S125, S129, S131, S141, S146, S331, S322 and Hearing comment #1

Accommodation: Partial

Response: The Department believes that the proposed regulations afford participating inmates improved privileges and that those improvements create a well balanced approach to recognizing participation and creating incentive for that participation. In response to the public comments, the Department has made changes to subsection 3044(g)(1) and adds new subsections 3044(j) through 3044(j)(2)(H) which address privileges.

Comment #133: The regulations are obscure and incomprehensible – in their present form, they do not provide adequate notice to prisoners, the public, the legislature, or the press of what the rules and procedures are.

- S35, S43, S52, S83, S112, S131, S141

Response: While the regulations necessarily address a wide variety of potential situations, the Department believes the proposed regulations meet the clarity standard required by the APA. The Department exceeded APA minimum notification requirements by approximately two weeks for both the initial and renote public comment periods.

Comment #134: The criteria for advancing through the steps of the SDP are not spelled out. They are too vague.

- S35, S43, S73, S81, S83, S125, S131, S141, S144, S148, S149, S332

Response: The proposed regulation provides very clear and concise direction and parameters for the release of STG affiliated inmates from SHU upon successful completion of Step 4 of the Step Down Program. The discretion that is built into the system provides for an accelerated release based upon program participation or regression should the inmate be found to be accountable for subsequent STG related behavior or activities.

Comment #135: The disciplinary matrix and corresponding penalties specifically appear designed to be obscure and incomprehensible.

- S35, S43, S73, S131, S141

Response: The STG Disciplinary Matrix was designed to provide the inmate population with a specific list of offenses which may have an STG nexus. It is still incumbent upon the staff member to articulate the circumstances which occurred to demonstrate the nexus to the STG. This list was developed utilizing existing disciplinary offenses, offenses which carry a determinate SHU term, and established source items.

Comment #136: Under the regulations, an inmate can be held in isolation indefinitely, which is a cruel and dehumanizing punishment.

- S36, S57, S61, S75, S83, S84, S91, S92, S101, S112, S121, S151 – S303, S148, S149

Accommodation: Partial

Response: See Response to Comment #78.

Comment #137: My fiancé has been incarcerated in the SHU since early 2011 because of a picture he made that was used to make him a “gang affiliate.” He has also lost his “good credits” and won’t be considered for early release due to the peaceful hunger strike. By the time my fiancé has the opportunity to parole, he will still be going through the Steps in the SHU – a total of six years, because of a picture.

- S37

Response: See Response to Comment #1.

Comment #138: There are things going on in these prisons that no human should ever be subjected to, like cold showers due to malfunctioning equipment in the middle of winter with the air conditioning running. The prison is giving the inmates small extras like cd players, bigger TVs, and a few other things, but they are doing as little as possible.

- S37

Response: See Response to Comment #1.

Comment #139: The commenter believes that the inmates who have had to endure the SHU should have even more time taken off of their sentence.

- S37

Response: Penal Code section 2933.6 prohibits SHU inmates who are validated members or associates from earning credits while they are housed in segregated housing. Upon their release from segregated housing, these inmates will be granted the opportunity to earn sentence reduction credits in compliance with the Penal Code.

Comment #140: The SDP they have come up with is utterly ridiculous. This is not rehabilitation; it sets people up for failure who are then expected to be released as a changed man.

- S37, S63, S87

Response: See Response to Comment #1.

Comment #141: Although additional due process and weighted validation criteria have been added, it will not change the fact that CDCR’s 602 inmate appeal system is a failure. The inmate appeal system is fully controlled by CDCR staff who do not override each other’s decisions. Most importantly, after an inmate is validated, the IGI answers the inmate’s gang validation appeal at the first and second level of appeal and they do not reverse their own decisions. Therefore, the regulations will not reduce expensive litigation as inmates will still have to rely on the courts.

- S38, S64, S76, S102, S121

Response: See Response to Comment #1.

Comment #142: Without a fair system, inmates will continue to be housed in the SHUs, which will be more expensive for California taxpayers

- S38, S40, S85, S121

Response: See Response to Comment #1.

Comment #143: The regulations will not reduce gang activity in the local communities because many of the CDCR inmates housed in the SHU have no gang ties and were wrongfully placed there.

- S38

Response: See Response to Comment #1.

Comment #144: There are no guidelines to the bad behavior that could get an inmate locked up in SHU

- S39

Response: CCR Sections 3378.4(a) and 3378.4(c) of the proposed regulation provides a full and complete Disciplinary Matrix for STGs, as well as the behavioral criteria for an inmate to be placed in the SDP for behavior which occurs subsequent to the initial validation.

Comment #145: I've been in the PBSP SHU since 1995 – why would I want to advance to Step 3 and have some of my property taken from me (e.g. either my radio or my television. In Step 3 and beyond you can only have one or the other)

- S39

Accommodation: Partial

Response: In response to the comments received through the public comment period, the Department amended language in CCR Section 3044(g)(1)(B) 8 to read as follows "Electrical appliances are allowed in accordance with the Authorized Personal Property Schedule for SHU/PSU inmates, as described in Section 3190(b)(4)."

Comment #146: The SDP and the journals are just another form of degradation and an attempt at humiliation.

- S39, S69

Response: See Response to Comment #1.

Comment #147: I disagree with these new rules and more specifically the Step Down Program and validation process. I have no way out of the Pelican Bay SHU unless I parole or die. I cannot drop out of a gang I have never associated with. I cannot fight confidential information used against me. I cannot become a confidential informant and put myself and family at risk just to get out of solitary confinement.

- S40

Response: See Response to Comment #1.

Comment #148: Only those who are a real (not imagined) danger to others should be in SHU

- S43

Response: The regulation establishes a stringent set of criteria to assure that only those who present a real danger to the safety and security of the institution are placed in SHU.

Comment #149: Owning or possessing an item does not qualify as “behavior”.

- S43

Response: It is the Department’s position that choosing to possess items associated with STG activity is a behavior.

Comment #150: Guards should not be allowed to have any input as to who is placed or retained in SHU. Suitably qualified people who have never been employed by CDCR should perform this role.

- S43

Response: Correctional Officer input during committee review is limited to observed behaviors and STG investigator information; these staff provide an important prospective of the inmate’s behavior as they are in the building and having daily interactions with the inmate.

Comment #151: SHU placement or retention based on evidence not disclosed to the inmate must cease immediately, and everyone held there on such evidence immediately transferred to the general population.

- S43

Response: The regulation requires that confidential information that will be utilized in the validation process shall be disclosed to the inmate in a written form. The confidential disclosure document must provide enough information to allow the inmate to respond to the information without divulging the confidential source’s identity. Information received from a confidential source must have reliability established per CCR Section 3321.

Comment #152: Commenter states that due process must be included when placing or retaining someone in SHU

- S43, S48, S107, S108, S142,

Response: Due process to which inmates are entitled by law during the administrative decision to house them in a more segregated environment requires that they receive notice of the factual basis on which the decision is based and that they have a fair opportunity to be heard. The proposed regulations provide this level of due process at several steps both during the validation process and before a validated inmate can be housed in a segregated environment. See proposed sections 3376(d)(5)(A), 3378.2(a), 3378.2(c), 3378.2(d), and 3378.2(e).

Comment #153: Being labelled as a member of a STG is not enough to merit SHU placement. Family members should not be validated or placed in SHU for having contact with one another

- S43

Accommodation: Partial

Response: In response to the comments that were submitted via the public comment period, the Department made a modification within the regulation. The language in Section 3378.1(c)(1) was changed from mandatory to discretionary. Language was added in Section 3378.2(e) which now requires the ICC to conduct an additional review of validations for STG-I members to ensure they agree with the

decision of the STG Unit Classification Committee. When the ICC does not agree with the decision of the STG Unit Classification Committee, the case will be referred to the Departmental Review Board for a final decision on the level of validation.

Family members having contact with each other, in and of itself, would not warrant validation. It is the behavior or activities that are occurring between the family members that may be identified as STG related behavior. In addition, it will take source items totaling at least 10 points which will subject the inmate to be considered for validation.

Comment #154: Gang investigators are not to be able to have someone validated and placed or retained in SHU. They are not qualified for such a role.

- S43

Response: STG investigators receive training to become subject matter experts and are the first of many levels of review and due process prior to validation being affirmed.

Comment #155: Indefinite SHU placement should be forbidden

- S43, S121

Accommodation: Partial

Response: A review of comments lead to the addition of sub section 3376.1(d)(10) which reads: “The ICC has evaluated and determined a validated affiliate has demonstrated that they are not progressing through Steps 1 or 2 of the SDP, and/or case factors such as medical or mental health needs, have changed which would warrant consideration of alternate custody/housing. DRB will conduct a case by case review of all case factors to determine if continued SHU placement is warranted or if alternate placement options are appropriate.”

The time an inmate spends in the in the SDP is dependent on the inmate’s behavior. This regulation greatly reduces the minimum time spent in the SDP for validated STG behavior from six (6) years to a possible three (3) years without debriefing.

Comment #156: SHU placement should always be limited to no more than 14 days per United Nations recommendations. Each step of the step down program should be no longer than 6 months (with no more than 14 days to be spent in SHU)

- S43

Response: The Department maintains that the terms, as represented in the regulation, best reflect its program needs.

Comment #157: Any inmate who has been in SHU for more than three years should bypass the SDP and be immediately released into the general population

- S43

Response: The time in the SDP is solely based on the inmate’s STG related activity as an STG affiliate. If there is no documented, recent (within the prior four years) history of STG related behavior, an inmate can be released and go directly into step 5 in a general population through the one-time case by case review process, unless the inmate has expressed safety concerns. As inmates are newly validated, they will be assessed by the ICC to determine if placement in the SDP is warranted.

Comment #158: Non-qualified people should not be delivering cognitive behavioral therapy programming or training

- S43

Response: The SDP focuses on self-help and the educational aspect of rehabilitative programming, any “therapy” determined to be necessary would be delivered through the mental health system by licensed clinical staff.

Comment #159: Group interaction and socialization – without cages – must occur at every stage of the SDP

- S43

Response: The Department believes that a gradual reintegration is the safest and most prudent path for a successful outcome.

Comment #160: SHU inmates should be allowed phone calls as those inmates in the general population do

- S43

Response: The Department’s review of national best practices made clear that incentive based privileges are important to the overall program outcome.

Comment #161: Decent food and proper mattresses should be given to all inmates – whether they’re in the SHU or not.

- S43

Response: The Department’s menus are formulated by licensed dieticians to provide healthy balanced menus which are prepared by culinary professionals at the institutions; the Department believes that the meals provided are of the highest quality. The weekly menu is the same for general population inmates as it is for SHU/ASU inmates. The mattresses provided are high quality bedding designed for prison use and are widely used in many correctional settings.

Comment #162: SHU temperatures should be maintained at reasonable seasonal levels and all air conditioning vents should be regularly cleaned and maintained

- S43

Response: The air handling systems were designed in accordance with the uniform building code to provide adequate rates of air exchange and maintain regulated temperatures throughout the institution. There is a computer generated maintenance schedule for each piece of equipment installed at the institution, which is followed to provide mandated preventative maintenance.

Comment #163: As few as three people can become a security threat group. This should be changed.

- S43, S73, S83, S129

Response: The Department believes that the criteria this regulation establishes clearly identifies the STG population. STGs are identified based on the activities of the group and several other criteria, not solely based on the numbers.

Comment #164: Prison is the punishment; inmates should not be punished once they are in prison. They should also not be punished more than once for the same offence (eg. placed in segregation and be issued a 115)

- S43

Response: Inmates serving a prison sentence do so as a result of the punishment imposed by the court for their crime/ commitment offense. If an inmate commits a new and additional violation of institutional rules, the Department has the legal authority to address that new behavior through its regulatory disciplinary process. The “115” refers to a form through which due process is in part provided for disciplinary actions and is not a punishment. Disciplinary sanctions authorized by regulation for specific violations are allowed following a hearing and finding of guilt, and may include placement in segregated housing if appropriate. Courts recognize that discipline by prison officials in response to misconduct falls within the expected perimeters of the sentence imposed by the court.

Comment #165: All reviews of current SHU inmates should begin with those who have been in there the longest.

- S43

Response: The reviews have focused on those who have the oldest validation dates and those who have court mandated inactive reviews due.

Comment #166: SHU should be abolished entirely, beginning with the closure of PBSP.

- S43

Response: See Response to Comment #1.

Comment #167: The regulations should be clearly defined and in simple language. Many inmates have low literacy levels. All terms must be clearly defined. Any and all ambiguity should be construed in the favour of the inmate. A Spanish translation of the regulations should be provided to all inmates of Hispanic origin.

- S43

Response: While the regulations necessarily address a wide variety of potential situations, the Department believes the proposed regulations meet the clarity standard required by the Administrative Procedure Act. Copies of CCR Title 15 regulations in Spanish are provided annually for review at CDCR institutions.

Comment #168: Inmate appeals that are not timely responded to should be granted. This will ensure timely responses.

- S43

Response: The regulation does not propose changes to the Departments Appeals system and the Department believes that the existing system provides full access and remedy as currently formulated.

Comment #169: Commenter states that only violent acts that are serious enough for an inmate to have been convicted in a court of law should be used at an inmate’s parole hearing – anything else in the inmate’s file should not be viewed.

- S43

Response: The Board of Parole Hearings in deciding whether an inmate is suitable for parole, is required by law to consider whether he still poses an unreasonable risk of danger to society. In doing so, the Board is legally required to consider all relevant, reliable information available including any serious institutional misconduct.

Comment #170: Release from SHU cannot be discretionary or arbitrary. There must be clearly defined criteria for the inmates to follow and once they have complied, release should be guaranteed.

- S43, S73, S83, S129, S141

Response: See Response to Comment #134.

Comment #171: Since 2011 when the STG/SDP pilot was implemented, the number of SHU inmates has risen. This remains true even though 60+% of prisoners have been released as a result of case by case reviews of all long-term SHU inmates, proving CDCR's extreme overuse of isolation. Nothing in these regulations prevents continued overuse of solitary confinement in California

- S44, S73, S130, S151 – S321

Response: The STG/SDP pilot was approved by the Office of Administrative Law on October 18, 2012. The broader based Departmental segregation numbers has actually been reduced by approximately one thousand inmates and continues to show a downward trend.

Comment #172: Because placement in the SHU is designated as an administrative assignment, there is no due process. If it is classified as punishment, which is what it is, then they would be entitled to due process.

- S44, S47, S54, S55, S57, S69, S73, S75, S92, S101, S96, S103, S112, S126, S130, S138, S323, S324, S325, S326, S327

Response: State and federal courts have determined that the placement of validated inmates into segregated housing is an administrative decision, and is not a disciplinary or punitive decision. Due process to which inmates are entitled by law during the administrative decision to house them in a more segregated environment requires that they receive notice of the factual basis on which the decision is based and that they have a fair opportunity to be heard. The proposed regulations provide this level of due process at several steps both during the validation process and before a validated inmate can be housed in a segregated environment. See proposed sections 3376(d)(5)(A), 3378.2(a), 3378.2(c), 3378.2(d), and 3378.2(e).

Comment #173: I am strongly opposed to the STG/ SDP because it perpetuates punitive approaches and California must move away from the use of solitary confinement, which is torture and a violation of international human rights.

- S45, S46, S67, S71, S72, S112, S141

Response: See Response to Comment #1.

Comment #174: The possession of certain books should not be held against prisoners. There is no reason to prevent prisoners from reading certain books, regardless of whether they are attempts to better learn about one's ethnicity and culture or prior social movements.

- S45, S73, S78, S91, S121, S128, S145

Response: The Department believes that restricting books that are used for the propagation of STG activities or STG recruitment is an important tool in limiting STG activity within CDCR institutions.

Comment #175: The conditions and duration of this form of incarceration are defined as torture by several international organizations.

- S47, S29, S63, S112, S114, S123, S141

Response: See Response to Comment #1.

Comment #176: To put someone in solitary confinement for any reason has been deemed torture by the U.N., if used for more than 15 days at a time and should be banned; let alone 15 weeks, months, or years as is happening now in California.

- S47, S54, S55, S78, S112, S126, S135, S151 – S303, S140, S141, S323, S324, S325, S326, S327

Response: The United States is not bound by the findings announced by the United Nations unless ratified. Specifically with regard to the U.N. conventions, in ratifying the treaty the United States has declared that it is only bound to prevent “cruel, inhuman or degrading treatment or punishment”, only insofar as the term means that treatment or punishment that is prohibited by the Fifth, Eighth, and or Fourteenth Amendments. The Department notes that segregated housing within its facilities does not constitute “solitary confinement.” The Department further notes that neither its classification, placement, nor use of segregated housing has been found to be prohibited by the Fifth, Eighth, and/ or Fourteenth Amendments.

Comment #177: I am adamantly and conscientiously opposed to the regulations regarding solitary confinement. Long-term solitary confinement is inhumane and violates the basic principles of the U.S. Constitution

- S48, S62, S65, S69, S70, S72, S78, S84, S91, S109

Response: See Response to Comment #1.

Comment #178: Inmates are subjected to more laws when they enter prison. These rules and regulations are implemented because inmate families do not have the funds to make a trip to Sacramento where rules are decided upon. This in itself is a travesty.

- S49

Response: Attendance at public hearings regarding proposed regulations is not necessary to provide comment on the regulations. All comments are treated equally whether they are received in person, via mail, email, fax, etc.

Comment #179: Please stop using solitary confinement. It has been shown to have extremely negative psychological effects.

- S50, S95, S98, S104, S133, S134, S137, S310

Response: See Response to Comment #1.

Comment #180: These regulations perpetuate California’s inhumane treatment of prisoners and its overuse of harsh, repressive measures. Uncrowding the prisons and drastically reducing or eliminating sentencing for minor offenses and victimless crimes (like drug use) would do far more to ease prison problems. Not more repression.

- S51

Response: See Response to Comment #1.

Comment #181: I am opposed to the Security Threat Group/ Step Down Program and to the use of SHU confinement for an indeterminate period of time for any reason. This proposal is purposefully designed to

destroy an inmate's mind, soul, and spirit and does not rehabilitate. Instead it constitutes psychological torture.

- S53, S81

Response: See Response to Comment #1.

Comment #182: PBSP is a modern, technologically advanced facility, but the staff and administration are cruelly indifferent to the basic rights of its inmates.

- S53

Response: See Response to Comment #1.

Comment #183: The SHU was designed to house the most difficult inmates, and gang members assigned to the SHU remain there for their entire terms. Contrary to the perception that control units house “the worst of the worst” it is often the most vulnerable prisoners, not the most violent, who end up in extended isolation.

- S53, S70

Response: See Response to Comment #1.

Comment #184: SHU inmates deteriorate mentally, physically, and emotionally whether they were mentally ill before entering prison or not. They suffer from “SHU syndrome”, the symptoms of which resemble those of schizophrenia and post-traumatic stress disorder. Inmates will hide their symptoms to maintain their dignity and hide their vulnerability and will not seek treatment. SHU syndrome is caused by correctional policies that condone long-term incarceration, harsh punishment, minimal rehabilitation, a predatory social environment, indifference of the larger society, overcrowded prisons, solitary confinement, and abuse by inmates and staff.

- S53

Response: See Response to Comment #1.

Comment #185: The SHU's physical environment in which prisoners are isolated in small cells for twenty-two and a half hours a day reinforces a sense of isolation and detachment from the outside world. This degree of isolation and control, and deprivation of virtually all human is degrading, dehumanizing, and results in a significant risk to inmate mental health.

- S53, S59

Response: See Response to Comment #1.

Comment #186: The United States' legal obligations to provide human rights to prisoners are cited in many documents: the International Covenant on Civil and Political Rights, The United Nations Standard Minimum Rules for the Treatment of Prisoners, The Principles for the Protection of All Persons under Detention, and the Basic Principles for the Treatment of Prisoners. The U.N. Human Rights committee ruled that solitary confinement of only one month in a cell with 24-hour artificial light was torture.

- S53

Response: The United States is not legally bound by the findings announced by the United Nations unless ratified. Specifically with regard to the U.N. conventions, the United States has declared that it is only bound to prevent “cruel, inhuman or degrading treatment or punishment”, only insofar as the term means

that treatment or punishment that is prohibited by the Fifth, Eighth, and or Fourteenth Amendments. The Department notes that segregated housing within its facilities does not constitute “solitary confinement.” The Department further notes that neither its classification, placement, nor use of segregated housing has been found to be prohibited by the Fifth, Eighth, and/ or Fourteenth Amendments.

Comment #187: In California prisons, and especially in the SHUs there is not a fair disciplinary hearing process. A prisoner experiencing unfair and undeserved practices at the hands of correctional staff perceives that he is being abused.

- S53

Response: The U.S. Supreme Court has determined that in prison disciplinary proceedings an inmate is entitled to the following due process: an advance written notice of the claimed violation, the right to call witnesses and present documentary evidence if to do so would not jeopardize institutional safety or correctional goals, and a written statement of fact findings. The Department notes that each of these provisions are already provided as part of its disciplinary process. See section 3313, which remains unchanged; and section 3315 which has been amended to include STG violations and the findings that must be made. However, an inmate is not constitutionally entitled to confront or cross-examine witnesses or to be represented by counsel.

Comment #188: Commenter states that over twenty-five years and various litigations, the courts have found that the use of solitary confinement carries major psychiatric risks inherent in the conditions of confinement at the PBSP SHU violate the Eighth Amendment rights of all current and future SHU inmates. The Eighth Amendment does not guarantee that inmates will not suffer psychologically to some degree, however, when their conditions of confinement cause serious mental illness or exacerbate already existing mental illness, prisons have crossed the line into psychological torture.

- S53

Response: The Department notes that the commenter misstates case law conclusions regarding the conditions of confinement at the PBSP SHU. Courts have not concluded that those conditions “violate the Eighth Amendment rights of all current and future SHU inmates”; similarly, it has not been found that the conditions of confinement “cause serious mental illness.” The Department has made significant changes during the twenty-five year period mentioned by the commenter and its current policies, practices and conditions have not been found to be unconstitutionally inadequate.

Comment #189: Human rights experts affiliated with the United Nations have called on states to ban solitary confinement except in the most extreme cases.

- S56

Response: See Response to Comment #1.

Comment #190: Solitary confinement makes prisoners more antisocial, psychologically unstable, and prone to self-harm and violence against others. This will lead to less safe communities after these inmates are released on parole.

- S56, S58, S63, S121, S132

Response: See Response to Comment #1.

Comment #191: The new rules will perpetuate the worst of the old rules. They are more of the same.

- S59, S121, S330, and Hearing comment #2

Response: See Response to Comment #1.

Comment #192: How about producing some meaningful change?

- S60, S87

Response: See Response to Comment #1.

Comment #193: The use of solitary confinement for more than 2 or 3 days is cruel and inhuman punishment

- S63

Response: See Response to Comment #1.

Comment #194: There are other forms of punishment available, such as taking away privileges like television or other “amenities”.

- S63

Response: The Department believes that the disciplinary sanctions for STG related behavior, as listed in the departmental regulations, provide a balanced approach and offer the best opportunity for a positive outcome.

Comment #195: Perhaps prisoners get sent to solitary because nobody can control them. In that case, it reflects poorly on the prison system; it seems to me that there must be ways to learn how to keep things under control without brutality.

- S63

Response: See Response to Comment #1.

Comment #196: My validation and SHU confinement of fourteen years has been unlawful as indicated in a July 2013 Ninth Circuit U.S. Court of Appeals order, and I am now waiting for rulings within the U.S. District Court. On occasion, CDCR has admitted that definitively identifying gang members is almost impossible.

- S64

Response: See Response to Comment #2.

Comment #197: The CDCR Office of Correctional Safety deemed me inactive in October 2012. The Department Review Board also found me inactive and placed me in Step 5 of the Step Down Program, but retained me in the SHU because I am on a prison gang “hit list.” The regulations lack provisions for these Step 5 inmates retained within segregation who still get Step 1 privileges rather than those of Step 5. Steps 3 and 4 receive greater privileges.

- S64

Accommodation: Partial

Response: In response to public comments, significant changes have been made to subsection 3044(g)(1) and added new subsections 3044(j) through 3044(j)(2)(H).

Comment #198: Families and friends of Step 5 inmates retained in segregation are also adversely affected; they only get a one-hour contact visit without access to vending machines. Whereas Step 5

inmates in general population may receive contact visits for up to 5 hours with photo opportunities, vending machines, etc.

- S64

Response: The Department believes that the visiting facilities and regulations, as written, provide the best opportunity to safely address the needs of this population.

Comment #199: Despite the fact that the SDP program has been in operation for more than seventeen months, Corcoran SHU has failed to implement a single privilege related provision for Step 5 inmates retained in segregation. And not a single CDCR employee has been fired or disciplined for this failure.

- S64

Response: See Response to Comment #2.

Comment #200: The SDP regulations are discriminatory, violate equal protection and due process of law, create cruel and/or unusual punishment conditions, and obstruct inmates' right to petition for redress of grievances.

- S64

Response: The proposed SDP regulations do not target or treat inmates differently based on any discriminatory intent disparate impact. The Department notes that the due process to which inmates are entitled by law during the administrative decision to house them in a more segregated environment requires that they receive notice of the factual basis on which the decision is based and that they have a fair opportunity to be heard. The proposed regulations provide this level of due process at several steps both during the validation process and before a validated inmate can be housed in a segregated environment. See proposed sections 3376(d)(5)(A), 3378.2(a), 3378.2(c), 3378.2(d), and 3378.2(e). The Department also notes that inmates currently have the opportunity to challenge their conditions of confinement in court through the filing of a writ of habeas corpus.

Comment #201: The DRB is retaining me in segregation despite being placed in Step 5 and will not send me elsewhere because I would not debrief. Improperly validated inmates lack recourse because they possess nothing to debrief. Thus requiring that they debrief could amount to an Eighth Amendment Violation.

- S64

Response: See Response to Comment #2.

Comment #202: The regulations allow for termination of STG validation status after eleven years with vastly different starting dates: release to general population to some, and from the date of initial validation for others. Further, termination is elusive because it requires "continuous" incarceration time.

- S64

Response: The Department uses the continued incarceration standard because it has no way to monitor activities outside of its sphere of authority. The varying starting dates are related to the time spent in a non-restricted housing environment. This will allow the inmate to demonstrate that he/she can live in a general population or SNY setting and remain free of STG related behavior.

Comment #203: Step 5 inmates retained in segregation are being discriminated against and punished based on their status. Eg. I am assigned D-1-D maximum custody status. If I had been released to Step 5, I would either be A-1-A or A-2-B status with a medium to minimum custody level designation and able to

earn sentence reduction credits. Without specific regulations that address this subclass being retained for reasons beyond their control, the institutions will treat them arbitrarily. This serves as notice to the State of California of my intent to sue.

- S64

Response: See Response to Comment #43.

Comment #204: Proof of a “direct link” does not require that the subject had knowledge, actual or implied of the validated STG affiliates status. Federal and State law mandate “knowledge” and notice. They call it the right to steer between right and wrong.

- S64

Response: The California Court of Appeals in *In re Cabrera* (2013) 216 Cal.App.4<sup>th</sup> 1522, 1540 recognized that a finding that a direct link exists does not necessarily require evidence that the inmate under investigation knew that the person to whom he has a direct link is a validated member or associate and that evidence of other facts could be sufficient to demonstrate a direct link without having to establish knowledge.

Comment #205: Validations may be based on a source item that may have occurred at any time. Under State and Federal law, except for very few acts such as murder, a statute of limitation applies and prosecution and punishment are prohibited.

- S64

Response: Validation is an administrative determinant and is not a punishment, therefore, the statute of limitations does not apply. Affiliation as a member or associate is considered by security threat groups themselves to be permanent, therefore source items have a continuing indicia of reliability. The Department notes, however, that in order for photographs to be relied upon as a source item, section 3378.2(b)(6) requires that they not be more than 4 years old.

Comment #206: The ability of CDCR to regress an inmate in the SDP to a prior step will be abused and result in longer SHU confinement for many.

- S64, S96

Response: The decision by an ICC to regress an inmate will be based upon an inmate being found accountable for STG related behavior. Once the disciplinary process is finalized, the Step Down Placement Options provides guidance for the ICC on the options available for the regression of the inmate. These options were developed based on the severity of the behavior committed by the inmate.

Comment #207: It is my experience at CSP-Corcoran SHU that disciplinary hearings are shams. All due process is routinely denied.

- S64

Response: See Response to Comment #2.

Comment #208: For decades, CDCR employee gangs have been known to exist, eg. “the green wall”, “sharks”, and white lightning” and these groups that enforce a code of silence that threatens the safety and security of the prisons, inmates, and other employees, would fit the criteria of a “prison gang” in Title 15 section 3000.

- S64

Response: See Response to Comment #1.

Comment #209: The SDP/ proposed regulations are intended to make moot two decades of laws showing the validation process and SHU confinement practices are unreliable, abused, and harmful.

- S64

Response: Efficient and effective STG management within prisons requires a comprehensive STG prevention, identification, and management policy that includes interdiction and rehabilitation. CDCR's regulatory strategy that was initially developed more than 25 years ago, is that of a crime prevention strategy through suppression. The Department recognizes a need to evaluate those strategies and adopt new approaches to address constantly evolving STG trends.

Comment #210: This entire barbaric system is based on money

- S68, S85

Response: See Response to Comment #1.

Comment #211: Most of the prisoners in these modern dungeons are black or latino.

- S65

Response: See Response to Comment #1.

Comment #212: Whether you call it "administrative" or "indeterminate" confinement, this is still an indefinite prolonged confinement in the SHU. Nothing substantially changed in this regard.

- S69, S125, S146, S333, and Hearing comment #2

Accommodation: Partial

Response: A review of comments lead to the addition of subsection 3376.1(d)(10) which reads: "The ICC has evaluated and determined a validated affiliate has demonstrated that they are not progressing through Steps 1 or 2 of the SDP, and/or case factors such as medical or mental health needs, have changed which would warrant consideration of alternate custody/housing. DRB will conduct a case by case review of all case factors to determine if continued SHU placement is warranted or if alternate placement options are appropriate."

The time an inmate spends in the in the SDP is dependent on the inmate's behavior. This regulation greatly reduces the minimum time spent in the SDP for validated STG behavior from six (6) years to a possible three (3) years without debriefing.

Comment #213: The Department through the proposed new regulation has provided the opportunity for the inmate to significantly shorten the time spent in a restricted housing environment, while measures taken to help provide for the safety of everyone living and working in this restricted area continue to be necessary.

- S69

Response: The Department believes that the timeframe set forth in the regulation best reflect the needs in California's facilities.

Comment #214: There is still too much inconsistency among correctional counselors in the interpretation and application of the new regs. Eg. Some say the inmate must journal, others say not. Some say that the

journals stay in the cell and are not reviewed, others say the information goes into the inmates' c-file. Which is it?

- S69

Response: These proposed regulations will ensure a standardized practice throughout the Department. In the revised policy, an inmate must participate in all program assignments as addressed by the ICC. The journals are for the inmate's use and will not be collected and placed in the central file.

Comment #215: In the regs there is a huge discrepancy between "elect" to participate and "required" to participate. Be clear

- S69

Response: Inmates are assigned to the SDP if they are eligible and placement is appropriate. An inmate may elect to participate in the SDP. However, if he chooses not to do so, he will not progress through the program. Participation is required to progress and be released from the SHU. The Department believes that its regulations are sufficiently clear. See section 3378.3.

Comment #216: The "Con Game" must be replaced with decent and meaningful work that will help the inmates truly understand and deal with a sense of unworthiness and other factors that led to their original crimes. The programs must be administered with compassion, intelligence, insight and commitment to transformation

- S69

Response: The Department's STG Step Down Program has been built around a collection of the best practices from other agencies across the nation and adapted to California's very complicated specific needs. The journaling series being used in California is also being used by other county and state correctional organizations around the country.

Comment #217: Having technical access to educational programs is not the same as actually having them consistently available and implemented so that inmates can truly rehabilitate.

- S69, S108, S334

Response: The Department believes that the proposed regulation offers comprehensive programming that is supported by educational staff and designed to help with the transition from a restrictive environment to a general population setting.

Comment #218: There appear to be no safeguards for an inmate who may be stuck in Step 1 indefinitely for refusing to program. There should be no indefinite confinement in any step.

- S69

Accommodation: Partial

Response: A review of comments lead to the addition of subsection 3376.1(d)(10) which reads: "The ICC has evaluated and determined a validated affiliate has demonstrated that they are not progressing through Steps 1 or 2 of the SDP, and/or case factors such as medical or mental health needs, have changed which would warrant consideration of alternate custody/housing. DRB will conduct a case by case review of all case factors to determine if continued SHU placement is warranted or if alternate placement options are appropriate."

Comment #219: It is unclear if the six-year review process is still occurring alongside the new case-by-case process.

- S69

Response: The six-year reviews will continue, as necessary, until all of the subject inmates have had their case by case reviews.

Comment #220: [The CDCR Director of Adult Institutions] has said in legislative hearings that artwork and photos and other “non-behaviors” no longer will count, but these items are still being used in the six-year reviews to deny inactive status and as the basis of RVRs that are being written in record numbers.

- S69

Response: The only change to the inactive review process has been to modify the time being reviewed from the previous 6 years to the previous 4 years. The source items being used to determine inactive status are outlined in CCR Section 3378. With the implementation of the STG Disciplinary Matrix, inmates are being held accountable for those behaviors when the nexus to the STG can be identified.

Comment #221: Are the counselors trained in effective communication, ethics, buy-in?

- S69

Response: See Response to Comment #1.

Comment #222: What training do the line guards receive? Why should inmates believe they will be treated fairly and not prevented from progressing out to Step 5? The culture needs reform, not just the inmates.

- S69

Response: See Response to Comment #1.

Comment #223: Behavior modification is now the only way out of the SHU, a worse situation than before. What training has been given to those who are administering this cognitive therapy? Why assume that inmates will embrace talking about personal information when prisoner survival psychology has been the opposite?

- S69

Response: The SDP focuses on self-help and the educational aspect of rehabilitative programming, any “therapy” determined to be necessary would be delivered through the mental health system by licensed clinical staff.

Comment #224: Too many times there has been no direct link to a gang nexus proven that would hold up in criminal court. The assumption of guilt, bad character, and gang activity is overwhelmingly prevalent.

- S69

Response: A direct link is required when an inmate is being validated as an STG-I associate or member. The definition for direct link has been developed and included in the proposed regulations. The evidence standard required for the validation process has always been and remains the “some evidence” standard, it is not the “beyond a reasonable doubt” standard which is required for a finding of guilt in a criminal court.

Comment #225: It is unclear if the decisions have already been made about what step an inmate will be assigned to before the hearing. It seems to not matter what the inmate says and his self-improvement does

not seem to matter. Anyone who has worked hard to change himself, especially without the benefit of meaningful or consistent programming should be given the highest consideration and released to Step 5.

- S69

Response: Decisions are not made until the inmate has an opportunity to interact with the classification committee and present or rebut information that is being used in the committee's decision. Decisions are made based on the inmate's overall case factors including participation or involvement in STG related behavior or activities within the last 4 years.

Comment #226: The decisions about placement and retention are still too often discretionary and arbitrary, and speak to a possible quota being followed rather than putting weight on individual worth.

- S69

Response: The proposed regulations specifically incorporate a separation between the process of STG validation of an STG affiliate and the determination for placement into restricted housing in the new Step Down Program. Although it is recognized that inmate classification systems as a whole are based upon using specific tangible case factors to assist in predicting future levels of behavioral compliance, the variable of human nature provides an ongoing subjective element to the process. Based upon unpredictable events and occurrences, there will always remain elements of professional discretion. The revised policy incorporates processes and practices to reduce or eliminate some components of discretionary decision making. The revised STG Policy has incorporated a national best practice of using a weighted point system for validation, an independent classification committee to affirm validations, and a requisite for individual accountability through a behavior based disciplinary process. Subsequent to the validation process, an individual's placement and progression through the SDP incorporates the use of individual accountability, using a formal disciplinary system, which was not used in the pre-existing policy. This is an objective behavior management system, requiring a level of preponderance of evidence, and maintains no elements of quota within practice or policy.

Comment #227: There are no safeguards to eliminate the gap between policy and practice – just because something is policy in the upper ranks does not mean it will be understood, carried out and applied at the line guard level. Often we see quite the opposite.

- S69

Response: The proposed regulations incorporate several new elements of due process and procedural safeguards, which are intended to provide enhanced levels of oversight between separate divisions within the CDCR. The pre-existing policy provided for the Office of Correctional Safety (OCS) to investigate and validate suspected STG affiliates, which automatically resulted in placement within an indeterminate SHU Program. Additionally, the policy provided for the OCS to investigate and evaluate validated affiliates each 6 years and determine if affiliates should be considered eligible for inactive review status. The proposed regulations establish more clearly defined source items; include a national best practice of using a weighted point system; and provide for an independent review by a separate management classification committee to assess and determine if sufficient evidence exists to affirm a validation. The revised policy has Division of Adult Institutions (DAI) supervisory and management oversight responsibilities imbedded within both the validation process, as well as the determination process for placement into the 3-4 year Step Down Program. These incorporated reviews by management, in addition to the Warden's 90/180/365 day Classification Committee reviews, are intended to ensure that management is observing and evaluating SDP placement, progression and release components of the Department's STG policy.

Comment #228: Should the SHU units continue to operate, I think inmates should have far more privileges, including more time out of their cells and the ability to contact loved ones, as well as educational, vocational, and self-help materials and classes.

- S70, S121

Response: The Department believes the Security Housing Units continue to be a necessary alternative for those inmates who present the greatest threat to public safety and institutional security.

Comment #229: It is time to empty the prisons and let out all the non-violent offenders and seek restorative justice and treatment for all of the rest of the prisoners.

- S72

Response: See Response to Comment #1.

Comment #230: Being seen by others as a leader is grounds for isolation even without violent behavior.

- S73, S91, S125, S332

Responds: The regulation set clear guidelines for what information may be used in decisions concerning validations or housing as well as what weight the information has when applied.

Comment #231: As with all statements made under duress, information gained from the debriefing process is highly questionable, unreliable and a threat to the safety of both the debriefer and the men he names.

- S29, S35, S73, S92, S101, S102, S103, S106, S115, S107, S112, S124, S129, S331, and Hearing comment #1

Response: The use of confidential documents for either initial validation or revalidation requires that the reliability of the information be established per CCR Section 3321 and the new regulation provides additional levels of due process to further insure the inmate has every opportunity to challenge any information being used. Section 3321(b)(1) was modified as follows: “No decision shall be based upon information from a confidential source, unless other documentation corroborates information from the source, or unless other circumstantial evidence surrounding the event and the documented reliability of the source satisfies the decision maker(s) that the information is true”.

Comment #232: A Step Down Program designed to help prisoners function in general population should focus on social reintegration, social interaction, group behavior skills, and anger management. This SDP does not.

- S73, S92, S101, S112

Response: The new SDP, by design, focuses on education, self-help, life skills, anger-management and social reintegration for those validated affiliates who activity participate.

Comment #233: The new regulations maintain the most inhumane aspects of SHU confinement: the indeterminate nature of long-term SHU confinement, human sensory deprivation, no access to self-help/educational programs in the SHU, and coercive debriefing program that causes inmates to manufacture evidence against other inmates.

- S74, S83, S102, S103, S106, S115, S121, S131, S140, S141

Response: The proposed regulation provides a means through active program participation in which an inmate can earn their way out of the SHU in as little as three years without debriefing while participating

in the new SDP which, by design, focuses on education, self-help, life skills, anger-management and social reintegration.

Comment #234: The STG/ SDP policies will perpetuate California's overuse of torturous isolation.

- S74, S75, S83, S84, S85, S91, S92, S101, S102, S109, S130

Response: See Response to Comment #1.

Comment #235: This bill must not be put into use in California. The Hunger Strike in California prisons will have accomplished less than nothing.

- S75

Response: See Response to Comment #1.

Comment #236: I've been in solitary confinement since October 2006 based on "mere speculation" of association to a prison gang. There is no documentation to corroborate this association. I have never been found in possession of gang related materials or committed any violent acts. All of these allegations against me would not be credible in our criminal justice system.

- S76

Response: See Response to Comment #2.

Comment #237: Solitary confinement is torture. I have experienced many symptoms over the last 8 years: sleeping problems, headaches, digestion problems, loss of the ability to concentrate, oversensitivity to stimuli, and loss of appetite are just a few symptoms. The most difficult issue is being a complete stranger to my family. I'm lucky to receive a visit once a year from my mother, but have no communication with my other relatives.

- S76

Response: See Response to Comment #2.

Comment #238: Matthew Lieberman of UCLA compared the brain activities of people suffering physical pain with people suffering from social pain. As he writes in his book "Social", "looking at the screens side by side . . .you wouldn't have been able to tell the difference." Social pain is, if anything, more traumatic, more destabilizing and inflicts more cruel and long lasting effects than physical pain. What we're doing to prisoners in extreme isolation, in other words, is arguably more inhumane than flogging."

- S76

Response: See Response to Comment #1.

Comment #239: Prison reform is something that needs looking into. Those who end up in your institutions get nothing of what they need. When citizens discover the kind of treatment that is customary and standard in your institutions, there will be a groundswell of shock, abhorrence and resistance.

- S77

Response: See Response to Comment #1.

Comment #240: Cruel and inhumane treatment does not rehabilitate human beings.

- S77, S80, S87

Response: See Response to Comment #1.

Comment #241: Of the five core demands of the California Prisoner Hunger Strikers, the second demand is to abolish the debriefing policy and modify gang status criteria. The security threat group pilot program with its “behaviorally based” Step Down Program does not address the prisoners’ legitimate demand.

- S78

Response: The STG regulations have made significant changes in the STG status criteria, although the Department still believes that the voluntary debriefing process is a very useful tool in the management of STG activity and providing relief to those who no longer wish to involve themselves with STGs.

Comment #242: CDCR claims that progression through the SDP is voluntary. However, section 700.1 states that “failure to maintain acceptable behavior and/or refrain from STG behavior or activities while in the SDP may result in the loss of privileges and/or regression to a previous step.” This introduces an element of coercion and does not allow fully voluntary and free informed consent, which violates Article 1 of the Nuremburg Code, and is a human rights abuse.

- S78

Response: Section 700.1 of the pilot program will be superseded by the proposed regulation. Acceptable behavior is a societal expectation around which laws and other expectations of good behavior are formed and the Department believes it should continue use in its application of this regulation.

Comment #243: The cognitive behavior change program, which includes the writing of self-directed journals and requires prisoners to reject their racial and ethnic identities, is one of the most insidious aspects of the program and akin to brainwashing. Prisoners have overwhelmingly expressed their concerns with this aspect of the program: “In order to successfully complete this aspect of the Step Down Program you must be willing to accept and believe all of the absolute worst things that the State has said about us and invalidate yourself completely.” This is by no means conducive to successful reentry into non-segregated housing reintegration into society when a prisoner is forced into giving up their cultural identities and accepting the sentiment of CDCR that they are the absolute worst of the worst.

- S78

Response: The new SDP focuses on education, self-help, life skills, anger-management, social reintegration, and learning to appreciate and tolerate each other’s racial, ethnic, and social diversity. The journaling and other activities are the first to this end, the only activities the Department seeks to deter is behavior which has been identified to have a nexus to the STG.

Comment #244: These regulations continue to keep inmates in isolation for vague gang affiliation based on artwork, literature, communication, or informants’ testimony that does not meet California’s judicial standards for reliability in criminal trials.

- S78, S81, S108, S151 – S321

Response: The use of confidential documents for either initial validation or revalidation requires that the reliability of the information be established per CCR Section 3321 and the new regulation provides additional levels of due process to further insure the inmate has every opportunity to challenge any information being used. Section 3321(b)(1) was modified as follows: “No decision shall be based upon information from a confidential source, unless other documentation corroborates information from the source, or unless other circumstantial evidence surrounding the event and the documented reliability of the source satisfies the decision maker(s) that the information is true”.

Comment #245: California is still unwilling to move to a real behavior based system where prisoners are given determinate terms in solitary after due process hearings at which they are found guilty of serious misconduct such as assault, murder, rape, or drug dealing.

- S78, S81, S151 – S321

Response: The Department believes that the proposed regulatory changes that establish STG/SDP provide a behavior based system that holds STG affiliates accountable for the behavior they engage in while providing a path out of segregated housing.

Comment #246: The US District court in Harrison v. IGI ruled that it is improper for prison administrators to place categorical bans on materials having to do with culture by associating them with gang activity. Possession of these banned materials may be constitutionally protected rights of free speech rather than evidence of gangs.

- S78, S121

Response: The Department assumes that the commenter is referring to the case of Harrison v. Milligan, 2013 WL 889656 (N.D. Cal 2013). The commenter mischaracterizes the court's rulings. The court denied the first motion for summary judgment because it only had before it a description of the documents which was not sufficient to qualify it as banned gang-related material. However, when presented with the material on a second motion for summary judgment, the court found that the George Jackson pamphlet and the New Afrikan Community Response Network activity was sufficiently related to the Black Guerilla Family security threat group to be confiscated as promoting gang activity. Therefore, it is permissible for the Department to continue to reasonably rely on such materials as indicia of gang activity.

Comments #247: The six year inactive review process, which could have provided an escape from the SHU for a prisoner stuck indefinitely in Step 1 for refusal to participate but who is inactive, has been eliminated.

- S78, S145

Accommodation: Partial

Response: A review of comments lead to the addition of subsection 3376.1(d)(10) which reads: "The ICC has evaluated and determined a validated affiliate has demonstrated that they are not progressing through Steps 1 or 2 of the SDP, and/or case factors such as medical or mental health needs, have changed which would warrant consideration of alternate custody/housing. DRB will conduct a case by case review of all case factors to determine if continued SHU placement is warranted or if alternate placement options are appropriate."

The time an inmate spends in the in the SDP is dependent on the inmate's behavior. This regulation greatly reduces the minimum time spent in the SDP for validated STG behavior from six (6) years to a possible three (3) years without debriefing.

Comment #248: Many of the inmates who are validated as members of the Black Guerilla Family are targeted today solely because of their interest in the writings of George Jackson or because of their political ideology. For these and other groups, to refrain from STG behavior, they must disavow their cultural, political, and social beliefs and give up their right to free speech and expression.

- S78

Response: See Response to Comment #243.

Comment #249: The Agreement to End Hostilities has resulted in reduced prisoner violence throughout the prison system. It should be emulated by all our communities outside of prison. Issuing and supporting the Agreement to End Hostilities should be identified as positive behaviors and included as ways to step down and get out of solitary.

- S78

Response: See Response to Comment #1.

Comment #250: Honor the five core demands of the California prison hunger strikers: (1) end long-term solitary confinement, (2) abolish the debriefing policy and modify the gang status criteria, (3) end group punishment and administrative abuse, (4) provide adequate and nutritious food, and (5) expand and provide constructive programming.

- S78, S107

Response: See Response to Comment #1.

Comment #251: Expose and end CDCR's retaliation against the hunger strikers who have been characterized as gang leaders rather than participants in a peaceful protest. At Pelican Bay, food has been decreased to bite- or child-size portions, frequently served on top of wet cardboard, and is sometimes spoiled or not completely cooked. Adequate food is a human right.

- S78

Response: See Response to Comment #1.

Comment #252: Stop retaliatory disciplinary citations against prisoners who worked to protect their constitutional rights, who issued or supported the Agreement to End Hostilities", worked to educate themselves and others, jailhouse lawyers who filed and won petitions to redress grievances, and those who engaged in peaceful hunger strikes.

- S78, S128

Response: See Response to Comment #1.

Comment #253: All regulations must be reviewed for clarity and consistency and the proposed STG regulations fail both tests. The regulations are unclear and unnecessarily complex, and in many respects are inconsistent.

- S79

Response: While the regulations necessarily address a wide variety of potential situations, the Department believes the proposed regulations meet the clarity standard required by the APA.

Comment #254: The regulations create a host of new "offenses" for activity that is defined so vaguely that prison staff will have little to guide them. This will inevitably lead to abuses of discretion and variation from prison to prison, and may result in guilty findings or classification decisions that are unlawfully arbitrary and capricious.

- S79, S127

Response: The training that is being done will provide staff with a clear understanding of the regulatory language and the added levels of due process will provide quality checks that might be needed in the beginning.

Comment #255: “Security Threat Group Behavior” is defined as a Division F offense punishable by a forfeiture of up to 30 days of credits (§3323(H)(12). But “Security Threat Group Behavior” is defined as “any documented behavior that promotes, furthers, or assists a STG” (§3000). Security Threat Group Behavior is expressly not limited to activity that leads to or includes violations of prison policies or unlawful acts, therefore rule-abiding behavior could be punished as STG behavior.

- S79

Response: The regulation requires the staff to clearly articulate the defining behavior and demonstrate the nexus to STG for an RVR to be issued. Prohibited security threat group behavior is defined in section 3000, and forms the basis for disciplinary action as more specifically described in sections 3023(e), 3314(a)(3)(M), 3315(a)(3)(Z) and (A)(A), and 3378.4.

Comment #256: A new serious rule violation has been created for “demonstrating activity, behavior or status as a recognized member and/or leader of an STG” (§3315(a)(3)(Z). Without further explanation or definition, this criteria is too ill defined to constitute a rules violation.

- S79

Response: The Department believes the new language adequately defines the violation.

Comment #257: New administrative rules violations have been created for vague and undefined activity such as “possessing” any clothing or “colors” that are associated with any Security Threat Group (§3314 (a)(3)(L)). It is unclear how it would be determined that clothing or colors is so associated.

Accommodation: Partial

Response: Through the comments received via this process, the reference to “colors” is being removed. The Department has other policies in place that control the color of clothing and other personal items that are allowable.

- S79

Comment #258: A violation has been created for “exhibiting unique behaviors clearly associated with a STG that promotes, furthers or assists any STG” (§3314 (a)(3)(M)). Without further definition or delineation of the conduct that is proscribed, prison staff have vast and almost unbridled discretion to punish prisoners for innocent acts.

- S79

Response: Departmental Staff are trained in the identification of STG behavior and its appropriate application to the disciplinary process.

Comment #259: The regulations are unnecessarily complex. They create at least 20 new categories of prisoners involved in gangs, many seeming to overlap and inter-related in a convoluted, confusing manner. It will be extremely difficult to implement and enforce such confusing regulations.

- S79, S125

Response: The proposed regulations are complex due to the nature of the subject matter and the need to ensure as many aspects of the STG management policy are clearly defined and articulated for use by both staff and inmates. There is a total of one new category of prisoners involved in STGs. All other categories of prisoners previously existed in the policy. In some cases, the name may have changed (e.g., an inmate who previously was referred to as a Prison Gang Associate is now referred to as a STG-I Associate).

Comment #260: The purpose of a step down program – providing incentives for prisoners to disengage from gang activity and program productively outside of the gang structure – is undermined by the length of the step-down process, the lack of incentives to change behavior, and the overly long delay between ICC reviews.

- S79

Response: Those inmates who actively participate in the SDP can progress through the program and be released to Step 5 in as little as 3 years.

Comment #261: A prisoner who truly wishes to disassociate without debriefing should not have to wait four years to do so. Observed behavior during a shorter timeframe will enable staff to determine the sincerity of the prisoner’s desire to engage in positive behavior.

- S79

Response: Those inmates who actively participate in the SDP can progress through the program and be released to Step 5 in as little three years. If it is determined through the case by case review that the affiliate has been inactive during the last four years, they could be released to step 5 at that time.

Comment #262: The step down program should incorporate more opportunities for rule-following prisoners to engage in education and other programs outside of the cell. Prisoners who are truly motivated to change their lives will be unable to learn the skills that the step down program intends to impart, or to prove that they have reformed.

- S79

Response: The Department believes that it is more important for the inmates to become actively involved in the SDP and focus on their workbooks, anger management, socialization, and reintegration as the transitional steps on their way back to a general population programming environment thereby increasing the probability of success.

Comment #263: Each step of the program should last no longer than six months for those prisoners who are following all rules and adhering to the program goals.

- S79

Response: The Department believes that it is more important for the inmates to become actively involved in the SDP and focus on their workbooks, anger management, socialization, and reintegration as the transitional steps on their way back to a general population programming environment thereby increasing the probability of success.

Comment #264: ICC should review participants every 30-60 days. Assessing inmates every six months in steps 1, 2, and 3, and every 3 months in step 4 provides too little oversight over the prisoner’s progress, and too little opportunity to adjust the program or behavior as appropriate.

- S79

Response: Oversight by program staff is ongoing. The Department believes that the 180-day review is an appropriate timeframe for progress evaluations.

Comment #265: There should be noticeable changes in privileges at each step for those prisoners who are following the rules, engaging actively in the offered program, and demonstrating that they have moved away from gang activities. Step 2 should increase the canteen draw, with more significant increases in steps 3 and 4. Step 2 should have at least one phone call per month, with increases in steps 3 and 4.

- S79

Response: The Department believes that the privilege progression through the steps represents an adequate acknowledgement of the progress being made and maintains the proper level of incentive to encourage continued participation.

Comment #266: Individual and group programs should be offered from step 2 onward, with increasing access and hours over each step

- S79

Response: The SDP provides progressive programming in step one that continues to offer increased program opportunities with each step as well as increasing the privileges through the remaining steps.

Comment #267: Time in the recreation yard should increase with each step

- S79

Response: The Department believes that the SDP currently offers the proper level of program incentives.

Comment #268: Steps 3 and 4 should include group meals.

- S79

Response: The regulation calls for group meals to start occurring in step 4, the department believes that it is more prudent to take the time to involve inmates in program which include limited interactions with offenders from other groups prior to allowing group meals. This will assist in providing the safest environment possible.

Comment #269: Steps 2 through 4 should include more significant increases in personal property, including increases in packages.

- S79

Response: CCR Section 3044 as proposed has made significant changes to the work group structure which afforded the participating inmates additional privileges and the Department believes that those improvements create a well balanced approach to recognizing participation and creating incentive.

Comment #270: More photos should be allowed at each step.

- S79

Response: The Department believes that the improvements made create a well balanced approach to recognizing participation and creating incentives.

Comment #271: If the prisoner fails or does not participate in a step, staff should have the ability to impose a graduated sanction depending on the seriousness of the behavior. Setting the prisoner back a full year, in essence giving another year SHU sentence, may be too severe a punishment for marginal cases.

- S79

Response: The proposed regulations allow the ICC to evaluate the STG related behavior which the inmate has been found to be accountable for and determine an appropriate sanction based on the placement options chart. When an inmate chooses to not participate in the activities associated with the assigned step, staff will discuss the issue with the inmate and give him/her an opportunity to begin participating

prior to the inmate being returned to ICC for evaluation of retention in the current step or regression to a previous step.

Comment #272: It should not take so long to have gang status terminated. Under the proposed regulations, it will take a full fifteen years for a prisoner to demonstrate that he has left the gang lifestyle behind.

- S79

Response: The Department believes that the termination of validation is a significant addition to the regulations and the time frame is appropriate given the level of commitment made by the offender at the time they joined the STG. Termination of validation status is not being done by any other state or federal agency that we are aware of.

Comment #273: Under the proposed regulations, 3378.1(c)(1) and 3378.2(d)(1), STG-I members will be placed in the SHU regardless of behavior.

- S79, S129, S144, S332

Accommodation: Partial

Response In response to public comments the Department modified the proposed regulations. The language in Section 3378.1(c)(1) was changed from mandatory to discretionary. Language was added in Section 3378.2(e) which now requires the ICC to conduct an additional review of validations for STG-I members to ensure they agree with the decision of the STG Unit Classification Committee. When the ICC does not agree with the decision of the STG Unit Classification Committee, the case will be referred to the Departmental Review Board for a final decision on the level of validation.

Comment #274: The criteria for who can be validated as an STG affiliate should be more focused on behavior and less focused on association. No prisoner should be validated as an STG affiliate unless he has actually been involved in a violent or illegal act with a gang nexus

- S79, S331, S322, S146, and Hearing comment #1

Response: Associations which have a proven nexus to the STG are used for the purpose of validation.

Comment #275: The “association” and “staff information” source items (proposed 3378.2(b)(2) and (7) are vague, open to abuse, and duplicative. The intent of the validation process should be to identify prisoners involved in illicit STG behavior, and these categories of source items will not further that aim.

- S79

Response: Only those source items of information that include a nexus to STG activity are used in the accumulation of the minimum 10 points necessary for validation.

Comment #276: The “visitors” source item in 3378.2(b) is far too vague. Under this source item, a prisoner could be validated as an STG member based on the fact that he shares a parent or child or other relative with an STG associate. This gives enormous discretion to line staff and should not be the basis for an STG validation.

- S79

Response Subsection 3378.2(b)(9) states “Visitors (Four Points): Visits from persons or entities that are documented as willfully promoting, furthering or assisting STG affiliates in activities associated with the STG. Staff shall articulate the basis for concluding the relationship between the visitor(s) and offender is

STG related in nature or that the visitor(s) and offender engaged in conduct related to the STG. Staff shall articulate the basis for identifying the visitor(s) as associated with the STG. Staff shall document and disclose this information to the offender in a written form that would not jeopardize the safety of any person or the security of the institution.” This language addresses the activities and behaviors which occur between the visitor and offender, not simply the identity of the visitor. The Department believes that the need to show affiliation is clearly spelled out within this regulatory language.

Comment #277: The “self-admission” category (proposed 3378.2(b)(11)) should be changed to make it clear that the admission must be an explicit, not implied, admission of involvement in the STG. Using “implied” admissions as indicia for identifying suspects, associates or members of gangs would cast far too broad a net.

- S79

Accommodation: Full

Response: As a result of comments received during the public comment period, the Department modified 3378.2(b)(11) to read, in part, as follows: “Staff shall document information about an offender’s verbal or written admission as an STG affiliate and/or specific involvement with the STG.” The phrase “or otherwise implied” has been removed from the proposed text.

Comment #278: The “other agencies” source item category (proposed 3378.2(b)(8)) is unduly vague. It is not clear what documents would exist that are both sufficiently reliable to underlie a validation and that “have not been submitted, considered, and incorporated within received court documents.” The “legal documents” category (proposed 3378.2(b)(14) sufficiently covers the category of documents from other agencies that have previously been tested or otherwise have an indicia of reliability. The “offenses” category sufficiently covers documented gang related behavior. Accordingly, the “other agencies” category should be deleted.

- S79

Response: Section 3378.2(b)(8) goes on to give direction: “Any information received from another agency shall be documented by the staff person who receives such information, citing the source and validity of the information.” The establishment of validity, in conjunction with the multiple levels of due process, insure the quality of information used in the validation, which may not meet the strict definition of legal documents as provided in 3378.2(b)(14), are fairly applied when used.

Comment #279: The new regulations provide that a direct link to an STG affiliate can be established even if the subject had no knowledge, actual or implied, of the validated STG affiliate’s STG involvement. If the subject of the validation doesn’t even have an implied knowledge of the already validated STG affiliate’s status, then the “direct link” is meaningless. The section should be revised to read: “for purposes of establishing a direct link, it shall be necessary for CDCR to demonstrate that the subject had actual knowledge of the validated STG affiliate’s STG involvement”

- S79

Response: The Department believes the definition provided for “Direct Link” is appropriate within the proposed regulations. The California Court of Appeals in *In re Cabrera* (2013) 216 Cal.App.4<sup>th</sup> 1522, 1540 recognized that a finding that a direct link exists does not necessarily require evidence that the inmate under investigation knew that the person to whom he has a direct link is a validated member or associate and that evidence of other facts could be sufficient to demonstrate a direct link without having to establish knowledge.

Comment #280: The STG Disciplinary Matrix includes overly broad definitions of gang offenses. It should not include “conversations evidencing active STG behavior, “communications between offenders/ others evidencing active STG behavior”, “participating in STG group exercise”, or possessing contact information for “individuals who have been confirmed to have assisted the STG in illicit behavior.” Those behaviors are far too vague and prisoners may be punished for innocent associational activities.

- S79

Response: The Department believes that the definitions as written with the qualifying requirement of evidencing STG behavior fully meet the needs of the department while providing adequate safeguards for the inmate population.

Comment #281: Prisoners must not be sent to the SHU because they have engaged in two “administrative” violations, such as two times having conversations with STG members, or two times exercising with STG members.

- S79, S338

Response: SDP placement for the referred to offences are post validation and the requirement of “evidencing” STG related activity will ensure the application of this standard is a well-defined behavior.

Comment #282: The STG “suspect” category (Sections 3000 and 3378.2(b)) is overly broad and should be eliminated because it will encompass prisoners who are not involved in gangs. Moreover, there is nothing to ensure the reliability of a “suspect” determination. Suspects are identified and tracked by investigative staff pending violation, but there is apparently no review of such a determination. It would therefore be inappropriate to make any prison management decisions based on such vague and unconfirmed information.

- S79

Response: A suspect is by definition someone who displays behavior that is suspect and in need of observation to clarify the basis of their activity. This designation does not impact an inmate’s housing or program opportunities.

Comment #283: The proposed regulations do not address what CDCR can and should do to reduce the power and influence of gangs. CDCR will need to address the absence of material incentives for prisoners who choose not to associate with gangs, but do not want to go to an SNY yard. CDCR will need to address the current practices that increase the power of gangs, such as permitting segregation in prison housing, yards, dayrooms, and recreational activities, and permitting STG leaders to exercise their authority over prison yards.

- S79

Response: The regulations are based on national best practices adapted to the specific needs of California and provide new direction and tools for the management of STG activities. The Department is focusing its programming resources in the General Population and SNY yards where inmates are housed who have made a decision not to involve themselves in STG activities.

Comment #284: There is no reason California can’t run high security prisons that treat prisoners humanely by allowing even segregated prisoners to have contact visits with family, phone calls to family and friends, educational and rehabilitations programs, more out of cell time, cells with windows, and recreational yards that allow for small groups to recreate together and see the outside world.

- S81, S151 – S303

Response: The Department through the proposed regulation has provided the opportunity for the inmate to significantly shorten the time spent in a restricted housing environment due to STG affiliation and to demonstrate that they are able to safely live in a less restrictive environment and its associated privileges. In the past, CDCR has attempted to utilize highly secured yards to run small group activities for STG affiliates and found that the level of violence and injury precluded the continuation of this approach.

Comment #285: The list of so-called behaviors which apparently warrant an indefinite SHU sentence is rife with nonsense (possession of readings on Black history; a mere greeting to another inmate; signing a card?!) and lends itself generously to arbitrary interpretation and application.

- S82, S121, S150

Response: See Response to Comment #135

Comment #286: Lifetime solitary confinement remains possible under the regulations

- S83, S90, S91, S102, S106, S115, S109, S131, S141, S144

Response: See Response to Comment #1

Comment #287: The minimum number of people required to be a Security Threat Group should be set at 20 or more.

- S43

Response: STGs are identified based on the activities of the group and several other criteria including the group's documented history of and future propensity for violence, and not solely based on the number of its participants.

Comment #288: Beyond the 7 prison gangs with which alleged affiliation has been used to put someone in solitary confinement, the STG policy widens the net of prisoners who can be put in solitary confinement by labelling them a member of a Security Threat Group.

- S83, S131, S141

Response: The identification of security threat groups beyond the 7 traditionally recognized prison gangs, ie, the inclusion of STG-II inmates, will not result in a greater number of prisoners being housed in a SHU. Under new regulation sections 3378.2(e) and 3378.4(a), validation as a security threat group affiliate no longer requires that the inmate be housed in the SHU based solely on that validation alone.

Comment #289: How a prisoner's SDP workbook will be evaluated is unclear.

- S131, S141

Response: The workbook will be used to gauge participation in the program. Inmates will retain their completed workbooks and will be given an opportunity during their regularly scheduled ICC to discuss the work they have done. Workbooks will not be placed in the inmate's central file.

Comment #290: The new regulations dangerously function as a handbook for guards to keep and/or put someone in SHU forever

- S83, S91, S131, S141

Response: Regulations must meet the statutory standards of necessity and clarity. Additionally, regulations can be neither vague nor overbroad. This is so that the people who are governed by them and those who are charged with their compliance and enforcement are aware of what is expected of them.

The Department believes that its proposed regulations meet these required tests. STG investigators receive training to become subject matter experts and are the initiators of several processes contemplated by the regulations. The regulations therefore must provide them with the necessary specificity.

Comment #291: Although CDCR has inserted a new stage of review for SHU placements, this review is still within the confines of the prison system, where the dominant culture is to rubber-stamp the gang unit's decisions.

- S83, S91, S131, S141, and Hearing comment #2

Response: The Department believes that the additional level of review by classification committees, chaired by management level staff, provide adequate safeguards.

Comment #292: The SDP program requires the collection of incriminating information about its participants in SDP workbooks.

- S83, S131, S141

Response: The SDP has no requirements to document past behavior of the participant or anyone else and focuses on moving forward and changing future behavior.

C293: The SDP regulations purposefully deny access to self-help and educational programming to those left in the early phases of the SDP, showing that solitary confinement is being used to punish, not only segregate.

- S83, S131, S141

Response: Although SDP Steps 1 and 2 are intended primarily for observation, these steps also include workbooks, educational opportunities and self-help activities that provide the inmate with an opportunity to reflect on the lifestyle decisions they have made and how those may have affected themselves and the other people in their lives.

Comment #294: Treating individuals like animals and torturing them with isolation is not a way of rehabilitating them. This system is not a model for justice but mirrors the very criminality that it seeks to incarcerate.

- S83, S87

Response: See Response to Comment #1.

Comment #295: Isolation, research shows, has no other purpose than to make people go literally insane.

- S84

Response: See Response to Comment #1.

Comment #296: This is inhumane treatment of people and reflects how out of touch we are with principles of democracy and justice. We do not create justice by treating those who have been convicted of a crime, no matter how terrible, in such inhumane ways. We become the very thing that we are trying to prevent.

- S84, S87

Response: See Response to Comment #1.

Comment #297: Men who commit no dangerous physical act will continue to be housed in solitary

- S85, S91, S141

Response: Only those offenders who are found to have engaged in continued STG activities will be subject to placement in the SDP.

Comment #298: There have to be many ways to separate dangerous people without completely isolating them in solitary.

- S86

Response: See Response to Comment #1.

Comment #299: We need to stop treating prisoners like garbage to be thrown away, because all of them will be returned to society, but their abusive treatment causes long term damage. Ironically, abuse is why most people end up in prison.

- S86, S307

Response: See Response to Comment #1.

Comment #300: The only outcome from severe isolation is violent behavior. When those confined are released they become more violent to others or themselves and exhibit strong symptoms of mental illness.

- S88

Response: See Response to Comment #1.

Comment #301: Solitary confinement is still being used well beyond a short-term last resort for immediately threatening physical danger – its only justifiable use.

- S91, S102, S119, S131, S135, S140, S141

Response: Restrictive housing is used for those validated affiliates who remain actively involved in STG behavior and only for the time it takes for the inmate to complete the SDP program and safely transition to a GP/SNY environment.

Comment #302: Can someone tell me why California is the only state that inflicts long term isolation?

- S91

Response: See Response to Comment #1.

Comment #303: The SDP is another form of debriefing

- S91
- S125

Response: The SDP has no requirements to create an autobiography or self-incriminate but is rather a program designed to assist the inmate in demonstrating their ability to refrain from participating in STG related behavior and preparing them for return to non-segregated housing.

Comment #304: These regulations do not allow prisoners to have contact visits with family members at any step and only arbitrarily one phone call per year. The STG/SDP plan is cutting the hearts out of mothers, wives, children and other family members.

- S92, S101

Accommodation: Partial

Response: See Response to Comment #132

Comment #305: These regulations are not “behavior based”, but instead isolate people who have not committed violent behavior.

- S38, S43, S45, S59, S61, S69, S73, S78, S81, S83, S84, S97, S102, S103, S108, S128, S131, S135, S137, S141, S146, S150

Response: The Department believes that the establishment of a clear and well defined disciplinary matrix, applied to offender behavior, clearly demonstrates that it is a behavior based regulatory change

Comment #306: Solitary confinement is a monster that swallows our soul, spirit, and dignity. It serves no purpose at all. Human contact is not to be restricted. Human beings don’t belong in a cage, isolated. Please stop the use of it.

- S99

Response: See Response to Comment #1.

Comment #307: I strongly urge you to reconsider the entire regulations as unnecessary, counter-productive, overly expensive, discriminatory, and resulting in what is internationally recognized as a form of torture. It is inhumane, barbaric, unnecessary, and costly, both fiscally to the taxpayers and psychologically to the prisoners, corrections officers, and society as a whole

- S100, S120, S121

Response: See Response to Comment #1.

Comment #308: The SDP process is too slow, is confusing, is not properly focused, and lacks legal safeguards on how information may be used during hearings.

- S103

Response: The time an inmate spends in the in the SDP is dependent on the inmate’s behavior. This regulation greatly reduces the minimum time spent in a SHU for validated STG behavior to as few as three (3) years. Additionally, in response to feedback received through the public comment period, the Department provided some additional language to address this concern. CCR Section 3378.3(a)(5) has been added to read: “Information gleaned through inmate participation in program activities is not intended to be used to validate an inmate, initiate an investigation into STG related behavior, or identify/corroborate the involvement of other STG participants. However, information specifically intended to convey to staff the occurrence of past, present, or future STG threats of violence or disruption may be evaluated to maintain institutional and public safety”.

Comment #309: Solitary confinement should only be used in extreme need and for a very limited time.

- S104

Response: See Response to Comment #1.

Comment #310: Proposed section 3023(b) establishes a zero tolerance policy for any STG activity or behavior. Zero tolerance policies have been a failure everywhere they have been tried.

- S105

Response: See Response to Comment #1.

Comment #311: The STG policy is a dangerous expansion of the gang validation model

- S106, S115, S141

Response: See Response to Comment #1.

Comment #312: These new regulations will create a faulty process leading to undue sentencing of many SHU inmates to be in solitary confinement for life, and the new program will make it extremely difficult for them to “prove” their release from solitary confinement.

- S108

Response: The proposed regulations strengthen criteria for STG validation; discontinue automatic segregation placement; and reduce the time frame from a 6 year Inactive Review Program to a 3-4 year SDP. Unlike the pre-existing “indeterminate” segregation policy, the new SDP incorporates individual accountability, where any suspected STG activities and/or behavior will require supervisory and management intervention and oversight, using a formal disciplinary process. The reduced restricted housing unit placement of 3-4 years, combined with an empirical disciplinary system approach with management oversight, will clarify expectations and better facilitate progression and ultimate release from restricted housing.

Comment #313: The regulations make it too easy for any one prison guard or administrator to send someone to solitary confinement. The STG/SDP program contains numerous loopholes that would allow the abuse of power and authority.

- S108

Response: See Response to Comment #227.

Comment #314: The STG/ SDP program will simply foster a process that is inhumane and unfair for those who are already facing some of the worst conditions in the prison system.

- S108

Response: See Response to Comment #1.

Comment #315: Release from the SHU by reform does not mean release to the street, it means release from the crushing isolation to the general prison population.

- S109

Response: See Response to Comment #1.

Comment #316: The STG/ SDP is worse than the current practice. No more SHU !

- S111

Response: See Response to Comment #1.

Comment #317: California’s current practice of indefinite long-term solitary confinement is immoral and too costly for all involved. There must be a better way.

- S112

Response: See Response to Comment #1.

Comment #318: Inmates should not be assigned administratively to indefinite time in SHU

- S112

Response: See Response to Comment #1.

Comment #319: Allow phone calls with family, visits, windows, self-improvement/ educational programs and access to outdoor yards

- S112

Response: The Department through the proposed regulation has provided the opportunity for the inmate to significantly shorten the time spent in a restricted housing environment due to STG affiliation and to demonstrate that they are able to safely live in a less restrictive environment and enjoy its associated privileges. In the past, CDCR has attempted to utilize highly secured yards to run small group activities for STG affiliates and found that the level of violence and injury precluded the continuation of this approach.

Comment #320: This program will mean more people will be condemned to solitary confinement for trivial infractions, with no due process or means of appeal.

- S113, S118, S128, S141

Response: The new regulations will not result in a greater number of prisoners being housed in a SHU. Under new regulation sections 3378.2(e) and 3378.4(a), validation as a security threat group affiliate no longer requires that the inmate be housed in the SHU based solely on that validation alone, but requires that the inmate engaged in STG-related violations established through the disciplinary hearing process. Inmates have the opportunity to challenge their conditions of confinement through the administrative appeals process, and in court through the filing of a writ of habeas corpus.

Comment #321: Solitary confinement for more than a short period has a debilitating psychological and neurological effect.

- S113, S134

Response: See Response to Comment #1.

Comment #322: Most European nations have abolished solitary confinement as torture. We need to do the same here. There are better means of disciplining the incarcerated, which, unlike solitary, do not lead to worse problems for the prisoner and everyone who has to deal with him, in and out of prison.

- S113

Response: See Response to Comment #1.

Comment #323: Prisoners should not be retained in SHU for non-disciplinary reasons under any circumstances.

- S116

Response: Under new regulation sections 3378.2(e) and 3378.4(a), validation as a security threat group affiliate no longer requires that the inmate be housed in the SHU based solely on that validation alone, but requires that the inmate engaged in STG-related violations established through the disciplinary hearing process.

Comment #324: No lawful behavior should be considered STG behavior, nor should it be used as criteria for validation. Only behavior for which a prisoner could be charged with a crime ought to be used.

- S116

Response: The Department has both a statutory and moral obligation to maintain order within its institutions and to ensure the safety of its staff and the inmates under its care. To attain that goal, the Department as an administrative agency is not restricted to only addressing criminal activity within its institutions.

Comment #325: Subsection 3043.4(b) states that there will be a loss of credits as the result of their validation related custody level. This results in the incarceration of people for longer than they otherwise would be without necessarily being the result of behavior that violates the law.

- S116

Response: Section 3043.4(b) makes specific Penal Code sections 2931, 2932, 2933, 2933.05, and 2933.6. Together, these Penal Code sections prohibit SHU inmates who are validated members or associates from earning credits. The Department cannot provide these credits in violation of the Penal Code.

Comment #326: Street gang membership should not be sufficient to determine membership in an STG. A group that has not demonstrably acted, in concert, within the CDCR, shouldn't be considered an STG. Doing so risks putting numerous persons who are no threat to the safety and security of the institution into the SHU

- S116
- S123

Response: By definition a street gang may be an STG. Behavior once incarcerated is the factor that would be applied to determine need for SHU placement. Validations will be based upon an inmate being involved in STG related behavior and/or activities. If the inmate comes to prison and does not get involved in STG activities, they will not acquire the points necessary for validation.

Comment #327: The criteria for certifying an STG are far too loose. They ought to include an objective review, by non CDCR staff, of the criminal behavior and other elements that are supposed to make up the STG.

- S116

Response: The Department believes that the proposed regulation incorporates additional levels of review and safeguards to insure a quality outcome. The criteria needed to certify a group as an STG-I are very specific and requires the approval of the CDCR Secretary.

Comment #328: The definition of an STG member includes the criterion of a prisoner being "accepted" for membership by other members. Why is evidence of their acceptance by other members not required as evidence of their membership? Mere acquaintance with a validated member or associate does not imply acceptance.

- S116

Response: Section 3378.2(b)(2), Association, is clear about activities that must accompany the association for use in establishing a nexus to the STG.

Comment #329: Subsection 3321(b)(1) permits the CDCR employee evaluating the information to determine that the information is reliable based on their perception of the circumstances. This permits far too much discretion. How will they be monitored?

- S116

Response: Subsection 3321(b)(1) specifically states that “No decision shall be based upon information from a confidential source, unless other documentation corroborates information from the source, or unless other circumstantial evidence surrounding the event and the documented reliability of the source satisfies the decision maker(s) that the information is true.” This is more than a CDCR employee determining the information is reliable based on their perception of the circumstances. All decisions regarding confidential information used in the STG process are reviewed by a classification committee prior to any committee decision based on that information.

Comment #330: Subsection 3334(b)(3), which permits placement in the BMU is far too vague. This section should be removed, or should require that the behavior be violent or otherwise a chargeable offense, rather than simply behavior related to an STG.

- S116

Response: The Department believes that the proposed regulation, as written, best provides for the safety and security of the public, staff, and offenders. The proposed amendment to section 3334(b)(3) does not substantively alter the previously existing regulatory section. Rather, the proposed amendment ensures consistency of terminology used throughout the regulation and makes clear that placement in the BMU is an option for those inmates whose security threat group behavior is not already addressed in section 3378.4(a), which requires consideration of SHU placement.

Comment #331: Section 3335(e)(3) permits indefinite retention in the SHU despite no guilty finding on a rules violation and only requires re-examination every 90 days, until transfer can be effected. Transfer should be effected within 90 days, period. Failure to find housing in general population within 90 days should result in the increase of privileges for the affected prisoner equivalent to those they would receive had they been transferred.

- S116

Response: Section 3335(e)(3) deals with Administrative Segregation placement not SHU placement. That aside, the 90 day review is to insure that the investigation is not being unduly delayed while assuring the safety of all concerned until the investigative process is complete.

Comment #332: Subsection 3341.5(c)(2)(A)(2) deeming an STG member to be a threat regardless of their behavior is inappropriate.

- S116

Response: The interpretation of the cited section is correct, the attainment and maintenance of Member level activities are behaviors and represent a threat to the safety of CDCR staff and other offenders and the security of CDCR institutions.

Comment #333: Subsection 3341.5(c)(2)(A)(3) should not permit the SHU term to be reinstated without further misbehavior. This increases the likelihood that the mentally ill will continue to be punished needlessly for behavior they engaged in while insufficiently treated. No mentally ill person should be housed in, or returned to, a SHU

- S116

Response: It is assumed that the commenter is referring to former section 3341.5(c)(2)(A)(3), which has now been renumbered to section 3341.5(c)(2)(A)(4). The sole amendment made to the existing regulation aside from its renumbering, is the non-substantive change in terminology from “indeterminate” to “administrative”. This comment addresses the substance of a previously existing regulation that has not been modified as part of this regulatory proposal and the comment therefore does not warrant a substantive response. However, the Department notes that section 3341.5(b) in existing regulations provides that inmates with psychiatric disorders who require placement in a SHU, will be housed alternatively in the Psychiatric Services Unit (PSU).

Comment #334: Subsection 3341.5(c)(7) states that SHU terms may be served in AdSeg units. AdSeg is not appropriate for long term housing. The serving of SHU terms in these units presents unnecessary risk.

- S116

Response: The length of some SHU terms are short enough that the SHU terms are completed prior to the department being able to affect a transfer to a SHU facility.

Comment #335: Subsection 3341.5(c)(11)(B)(1) permits a person paroled and with no documentation of further STG activity to be returned to the step of the SDP that he or she was previously on. Time outside of the institution should count as a period of inactivity, and if sufficient time has passed such that the inmate would have completed the SDP, he should be housed in general population upon his return.

- S116

Response: The Department has no way of monitoring activity outside of its jurisdiction and as such no way of knowing whether the offender was involved in STG behavior or activities.

Comment #336: Subsection 3378.1(c)(1) states that STG-I members will be placed in SHU “based solely upon their validation.” This is unnecessary, serves no penological or rehabilitative purpose, and is not behavior based punishment. Membership in an organization should be insufficient for placement in a SHU

- S116

Response The Department has determined that membership in an STG-I is cause for placement in the SDP when the validation has been reviewed by the Institution Classification Committee who will ensure there is sufficient evidence to warrant validation at the level of STG-I member. Any disagreement on an inmate’s validation and/or placement into the SDP shall be referred to the Departmental Review Board for resolution.

Comment #337: Subsection 3378.1(c)(2) states in part that “validated STG-II members or associates will remain housed in general population, or similar specialized housing.” This should be changed. “similar specialized housing could and will be used to hold prisoners in locations with dramatically reduced freedoms without having committed an infraction

- S116

Response: The Department believes that regulation, as written, best reflects its needs, thereby leaving room for medical, mental health, or even SNY placement.

Comment #338: Subsection 3378.1(f) through (f)(4) addresses the certification of STG symbols. There is no due process for inmates that this certification will affect – they do not have the opportunity to explain the origin, purpose and function of that symbol. This seems likely to lead to numerous innocuous symbols being incorrectly used to validate inmates.

- S116

Response: The certification process is a very in-depth investigative process that includes a detailed analysis of the collaborative information used when certifying symbols. Inmates will have an opportunity to explain the origin, purpose and/or function of a symbol, as it specifically relates to them, at the time they are interviewed by the STG Investigator prior to submission of the validation package.

Comment #339: Subsection 3378.2, despite claiming that the validation process is “objective”, no disinterested persons, persons outside the CDCR, or experts in the field are part of this process.

- S116

Response: The Department does not have the statutory authority to require an independent agency or third party to review its administrative validation decisions. The Department notes, however, that inmates have the opportunity to challenge their validations through the inmate appeals process and in court through the filing of a writ of habeas corpus.

Comment #340: Subsection 3378.2 states that “validation is the term used to describe the quality control and due process review of STG identifications.” The mere fact that there are many steps to a process does not create quality control and due process. Due process requires input from the subject at all points. This process only seeks input from the subject in a half-hearted way, late in the process, after the entire validation packet has been accumulated. At no point in the process is anyone reviewing the validation that has any actual stake in the outcome other than to validate the prisoner. CDCR ought to have a citizen review board, or some other independent panel that evaluates an STG validation.

- S116

Response: State and federal courts have determined that the validation of inmates is an administrative decision, and as such, due process requires that the inmate receive notice of the factual basis on which the decision is based and that they have a fair opportunity to be heard. The proposed regulations provide this level of due process at several steps both during the validation process and before a validated inmate can be housed in a segregated environment. See proposed sections 3376(d)(5)(A), 3378.2(a), 3378.2(c), 3378.2(d), and 3378.2(e). Additionally, the Department does not have the statutory authority to require an independent agency or third party to review its administrative validation decisions. The Department notes, however, that inmates have the opportunity to challenge their validations through the inmate appeals process and in court through the filing of a writ of habeas corpus.

Comment #341: Subsection 3378.2 requires that for validation of an offender as a member of an STG-I, one of the source items must be a direct link to a current or former validated member or associate of the STG, or anyone validated within 6 months of the date of activity in the evidence considered. This creates several problems because it does not require that: (1) a prisoner’s connection have any nexus to the STG, (2) their connection have any criminal overtones, or (3) the prisoner be aware that the person they are being linked to is validated.

- S116

Response: The Department believes the use of a direct link as a component of the new three source item, 10 point validation process is fair and properly applied.

Comment #342: Subsection 3378.2(b) defines a member as being “periodically or regularly” being “involved” with members or associates of an STG. This language is vague. Involvement relied upon should not be innocuous, and as it is observed the subject of the validation ought to be informed within 30 days, and given an opportunity to explain and/ or change their relations with a given prisoner.

- S116

Response: Subsection 3378.2 defines a member as “Any offender or any person who, based on documented evidence, has been accepted into membership by a STG. STG members will be identified by the STG Investigator through the validation process, reviewed by OCS and affirmed by the STG Unit Classification Committee.” The Department has added multiple levels of due process and believes that the process created provides ample opportunity for the inmate to rebut any information used in the validation.

Comment #343: Subsection 3378.2 describes “suspect” STG members. These suspects ought to be notified of the reasons why they are suspected of membership and given the opportunity to alter their behavior if they choose. This system investigates STG behavior as if it were a crime, but does not afford the protections that the accused in the rest of the criminal justice system are afforded. In order to protect their rights, they either need to be given attorneys to fight validation, or the secret amassing of the validation packet without the knowledge of the subject should cease.

- S116

Response: A suspect is by definition someone who displays behavior that is suspect and in need of observation to clarify the basis of their activity. This designation does not impact an inmate’s housing or program opportunities.

Comment #344: Subsection 3378.2(b)(3) and (4) state that exclusive reliance on hearsay information will not be used for validation purposes, but there are no regulations that prevent this from happening. The inability of prisoners to confront their accusers prevents them from mounting a meaningful defense or even being aware that they are being validated using hearsay evidence.

- S116

Response: The commenter cites to regulations that ban the exclusive reliance on hearsay, but then states that there are no regulations on this issue. The Department contends that the ban on the exclusive reliance on hearsay information found in sections 3378.2(b)(3) and (4) are self-effectuating.

Comment #345: Subsection 3378.2(b)(5) addresses the use of written materials as source items in the validation process. Personal possession of contact information of other prisoners should not be considered to be a source for validation when there is no demonstrated crime related function of that list. Additionally, prisoners do not control the flow of information within an institution so they might have their information in many places against their will

- S116

Response: Subsection 3378.2(b)(5) states that “Staff shall articulate why, based on either explicit or coded content, the written material is reliable evidence of affiliation with the STG”. When written materials have been identified by the Department to demonstrate STG behavior, the inmate will have various levels of due process and the appeals process to address his/her concerns.

Comment #346: Subsection 3378.2(b)(6) Using photographs as a source for validation with no consideration for nuance is unreasonable

- S116

Response: The cited subsection provides the parameters which will be applied for demonstrating the existence of an STG nexus.

Comments #347: Subsection 3378.2(b)(7) does not include an opportunity for the rebuttal or presentation of witnesses in opposition to the observation of staff members. And in many cases, the information might only be disclosed months or years later.

- S116

Response: Any time an inmate receives a rules violation report, they are given a disciplinary hearing and provided the opportunity to call witnesses in support of their assertions. There are specific timeframes provided in the disciplinary regulations regarding issuance of a rules violation report.

Comment #348: Subsection 3378.2(b)(8) is unreasonable because it relies on the subjective analysis of CDCR staff to evaluate the “validity” of information provided by outside law enforcement agencies. There is no requirement that the conveyed information have any evidence beyond the opinion of the person conveying it. Many times the reports etc. do not bear any relationship to a final conviction, and as such should not be relied upon for validation.

- S116

Response: The Department believes that the regulation provides ample safeguards and due process to insure a justified outcome.

Comment #349: Subsection 3378.2(b)(9) uses visitors as points towards validation but there is no standard for the evidence required to consider a visitor to have been involved in STG activities. There is no provision for telling the prisoner before a visit that this visit could be used against them.

- S116

Response: Subsection 3378.2(b)(9) states “Visitors (Four Points): Visits from persons or entities that are documented as willfully promoting, furthering or assisting STG affiliates in activities associated with the STG. Staff shall articulate the basis for concluding the relationship between the visitor(s) and offender is STG related in nature or that the visitor(s) and offender engaged in conduct related to the STG. Staff shall articulate the basis for identifying the visitor(s) as associated with the STG. Staff shall document and disclose this information to the offender in a written form that would not jeopardize the safety of any person or the security of the institution.” This language addresses the activities and behaviors which occur between the visitor and offender, not simply the identity of the visitor. The Department believes that the need to show affiliation is clearly spelled out within this regulatory language.

Comment #350: Subsection 3378.2(b)(11) states that “implied” self-admission is sufficient to give a prisoner 5 points towards validation. This is far too wide an opportunity for miscommunication with drastic consequences for the inmate. Also, there are many things that an inmate might say that are inaccurate or exaggerated to secure safe housing for himself. CDCR’s use of an inmate’s ethnicity as a housing factor should not be used against him.

- S116

Accommodation: Full

Response: See Response to Comment #277.

Comment #351: Subsection 3378.2(b)(13) fails in that there is no age requirement for tattoos in the same manner as there is for photographs. Only tattoos that are demonstrably new, received during a current commitment, ought to be used for validation.

- S116

Response: Tattoos are documented and updated every time an inmate enters the system. Once a tattoo is identified as having specific STG significance and is recorded, that tattoo cannot be used again for additional validation points.

Comment #352: Subsection 3378.2(b)(13) and (14): the use of legal documents and the use of circumstances of the commitment offense is redundant and could add up to unwarranted validation points. Additionally, while a single incident cannot be used against an inmate multiple times under subsection 13, there is no such protection in subsection 14.

- S116
- S322

Accommodation: Partial

Response: Based on comments received through the public comment period, the Department modified Subsection 3378.2(b) to read: “Multiple sources providing information about a single STG related act or conduct shall constitute a single source item. One may support the other but will only count as one item toward the validation with the others listed as support documents.” Documents used to establish validation points can only be used once.

Comment #353: Subsection 3378.2(b)(14): There is no process to determine whether any gang allegations included in legal documents were found to be true by an adjudication process.

- S116

Response: Legal documents transmitted to the Department are those used as part of the court proceedings and as such are adopted as verified.

Comment #354: Leading group exercise should not be a serious rule violation in the Disciplinary Matrix section (6)(f), or 8(b). Exercise is recommended in Title 15 and the benefits of group exercise are well known. To punish a prisoner for leading exercise with validation and a SHU term is excessive. Exercise should not be used as criteria for gang validation. People ought to be permitted to exercise with whom and how they want, as long as this presents no immediate threat.

- S116

Response: Only participation or leading of STG group exercise warrants a rules violation report for STG activity.

Comment #355: Possession of a list or other written material in the Disciplinary Matrix section (6)(g) is no indication of any malevolent intent or power within an organization. Some written material that CDCR has designated as “training material” is assigned reading in numerous college courses. Without a demonstrable crime that has resulted from the possession of written material, no rules violation should result.

- S116

Response Subsection 3378.2(b)(5) states that “Staff shall articulate why, based on either explicit or coded content, the written material is reliable evidence of affiliation with the STG”. When written materials have been identified by the Department to demonstrate STG behavior, the inmate will have various levels of due process and the appeals process to address his/her concerns.

Comment #356: Reliance on an inmate’s “personal possession of mail, notes, greeting cards, or other communications” in the Disciplinary Matrix section (6)(h) is unfair. A prisoner has little control over the

mail he or she receives, and possession of material like this is no indication of violent or otherwise dangerous behavior

- S116

Response: Only items that are shown to establish or demonstrate STG activity can be used in the validation process.

Comment #357: “Participation in Roll Call” in the Disciplinary Matrix section (8)(a) is incredibly vague. How is a prisoner to know what to avoid if he doesn’t know what behavior is being prohibited?

- S116

Response: The act of participation is an affirmative action reflective of active STG affiliation and thus identified as such in the regulation.

Comment #358: Section 8 of the Disciplinary Matrix is rife with language that could be interpreted any number of ways and invites capricious enforcement of extremely harsh punishments.

- S116

Response: See Response to Comment #135.

Comment #359: There should not be a requirement for prisoners to sign paperwork acknowledging their participation in an SDP. This in effect requires them to admit their membership in an STG. Participation should be automatic and not require a signature.

- S116

Accommodation: Full

Response: Based on comments received through the public comment period, the Department removed the requirement to sign the Contracts for the Step Down Program. They are now referred to as “Notice of Program Expectations – Step [X]”.

Comment #360: There is an allusion to the use of “innovative programming” during participation in the SDP. What exactly is being referred to? Does such programming exist? What are its components? Have they been demonstrated to provide any therapeutic or other value to participants? How is this innovative programming to be funded? Is money earmarked for this programming? Will it be available to all validated prisoners? How will this be tracked? Will there be public audits of these programs?

- S116

Response: There are no references in the regulation text to “innovative programming.” The SDP provides a number of self-help activity programs, access to college courses, and anger management to assist with reintegration into a general population setting. The programs are being paid for by the Department’s Division of Rehabilitative Programs from its existing budget. Auditing will be done within the Department.

Comment #361: A requirement that a participant in the SDP keep his or her bed made is problematic and demeaning. What possible necessity does this hold?

- S116

Accommodation: Partial

Response: The regulation has no requirement for an inmate to make their bed; however, this was a component of the original SDP contracts. Based on the feedback received through the public comments, that requirement has been removed from the SDP Notice of Program Expectations.

Comment #362: Is there any research to show that the STG Diversion Video is in any way an effective deterrent? If not, why show it at all?

- S116

Response: The Department is unaware of any quantitative study showing that the STG Diversion Video acts as a deterrent; however, the department believes that providing information to an inmate may help them to make informed decisions.

Comment #363: It is implicit in these regulations that a prisoner who has debriefed is less dangerous than one who has not. Has this ever been studied? Can CDCR produce statistics suggesting that prisoners who have debriefed are less likely to commit serious rules violations than prisoners who have not?

- S116

Response: The Department is unaware of any empirical studies dealing with the question, but believes that gang behavior (many acting in concert) presents a far greater danger to the safety and security of the institution than someone that is debriefing or has participated in the debriefing process.

Comment #364: These proposed changes are not designed to give inmates meaningful, clear, or intelligible notice on how they avoid being placed in SHU, or how they can get out of the SHU once they've been sent there. Instead, the proposed changes are designed to expand the powers of the Department to arbitrarily and indefinitely torture its inmates at the public's expense, and to prevent its inmates from having meaningful access to social support networks.

- S117

Response: See Response to Comment #1.

Comment #365: What do phrases such as “are connected or interact with” or “any connection” mean as to alleged affiliates or direct links? Those in the SHUs are forcibly surrounded by validated affiliates, hence they must interact with and are connected with other alleged STG affiliates. To punish them on the basis of mere affiliation is unconscionable.

- S117

Response: Direct link is a component used in the validation process that demonstrates affiliation between the subject and known validated STG members or associates.

Comment #366: Guards/ staff may have connections with alleged affiliates that are indicative of STG association under section 3378, but these regulations do not address internal corruption.

- S117

Response: See Response to Comment #1.

Comment #367: The definition of “gang” is so broad and vague that it could easily apply to any number of persons who enjoy the privileges of wealth and connection who are not incarcerated. Similarly, the definition of “suspect” is so broad that it would include anyone who has a relationship with the inmate: mothers, attorneys, even CDCR staff

- S117

Response: The Department believes that the criteria this regulation establishes clearly identifies the STG population. STGs are identified based on the activities of the group and several other criteria, not solely based on the numbers.

Comment #368: Sections 3323(h)(11) through (13) are patently offensive as they seem intended to circumvent any communication whatsoever between an alleged STG affiliate and anybody else.

- S117

Response: The subsections cited specifically address STG behaviors and activities and in no way do they impede innocuous communication with other offenders.

Comment #369: According to the new regulations, I can be kept in SHU without committing any gang activity, eg. I can be retained for refusing to write in a journal that no one is supposedly going to read anyway, or for failing to go to the classification ICC. These new regulations are worse than the old regulations because they don't even have to allege activity.

- S119

Accommodation: Partial

Response: The new regulation requires each inmate who is assigned to the SDP to participate in all program opportunities assigned by the ICC. As a result of comments received through the public comment period, the SDP contracts were revised to remove several of the requirements that were contained there and the forms were renamed. The form is now called Notice of Program Expectations and it identifies the requirements to be considered participating in the SDP as follows: 1) Participate in and successfully complete all mandated educational instruction and program activities, as determined by the ICC; 2) Follow all staff directives; and 3) Cease any and all STG related behavior including but not limited to: Planning, organizing, recruiting, promoting, training, communicating in code, using known STG symbolism, participating in and/or communicating STG activities.

Comment #370: I was recently placed in Step 2 because several confidential disclosures were used against me. These disclosures are all debriefers and informants repeating hearsay, rumors, and idle gossip, half-truth, and blatant self-serving lies. My actual activity has been educational accomplishments, but my "activity" was determined by what others said.

- S119

Response: See Response to Comment #2.

Comment #371: CDCR's gang investigators manipulate anything into "proof of gang activity", and without oversight or consequences, the STG/ SDP does nothing to hinder this whatsoever.

- S121

Response: See Response to Comment #1.

Comment #372: Minor infractions that would have been previously disciplined with a 30-90 day loss of credit and no AdSeg placement, is now considered "gang activity" and can keep you in the SHU for an additional year, regardless of any consideration as to how that behavior benefits a gang in any way.

- S121

Response: There must be evidenced STG activity tied to an infraction for it to be considered for use in the application of STG related sanctions.

Comment #373: The designation of “disruptive groups” and “street gangs” as STG IIs will expose black and brown prisoners to further scrutiny, prejudice, and discrimination. Most minorities in prison come from poor, disenfranchised areas and are therefore automatically targeted when they arrive in prison.

- S121

Response: See Response to Comment #1.

Comment #374: SHUs have had no effect on the prison gang problem. CDCR locks up the gang members and the worst of the worst in SHUs, but validations have increased

- S121, S125

Response: See Response to Comment #1.

Comment #375: The idea of a proactive and interactive program is a good idea, but the mandatory curriculum imposed in the SDP is counterproductive, degrading, offensive, assuming, and judgmental. Rather than collaborating with prisoners, psychologists, CDCR officials, and rehabilitative advocates to create or agree upon a program. Prisoners are not against rehabilitation so long as it’s constructive, supportive, strengthening, and welcoming.

- S121

Response: The materials being used in the Step Down Program are being successfully used in other states and in the Federal Bureau of Prisons.

Comment #376: CDCR could easily house SHU inmates on their own highly secured yard with access to rehabilitative programming, educational/vocational training, contact visits, phone access and small group activities.

- S121

Response: In the past, CDCR has attempted to utilize highly secured yards to run small group activities for STG affiliates and found that the level of violence and injury precluded the continuation of this approach.

Comment #377: Long term isolation as determined by prison staff is not included as part of the sentence handed down from Judges.

- S123, S133

Response: Inmates serving a prison sentence do so as a result of the punishment imposed by the court for their crime/ commitment offense. If an inmate commits an additional violation of institutional rules, the Department has the legal authority to address that behavior through its regulatory disciplinary process, which may include placement in segregated housing, if appropriate. Courts recognize that discipline by prison officials in response to misconduct falls within the expected perimeters of the original sentence imposed by the court.

Comment #378: If California has such faith in their STG/SDP, why did it shut out UN Special Rapporteur on Torture, Juan Mendez when he made the request to speak to SHU and AdSeg inmates?

- S123

Response: See Response to Comment #1.

Comment #379: United Nations resolution 3452 defines torture as any act by which severe pain or suffering, whether physical or mental is intentionally inflicted by or at the instigation of a public official on a person for information or a confession, punishing him for an act he has committed or is supposed to have committed, or intimidating him or other persons.

- S123

Response: See Response to Comment #1.

Comment #380: SHU is a warehouse where people suffer and die in their cells from deterioration of the mind. One inmate has been there since the 1960s, some since the 1970s, and others since the 1980s.

- S123

Response: See Response to Comment #1.

Comment #381: Prisoners are kept in extreme isolation because state officials/ prison guards have classified, validated, and judged their political thoughts, beliefs, and ideas in support of human rights as a criminal conspiracy and a threat to the safety and security of the institutions and the department.

- S123

Response: See Response to Comment #1.

Comment #382: Prisoners are deprived of any meaningful avenues for seeking impartial and fair redress.

- S123

Response: Inmates have the opportunity to challenge their validations, or any condition of confinement that imposes an adverse impact, through the inmate appeals process and in court through the filing of a writ of habeas corpus.

Comment #383: The state prison system does not employ, orient, instruct, or train qualified personnel capable of adequately identifying, evaluation, treating, and curing symptoms, medical health, diet, and nutrition concerns relative to distinct culture and heritage.

- S123

Response: See Response to Comment #1.

Comment #384: The scope of the failed policies is expanded to include currently unknown and unidentified “threat groups” and their members, associates, and even “suspects”.

- S125

Response: The regulations are based on national best practices adapted to the specific needs of California, and must include a process for the objective identification and certification of newly formed security threat groups under proposed section 3378.1. This is based on the recognition that these groups may evolve, that new ones are established by inmates over time, and that the recruitment of members, affiliates, and suspected members and affiliates within these groups is ongoing.

Comment #385: The sheer breadth of behavior that can result in validation, discipline or failure in the SDP is expanded far beyond its already extensive scope. No inmate can ever be free of worry that matters beyond his control or knowledge will keep him in the SHU indefinitely.

- S125

Response: See Response to Comment #144.

Comment #386: The regulations add layers of bureaucracy without adding any meaningful oversight. Unit and Institutional Classification Committees routinely rubber stamp OCS conclusions and recommendations. The rules don't anticipate that the UCC will not confirm a validation, because they provide no procedures for that occurrence. Today, ICCs have the authority to override a validation decision, but apparently never exercise that power.

- S125, S129

Response: The Department believes that the additional level of review by classification committees, chaired by management level staff, provide adequate safeguards.

Comment #387: Many definitional or name changes appear to have no purpose other than disguising reality. It is also extremely unclear how the new rule violations relate to existing legal and regulatory standards for validation, due process requirements or even whether they carry SHU terms. The overall complexity provides an almost endless playground for CDCR's considerable talent in creative interpretation.

- S125

Response: The regulations are based on national best practices adapted to the specific needs of California and therefore include new terminology that has been widely accepted in the correctional community. Validation occurs in accordance with the accumulation of source items totaling 10 points as described in proposed section 3378.2(b) and the review and assessment described in proposed section 3378.2(d). The STG disciplinary matrix in proposed section 3378.4(a) lists violations that demonstrate a nexus to an STG and for which placement in the SDP may be warranted under section 3378.4(b). These sections also sufficiently outline the due process which shall be provided during each of these processes.

Comment #388: The proposed regulations erode numerous legal protections imposed by years of litigation. The new processes and interpretations do not mirror the time limits and other restrictions imposed by Castillo, eg. the need to articulate reasons for conclusions is missing from the methods of validation in section 3375.3(a)(4)(B); and the rules seem to allow consideration of source items that occurred at any time in the inmate's institutional history.

- S125

Accommodation: Partial.

Response: The section cited by the commenter refers to the classification codes that are assigned to each of the identified source items relied upon. This is not the regulation that governs validations and therefore would not include the language to which the commenter refers. That language has been added to the regulatory sections governing validation; section 3378.2(a) now states "staff shall articulate the basis for determining the content or conduct at issue is STG related." Affiliation as a member or associate is considered by security threat groups themselves to be permanent, therefore source items have a continuing indicia of reliability. The Department notes, however, that in order for photographs to be relied upon as a source item, section 3378.2(b)(6) requires that they not be more than 4 years old.

Comment #389: No other state's step down program requires a 4-year process. The Texas GRAD is completed in 9 months, the BOP, New Mexico, and Arizona provide for completion in 18-24 months. Additionally, STG I inmates will be subject to indefinite monitoring and oversight in Step 5 and beyond,

unless, after another eleven years, they are finally privileged enough to have the STG label removed – many will be dead before completing a 16-year program to get rid of the gang label.

- S125

Response: The Department believes that the terms identified in the regulation best fit the needs of the state of California and the population addressed.

Comment #390: The privilege incentives in the SDP are meaningless compared to those of other states. Those privileges offered at the ending point of step 4 are more restrictive than other states or BOP offer at the beginning of their programs.

- S125

Response: The Department believes that the new regulation affords the participating inmates improved privileges and that those improvements create a well balanced approach to recognizing participation and creating incentive for that participation. In response to the public comments, the Department has made changes to subsection 3044(g)(1) and adds new subsections 3044(j) through 3044(j)(2)(H) which address privileges.

Comment #391: The materials internally circulated to inmates so far start with a questionnaire that amounts to a formalized written debriefing, which is not voluntary, but mandatory for participants in the SDP. An inmate has to answer questions about his criminal background, his role and activity in the gang, and the criminal activities of others in the gang. Then the questionnaire asks about family members' criminal history, tattoos, drug and alcohol abuse, etc. This is directly contrary to case law indicating that holding an inmate in security housing until he debriefs is unconstitutional.

- S125

Response: The materials provided are meant to cause the inmate to reflect on the life style decisions they have made and how those may have adversely affected themselves and the other people in their lives. They don't require detailed specific information about previous criminal activities or the specific activities of others.

Comment #392: While the regulations specify that the journaling contents will not be used against the participating inmate, they do not prohibit use against other inmates.

- S125

Accommodation: Partial

Response: The workbook materials provided are meant to cause the inmate to reflect on the life style decisions they have made and how those may have adversely affected themselves and the other people in their lives. They don't require detailed specific information about previous criminal activities. In response to feedback received through the public comment period, the Department provided some additional language to address this concern. CCR Section 3378.3(a)(5) has been added to read: "Information gleaned through inmate participation in program activities is not intended to be used to validate an inmate, initiate an investigation into STG related behavior, or identify/corroborate the involvement of other STG participants. However, information specifically intended to convey to staff the occurrence of past, present, or future STG threats of violence or disruption may be evaluated to maintain institutional and public safety".

Comment #393: It has eliminated the inactive status and review process as an alternative to debriefing as a means of release from SHU. The inactive review, implemented to fend off legal challenges to the

debriefing-only policy, has now been eliminated. CDCR has always claimed that Miranda rights are not necessary for debriefers because, among other things, debriefing is voluntary.

- S125

Response: The inactive review has been removed. The debriefing process did not substantially change as part of this regulation revision.

Comment #394: CDCR provides significantly greater advantages to those who choose to go through the official debriefing process, as opposed to the unofficial debriefing of the SDP. Debriefers are rewarded with significantly shorter transitional periods and a significantly greater increase in privileges. Debriefers also appear to get a “free pass” on STG related behavior while they are in transitional programs; they are almost never returned to SHU or validated status based on continued evidence of gang activity.

- S125

Response: The decision to debrief demonstrates a higher level of commitment to stepping away from the STG. If a former debriefer chooses to reengage in STG behavior, the regulation applies similar sanctions for the behavior.

Comment #395: In spite of its regulations barring validation retention solely on the basis of confidential information, CDCR continues to retain inmates in SHU based on just that. Investigation of such information is at best sloppy and at worst non-existent and CDCR 1030s routinely misrepresent the content of the underlying confidential information.

- S125

Accommodations: None

Response: The Department maintains that the terms, as represented in the regulation, best reflects its operational needs.

Comment #396: It is impossible to definitively evaluate the proposed changes, because their real meaning and ramifications will become clear only in more complete implementation.

- S127

Response: See Response to Comment #1.

Comment #397: The proposed regulations leave intact the basic conditions of extreme isolation for SHU inmates, except at the very latest stages of step-down. For those prisoners for whom it is appropriate, and to the extent consistent with everyone’s safety, normal human contact and sensory experience should be restored. Continuing to isolate people in the SDP’s first two steps, and then allowing contact only in cages, is not a model for re-socialization or rehabilitation.

- S127

Response: The Department believes the SDP is a significant addition to the regulations that provides a path out of SHU for those who participate. It also believes that for the safety of all concerned that caution must be exercised given the level of commitment made by the offender at the time they joined the STG. The regulation provides that active participation can advance the inmate through the program in as little as three years. Program activities beginning in Step 2 may be conducted utilizing individual treatment modules, based upon the decision of the ICC.

Comment #398: Amnesty International concluded in their recent review of the new strategy: prisoners are confined for 22 hours a day in single or double cells, which in Pelican Bay have no windows to the outside or direct access to natural light and cell doors which significantly impede vision and look onto a bare wall. Such conditions are contrary to international standards which provide that prisoners should have access to natural light and should not be held in conditions of reduced sensory stimulation.

- S127

Response: The Department is bound by federal and state constitutional, statutory, and case law. The current conditions of confinement within the Pelican Bay SHU have not been found to be in violation of any state or federal law.

Comment #399: The programming provided may not be appropriate for many prisoners. Those who have been isolated for long periods of time will not usually have the capacity to “study” in a focused way using videos or written materials. Their programming must include human interaction.

- S127

Response: The program is set at a level that even those who may have trouble with focusing can be active participants. The program can be completed at a pace established by the inmate. The program does not preclude double celling and requires integrated interaction as part of the fourth step. In addition, program facilitators have been assigned to assist inmates if/when they have questions about program materials.

Comment #400: The proposed regulations do not specify criteria for decisions about validation, placement in the SDP, and whether a prisoner advances to the next step. By omitting these criteria, decision makers’ decisions remain unchecked and the due process offered is “illusory.”

- S127

Response: The Department provides clear direction on the eligibility criteria and the associated due process that must be provided to inmates during the validation process and during SDP placement, progression, or regression. These are fully set forth in proposed sections 3376(d)(5)(A), 3378.2(a), 3378.2(c), 3378.2(d), 3378.2(e), 3341.5(c)(2)(A)3, and 3378.3(b).

Comment #401: The removal of the word “direct” from the phrase “direct nexus” in various places in the proposed regulations renders meaningless the requirement that a prisoner be validated, placed in SHU, or regressed in the SDP based only on behavior related to gang involvement.

- S127

Response: The term “direct nexus” continues to be used where appropriate as in section 3(f) of the disciplinary matrix incorporated in Section 3378.4.

Comment #402: CDCR asserts its authority to expand the list of STGs without limit, to cooperate with local law enforcement’s branding of people outside CDCR jurisdiction as STG affiliates, and to assign a person to SHU immediately upon his entry into a California prison. The implications are ominous for the freedoms of our communities.

- S127

Response: The Department is under the continuing obligation to maintain the safety and security not only of the inmates and staff within its institutions, but also of the community through the supervision of parolees who, although they are no longer housed in an institution, remain under the Department’s jurisdiction and supervision. In order to do so, the Department must work cooperatively with local law enforcement. Parolees who reenter prison retain their previous classification while they are pending a new

assessment, which will take into consideration all relevant current case factors. See proposed section 3341.5(c)(11).

Comment #403: The Department continues to use items that are associated with gangs but do not demonstrate gang behavior such as tattoos, artwork, political books, certain newspapers or quarterly publications, or signing a greeting card with others as evidence that one is a gang member.

- S129

Response: Only those tattoos, pictures, and literature that demonstrate a nexus to the STG or STG affiliation can be used in the validation process.

Comment #404: The new policy does not accomplish the goal set out by the 2006 bipartisan commission on Safety and Abuse in Prisons, that solitary confinement be used only as a last resort and then only for the shortest time possible.

- S129

Response: The Department is bound by federal and state constitutional, statutory, and case law. The Department's process for identifying security threat group affiliates, criteria for segregated housing, current conditions of confinement, and associated due process provided in those determinations have not been found to be in violation of any state or federal law.

Comment #405: The prisoner is required to demonstrate "progress" by, among other things, filling out workbooks and showing changed attitudes - very subjective criteria that will no doubt make it very difficult for prisoners to pass from one step to the next.

- S129

Accommodation: Partial

Response The new regulation requires each inmate who is assigned to the SDP to participate in all program opportunities assigned by the ICC. As a result of comments received through the public comment period, the SDP contracts were revised to remove several of the requirements that were contained there and the forms were renamed. The form is now called Notice of Program Expectations and it identifies the requirements to be considered participating in the SDP as follows: 1) Participate in and successfully complete all mandated educational instruction and program activities, as determined by the ICC; 2) Follow all staff directives; and 3) Cease any and all STG related behavior including but not limited to: Planning, organizing, recruiting, promoting, training, communicating in code, using known STG symbolism, participating in and/or communicating STG activities.

Comment #406: If debriefing continues, evidence from debriefing must receive greater scrutiny and must be corroborated before it is used against a prisoner who is unable to contest the information. Prisoners should be able to contest all information brought against them.

- S129

Accommodation: Partial

Response: The use of confidential documents for either initial validation or revalidation requires that the reliability of the information be established per CCR section 3321 and the new regulation provides additional levels of due process to further insure the inmate has every opportunity to challenge any information being used. Section 3321(b)(1) was modified as follows: "No decision shall be based upon information from a confidential source, unless other documentation corroborates information from the

source, or unless other circumstantial evidence surrounding the event and the documented reliability of the source satisfies the decision maker(s) that the information is true.”

Comment #407: Previously, disruptive groups were never sent to SHU, but now members of STG IIs with a serious rules violation can be considered for SHU. The coining of the new provocative term, “security threat group,” with nuanced reference to terrorism is deeply troubling; the expansion of the SHU–eligible population is of grave concern.

- S129, S332

Response: The term Security Threat Group is a term that is being used by law enforcement and correctional agencies around the country and by the Federal Bureau of Prisons. This term addresses groups that pose the most significant threat to both institutional security and public safety by eliminating the focus which was previously only on those gangs that had their beginning in a prison setting. The transition from gang as an identifier to STG provides a better focus on activities that are associated with STG behavior.

Being found guilty of a serious Rules Violation Report (RVR) may warrant the assessment of a SHU term, the placement into the SDP is based on that violation being STG related. For a validated STG-II member or associate to be placed in the SDP, the inmate must have been found guilty of two STG related behaviors which also require a determinate SHU term as identified in CCR Section 3341.5(c)(9) within the last four years. The program is focused on reducing STG activity.

Comment #408: An alternative program is the “Max B” program, which was/is functional at several prisons prior to Pelican Bay State prison and which can work. The Department should explain why it cannot return to that model which was based on behavior and which had fewer, and more behavior based, steps.

- S129

Response: “Max B” is a custody (housing) designation. That aside, had the program referred to by the commenter demonstrated positive results, the Department would not have moved away from it. The Department’s STG program has been built around a collection of the best practices from other agencies across the nation and adapted to California’s very complicated specific needs.

Comment #409: The Max B proposal can be piloted at Pelican Bay in its 180 design housing units. Max B would serve a dual purpose: (1) allowing a short period of decompression for validated SHU/AdSeg inmates who have served decades in SHU, and (2) allowing validated to complete a 90-day, three-step program for re-entry to general population. This three-phase step program would consist of: (1) initial placement into the program for 30 days with non-contact visits, no group programming, and no work group participation; (2) a 60-day phase with group programming, contact visits, and group meals; and (3) release to General Population.

- S129

Response: See Response to Comment #408.

Comment #410: In all cases of gang validation, the review process is 100 percent reliant on the information gathered in the initial investigation. Thus if the investigation was biased, incomplete, or contained wrong information, all subsequent decisions would be based on the same biased, incomplete, and wrong information. I suggest that an Administrative Law Judge would be in the best position to provide independent oversight and investigation.

- S129, S145

Response: The Department believes that the addition of multiple layers of due process review provides ample levels of review to insure the integrity of the investigation.

Comment #411: CDCR has to provide prisoners the guarantee that information gathered through either SDP journal writing, interviews, etc., will not be used legally against the person in some other venue, forum, or manner.

- S129

Accommodation: Partial

Response: See Response to Comment #392.

Comment #412: The Disciplinary Matrix, as it stands, is almost meaningless because in seven of its eight sections, any single behavior could require placement at the beginning of step 1. No matter what the inmate may do – from committing murder (section 1) to reading an STG roll call (section 7), he can be placed at the beginning of Step 1. The criteria for deciding that outcome is nowhere cited in the policy and appears arbitrary. Either these act or equally serious, or if they are not then why is placement at the beginning of Step 1 (section 3378.4(b)(2)) a possible outcome for all behaviors in sections 1 through 7 ?

- S129

Response SDP placement options as outlined in CCR Section 3378.4(b) provide direction for the Institution Classification Committee based on the STG related violation for which the inmate has been determined to be accountable. The various sections will be applied based on the circumstances of that specific inmate. For example, sections (1), (2), and (3) address an inmate who is initially being placed into the SDP after being retained in the GP at the time of validation.

Comment #413: I strongly suggest that the disciplinary matrix be revised so that only violent behavior as laid out in Penal Code 2933.6 triggers a SHU sanction for a fixed, determinate time period, while non-violent behaviors receive non-SHU sanctions.

- S129

Response: The Department believes activities that are driven by STG affiliation must be viewed independently.

Comment #414: If CDCR wants to have a zero tolerance policy for prison gangs, it should (1) provide greater incentives for people to refuse joining gangs and greater positive reinforcement for good behavior, and (2) use other sorts of punishments as a consequence of gang related behaviors, such as loss of certain privileges.

- S129

Response: The Department's STG program has been built around a collection of best practices from other agencies across the nation and adapted to California's very complicated specific needs.

Comment #415: CDCR can create housing units with fewer individuals who are violating their rules, but with much more time outdoors, greater levels of interaction (such as four individuals playing chess or cards together within a SHU Pod area), and much greater programming.

- S129

Response: See Response to Comment #414.

Comment #416: The effects of STG/ SDP will create severe psychological trauma to the prisoners who are subjected to solitary, which will then have a damaging effect on their ability to reenter the outside world, look for and obtain work, have healthy relationships, have insight into their behavior, learn from their mistakes, teach others, and contribute to their communities.

- S132

Response: See Response to Comment #1.

Comment #417: I never committed any act of violence while in the general population, yet I have been in the PBSP SHU for over 25 years.

- S123

Response: See Response to Comment #2.

Comment #418: The prison system in California is considered to be one of the worst in the country. There is so much to be done before this broken system can resemble anything constructive. There are two core changes that are the most constructive and civil and these changes must be made: end long term solitary confinement and end the use of mandatory minimum sentencing.

- S133

Response: See Response to Comment #1.

Comment #419: States such as Mississippi, Washington, Colorado, Maine, and New Mexico are implementing dramatic reductions in their use of isolation, resulting in greater institutional safety and cost savings. It's time for California to do the same.

- S135, S140

Response: See Response to Comment #1.

Comment #420: My fiancé is being held in AdSeg based on the word of a confidential informant for an apparent riot that he was not involved in. The living situation in which they have my fiancé are inhumane, cruel, and unusual.

- S136

Response: See Response to Comment #2.

Comment #421: The fact that CDCR treats its inmates in such a systematic, inhumane manner makes CDCR more of a corrupt organization than many of the inmates it houses. The STG/ SDP helps no one – not society, not CDCR, not the prisoners.

- S137, S139

Response: See Response to Comment #1.

Comment #422: This system has the same extreme “us-them” perception that makes one group of people into people with no rights event to basic needs who are seen by those in authority as worthy of that cruelty. This also has a severe effect on the prisoners who are called upon to be severe and cruel, and must live in a biological state of stress without respite. The well-being of persons should be paramount in the minds of those entrusted with their care.

- S138

Response: See Response to Comment #1.

Comment #423: Our legal process already has many shortcomings and puts poor people behind bars and lets wealthy people go free. The injustices in the prison system should not continue to increase this harm done to those who are incarcerated.

- S138

Response: See Response to Comment #1.

Comment #424: Even those prisoners who need to be isolated from the general population because of the violence they have committed while in prison ought to be treated humanely.

- S151 – S321

Response: See Response to Comment #1.

Comment #425: We believe that the current misuse of secured housing units create unnecessary public safety issues and make successful reentry highly unlikely. These regulations only add to the dehumanization and traumatization of people that will eventually be released back into society. It is well documented that the misuse of SHUs results in anti-social behaviors, mental illness, and a myriad of other physical, mental, and social disorders.

- S139, S140

Response: See Response to Comment #1.

Comment #426: Respected data reveals that people who maintain family contact do better inside the institution and upon release than those that do not maintain family ties. Family members are also impacted by the misuse of SHUs because they are denied the right to visit, talk, and support their family member.

- S139, S331, and Hearing comment #1

Response: See Response to Comment #1.

Comment #427: As taxpaying people it is our intent to let you know that we do not support this, nor do we volunteer to have our tax dollars used to perpetuate such a breach of humanity.

- S139

Response: See Response to Comment #1.

Comment #428: Jewish tradition understands the need for human companionship. We believe in the value of the inherent dignity of human life, and believe that as a nation we must uphold human dignity for everyone, even those behind bars.

- S140

Response: See Response to Comment #1.

Comment #429: In order for repentance and rehabilitation to take place, those who are incarcerated need opportunities, not destructive prison conditions.

- S140

Response: See Response to Comment #1.

Comment #430: The policies do not serve either the cause of justice or of the restoration of wholeness to victims of crime.

- S140

Response: See Response to Comment #1.

Comment 431: People in solitary need more programs and more human contact than prisoners not in isolation, not less. The STG/SDP has very little programming available.

- S140

Response: See Response to Comment #1.

Comment #432: The isolation and segregation practices of CDCR are inhumane, cruel and unusual, degrading, unfair, constitute torture, cause and intensify mental illness, result in many suicides, do not protect inmates or the public, are falsely promulgated as a way to decrease violence (because they don't), violate human and civil rights, and violate international and constitutional law.

- S141

Response: See Response to Comment #1.

Comment #433: Widespread criticism throughout California, the United States, and the international community have clearly been ignored in the drafting of these regulations. How can CDCR do so and simultaneously claim to be protecting or serving the public interest?

- S141

Response: See Response to Comment #1.

Comment #434: The regulations fail to address and indeed perpetuates the outlier role of California regarding: its intense overuse of solitary confinement; the large number of people put in solitary confinement; the excessive length of time that people are in solitary confinement; the unjustifiable reasons people are put in solitary confinement; who is put in solitary confinement (eg. People with mental health issues, unpopular political stance, or interests in their culture and history), and who stays in solitary confinement. CDCR needs to address these concerns to justify its proposed regulations.

- S141

Response: See Response to Comment #1.

Comment #435: Given the vague and overbroad language related to validation and evidence for validation, the lack of due process and oversight, and the overwhelming power given to CDCR employees regarding validation, there needs to an overhaul or abolition of the validation system in new regulations so that arbitrary and capricious assignments to isolation, solitary confinement, or segregation are explicitly and systematically prohibited.

- S141

Response: See Response to Comment #227.

Comment #436: The use of the phrase “including, but not limited to . . .” in relation to Security Threat Group behavior establishes wide-open, limitless, and dangerous provisions by allowing prions employees to turn almost anything into a very serious accusation.

- S141

Response: See Response to Comment #135.

Comment #437: Indeterminate SHU terms, still inflicted under the new regulations, are inherently cruel and unusual punishments and are condemned internationally. There should never be indeterminate or indefinite SHU terms.

- S141

Accommodation: Partial

Response: See Response to Comment #104.

Comment #438: CDCR retaliates against and punishes prisoners who challenge the oppression and abuse. This retaliation is codified with vague language in the new regulations through STG validation and long-term solitary confinement in SHU. The definition of a Security Threat Group makes clear that a person need not engage in dangerous, violent, or illegal activity to be sent to a SHU torture chamber.

- S141

Response: The proposed regulations define a STG: "...any ongoing formal or informal organization, association, or group of three or more persons which has a common name or identifying sign or symbol whose members and/or associates, individually or collectively, engage or have engaged, on behalf of that organization, association or group, in two or more acts which include, planning, organizing, threatening, financing, soliciting or committing *unlawful acts*, or *acts of misconduct*." The definition is generally consistent with national best practices; however, this definition does not identify the elements of the policy that would require consideration for SDP placement within restricted housing. Unlike the pre-existing policy, the revised STG Policy does not require automatic placement within restricted housing based upon validation alone. The revised policy is established as a behavior system, when placement consideration is contemplated within the SDP. In most instances, validated affiliates will have received adjudicated serious disciplinary behavior and/or a pattern of administrative behavior with an STG nexus prior to consideration for placement into restricted housing. The revised policy incorporates a disciplinary matrix that identifies behavior which may be considered for placement within the SDP. Additionally, an STG I must be certified by the CDCR Secretary in advance of any consideration for placement of an affiliate within the SHU. The process of certification requires the demonstration that the group as a whole has engaged in repeated acts which include planning, organizing, threatening, financing, soliciting or committing unlawful acts, or acts of misconduct. Therefore, under the revised policy, an STG I must become certified by the Secretary as a threat to others and institution security; suspects must accumulate a minimum of 3 sources items, with a weighted point value of 10 or more points, of activity/behavior with a nexus to the STG; and associates must receive adjudicated serious behavior and/or a pattern of administrative behavior with an STG nexus as identified within the Disciplinary Matrix.

Comment #439: People who are not incarcerated or accused of a crime can be deemed STG affiliates by CDCR. This is an unfair overreaching that seeks to set more people up in solitary confinement in the future.

- S141

Response: The Department is under the continuing obligation to maintain the safety and security not only of the inmates and staff within its institutions, but also of the community through the supervision of parolees who, although they are no longer housed in an institution, remain under the Department's

jurisdiction and supervision. In order to do so, the Department must work cooperatively with local and federal law enforcement to monitor security threat group activity in its institutions and within the community. Under new regulation sections 3378.2(e) and 3378.4(a), validation as a security threat group affiliate no longer requires that the inmate be housed in the SHU based solely on that validation alone.

Comment #440: The new regulations give CDCR the authority to determine who and what is a threat to the public. CDCR has proven itself to instigate, create, and perpetuate threats to prisoners and to the public. We, the public must be recognized by CDCR to be the appropriate oversight for CDCR treatment of prisoners, and there is no deference to such public authority in the regulations.

- S141

Response: The Legislature has delegated to the Department broad authority for those within its jurisdiction, which includes the responsibility for their care, custody, treatment, training, and discipline. The Department does not have the statutory authority to require an independent agency or third party to review its administrative decisions. The Department notes, however, that inmates have the opportunity to challenge their validations through the inmate appeals process and in court through the filing of a writ of habeas corpus.

Comment #441: The STG/ SDP regulations violate state, federal, and international rights.

- S141

Response: The Department is bound by federal and state constitutional, statutory, and case law. The Department's process for identifying security threat group affiliates, criteria for segregated housing, current conditions of confinement, and associated due process provided in those determinations have not been found to be in violation of any state or federal law.

Comment #442: CDCR has no jurisdiction over the words, actions, or associations of a probationer, or of a person who is not on parole or incarcerated in a CDCR facility. The STG/ SDP regulations erroneously grants itself such jurisdiction.

- S141

Response: The Department is under the continuing obligation to maintain the safety and security not only of the inmates and staff within its institutions, but also of the community through the supervision of parolees. The Department does not seek to exercise any control over those who are not within its jurisdiction. However, communications with inmates and visiting inmates place those interactions within the investigative jurisdiction of the Department.

Comment #443: Unit and Institutional Classification Committees are inappropriate bodies to make decisions regarding placement of people into solitary: they have too much discretion, are internal to CDCR, have no regular or independent oversight outside of CDCR, have no appropriate education or training regarding rehabilitative techniques and processes, and no mental health expertise.

- S141

Response: The Department believes that the additional levels of review and due process being established, after careful review of national best practices by nationally recognized experts in the field, will provide the necessary safeguards.

Comment #444: Validation is not based on conduct, although section 3043.4(b) erroneously describes it as such.

- S141

Response: Section 3043.4(b) addresses credit earning status of inmates who are placed in SHU for behavior and those who are placed in SHU due to being validated as an STG-I member or associate.

Comment #445: CDCR should have to prove to a non-CDCR judicial body, with the prisoner given more notice and being represented by counsel, that the prisoner has been involved in actual misconduct for a serious rules violation to be upheld.

- S141, S142

Response: All inmates have the right to appeal committee decisions and may challenge the actions of the Department in the judicial system.

Comment #446: Due process in the regulations should include a hearing and court process before a non-CDCR judicial body that follows CA rules of evidence and other statutes and laws. Due process should provide prisoners with the opportunity to be represented by counsel, whether or not the prison can afford to hire an attorney.

- S141, S150

Response: See Response to Comment #445.

Comment #447: The information from a debriefing prisoner is inherently unreliable because the program is coercive; the debriefer is obtaining the significant benefit for providing this information – release from the SHU.

- S141, S331, and Hearing comment H1

Response: The use of confidential documents for either initial validation or revalidation requires that the reliability of the information be established per CCR section 3321 and the proposed regulations provide additional levels of due process to further insure the inmate has every opportunity to challenge any information being used. Section 3321(b)(1) was modified as follows: “No decision shall be based upon information from a confidential source, unless other documentation corroborates information from the source, or unless other circumstantial evidence surrounding the event and the documented reliability of the source satisfies the decision maker(s) that the information is true.”

Comment #448: Solitary confinement longer than a day is torture and leads to psychosis. Since many inmates have mental problems to begin with, this should be addressed with psychiatric help, which may prevent the acting out to begin with.

- S143

Response: See Response to Comment #1.

Comment #449: Sixty-two days is an insufficient comment period for the parties to whom the proposed regulations would apply most directly: indigent men and women incarcerated throughout the state. The circumstances of their confinement have denied or severely limited many inmates ready access to the proposed regulations, as well to many of the materials used to create them, which is even more insufficient for the men and women housed on death row. An extension of time to comment on the proposed regulations is needed.

- S144

Response: The APA requires a minimum of 45 days for public comment on proposed regulations. The Department exceeded that requirement by over two weeks. Additionally, the Department accepted all

comments that were postmarked by the close of the comment period, regardless of when they were received. At least 37 inmates, many housed in SHUs, provided comments on the proposed regulations.

Comment #450: The proposed regulations do not specify whether the STG and/or SDP process applies to condemned inmates. Gang management, as currently applied to the condemned population, is arbitrarily and inconsistently imposed. There has been considerable confusion between the interplay between Title 15 regulations and San Quentin Operational Procedure No. 608, which governs San Quentin's condemned inmates: some are determined to be validated based on Title 15, while others are placed in validated condemned housing status based on the nominal authority of OP 608. As a result, inmates who wish to challenge the designation face a nearly impossible task.

- S144

Accommodation: Partial

Response: New subsection 3023(f) has been adopted to address the Condemned inmate population.

Comment #451: The placement of gang members in the SHU based on status alone under proposed section 3378.1(c)(1). This violates the inmates' rights under the First, Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments and the CA State Constitution's analogous provisions. This provision is similarly invalid because it permits the placement of an inmate in a SHU without evidence of either (1) a serious rules violation; or (2) a specific and continuing actual threat to the safety of the inmate or others.

- S144

Accommodation: Partial.

Response: In response to the comments received during the public comment period, the Department made a modification within the regulation. The language in Section 3378.1(c)(1) was changed from mandatory to discretionary. Language was added in Section 3378.2(e) which now requires the ICC to conduct an additional review of validations for STG-I members, but also to determine the individual inmate's housing based on consideration of all relevant case factors. If the ICC does not agree with the decision of the STG Unit Classification Committee, the case will be referred to the Departmental Review Board for a final decision on the level of validation.

Comment #452: The automatic validation and placement of gang members into the SHU based on their commitment offense is equivalent to imposing harsher prison conditions and punishments, which is inconsistent with punishments imposed by the Penal Code (see Gov Code sections 11349(d), 11349.1(a), 11342.1, and 11342.2).

- S144

Response: No inmate can be automatically validated and placed into a SHU based solely on their commitment offense. Under proposed section 3378.2(b)(12) or (14), the Department can take into consideration commitment offense documents that evidence STG conduct as one of many factors or source items considered as part of a validation investigation. However, under proposed sections 3378.2(e) and 3378.4(a), validation as a security threat group affiliate no longer requires that the inmate automatically be housed in the SHU based solely on that validation alone.

Comment #453: The regulations package does not provide substantial evidence of a need for a regulation providing for the placement of gang members in the SHU based on status alone. This failure does not meet the necessity standard of Gov Code section 11349(a).

- S144

Accommodation: Partial.

Response: See Response to comment #451.

Comment #454: The proposed regulations regarding validation lack the clarity required by Gov Code section 11349(c) and are unconstitutionally vague and overbroad. The regulations are extremely long and convoluted, and likely beyond the understanding of many CDCR staff and inmates, and will lead to uneven and arbitrary application. eg. the description of STG behavior is open-ended, and thus subject to abuse.

- S144, S332

Response: While the regulations necessarily address a wide variety of potential situations, the Department believes the proposed regulations meet the clarity standard required by the APA.

Comment #455: The proposed validation process lacks important due process guarantees, and will deny equal protection. eg. 3378.2 permits the certification of gang indicia, but source items traditionally relied upon are not exclusive to gangs.

- S144

Response: Due process to which inmates are entitled by law during the administrative decision to house them in a more segregated environment requires that they receive notice of the factual basis on which the decision is based and that they have a fair opportunity to be heard. The proposed regulations provide this level of due process at several steps both during the validation process and before a validated inmate can be housed in a segregated environment. See proposed sections 3376(d)(5)(A), 3378.2(a), 3378.2(c), 3378.2(d), and 3378.2(e). The Department notes that state and federal courts have found that its reliance on credible gang symbols as sources of validation is permissible even where those symbols may also have religious or other significance.

Comment #456: SHU placement is harsh and punitive and should be reserved for prisoners who commit serious rule violations.

- S144, S146, S332

Response: See Response to Comment #1.

Comment #457: The Office of the State Public Defender strongly supports the use of a disciplinary system that applies equally to all inmates and is based only upon an individual's active behavior while incarcerated within CDCR.

- S144

Response: The Department appreciates this organization's support of the proposed regulatory changes.

Comment #458: The proposed SDP would violate an inmate's First, Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendment Rights and the CA State Constitution's analogous provisions. eg. According to the pilot program's instructional memorandum, an inmate willing to participate in the SDP is required to sign a contract that clearly stated ". . . that by signing the document, the inmate does not acknowledge or admit to being an STG affiliate. This language arguably safeguarded the inmate's rights, but we see no similar protection in the proposed regulations.

- S144

Accommodation: Partial.

Response: The Department's individual classification decisions to validate security threat group affiliates, and/or house inmates in Security Housing Units have been upheld against challenges based on the First, Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments. Additionally, based on comments received through the public comment period, the Department removed the requirement that participants in the Step Down Program sign the Contracts for each Step. Instead, these documents now function as an advisement or expectations and participant are not required to sign them.

Comment #459: The proposed regulations fail to safeguard a defendant's right to counsel, right against self-incrimination, and right to due process by ensuring that an inmate who is still actively involved in litigation is not required to divulge information about the underlying incident. This issue is especially acute for condemned inmates who are actively challenging their convictions and sentences.

- S144

Accommodation: Partial.

Response: An inmate is not constitutionally entitled to be represented by counsel in any administrative hearing or decision making process contemplated by these regulations. Similarly, the Fifth Amendment right against self-incrimination does not apply to administrative processes in which there is no risk of criminal prosecution. However, in response to feedback received through the public comment period, the Department provided some additional language to address the provision and use of information revealed during the Step Down Program. CCR Section 3378.3(a)(5) has been added to read: "Information gleaned through inmate participation in program activities is not intended to be used to validate an inmate, initiate an investigation into STG related behavior, or identify/corroborate the involvement of other STG participants. However, information specifically intended to convey to staff the occurrence of past, present, or future STG threats of violence or disruption may be evaluated to maintain institutional and public safety". Additionally, inmates will retain their completed workbooks, which will not be placed in their central files.

Comment #460: Regulations that permit indefinite life-time punishment are invalid because they conflict with existing law (see Gov Code 11349(d)) and are beyond the statutory authority of CDCR (see Gov Code 11342.1 and 11342.2)

- S144

Response: The Department is unable to refute or accommodate this comment. Although the commenter claims that the proposed regulations conflict with existing law and is beyond the statutory authority of CDCR, no conflicting statute or other law is cited. The Department believes that its proposed regulations meet the mandates set forth in the Administrative Procedure Act that require consistency with existing law and the exercise of rulemaking authority in accordance with conferred authority.

Comment #461: It is inhumane to isolate a person in the conditions that exist in your prisons. It leads to no good and unnecessarily robs the prisoners of both mental and physical health, and any sense of dignity. Change your procedures to protect their humanity.

- S147

Response: See Response to Comment #1.

Comment #463: The reforms make no changes to the harsh physical conditions in Pelican Bay SHU, despite being in breach of minimum internationally recognized standards: prisoners will continue to be

held in concrete cells facing a blank wall, with no windows to the outside, the cell doors are constructed of heavy gauge perforated metal which significantly blocks vision and light; and no changes are proposed to the exercise facilities that are seriously inadequate.

- S148, S149

Response: See Response to Comment #1.

Comment #464: It will normally take at least 4 years for prisoners to work their way out of the SHU through the SDP and will therefore continue to be held for long periods in these unacceptably harsh conditions.

- S148, S149

Response: The Department through the proposed regulations have provided the opportunity for the inmate to significantly shorten the time spent in a restricted housing environment due to STG affiliation. Those inmates who actively participate in the SDP can progress through the program and be released to Step 5 in as little three years.

Comment #465: For the first two years, most prisoners will remain confined to their cells for 22 – 24 hours a day with no group association at any time, only limited association for the third year and the first six months of year four. Only during the final six months of year four will inmates have less restrictions on association.

- S148, S149

Response: See Response to Comment #397.

Comment #466: All visits remain non-contact and there are severe restrictions on phone calls with families, the allowance of a single phone call upon completion of each step is unacceptably harsh and does not go far enough to satisfy human rights and other standards.

- S148, S149

Response: There continues to be a need for the restrictive measures which are necessary to provide a safe and secure environment for inmates and staff. The Department believes that the proposed regulation best reflects the level of visitation that is appropriate for the population in question.

Comment #467: Programming during the first 2 years in the SDP is delivered remotely and done in-cell. Given the negative effects that prolonged isolation has on physical and psychological health, in such a restrictive setting a prisoner's progress cannot be fully measured in the absence of any social interaction.

- S148, S149

Response: The SDP provides educational staff and program facilitators that will interact with inmates who are actively participating in the program. Program activities beginning in Step 2 may be conducted utilizing individual treatment modules, based upon the decision of the ICC.

Comment #468: While the reforms include changes to the gang validation process, the distinction between “active” gang members and associates can remain blurred in practice and prisoners may still be assigned to the SHU without clear evidence of dangerous or disruptive behavior.

- S148, S149

Response: The Department believes that Section 3000 Definitions makes a clear distinction between Associates and Members. In addition, the proposed regulation provides that an STG-I associate or STG-II

member or associate who does not have behavior that may result in a SHU term being considered as part of the validation will remain housed in the general population. It further tasks the Institution Classification Committee to evaluate STG-I member's validation source items to ensure there is sufficient evidence to warrant validation at the level of member.

Comment #469: Progress through the SDP may still, in practice, depend on prisoners informing on fellow gang members. These concerns must be addressed and criteria for SHU placement should be narrowly defined and subject to rigorous and fair review. Progression through the SDP must not be conditioned upon becoming an informant.

- S148, S149

Response: An inmate who refrains from STG behavior and successfully participates in the SDP, which focuses on anger management, socialization, life skills, and reintegration will program their way back to a general population programming environment. There is no need or requirement that an inmate inform on fellow gang members in order to progress through the SDP. The workbooks utilized in the SDP are designed to provide the participant the opportunity and learning materials to explore in part through journaling, positive social and life skills including, assessing consequences, family relationships, communication skills, and success strategies. The workbooks are self-directed and do not require that a participant provide information regarding specific past or future STG activities.

Comment #470: Prisoner should only be segregated if they pose a continuing serious threat that cannot be safely controlled in a less restrictive environment, and for the shortest possible time. Even at the most restrictive custody levels, prisoners should be held in conditions that fully conform to international standards for humane treatment, including adequate access to natural light, fresh air, exercise, group interactions and rehabilitation programs.

- S148, S149

Response: The proposed regulations incorporate a behavior-based management policy for security threat group affiliates who, by their actions, have demonstrated that they pose a threat to institutional and individual safety and security. The Department is bound by federal and state constitutional, statutory, and case law. The Department's process for identifying security threat group affiliates, criteria for segregated housing, current conditions of confinement, and associated due process provided in those determinations have not been found to be in violation of any state or federal law.

Comment #471: Is Homeland Security (federal) money going to be allocated to the CDCR budget if the security threat group regulations are formally adopted?

- S150

Response: See Response to Comment #1.

Comment #472: There is no mention of CDCR ceasing the practice of "yard sweeps" where all prisoners of certain races or groups in a yard are taken forcibly to isolation units and made to wait for decisions as to their future cell status. What guarantee is there that this practice will cease permanently?

- S150

Response: See Response to Comment #1.

Comment #473: The use of contraband watch has been reduced since the method was reported to Legislators and by the press. Will x-rays only be used to search for contraband? Is there still a chance that CDCR will return to the unnecessary physical torture of contraband watch?

- S150

Response: See Response to Comment #1.

Comment #474: Why would questions be included in the workbook “The Con Game” that further criminalizes a prisoner? What legal reason does CDCR have to justify the degrading effects of the workbook on a prisoner? What legal reason does CDCR have to justify eliciting incriminating information through the workbook?

- S150

Response: The Department’s SDP utilizes a workbook series that is also being used by other county and state correctional organizations around the country. The workbooks are designed to provide the participant the opportunity and learning materials to explore in part through journaling, positive social and life skills including, assessing consequences, family relationships, communication skills, and success strategies. The workbooks are self-directed and do not require that a participant provide information regarding specific past or future STG activities.

Comment #475: How does CDCR reconcile Fifth Amendment protections for prisoners who are required to fill out the workbook?

- S150

Response: The workbooks are self-directed and do not require that a participant provide information regarding specific past or future criminal activities that would subject the participant to criminal prosecution. In response to feedback received through the public comment period, the Department provided some additional language to address the provision and use of information revealed during the Step Down Program. CCR Section 3378.3(a)(5) has been added to read: “Information gleaned through inmate participation in program activities is not intended to be used to validate an inmate, initiate an investigation into STG related behavior, or identify/corroborate the involvement of other STG participants. However, information specifically intended to convey to staff the occurrence of past, present, or future STG threats of violence or disruption may be evaluated to maintain institutional and public safety”. Additionally, inmates will retain their completed workbooks, which will not be placed in their central files.

Comment #476: CDCR is under federal oversight of the provision of inmate health care. What does the STG plan do for mentally ill prisoners? Will mentally ill prisoners be immediately released from solitary into more humane situations for treatment?

- S150

Response: As noted by the commenter, the provision of mental health care to inmates is governed by court orders and agreements in *Coleman v. Brown* (U.S. District Court, E.D. Cal, case no. 2:90-cv-00520). As such, the Department will continue to comply fully with court-ordered requirements.

Comment #477: There are no provisions in the regulations to assist prisoners in recovering from the detrimental effects of long term solitary confinement. Nor are there provisions to protect prisoners who have been in solitary for years, from ever being returned to isolation.

- S150

Response: The Department provides full access to a range of medical and mental health programs available to all inmates. Any return to restricted housing would be based on the inmate being found to be accountable for participation in STG related behavior.

Comment #478: How does CDCR consider controlling street gangs part of its jurisdiction? How is CDCR jurisdiction of CA communities legally justified?

- S150

Response: CDCR has authority only over those committed to its jurisdiction by the courts.

Comment #479: Why are there no provisions for prisoners to immediately enter into rehabilitation programs and to educate themselves?

- S150

Response: Inmates are provided self-help workbooks, access to educational programs, and program facilitators that have been established at each of the SDP institutions. Program activities beginning in Step 2 may be conducted utilizing individual treatment modules, based upon the decision of the ICC.

Comment #480: Why, as the SDP was being piloted, was there such a push by CDCR to take away access to college courses?

- S150

Response: See Response to Comment #1.

Comment #481: In section 3000, although distinctions are theoretically made between affiliates and associates and members, the distinctions are confusing and seem to overlap.

- S331 and Hearing comment #1

Response: The Department believes that Section 3000 Definitions makes a clear distinction between Associates and Members. The term affiliates means individual offenders validated as members, associates, or monitored status inmates who are connected or interact with a certified or recognized STG. That term is used in the regulation to identify a group of inmates without having to spell out members, associates and monitored status inmates.

Comment #482: Although the regulations say they distinguish between affiliations and actual behavior, affiliation with a gang nexus seems to constitute behavior, blurring the distinction. eg. In section 3023(b) the distinction between activities and behavior is vague: identification is listed with prevention and management as if mere association were the same as actual behavior.

- S331 and Hearing comment #1

Response: Affiliation that includes STG activities is considered behavior.

Comment #483: While debriefing is limited to a request by a prisoner, but by encouraging and actually giving incentives to do so in a coercive environment, debriefing could hardly be considered voluntary.

- S331 and Hearing comment #1

Response: The act of debriefing is completely voluntarily and the only “incentives” are those available to anyone who has not been found to be accountable for participation in STG related activities or behaviors.

Comment #484: The shift from gang validation language to security threat group language is very troubling although it may be consistent with policies in other jurisdictions. It radically expands the number of people who could be validated not only to prison gangs, but to street gangs and result in labeling people before they are even within CDCR jurisdiction.

- S331 and Hearing comment #1

Response: The term Security Threat Group is a term that is being used by law enforcement and correctional agencies around the country and by the Federal Bureau of Prisons. This term addresses groups that pose the most significant threat to both institutional security and public safety by eliminating the focus which was previously only on those gangs that had their beginning in a prison setting. The transition from gang as an identifier to STG provides a better focus on activities that are associated with STG behavior.

Comment #485: The new definition of validation creates a much larger category than previous regulations.

- S331 and Hearing comment #1

Response: The new definition is not significantly more inclusive than the previous one, rather it shifts the focus to STG related behavior.

Comment #486: Section 3023(e) lumps conspiring, attempting and participating in certain activities, making no distinctions

- S331 and Hearing comment #1

Response: The Department believes that the proposed regulation, as written, meets the needs of the state of California and the population being addressed.

Comment #487: Section 3044(b)(7)(c) refers to people deemed a program failure as defined in section 3000, but that section does not define failure other than to say that success is up to the ICC. This gives prisoners no real guidance as to what they must do to be successful.

- S331 and Hearing comment #1

Response: Per CCR Section 3000, Program failure means “any inmate who generates a significant disciplinary history within the last 180 days from the current date”; anyone who remains disciplinary free would be successful in avoiding program failure.

Comment #488: Section 3341.5 allows administrative SHU terms to be re-imposed without subsequent behavior if they have been interrupted by medical or mental health treatment needs. To resume isolation with no new events seems unnecessarily punitive and could endanger prisoners’ health.

- S331 and Hearing comment #1

Response: Subsection 3341.5(c)(2)(A)3. was amended to read: “Administrative SHU terms suspended based solely on the need for inpatient medical or mental health treatment may be re-imposed without subsequent misbehavior if the inmate continues to pose a threat to the safety of others or the security of the institution.” The referenced section is discretionary which allows for review and assessment by a classification committee and placement upon a determination by that committee.

Comment #489: Subsection 3378.1(a)(2) requires the STG assessment to include why the person constitutes an immediate clear and present danger, which we applaud. However, there’s no guidance about how this determination would be made. Subsection (b) contains some criteria but none of those behaviors need to involve the actual person being certified.

- S331 and Hearing comment #1

Response: The Department believes Section 3378.1 inclusive of (a)(2) addresses the STG certification process and is very detailed and complete in explaining how that assessment occurs. This section does not speak to an individual inmate, rather a group of inmates being considered for certification of their group as an STG.

Comment #490: Section 3378.1(c)(2) does not require certification for STG IIs although the ramifications of this designation can still be quite serious.

- S331, S332, and Hearing comment #1

Response CCR Subsection 3378.1(e) addresses the process for a group to be recognized as an STG-II by the CDCR.

Comment #491: Section 3378.1(e) gives the Office of Correctional Safety total discretion in recertifying STGs. This office tends to overuse gang designations. Although it's mentioned that certification would be widely publicized, including to prisoners, experience has shown that this is rarely done and people are found in violation of possessing a symbol they had no idea would put them at risk.

- S331 and Hearing comment #1

Response: In review of the comment it appears the commenter is referring to 3378.1(f) the Department believes the process, as designed, provides ample safeguards.

Comment #492: Section 3378.2(b) contains the phrase “or to an offender who is validated within six months.” This is virtually an invitation to have someone go out and find a connection after the fact in order to validate someone, and seems wholly inappropriate.

- S331 and Hearing comment #1

Response: The Department has determined that the six month period for determining a direct link between a validated affiliate and another offender is an adequate time for information to be gathered in support of the connection.

Comment #493: Section 3378.2(b), in reference to informants and debrief reports in paragraphs 3 and 4 states that information related to acts or conduct are the only things that can be considered, the previous paragraph on informants is much broader.

- S331 and Hearing comment #1

Response: The Department is not entirely clear on what this comment is referring to, however the comment appears to be addressing the following two sentences in Section 3378.2(b)(3): “Staff shall articulate how the information specifically relates to the offender’s involvement with the STG. The information may be used as a source of validation if the informant provides specific knowledge of how he/she knew the offender to be involved with the STG.” These two additional/broader sentences are necessary and specific to informants in establishing a knowledge base between the informant, the specific STG and the STG Suspect. These additional elements that are intended to demonstrate a knowledge base for the STG are predisposed in the case of a debriefing inmate, who has previously been established and/or validated as part of the same specific STG. Regardless of the language, any information being described by the informant or the debriefing inmate must fully meet the criteria for using confidential information as established in CCR section 3321.

Comment #494: Section 3378.3 states: “if the prisoner chooses not to progress, they may be placed in a previous step until they demonstrate appropriate behavior.” This language is vague and could result in indefinite SHU confinement regardless of whether the person has engaged in serious rules violations.

- S331 and Hearing comment #1

Accommodation: Partial

Response: Based on comments received during the public comment period, the Department developed additional language to address this concern. CCR Section 3378.3(a)(4) was added and reads “If the offender chooses not to progress through any step of the program, the offender may be returned, by ICC, to one of the previous steps until they demonstrate appropriate behavior for movement into the next step. At any time the inmate wishes to begin participating in the SDP, they may notify their assigned counselor who will schedule their appearance before the ICC within 30 days.” The proposed regulation also provides for ICC review, regardless of participation in the SDP. ICC has the authority to refer the case to DRB for consideration of continued placement in the SDP.

Comment #495: We believe that the Step Down Program should be no longer than 18 months

- S331 and Hearing comment #1

Response: The Department believes the SDP is a well-balanced program with an approach that recognizes participation and creates incentives over a timeframe that provides for ample review to best insure the safety of everyone involved and the commitment of the inmate.

Comment #496: Section 3378.4: We are deeply concerned about the concept of nexus to STG behavior. While we appreciate that the nexus should be clearly articulated, we do not believe that merely connecting or finding an association to an STG makes the behavior gang behavior.

- S331 and Hearing comment #1

Response: The CDCR recognizes that behavior may occur with a casual and/or non-incriminating nexus to STG behavior, and as such would not represent an implicating nexus to STG behavior. Unless sufficient evidence/information exists to demonstrate the act was completed knowingly in support and/or on behalf of the STG, etc., a behavioral nexus to STG behavior may not become established. Further, the establishment of an STG nexus should demonstrate a central relationship to the behavior, which provides an explicit and actual connection between the described behavior and its relationship to the STG. Establishing the ability to adjudicate this nexus is not considered a policy component, but rather is most closely linked to the training and experience of the assigned hearing officers, which is being incorporated into the establishment of the STG policy and procedure. The CDCR further recognizes that Rules Violation Reports must be reviewed, interpreted and adjudicated by well-trained and knowledgeable individuals, as well as reviewed through multiple levels of due process to provide a fair and objective assessment.

Comment #497: In section 3378.5 it becomes clear that even successful completion of the Step Down Program will not necessarily move someone on to Step 5. This casts serious doubt on the whole program.

- S331 and Hearing comment #1

Response: It is unclear what the commenter is referring to as Section 3378.5 refers to debriefing with no language dealing with the SDP.

Comment #498: Subsections 6, 7, and 8 of the Disciplinary Matrix are seriously problematic. Items judged as serious behavior include tattoos, many of which could be quite old, conversations, and possession of greeting cards. Violations categorized as administrative like possessing certain clothing deemed to be STG related could send someone to SHU.

- S331 and Hearing comment #1

Response: Tattoos are identified, photographed and filed so only new tattoos with STG significance can be used. Other possessions must also have a STG nexus to be used in the validation process.

Comment #499: A person can be sent to SHU for behavior that took place outside of CDCR jurisdiction (see page 48). CDCR should confine its management to people within its custody.

- S331 and Hearing comment #1

Response: The Department believes that continued documented STG activities demonstrate ongoing behavior.

Comment #500: Section 3378.4(d) requires inmates with determinate terms to be removed from the step down program. This can result in very long SHU terms. We think it should be clarified that prisoners serving determinate SHU sentences should not have to then also have to complete the SDP after completion of their determinate SHU sentence. These should not be consecutive instead of concurrent.

- S331 and Hearing comment #1

Response: Existing regulations provide authority for ICC to review and suspend a determinate SHU term when they determine it is warranted.

Comment #501: Section 3378.9 requires six years before someone who has completed the SDP can have their STG status removed. If a person's sentence is shorter than 11 years, they would be deprived of that opportunity and their status would go on indefinitely.

- S330, S331, and Hearing comment #1

Response: The Department believes that the termination of validation is a significant addition to the Department's regulations and that the timeframe is appropriate given the level of commitment made by the offender at the time they committed to the STG.

Comment #502: I am against the Step Down Program because it has too many flaws. I'm also against the Security Threat Group labelling, as psychologically it suggests that as a group of people, they are unable to progress. I stand by the comments made by [Hearing commenter #1].

- H2

Response: See Response to Comment #1.

Comment #503: I would like to commend CDC for the efforts that they are making thus far. We realize that many are being released, but unfortunately, there's still thousands waiting to be heard, and my son is one of them. More states have taken a moderate and progressive outlook similar to Connecticut and changing their correctional culture before installing a new program.

- S330 and Hearing comment #3

Response: The Department appreciates the commenter's support of the proposed regulations.

Comment #504: Section 3341.5(c)(2)(A) sets time parameters for review of administrative placements, but there is no discussion of solitary confinement. There is still no definite way out of solitary confinement other than to debrief.

- S330 and Hearing comment #2

Response: The Department contends that its segregated housing does not qualify as “solitary confinement.” The Department notes that an inmate who refrains from STG behavior and successfully participates in the SDP, which focuses on anger management, socialization, life skills, and reintegration will program their way back to a general population programming environment. There is no need or requirement that an inmate inform on fellow gang members in order to progress through the SDP.

Comment #505: Ninety percent of SHU inmates are presumed to be gang affiliated. This presumption results in their guilt without evidentiary support or trial. The opportunity to leave the gang lifestyle requires the incrimination of all SHU inmates as gang affiliates. If you are deemed a gang affiliate, you are forced to debrief or to self-incriminate.

- Hearing comment #2

Response: Under the proposed regulations, any inmate who wishes to leave the gang lifestyle need only refrain from STG behavior and, if housed in the SHU, successfully participate in the SDP to program their way back to a general population programming environment. There is no need or requirement that an inmate inform on fellow gang members in order to progress through the SDP. If an inmate wishes to go further, debriefing remains as a strictly voluntary option. Debriefing is a voluntary process and is not the only method by which an inmate can be released from the SHU.

Comment #506: Even though 400-plus men have been released to Step 5, the new regulations require that associates be observed for another six years and members for another eleven, before their gang designation can be terminated and removed.

- S330 and Hearing comment #2

Response: The Department believes that the termination of validation is a significant addition to the Departments regulations and that the time frame is appropriate given the level of commitment made by the offender at the time they committed to the STG.

Comment #507: The propaganda in the CDCR press release is refuted upon a thorough examination of the regulations. CDCR is implementing a positive public opinion with their regulations in the hope that it will delay the protests and prevent them from making significant changes. The gap between policy and practice is where torture lies and breeds.

- S330 and Hearing comment #2

Response: See Response to Comment #1.

Comment #508: Steps 1 and 2 in the regulations are primarily for observation, but if the inmates have been sitting in solitary confinement 20 and 30 years, how much more do they need to be observed. This is idle warehousing.

- S330 and Hearing comment #2

Response: Steps 1 and 2 include workbooks, educational opportunities and self-help activities in addition to the observation. These opportunities can provide the inmate with an opportunity to reflect on the lifestyle decisions they have made and how those may have adversely affected themselves and the other people in their lives. In addition, participation in the various steps will allow the inmates to initiate the process of interacting with inmates of other races and groups prior to release to a general population setting.

Comment #509: The six year reviews are still ongoing side by side with the CDC reviews. Men are still being denied on the basis of nominal issues, artwork, saying hello, confidential information, which CDCR stated in a hearing would no longer be allowed.

- S330 and Hearing comment #2

Response: The only change to the inactive review process has been to modify the time being reviewed from the previous 6 years to the previous 4 years. The source items being used to determine inactive status are outlined in CCR Section 3378. With the implementation of the STG Disciplinary Matrix, inmates are being held accountable for those behaviors when a nexus to the STG can be identified.

Comment #510: Inmates will still be held accountable for associating with inmates who they do not know are affiliated with a gang, which violates the law. (see *People ex rel Gallo v. Acuna*, 14 Cal.4th 1090, 1117 (1997) (“Prohibiting association with gang members without restricting the prohibition to known gang members is a classic case of vagueness.”)

- S322

Response: The commenter misstates the holding of *Gallo*. The law at issue in that case was an injunction that prohibited association with “known gang members.” The Court of Appeal considered the knowledge requirement itself to be vague because it was unclear whether those gang members needed to be known to the suspect or known to the police. The CA Supreme court disagreed that it was vague and held that the explicit knowledge requirement in the decree referred to the suspect’s knowledge. The Department’s validation regulations do not have a specific knowledge requirement. The California Court of Appeals in *In re Cabrera* (2013) 216 Cal.App.4<sup>th</sup> 1522, 1540 recognized that establishing a direct link for purposes of a validation does not necessarily require evidence that the inmate under investigation knew that the person to whom he has a direct link is a validated member or associate and that evidence of other facts could be sufficient to demonstrate a direct link without having to establish knowledge.

Comment #511: Although CDCR claims the new gang policy is based on “individual accountability,” the regulations continue to hold inmates accountable for other inmates’ actions. (See eg. 3378.2(b)(4) written materials in other inmates’ possession).

- S322

Response: The disciplinary matrix does not use written materials in the possession of others, this information is only used in the validation process.

Comment #512: The regulations fail to define the term “nexus” which is used dozens of times in the proposed regulations. This failure will lead to arbitrary application and enforcement of STG regulations.

- S146, S322

Response: The Department is using the term in its common definition which can be found in many widely available dictionaries. “Nexus” means “connection; tie; link“ and “a connection or series of connections linking two or more things”.

Comment #513: The definition of direct link fails to include the specific terms as CDCR agreed the definition should contain, ie. “without interruption or intervening step”, see *In re Cabrera*, 216 Cal App 4th 1522 (2013)

- S322

Response: The definition of “direct link” that is quoted by the commenter is the Webster dictionary’s definition of “direct.” This definition was used by the Court of Appeal in the earlier case of *In re Furnace*

(2010) 185 Cal.App. 4<sup>th</sup> 649, and was then used and accepted again by the court in *Cabrera*. The Department was under no obligation in either case to include this language in the definition of “direct link”. Terms in laws and regulations are given their ordinary and plain meaning. As the cited language appears in the dictionary definition of “direct” and as it has been generally accepted by California courts, the Department believes that it is not further obligated to include dictionary definitions in its regulations.

Comment #514: We have witnessed the deleterious effects of prolonged SHU confinement on our clients’ physical and mental health. This decline is often so severe that it impedes our ability to communicate with and effectively represent them. We have also seen it in clients housed in the Adjustment Center at San Quentin.

- S145

Response: See Response to Comment #1.

Comment #515: We would like to call your attention to the ongoing confusion and conflict between Title 15 and the policy and procedure that governs the condemned on death row at San Quentin (IP-608). While the proposed regulations (and Title 15 generally) purport to govern all California prisons, historically they have not been employed on death row. We join the State Public Defender in asking for clarity as to which rules apply to the condemned in the Adjustment Center.

- S145

Accommodation: Partial

Response: New subsection 3023(f) has been adopted to address the Condemned inmate population.

Comment #516: The regulations are insufficiently responsive to changing public opinion and new scientific understanding of the dangers of long-term solitary confinement. The CDCR regulations do little more than create new committees, new forms, new terminology and some new procedures – a bureaucratic response to a human rights crisis.

- S145

Response: See Response to Comment #1.

Comment #517: Solitary confinement has been the sole means of attempting to control gangs for decades, and it has not proven effective.

- S145

Response: See Response to Comment #1.

Comment #518: By including street gangs as STGs, the effect of the regulations will be to increase, not decrease the number of people in the SHU in California.

- S145

Response: The term “street gang” is used to refer to those security threat groups that originated in the community, but which now also operate within the prison system and are included in the STG-II category. The identification of STG-II affiliates will not result in a greater number of prisoners being housed in a SHU. Under new regulation sections 3378.2(e) and 3378.4(a), validation as a security threat group affiliate no longer requires that the inmate be housed in the SHU based solely on that validation alone.

Comment #519: These regulations leave California with a system of solitary confinement that is expensive, ineffective as to its stated purpose, and inherently pathogenic as a cause of mental illness.

- S145

Response: See Response to Comment #1.

Comment #520: There are other ways of addressing the gang problem. eg. by providing members and potential members with meaningful and hopeful alternatives. The overcrowded environment in California prisons that is almost completely lacking in meaningful rehabilitation, vocational, or educational programs explains the proliferation of gangs. Because CDCR offers most prisoners little or nothing, many feel that they have little or nothing to lose.

- S145

Response: See Response to Comment #1.

Comment #521: The proposed regulations do not address systemic issues found throughout the validation process and the existing “culture of punishment.” While the proposal purports to add procedural safeguards and “due process,” none of that is possible unless the department and its employees are committed to restricting the use of solitary confinement to the most immediate and pressing cases, and to setting a limit on the length of time any one prisoner may spend in solitary.

- S145

Accommodation: Partial

Response: See Response to Comment #104.

Comment #522: The Castillo agreement that was eventually codified in California Code of Regulations Title 15 addressed the process for validating gang members in the California prison system. With respect to all of the source items that CDCR was using to validate prisoners, Castillo required that there be “an articulable basis” why each particular source item evidences gang activity. But in lieu of doing so, meaningless phrases such as “based on my training and experience” were used. The use of “greeting cards” as indicia, suggest a reversion to a pre-Castillo model.

- S145

Response: The elements finalized in the Castillo agreement continue to be included in the proposed CDCR policy.

Comment #523: The Castillo agreement emphasized that only active gang activity should serve as the basis for SHU placement; in actuality, prisoners are housed in the SHU based on hearsay, photographs and greeting cards alone.

- S145

Response: The elements finalized in the Castillo agreement continue to be included in the revised CDCR policy. The use of information received from a confidential source must establish reliability per CCR section 3321. Other information gathered via photographs and cards must also have the STG nexus clearly documented.

Comment #524: I suggest that an Administrative Law Judge would be in the best position to provide independent oversight and investigation of the information relied upon to make a validation decision.

- S129

Response: The Department believes that the addition of multiple levels of due process review provides ample levels of review to insure the integrity of the process.

Comment #525: A functioning grievance system is important and the existing one is futile as appeals of prison classification decisions are perfunctory and procedural, if they happen at all, with no independent investigation of the claims. When classification decisions, including placement in solitary confinement cannot be effectively grieved, the system is broken. The proposed regulations do nothing to fix this.

- S145

Response: Inmates have the opportunity to challenge their classification decisions in the same manner that they are able to challenge any administrative decision that has a material, adverse impact on their conditions of confinement – by utilizing the inmate appeals process, and in court through the filing of a writ of habeas corpus.

Comment #526: The use of the 1030 form (“Confidential Information Disclosure form”) invites an unconscionable level of arbitrariness and error into the validation process. The range of allegations can be limitless, yet the protections against the consequences of those allegations is non-existent. The 1030 is not a Rules Violation Report that alleges a violation of some rule, triggers due process protections such as time limits, hearings, documented findings and an opportunity for prisoner to appeal the findings. The 1030 process does nothing to guard against wrongly offered information.

- S145

Response: Subsection 3321(b)(1) specifically states that “No decision shall be based upon information from a confidential source, unless other documentation corroborates information from the source, or unless other circumstantial evidence surrounding the event and the documented reliability of the source satisfies the decision maker(s) that the information is true.” This process provides an evaluation of the data being provided as all decisions regarding confidential information used in the 1030 process are reviewed by a classification committee prior to any committee decision based on that information.

Comment #527: The dangers of debriefing can be lifelong. Prisoners may see the STG/ SDP as solely a debriefing program and those who understand the consequences will not participate out of fear. For those who have been mistakenly validated as members of an STG, successful debriefing is an impossibility. The department should create as many low-risk avenues out of the SHUs and AdSegs as possible, rather than curtailing the inactive review option.

- S145

Response: The Department believes that the proposed regulation provides a safe avenue out of the SDP without debriefing, through program participation.

Comment #528: We are concerned about self-incrimination in the debriefing process. The regulations fail to reassure us that prisoners will not feel coerced to trade their right not to incriminate themselves in exchange for better living conditions.

- S145

Response: The Department does not practice, support, or tolerate coercion. New subsection 3378.6 of the proposed regulations includes the departmental policy related to self-incrimination. This language only received very minor modifications in the revision process and reads as follows: “A waiver of the right against self-incrimination is not a precondition of an offender (subject) undergoing a debriefing since the information is provided for administrative purposes. A subject shall not be required to complete the

debriefing process and the subject is free to terminate the debriefing at any time. If, during the debriefing, a subject made a statement that tends to incriminate the subject in a crime, the STG coordinator/investigator may stop any discussion about the matter and continue on with another topic. Prior to questioning the subject about the incriminating matter, the subject must waive the right against self-incrimination. The decision by the subject to exercise the right against self-incrimination shall not affect the determination of whether the subject successfully participated in the debriefing.”

Comment #529: The regulations are vague and overly broad. A statute can be impermissibly vague for either of two reasons: first, if it fails to provide people of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits, and second, if it authorizes or even encourages arbitrary and discriminatory enforcement. These regulations fail on both fronts.

- S145

Response: If it is clear what the regulation prohibits in the vast majority of intended cases, it is not considered to be unconstitutionally vague. The Department believes that its regulations are not only clear with regard to what activities are prohibited, but with regard to the processes that govern each related administrative decision and the results of those decisions. The Department also believes that the proposed regulations provide sufficiently definite standards of application, even where administrative discretion is allowed, to prevent arbitrary or discriminatory enforcement of its terms.

Comment #530: We object to the definition of STG. It is a much broader definition of “criminal street gang” provided in the STEP Act and can include groups that commit no crimes at all. A statute or regulations is overbroad if it does not aim specifically at evils within the allowable area of governmental control, but sweeps within its ambit other activities that in the ordinary circumstances constitute an exercise of protected expression and conduct.

- S145

Response: The Department disagrees with the commenter’s contention that the definition of an STG can include groups that commit no crimes. The definition in proposed section 3000 includes the following language “whose members and/or associates, individually or collectively, engage or have engaged, on behalf of that organization, association or group, in two or more acts which include planning, organizing, threatening, financing, soliciting, or committing unlawful acts, or act of misconduct.” Additionally, the management of security threat groups operating within the jurisdiction of the Department is well within its allowable area of governmental control. The Legislature has delegated to the Department broad authority over those within its jurisdiction, which includes the responsibility for their care, custody, treatment, training, and discipline.

Comment #531: Proposed section 3378.1 sets out a procedure for certifying a gang or group as an STG, however, the factors to be considered include vague and sometimes circular items as set forth in 3378.1(b), subsections (2),(3), (4), (7), (8), and (9).

- S145

Response: The Department believes the proposed regulation establishes an objective review process that provides a level of safety and integrity. The criteria which has been established outlines the history of the group, identifies the potential threat they pose, identifies behavior which is occurring both in institutions and in the community, documents the structure, formalized procedures, bylaws and membership characteristics and identifies tattoos, symbols and graffiti being used. This detailed process allows the Secretary of the Department to evaluate the overall impact of the group on the CDCR and make a determination of the need to certify the group as an STG-I

Comment #532: The regulations do not explain how staff will be able to distinguish a simple handshake from one that has STG significance.

- S145

Response: The employee must be able to clearly articulate that the activity being identified demonstrates a nexus to the STG. The Departmental training program will provide the basis for making such observations and how to articulate what has been observed. Supervisory staff is charged with evaluating the information being provided and determining if the nexus is clearly described in the written reports.

Comment #533: Security threat group behavior is described in vague terms and examples are listed in section 3378.4. However these are only “examples” of STG behavior, not exclusive criteria.

- S145

Response: Those behaviors that qualify as STG behavior are clearly identified in the regulation and the Department believes the regulation to be appropriate and clearly defined. The Department has created an employee training program that will assist an employee to identify and articulate the necessary information. Supervisory staff is charged with evaluating the information being provided and determining if the nexus is clearly described in the written reports.

Comment #534: There are other sources of confusion: in some sections STG-significant photos must be no more than 4 years old to count toward validation, but in other sections there is no time limit; in some sections tattoos date from no earlier than the latest arrival at CDCR for validation and in other sections there is no limitation on tattoos; the new regulations revive “roll calls” as STG-indicia and disfavor enemy lists, but fail to distinguish this from “laundry lists” that are prohibited under *Castillo*.

- S145

Response: Subsection 3378.2(b) provides a clear description to address the confusion being expressed by the commenter. The paragraph reads as follows: “Although placement into the Security Housing Unit / Step Down Program (SHU/SDP) is based upon behavior with a nexus to a certified or recognized STG, validation of an STG affiliate can occur based upon the sole use of source criteria items or based upon a combination of source criteria items and STG behavior that is reported and adjudicated via the disciplinary process. The STG validation process may take into account source criteria items that may have occurred at any time in an individual’s personal STG history. The determination for placement into the SHU/SDP by an Institution Classification Committee must be based upon serious STG behavior, except as provided for members in section 3378.2(d)(1)(A), which occurred during the preceding four years and has been adjudicated through the inmate disciplinary process.”

Comment #535: CDCR’s rules and practices regarding gang validation fail to distinguish innocent expressions of cultural pride from evidence of gang affiliation. For eg., the “Huelga Bird” is used to validate latino gang members, but is the primary symbol for United Farm Workers. The court in *Lira v. Cate* found that the “Huelga Bird has become a symbol of Hispanic American culture, but IGIs continue to use the Huelga Bird and other symbols of cultural significance to validate prisoners.

- S145

Response: The Department has added a component in which symbols that will be used in the validation process must be certified. Certification includes the requirement of an explanation of the relevance of the sign or symbol and evidence that the sign or symbol has been adopted/accepted by the specific STG. This is an enhancement to the existing process.

Comment #536: The privileges in the SDP are less in some respects than a SHU inmate receives, eg. SDP participants in steps 1 – 3 may only have one entertainment appliance, while SHU inmates may have two.

- S322

Accommodation: Partial

Response: See Response to Comment #145.

Comment #537: CDCR agreed in the Castillo settlement agreement that the definition of gang activity would contain the terms “knowingly, promote, further, or assist”, but the new definition for STG behavior fails to do so. The Castillo settlement is still valid.

- S322

Response: The definition for STG activity can be found in CCR Section 3023(a). The Castillo settlement remains valid.

Comment #538: Sections 3314(a)(3) and 3315(a)(3) contain a lot of behaviors that are vaguely worded and will be subject to arbitrary enforcement. They also fail to provide inmates adequate notice of what specific conduct to avoid.

- S322

Response: The Department believes the language in the referenced sections to be clear and accurate.

Comment #539: The term “corroborates” in section 3321 has been abused and applied incorrectly by the IGIs, eg. incriminating information is deemed corroborated if non-incriminating information has been. To prevent this abuse, the term “corroborates” needs to be meticulously defined and limits imposed on information verification.

- S322

Response: The Department believes the language to be well defined.

Comment #540: Adding the term “circumstantial evidence” to section 3321 does not convey that corroboration of information is critical, as stated in the Initial Statement of Reasons

- S322

Response: The Department believes the language to be clear and consistent, as written.

Comment #541: The regulations fail to require that staff document information critical to assessing informant reliability so that secondary reviewers can meaningfully review the original determination of reliability.

- S322

Accommodation: Partial.

Response: Based on comments received during the public comment period, the following language has been added to section 3378.2(a): “staff shall articulate the basis for determining the content or conduct at issue is STG related.”

Comment #542: Section 3341.5(c)(6) conflicts with other sections by stating STG affiliates may be returned to SHU based on any documented STG activity or behavior.

- S322

Response: The Department believes the language to be clear, consistent and without conflict.

Comment #543: The regulations fail to include any penalties for violating due process, which makes safeguards meaningless. The penalty should be permanent invalidation of the action, to provide staff incentive for compliance.

- S322

Response: The Department believes that the safeguards built into the regulation are sufficient to insure due process is observed.

Comment #544: The current penalties for violation of due process at Rule Violation hearings discriminate against lifers by only invalidating credit loss, which does not affect lifers' sentences.

- S322

Response: The issue this comment addresses is outside the scope of the proposed regulations. The comment addresses the limitations imposed when the Department has not complied with disciplinary hearing timeframes, which is contained within existing section 3320(f). However, section 3320(f) was not amended as part of the proposed regulations.

Comment #545: The regulations fail to define the term "distinctive" in section 3378.2(b)(1) to prevent arbitrary application. In the past, IGIs used signs, symbols, tattoos, etc. that were not distinctive to validate an inmate.

- S322

Response: See Response to Comment #535.

Comment #546: The point values assigned to source items is too high and does not follow the recommended point values continued in the 2007 STG Identification and Management report by Vohryzek-Bolden.

- S322

Response: This regulation was developed after extensive review of national best practices and reviewing how those could best be adapted for use in California.

Comment #547: Section 3378 fails to require the IGI to document and consider all information that conflicts with or undermines a source item's reliability.

- S322

Response: It is the Departments expectation that all sources of information be fully considered during the validation process. This is discussed in Section 3378.2(c)(5) which reads as follows: "The interview shall be documented to include an evaluation and conclusion on each item for which the inmate has provided a rebuttal. The assigned staff shall record this information, via CDCR Form 128-B5 (11/13), STG Validation Chrono, which is incorporated by reference. If through the review and interview process, a source item is determined to not have merit, the assigned staff shall document that further investigation shows no merit on the CDCR Form 128-B5. Staff will provide a copy to the subject within 14 calendar days and prior to submission of the validation package to the OCS."

Comment #548: There is no protection against perfunctory IGI reviews, including consideration of the inmate's opinion/rebuttal of the source items in the validation package. The IGI should be required to document the specific reasons the inmate's rebuttal does not warrant investigation or does not have merit.

- S322

Response: See Response to Comment #547.

Comment #549: There is a need to require that staff document the time and service of all documents in the validation process that involve time limits to prevent the prevalent violations that occur because of reliance on institutional mail.

- S322

Response: Inmates have the opportunity to challenge their validations or any violations of the regulations that have a material, adverse impact on their conditions of confinement, through the inmate appeals process. Under the proposed regulations, inmates will also be afforded an interview with investigative staff and a hearing before the UCC at which time challenges to the process provided can be raised.

Comment #550: The proposed regulations fail to provide any mitigating or aggravating factors that the SDP committee is required to consider when determining when to advance a participant to the next level or keep them in the same step. The lack of objective criteria will lead to arbitrary enforcement.

- S322

Accommodation: Partial

Response: Based upon feedback received through the public comment period, the Department modified the proposed regulation. The new regulation requires each inmate who is assigned to the SDP to participate in all program opportunities assigned by the ICC. The SDP contracts were revised to remove several of the requirements that were contained there and the forms were renamed. The form is now called Notice of Program Expectations and it identifies the requirements to be considered participating in the SDP as follows: 1) Participate in and successfully complete all mandated educational instruction and program activities, as determined by the ICC; 2) Follow all staff directives; and 3) Cease any and all STG related behavior including but not limited to: Planning, organizing, recruiting, promoting, training, communicating in code, using known STG symbolism, participating in and/or communicating STG activities.

Comment #551: The proposed regulations fail to include the Castillo settlement requirement that the IGI in the validation package disclose not only the "specific facts" supporting the source item, but also the inferences drawn from those facts. Currently many IGIs only disclose their conclusion.

- S322

Accommodation: Partial.

Response: Based on comments received during the public comment period, the following language has been added to section 3378.2(a): "staff shall articulate the basis for determining the content or conduct at issue is STG related." Additionally, language was added to section 3378.2(c)(1) requiring that staff identify the individual being used as a direct link unless it compromises individual safety. Section 3378.2(c)(5) also requires that staff document an evaluation and conclusion for each source item for which the inmate has provided a rebuttal.

Comment #552: In all instances where a source item alleges association with a gang affiliated inmate, the name and validation date of the inmates should be disclosed to allow a meaningful rebuttal. see *In Re Fernandez*, 212 Cal App 4th 1199, 1218 (2013)

- S322

Accommodation: Partial.

Response: Language has been added to proposed section 3378.2(c)(1) requiring that staff disclose the identity of the individual being used to establish a direct link unless it compromises the individual's safety or the safety of others.

Comment #553: The proposed regulation fails to apply the Single Source Rule of the Castillo settlement to all source items. Currently, the regulations only apply the rule to three of the fourteen categories of source items (ie, informants, debriefing reports, and offenses)

- S322

Accommodation: Partial

Response: Based on comments received through the public comment period, the Department modified Subsection 3378.2(b) to read: "Multiple sources providing information about a single STG related act or conduct shall constitute a single source item. One may support the other but will only count as one item toward the validation with the others listed as support documents." Documents used to establish validation points can only be used once.

Comment #554: I have been found guilty of rules violations based on STG behavior, but know nothing of these proposed STG regulations. Inmates in Centinela prison's Administrative Segregation Unit C6 did not have access to the full text of the proposed regulations until March 20, 2014 – fifty days after the posting date. I had to write the CDO and the AW and request that a copy be posted in the C6 library. I'm unaware of these rules as they were not posted and the rules are not in effect making them ex post facto. I object to Centinela staff abusing their authority and implementing rules that are not passed. I object to the implementation of these STG regulations because they were never posted for us to read and evaluate.

- S328

Response: The Department's STG Management Policy became effective as a two-year pilot program on October 18, 2012. Many of the provisions contained in the proposed regulations already exist in this authorized pilot program.

The Department exceeded statutory notice requirements under the Administrative Procedure Act by providing a copy of the notice of proposed regulations to inmates in each of its SHU and Administrative Segregation Units and establishing a comment period in excess of the required 45-day period. The Department's internal procedures require that all institutions certify in writing that they have posted the notices of regulations in accordance with Penal Code Section 5058(a) and CDCR Department Operations Manual requirements. Centinela returned this certification for Administrative Segregation Unit C6 dated February 4, 2014.

Comment #556: I am seeking a preliminary injunction of the SDP regulations from sections 3000 to 3721 and ask that these issues be addressed at the public hearing on April 3, 2014.

- S329

Response: It is not within the Department's authority to grant such an injunction. The public hearing was for the purpose of receiving comments regarding the proposed regulations rather than for discussing or debating their provisions. All public comments are treated the same whether they are received at the hearing or in writing, email, etc.

Comment #557: Approximately 15-20 inmates who were endorsed to the Pelican Bay SHU for placement in the Step Down Program are being housed in Pelican Bay's AdSeg. We are expected to participate but are not receiving all of the privileges that we are entitled to – specifically: canteen draw amounts, photos, telephone calls, and annual packages that are being returned because they do not comport with AdSeg allowances.

- S329

Response: See Response to Comment #2.

Comment #558: The proposed STG regulations fall far short of bringing California's policies and practices regarding solitary confinement into line with international law or generally recognized correctional standards.

- S146

Response: The Department is bound by federal and state constitutional, statutory, and case law. The Department's process for identifying security threat group affiliates, criteria for segregated housing, current conditions of confinement, and associated due process provided in those determinations have not been found to be in violation of any state or federal law.

Comment #559: The regulations are often so vague as to give prison personnel virtually unbridled discretion to impose prolonged solitary confinement for little or no objectively verifiable cause.

- S146

Response: See Response to Comment #134.

Comment #560: CDCR's proposed regulations will likely result in more lawsuits, hunger strikes, mental and physical deterioration of California prisoners, and increased danger to the public when prisoners are eventually released.

- S146

Response: See Response to Comment #1.

Comment #561: The regulations grant nearly unchecked discretion to the classification committee and its officers tasked with STG validation. The validation system is not reformed, but simply reorganized.

- S146

Response: The proposed regulations establish weighted criteria to be used in identifying source items associated with the validation process. In addition, it maintains the previous requirement of 3 independent source items and the direct link. The review by the STG Unit Classification Committee adds a layer of due process that did not previously exist in the validation process.

Comment #562: It is the indefinite nature of SHU sentences and the vagueness of sources for validation that is prompting the call for increased transparency of the validation system as well as accountability of guards who validate.

- S146

Response: The proposed regulations establish weighted criteria to be used in identifying source items associated with the validation process and maintains the previous requirement of 3 independent source items and the direct link. The review by the STG Unit Classification Committee adds a layer of due process that did not previously exist in the validation process. Also in the proposed regulations, an inmate who is validated (as other than an STG-I member) is not immediately transferred to the SHU. This is a significant change in the process.

Comment #563: Inmates who have already served an incredibly long sentence in SHU, often discipline free, are treated no differently than incoming SHU inmates, and will not receive expedited services.

- S146

Response: See Response to Comment #30.

Comment #564: The proposed regulations fail to address long-term validations and fail to propose a method of preventing overly long validations.

- S146

Response: In the proposed regulations, the Department has added a component which allows an inmate's validation status to be terminated after a specified period of time. This did not exist in the previous policy.

Comment #565: The source items used to validate an inmate includes non-behavior based criteria such as "symbols", mere membership in a group, photographs, "documentation", conversations, greeting cards, and tattoos.

- S146

Response: Only those tattoos, pictures, and literature that demonstrate a nexus to the STG or STG affiliation can be used in the validation process.

Comment #566: Inmates who complete Step 5 and are identified as a "Monitored Status" affiliate will be observed for potential recurrence of STG behavior for an indefinite period of time under subsection 3378.3(b)(8). This period should be limited, so that a prisoner may at some point fully disassociate himself and be considered clear of suspicion of gang involvement.

- S146

Accommodation: Partial. The requested accommodation was already incorporated as part of the original regulatory package

Response: Section 3378.8 provides the criteria and a procedure by which a validated inmate would no longer be considered an STG affiliate.

Comment #567: Simply replacing the term "gang" with "security threat group" does not demonstrate a reformed approach to solitary confinement.

- S146

Response: Both the regulations and the newly incorporated terminology are consistent with national best practices and correctional trends that have been adapted to the specific needs of California

Comment #568: There is hardly any difference between the privileges available to inmates as they progress through each program step. The most meaningful privilege - contact with family visitors – is prohibited throughout the entire SDP, which can last 4 or more years. Prisoners who complete each step should have the opportunity to earn a family visit, progressively more phone call privileges.

- S146

Accommodation: Partial.

Response: The Department believes that the new regulation affords the participating inmates improved privileges and that those improvements create a well balanced approach to recognizing participation and creating incentive for that participation. In response to the public comments, the Department has made changes to subsection 3044(g)(1) and adds new subsections 3044(j) through 3044(j)(2)(H) which address privileges.

Comment #569: The proposed regulations do not specify the number of hours inmates may exercise or have yard activity. Yard privileges do not increase as the inmates progress through the SDP.

- S146

Accommodation: Partial.

Response: The Department believes that the new regulation affords the participating inmates improved privileges and that those improvements create a well balanced approach to recognizing participation and creating incentive for that participation. In response to the public comments, the Department has made changes to subsection 3044(g)(1) and adds new subsections 3044(j) through 3044(j)(2)(H) which address privileges. The number of hours an inmate may have exercise is governed by the inmates' privilege group as described in existing section 3044.

Comment #570: CDCR should introduce some group interaction for all prisoners at all stages of SHU confinement.

- S146

Response: The Department believes that a gradual reintegration is the safest and most prudent path for a successful outcome.

Comment #571: The proposed regulations do not address the living conditions in the SHUs, which currently do not meet international human rights standards. Little natural light enters the cells at the Pelican Bay SHU and lack of light in areas where prisoners live or work is in direct breach of the United Nations Standard Minimum Rules for the Treatment of Prisoners.

- S146

Response: This comment addresses the physical structure of the SHUs, which is neither a subject of this regulatory package, nor is appropriate to be addressed through the rulemaking process. Additionally, the Department notes that it is bound by federal and state constitutional, statutory, and case law and its current conditions of confinement have not been found to be in violation of any state or federal law.

Comment #572: These regulations fail to modify and improve the living environment so that all prisoners even in the most restrictive custody have better facilities for outdoor exercise, access to natural light and more human contact.

- S146

Response: This comment addresses the physical structure of the SHUs, which is neither a subject of this regulatory package, nor is appropriate to be addressed through the rulemaking process. Additionally, the Department notes that it is bound by federal and state constitutional, statutory, and case law and its current conditions of confinement have not been found to be in violation of any state or federal law.

Comment #573: All prisoners held in segregation for longer than a few days should have access to occupational materials and contact with the outside world through TV and/or radio to reduce the effects of extreme isolation and sensory deprivation.

- S146

Accommodation: Partial. The requested accommodation is already provided within existing regulations and does not require an amendment.

Response: Existing section 3190(j)(3) which allows inmates housed in SHUs to possess a radio and or a television. Existing sections 3190(i)(3) and (5) permit inmates to participate in correspondence courses and possess handicraft material.

Comment #574: The proposed regulations do not address the mental health and well-being of inmates in the SDP. The first reference to mental health services occurs in section 3378.3(b)(7)(A) describing the orientation services provided to inmates who reach Step Five of the program. CDCR should provide frequent and meaningful mental health screening and counselling at every stage of the SDP.

- S146

Response: Mental health services are always available to all inmates. The changes to the STG management policy that is contemplated by the regulations do not impact inmates' access to or the availability of mental health services, which are governed by other regulations not included in this package.

Comment #575: CDCR should ensure that inmate who graduate from the SDP are well prepared to re-enter general population and mental health services should be made available to SDP graduates.

- S146

Response: Mental health services are always available to all inmates. The changes to the STG management policy that is contemplated by the regulations do not impact inmates' access to or the availability of mental health services, which are governed by other regulations not included in this package. The Department is committed to the successful release to general population of graduates from the SDP; a referral to mental health will occur upon release to general population (see proposed section 3378.3(b)) and ongoing mental health services are available, as they are available to all inmates in the general population.

Comment #576: Inmates who are being validated should have the opportunity to seek assistance of counsel, present testimony, call upon witnesses, be given notice of the evidence to be used, a hearing, and an opportunity to appeal to an independent decision maker. None of these due process provisions are included in the proposed regulations.

- S146

Response: Due process to which inmates are entitled by law during the administrative classification decision to validate them as an STG affiliate requires that they receive notice of the factual basis on which the decision is based and that they have a fair opportunity to be heard. The proposed regulations provide this level of due process at several steps both during the validation process and before a validated inmate can be housed in a segregated environment. See proposed sections 3376(d)(5)(A), 3378.2(a), 3378.2(c),

3378.2(d), and 3378.2(e). Inmates have the opportunity to challenge their validations through the inmate appeals process and in court through the filing of a writ of habeas corpus. However, an inmate is not constitutionally entitled to confront or cross-examine witnesses or to be represented by counsel.

Comment #577: There must be an independent evaluation of whether information used to validate has sufficient indicia of reliability due to the lasting impact, potential for serious error, and the inability to get a substantive review of a validation once the decision has been made.

- S146

Response: The Department, through the proposed regulation, has added multiple layers of additional due process and secondary reviews within the validation/segregation process. Additionally, the use of confidential documents for either initial validation or revalidation requires that the reliability of the information be established per CCR Section 3321 and the new regulation provides additional levels of due process to further insure the inmate has every opportunity to challenge any information being used. Section 3321(b)(1) was modified as follows: “No decision shall be based upon information from a confidential source, unless other documentation corroborates information from the source, or unless other circumstantial evidence surrounding the event and the documented reliability of the source satisfies the decision maker(s) that the information is true.”

Comment #578: The security threat group designation should be limited to violent groups only. No group should be considered an STG absent a documented history of violence or serious illegal acts.

- S146

Response: The Department believes that the proposed regulation, as written, best provides for the safety and security of the public, staff, and offenders.

Comment #579: Delete the criteria in proposed section 3378.1(b)(4) that states: “Absent a documented history of violence” a group that is a “potential threat” to institutional security can be considered an STG. Broadening the STG definition to include political or religious groups weakens the effort to contain gang violence and expands the pool of inmates who may be validated.

- S146

Response: The Department disagrees with the commenter’s contention that the definition of an STG has been broadened to include political or religious groups. The definition in proposed section 3000 includes the following language “whose members and/or associates, individually or collectively, engage or have engaged, on behalf of that organization, association or group, in two or more acts which include planning, organizing, threatening, financing, soliciting, or committing unlawful acts, or act of misconduct.” Although the number of inmates validated under the regulations may increase, this will not result in an increase in the number of inmates who are housed in the SHU.

Comment #580: Although a prisoner’s participation in the SDP is voluntary, a prisoner wishing to participate must sign a form. The CDCR 128B SDP1 and other forms incorporated by reference require that an inmate sign a validation determination admitting to being a gang member. Such a provision would curtail prisoners’ participation in the SDP

- S146

Accommodation: Full.

Response: Based on comments received through the public comment period, the Department removed the requirement that participants in the Step Down Program sign the Contracts for each Step. Instead, these documents now function as an advisement of expectations and participants are not required to sign them.

Comment #581: Replacement of the word “indefinite” with “administrative” is a vocabulary modification with no definition of what “administrative” means. Section 3341.5(c)(2)(A) states “administrative” sets time parameters and there appears to be no discussion involving solitary confinement.

- S330

Response: The regulations are based on national best practices adapted to the specific needs of California and therefore include new terminology that has been widely accepted in the correctional community. The Department contends that its segregated housing does not qualify as “solitary confinement.”

Comment #582: Debriefing remains the only definite way out of solitary confinement, and even then, they are observed

- S330

Response: Inmates who refrains from STG behavior and successfully participates in the SDP, which focuses on anger management, socialization, life skills, and reintegration will program their way back to a general population programming environment. There is no need or requirement that an inmate debrief in order to progress through the SDP.

Comment #583: Most SHU inmates are presumed to be gang affiliated without evidentiary support or trial.

- S330

Response: Under the proposed regulations, STG affiliates will not be automatically housed in the SHU based on their validation alone. Only those activities that are connected to STG behavior, as defined in the STG Disciplinary Matrix, can be used for the purpose of SHU placement.

Comment #584: SHU prisoners spend the vast majority of their time confined to their cells. Their social isolation is profound and harmful and these regulations do nothing to mitigate the harsh and harmful SHU conditions.

Response: The Department is bound by federal and state constitutional, statutory, and case law. The current conditions of confinement within the Pelican Bay SHU have not been found to be in violation of any state or federal law.

Comment #584: SHU prisoners spend the vast majority of their time confined to their cells. Their social isolation is profound and harmful and these regulations do nothing to mitigate the harsh and harmful SHU conditions.

- S332

Response: The Department is bound by federal and state constitutional, statutory, and case law. The current conditions of confinement within the Pelican Bay SHU have not been found to be in violation of any state or federal law.

Comment #585: To the extent that CDCR deems certain prisoners such a threat that they must be isolated from the general population, CDCR should create a far more humane living environment for them, the Max B program of the past is a model.

- S332

Response: In the past, CDCR attempted to utilize highly secured yards to run small group activities for STG affiliates and found that the level of violence and injury precluded the continuation of this approach. The Department's STG program has been built around a collection of the best practices from other agencies across the nation and adapted to California's very complicated specific needs.

Comment #586: STG inmates in Steps 1-4 of the SDP are of the same custody classification as all other inmates in SHU, ie, D2, then according to CCR Title 15, section 3044(c)(5), we are all entitled to the "enhanced privileges" provided to those who elect to participate in the SDP. This makes the following sections incompatible: 3044(c)(5), 3043.4(b), 3044(b)(7), and 3004(a).

- S333

Response: Inmates in the SHU who are not participants in the SDP are classified as belonging to Work Group D2 and privilege group D. Participants in Steps 1-4 of the SDP are classified as belonging to Work Group D2, but to privilege groups S1 through S4. Therefore the associated privileges are different.

Comment #587: Although CDCR realizes its offenders' low literacy rate, it is requiring completion of high school/ college level "journals" in Steps 1- 4, without providing tutors to assist participants.

- S334

Response: The program is set at a level that even those who may have trouble with focusing can be active participants. The program can be completed at a pace established by the inmate. The program has no preclusions to double ceiling and requires integrated interaction as part of the fourth step. In addition, program facilitators have been assigned to assist inmates if/when they have questions about program materials.

Comment #588: The types of rehabilitative programs discussed in Title 15 3043(c)(1), (2), (4) and (6) can be offered in Steps 1 – 5.

- S334

Response: The Department believes that a gradual reintegration and exposure to programming is the safest and most prudent path for a successful outcome.

Comment #589: CDCR has failed to promulgate clear and fair regulations regarding the definition of the Step Down program "journals" and has not included a definition in section 3000. CDCR has not included the journals themselves in the APA process.

- S334

Response: The Department is not required to subject its educational and programming materials to the Administrative Procedure Act. The term "journal" is a commonly used word for which a regulator definition is not required. However, in response to feedback received through the public comment period, the Department provided some additional language to clarify the purpose of the journals/workbooks. CCR Section 3378.3(a)(5) has been added to read: "Information gleaned through inmate participation in program activities is not intended to be used to validate an inmate, initiate an investigation into STG related behavior, or identify/corroborate the involvement of other STG participants. However, information specifically intended to convey to staff the occurrence of past, present, or future STG threats of violence or disruption may be evaluated to maintain institutional and public safety".

Comment #590: The regulations are unclear as to the length of time that an inmate will have to spend in Step 1 in the event that he is returned to the Step Down Program a second or third time.

- S334

Response: Proposed section 3378.4(b)(7) states “if offender has completed the SDP previously, he/she must normally serve 2 years in Step 1 of the SDP”. This rule applies to every inmate returning to the SDP from a general population setting. The length of time spent in Step 1 upon return is not dependent upon the number of times the STG affiliate has returned to the SDP.

# EXHIBIT 2

## **RESPONSES TO PUBLIC COMMENTS – SECURITY THREAT GROUPS – RENOUNCE COMMENT PERIOD**

**Notes on Organization:** This document is arranged by individual comments received rather than by individual commenters. This was necessary because the Department received many form letters that made identical comments. Rather than listing, for example, 50 different commenters who made the same comment, the comment is listed, then after the comment the commenters who made that particular comment are listed by number. These numbers can be cross-referenced against the actual comments received which are Exhibit 3 in the rulemaking file.

For clarity and brevity, due to the volume of comments received, only those comments that received full or partial accommodation have an “accommodation” field. The remainder have only comment and response. Some comment numbers are omitted due to multiple, identical comments being received from the same commenter (e.g., the commenter sent their comments by email, regular mail, and fax) or due to comments that were later combined after the initial numbering.

### **Frequently used abbreviations:**

CDCR – California Department of Corrections and Rehabilitation

STG – Security Threat Group(s)

SDP – Step Down Program

SHU – Security Housing Unit

ICC – Institution Classification Committee

Comment #591: Privileges for Step 5 inmates in section 3044(j) indicates that a Step 5 inmate may be held in the SHU for non-disciplinary reasons. However the STG regulations fail to state what these non-disciplinary reasons are. This appears to create a big loophole that will allow prolonged solitary confinement for someone who has remained disciplinary free and has fully programmed with the steps.

- S335, S340

Response: Inmates may be retained in SHU for non-disciplinary reasons in accordance with existing section 3335(b), which have not been amended as part of this regulatory action.

Comment #592: Section 3376.1(d)(10) is unfair and arbitrary in that an inmate who is not progressing through the SDP and released by the DRB can be placed back in the SHU without involvement in STG activity.

- S335

Response: Section 3376.1(d)(10) allows the ICC to refer an inmate who is already in the SHU and who is a current participant in the SDP but who is not progressing further than Steps 1 or 2, for review by the DRB. The DRB will conduct an in-depth review to determine whether that inmate should continue in the SDP and to consider alternate placement options.

Comment #593: Title 15 section 3044(e)(2)(D) only allows the A-2-B work group to make one phone call per month, which is not fair. This is disconnecting family ties that are essential to rehabilitation. The A-2-B work group should be allowed one phone call per week.

- S336

Response: This comment appears to address a subsection of section 3044 that has not been amended as part of this regulatory package and is therefore not sufficiently related to the proposed changes to permit the Department to refute or deny the comment.

Comment #594: The Department does not have the authority to remove the word “knowingly” from section 3023 (c), which interprets Penal Code section 186.22. This is not a strict liability offense and therefore requires some sort of knowledge or intent. Section 3000 must be amended to be consistent with section 3023(c) and Penal Code section 186.22.

- S337, S339, S340, S341, S342

Accommodation: Full

Response: The removal of the word “knowingly” from section 3023(c) was an inadvertent error. The Department rescinds that proposed modification and will retain the word “knowingly” in section 3023(c).

Comment #595: Section 3023(c) removes the word knowingly from the text. Since STG designation is determined solely by CDCR, we believe it is essential that the prisoner actually know he/ she was committing an offense.

- S338

Accommodation: Full

Response: See response to comment #594.

Comment #596: Section 3323(h)(11) through (h)(13) deletes the word “active” when referencing STG behavior. If there is no need for the behavior to be “active” the reasons for holding people in solitary confinement will continue to be indefinite and be based on innocuous behavior.

- S338, S339, S340, S341, S342, S343, S344, S345, S346

Response: The Department believes that the word “active” is unnecessary in the cited sections. The disciplinary violations that are being charged is the involvement in STG activity through conversations and possession of STG materials and not the STG activity that is the subject of those communications or materials. Removal of the word “active” makes this more clear.

Comment #597: The new revisions give the ICC even more discretion than the original version. Sections 3341.5(c)(2)(A)(3) through 3341.5(c)(2)(A)(3)(d), and 3376(d)(3)(F)(2) state that behavior alone need not be the only consideration use by the ICC. This discretion would be an improvement if this discretion is used to keep people in general population rather than place them in SHU. CDCR should amend these regulations to provide guidance about how this discretion should be exercised.

- S338, S339, S340, S343, S344, S345, S346

Response: The referenced sections are discretionary to allow the ICC to review and assess whether SHU placement is in fact warranted in those cases where an individual inmate’s case factors may need further evaluation.

Comment #598: Section 3378.1 is incomprehensible.

- S338

Response: The Department believes that proposed section 3378.1 is clear, understandable, self-explanatory, and otherwise meets the requirements of Government Code section 11349.

Comment #599: Although we like the new language in section 3378.2(c)(1) requiring that direct link source items be identified, there is still language that will enable the Department to ignore this provision.

- S338

Response: Language has been added to proposed section 3378.2(c)(1) requiring that staff disclose the identity of the individual being used to establish a direct link unless it compromises the individual's safety or the safety of others. Staff can only withhold that information if it compromises someone's personal safety. The Department does not believe that this provision allows staff to ignore the disclosure requirement.

Comment #600: The interchangeability of designations between "affiliates," "associates," and "members" renders the intent to move to a behavior based system disingenuous.

- S338

Response: The three terms are not interchangeable, but are related. According to 3378.2(b), an associate is any person who, based on documented evidence, is involved periodically or regularly with the members or associates of a STG; a member is any person who, based on documented evidence, has been accepted into membership by a STG; and according to section 3000 an affiliate is anyone who has been validated as members or associates of a STG.

Comment #601: Sections 3378.3(a) through 3378.3(a)(5) states that participation in the Step Down Program is voluntary, but goes on to state what sanctions will be brought to bear if they do not "cooperate" – this can hardly be considered voluntary.

- S338

Response: Inmates are assigned to the Step Down Program if they are eligible and placement is appropriate. An inmate may elect to participate in the SDP. However, if he chooses not to do so, he will not progress through the program. Participation is required to progress and be released from the SHU. The Department believes that its regulations are sufficiently clear. See section 3378.3.

Comment #602: Section 3378.3(a) through 3378.3(a)(5) disallows the use of "information gleaned through inmate participation in program activities" from being used to re-validate people, but then effectively takes away that protection by allowing it to be used if it is "intended to convey to staff the occurrence of past, present, or future STG threats of violence or disruption" – this seriously calls into question the effectiveness of the workbooks. The vagueness of the language creates substantial opportunities for information gathered to be used in coercive, retaliatory, or abusive manners.

- S338
- S341

Accommodation: Partial

Response: In response to feedback received through public comment, the Department provided amended section 3378.3(a)(5) by adding language to clarify the intent and use of the workbooks. The workbooks are self-directed and are not being introduced to serve any law enforcement purpose and are not designed to elicit information regarding specific STG activities. However, as stated in the regulations, "information specifically intended to convey to staff the occurrence of past, present, or future STG threats of violence or disruption may be evaluated to maintain institutional and public safety."

Comment #603: Prisoners are not only required to complete all aspects of the curriculum but remain free of STG disciplinary behavior, which is usually unrelated to acts that would be considered crimes. This

could mean that a person who refuses meals is considered to be participating in gang behavior and would result in more years in SHU.

- S338

Response: The STG Disciplinary Matrix was designed to provide the inmate population with a specific list of offenses which may have an STG nexus. It is incumbent upon the staff member to articulate the circumstances which occurred to demonstrate the nexus to the STG.

Comment #604: Subsection 3378.4(a), 6(b), (d),(h), and 8(a) all delete the word “active” meaning that an inmate could receive points for very old behavior. This word should be restored in the regulations.

- S338, S341, S342

Response: The Department believes that the word “active” is unnecessary in the cited sections. The disciplinary violations that are being charged is the involvement in STG activity through conversations and possession of STG materials and not the STG activity that is the subject of those communications or materials. Removal of the word “active” makes this clearer.

Comment #605: Section 3378.4(b)(7) allows the ICC to depart from behavior in determining if someone should be placed or remain in SHU, and allows broad discretion to punish rules violations. These are not members of gangs, but mere affiliates, yet they are subject to the same punishments.

- S338

Response: The referenced section establishes a consistent criteria for placement into the SDP of previously validated STG affiliates. The policy takes into account differences between serious and administrative behavioral violations requiring repeated administrative violations within a 12 month period. The SDP is not a set term in segregation, but rather a three to four year program which begins at Step 1.

Comment #606: Section 3378.8’s timeframes for determining “dropout status”, which is a problematic term, are extremely long and are only available to prisoners who are actually in custody throughout that time period. Meaning that paroled people continue to be labeled as gang related.

- S338

Response: The Department believes that the periods of time provided in section 3378.8 are appropriate and necessary to ensure that the inmate has fully withdrawn from all STG activity. Additionally, the Department is not able to closely monitoring possible STG activity outside of its jurisdiction and as such could not definitively determine whether the paroled offender was involved in STG behavior or activities, therefore parole time cannot be factored.

Comment #607: The amendment to section 3378.1(c)(2) is inconsistent and equivocal with the language in section 3341.5(c)(2)(A)(2) by misstating what the ICC determines, because the ICC doesn’t have any independent authority in determining SHU placement for STG-I members.

- S339, S343, S344, S345, S346

Response: Section 3378.1(c)(2), which is cited by the commenter does not govern the placement of STG-I members, but rather the placement of STG-II affiliates. However, proposed section 3378.2(e) and (e)(1) grants the ICC the independent authority in determining SHU placement for STG-I members.

Comment #608: The amendment to the single source rule described in section 3378(b)(2) lacks substance on how CDCR will distinguish between a single source item from a multiple sources providing the same

information. There should be some language that states that a supporting source item may not be used to purportedly establish the same STG-related incident.

- S339, S343, S344, S345, S346

Response: Based on comments received through the public comment period, the Department modified Subsection 3378.2(b) to read: “Multiple sources providing information about a single STG related act or conduct shall constitute a single source item. One may support the other but will only count as one item toward the validation with the others listed as support documents.” The Department believes that this change is substantive and provides sufficient clarity and guidance.

Comment #609: The amendment to 3378.2(c)(1) should require that all source items being relied upon as evidence of STG activity be identified and not just the source item being used as the direct link.

- S339, S343, S344, S345, S346

Response: Proposed section 3378.2(c)(1) already states that “all source criteria items referenced in the validation package shall be disclosed.” The only exception is with regard to confidential information or documents. However, such confidential information and documents must be otherwise disclosed via the Confidential Information Disclosure form.

Comment #610: In order for every inmate to have a fair opportunity to challenge STG evidence, the courts have stated in a recent decision that to “faithfully comply with prison regulations” the gang validation packet should disclose which inmates have been identified as involved with a gang. See *In re Fernandez*, 212 Cal. App 4<sup>th</sup> 1199, 1218 (2013)

- S339, S343, S344, S345, S346

Accommodation: Partial.

Response: Language has been added to proposed section 3378.2(c)(1) requiring that staff disclose the identity of the individual being used to establish a direct link unless it compromises the individual’s safety or the safety of others.

Comment #611: The amendment to section 3378.4(b) regarding initial placement fails to give the ICC discretion in deciding what step in the SDP to place the STG affiliate. This undermines the intent to give the ICC true discretion.

- S339, S343, S344, S345, S346

Response: Proposed section 3378.4(b) provides the ICC with sufficient discretion to make a determination as to whether an individual inmate’s specific case factors warrant placement in the Step Down Program despite meeting eligibility criteria. However, if an inmate is in fact placed in the Step Down Program, that placement must be in accordance with section 3378.4(a), in order to avoid arbitrary or inconsistent results.

Comment #612: The placement option in section 3044(j)(2)(H), for Step 5 inmates retained in SHU should be eliminated. Alternatively, contact visits and family visits should be added to the benefits of those in this privilege group.

- S340

Response: Inmates may be retained in SHU for non-disciplinary reasons in accordance with existing section 3335(b), which has not been amended as part of this regulatory action. In response to public

comments, new subsections 3044(j) through 3044(j)(2)(H) were added in order to enhance the privileges of those inmates who are in Step 5, but who are retained in the SHU.

Comment #613: Privilege group S5 in section 3044 is confusing and contradictory. Under the SDP, an imprisoned person that has completed Step 5 would not be confined in SHU. This is especially confusing given that the privilege category applies to people sent to or being retained in the SHU for non-disciplinary reasons. This demonstrates a significant loophole through which CDCR could hold someone in solitary regardless of the qualifications for release from SHU

- S341, S342

Response: Inmates may be retained in SHU for non-disciplinary reasons in accordance with existing section 3335(b), which has not been amended as part of this regulatory action. In response to public comments, new subsections 3044(j) through 3044(j)(2)(H) were added in order to enhance the privileges of those inmates who are in Step 5, but who are retained in the SHU.

Comment #614: Section 3378.3(5) should be amended to read: “Information gleaned through inmate participation in program activities ~~is not intended to~~ shall not be used to validate an inmate, initiate an investigation into STG-related behavior, or identify/corroborate the involvement of other STG participants. ~~However, information specifically intended to convey to staff the occurrence of past, present, or future STG threats of violence or disruption may be evaluated to maintain institutional and public safety.~~” As phrased, this is a poor substitution for an actual assurance that such information won’t be so used.

- S342

Accommodation: Partial

Response: In response to feedback received through the public comment period, the Department provided amended section 3378.3(5) by adding the language quoted in the comment to clarify the intent and use of the workbooks. The workbooks are not being introduced to serve any law enforcement purpose and are not designed to elicit information regarding specific STG activities.

Comment #615: The word “knowingly” has been removed from section 3023 (c), which interprets Penal Code section 186.22. This code section utilizes the words “willfully promote, further or assist,” and the courts have already established that these elements require proof to ensure that no one is punished for unknown conduct. See *People v. Rodriguez*, 150 Cal.Rptr.3d 533, 539 (2012). See also Penal Code 186.22(a).

- S343, S344, S345, S346

Accommodation: Full

Response: See response to comment #594.

Comment #616: Section 3044(j) allows one telephone call per month for inmates retained in the SHU at Step 5, whereas other inmates retained in segregation are allowed one telephone call per week.

- S348

Response: The telephone privileges of inmates in segregated housing are governed by existing and amended sections 3343(j), 3044(c)(6)(A), and 3044(g). None of these sections previously or presently allows segregated inmates one telephone call per week.

Comment #617: Step 5 inmates retained in the SHU were allowed three telephone calls per week at CSP-Corcoran prior to April 2014. After April 2014, this was limited to one call per month to lessen staff workload. This denies these inmates calls that they are entitled to, in violation of section 3044(c)(6)(A), which is in conflict with the re-noticed section 3044(j).

- S348

Response: The telephone privileges of inmates in segregated housing are governed by existing and amended sections 3343(j), 3044(c)(6)(A), and 3044(g). None of these sections previously or presently allows segregated inmates three telephone calls per week. Section 3044(c)(6)(A) is not in conflict with proposed section 3044(j).

Comment #618: Section 3044(j) allows Step 5 inmates retained in the SHU only non-contact visits. This is discriminatory, unequal, arbitrary, and capricious. Other segregated inmates at CSP-Corcoran are allowed contact visits of unlimited duration. Denying Step 5 inmates contact visits is a major liability.

- S348

Response: In response to public comments, new subsections 3044(j) through 3044(j)(2)(H) were added in order to enhance the privileges of those inmates who are in Step 5, but who are retained in the SHU. The Department believes that the visiting regulations, as written, provide the best opportunity to safely address the case factors of this population.

Comment #619: Section 3044(j)(2)(B) states that visiting time is limited to available space. At CSP-Corcoran, there are 24 non-attorney visiting booths that must accommodate 15-64 bed housing units plus the AdSeg. Moreover, my weekly visits have been less than one hour long due to the prison bus transporting visitors late and housing unit staff escorting me to visiting late, with no make-up time provided.

- S348

Response: This comment makes reference to an inmate's individual case or the conditions in the institution in which he/she is housed. It does not directly address the proposed regulations, therefore the Department is unable to refute or accommodate the comment.