

**State of California
Office of Administrative Law**

In re:
**Department of Corrections and
Rehabilitation**

Regulatory Action:

Title 15, California Code of Regulations

Adopt sections: 3378.9, 3378.10
Amend sections: 3000, 3023, 3043.8, 3044,
3084.9, 3269, 3335, 3337,
3341, 3341.2, 3341.3,
3341.5, 3341.6, 3341.8,
3341.9, 3375, 3375.1,
3375.2, 3376, 3376.1, 3378,
3378.1, 3378.2, 3378.3,
3378.4, 3378.5, 3378.6,
3378.7, 3378.8

Repeal sections: 3334

**NOTICE OF APPROVAL OF CERTIFICATE OF
COMPLIANCE**

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

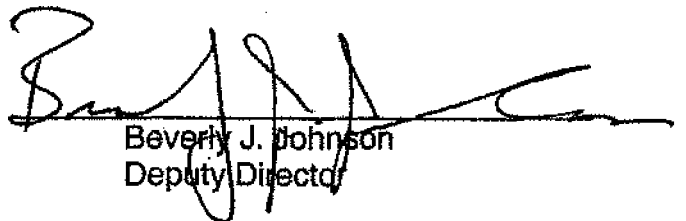
OAL Matter Number: 2018-0821-01

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

The California Department of Corrections and Rehabilitation submitted this timely certificate of compliance to make permanent the amendments made in OAL File No. 2017-0918-05EON, and readopted in OAL File No. 2018-0214-01EON regarding security threat group management.

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

Date: October 3, 2018


Beverly J. Johnson
Deputy Director

For: Debra M. Cornez
Director

Original: Scott Kernan, Secretary
Copy: Anthony Carter

NOTICE PUBLICATION/REGULATIONS SUBMISSION

CERT

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

per agency request *lm*

OAL FILE NUMBERS	NOTICE FILE NUMBER 2018-0109-05	REGULATORY ACTION NUMBER 2018-0821-01C	EMERGENCY NUMBER
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ENDORSED - FILED
in the office of the Secretary of State
of the State of California

OCT 03 2018
1:43 PM

For use by Office of Administrative Law (OAL) only

2018 AUG 21 P 3:09

OFFICE OF
ADMINISTRATIVE LAW

NOTICE	REGULATIONS
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AGENCY WITH RULEMAKING AUTHORITY
California Department of Corrections and Rehabilitation

AGENCY FILE NUMBER (if any)
17-0045

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE	
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON		TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER 2018-03-2	PUBLICATION DATE 1/19/2018	

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Security Threat Group Management		1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) 2017-0918-05EON, 2018-0214-0130N	
2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (including title 26, if toxics related)			
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)		ADOPT 3378.10	
		AMEND See attachment	
TITLE(S) 15		REPEAL 3334	

Blk. request 10/2/18

3. TYPE OF FILING

<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input checked="" type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §511346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §511349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input type="checkbox"/> Other (Specify) _____	

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)
7/13/18-7/31/18

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)

<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(e))	<input checked="" type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> 5100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify)
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6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal
<input type="checkbox"/> Other (Specify) _____		

7. CONTACT PERSON Anthony Carter	TELEPHONE NUMBER 916-445-2220	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional) Anthony.Carter@cdcr.ca.gov
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE 	DATE 8-16-18
TYPED NAME AND TITLE OF SIGNATORY RALPH M. DIAZ, Undersecretary, Operations, CDCR	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

OCT 03 2018

Office of Administrative Law

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S)

Title

15

SECTION(S) AFFECTED

Adopt

- 3378.9
- 3378.10

Amend

- 3000,
- 3023,
- 3043.8,
- 3044,
- 3084.9,
- 3269,
- 3335
- 3337
- 3341
- 3341.2
- 3341.3
- 3341.5
- 3341.6
- 3341.8
- 3341.9
- 3375
- 3375.1
- 3375.2
- 3376
- 3376.1
- 3378
- 3378.1
- 3378.2
- 3378.3
- 3378.4
- 3378.5
- 3378.6
- 3378.7
- 3378.8

Repeal

- 3334

TEXT OF ADOPTED REGULATIONS

In the following text, ~~strike through~~ indicates deleted text and underline indicates added or amended text as a result of the 15-Day Renotice.

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

Division 3, Adult Institutions, Programs, and Parole

Chapter 1 Rules and Regulations of Adult Operations and Programs

Article 1. Behavior

§ 3000 Definitions.

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

*

Administrative Security Housing Unit (SHU) Term means a determination of the need for retention of any inmate in the SHU by the Department Review Board that: 1) upon completion of a determinate SHU term when overwhelming evidence exists supporting an immediate threat to institutional security and/or safety of others and a substantial justification has been articulated of the need for SHU placement; or 2) the inmate has a substantial disciplinary history consisting of no less than three SHU terms within the past five years demonstrating an on-going threat to safety and security of the institution and/or others and less restrictive housing is not appropriate; or 3) for the inmate who is currently serving an administrative SHU term ~~may continue to be retained in SHU when overwhelming evidence exists supporting an on-going threat to institutional security and/or safety of others~~ and continued retention is required because the inmate's case factors are such that overwhelming evidence exists supporting an immediate threat to the security of the institution or safety of others and substantial justification has been articulated of the need for continued SHU placement; or the inmate has a substantial disciplinary history consisting of no less than three SHU terms within the past five years and substantial justification has been articulated for the need for continued SHU placement due to the inmate's ongoing threat to the safety and security of the institution and/or others, and the inmate cannot be housed in a less restrictive environment.

*

Affiliate means individual offenders validated as members or associates, who are connected or interact with a certified or recognized Security Threat Group.

*

Confirmed Security Threat Group (STG) Behavior means behavior with a nexus to an STG which is discovered and confirmed to have occurred. Confirmation can be obtained through either a guilty finding in a STG related Rules Violations Report and/or any

document that clearly describes the STG behavior incorporated within the validation package which is affirmed by an STG Unit Classification Committee.

*

Debrief Processing Unit (DPU) is the centralized location/living unit where inmates who have chosen to disassociate from their Security Threat Group, will be housed to complete Phase One of the Debrief Process.

*

Prison Gang means any gang which originated and has its roots within the department

*

Restricted Custody General Population (RCGP) living units will provide a general population housing alternative to offenders: 1) who have a substantial threat to their personal safety should they be released to the general population; or 2) who have refused to complete the Security Threat Group (STG) Step Down Program (SDP); or 3) who have been found guilty of repeated STG related Rules Violations Reports while in the SDP.

*

Security Threat Group (STG) Associate means any offender or any person who, based on documented evidence, is involved periodically or regularly with the members or associates of a STG. STG Associates will be identified through the validation process.

*

Step Down Program (SDP) shall be 24 months in duration and consist of four program steps that take place within a SHU or other housing units where indicated. Each step will normally be 6 months in duration. The SDP incorporates rehabilitative programming consisting of both required and elective components.

*

Transitional Housing Unit is a general population program designated for the observation phase of the Debrief process. This program may house those inmates that are in the second phase of the debrief process.

*

Note: Authority cited: Sections 243(f)(4), 2717.3, 3000.03, 5058, 5058.3 and 1170.05, Penal Code; Section 10115.3(b), Public Contract Code; and Sections 4525(a), 4526 and 14837, Government Code. Reference: Sections 186.22, 243, 314, 530, 532, 600, 646.9, 653m, 832.5, 1170.05, 1203.8, 1389, 2080, 2081.5, 2600, 2601, 2700, 2717.1, 2717.6, 2932.5, 3003.5(a), 3020, 3450, 3550, 4570, 4576, 5009, 5050, 5054, 5068, 7000 et seq., 11180 and 11191, Penal Code; Sections 1132.4, 1132.8, and 1203(b)(1), Labor Code; Sections 10106, 10108, 10108.5, 10115, 10115.1, 10115.2, 10115.3 and 10127, Public Contract Code; Section 999, Military and Veterans Code; Section 391, Code of Civil Procedure; Section 297.5, Family Code; Sections 8550, 8567, 12838 and 12838.7, Government Code; Governor's Prison Overcrowding State of Emergency Proclamation dated October 4, 2006; *In re Bittaker*, 55 Cal.App. 4th 1004, 64 Cal. Rptr. 2d 679; Section 11007, Health and Safety Code; *Madrid v. Cate* (U.S.D.C. N.D. Cal. C90-3094 TEH); *Sassman v. Brown* (E.D. Cal. 2015) 99 F.Supp.3d 1223; *Mitchell v.*

Cate, USDC ED 2:08-CV-01196-TLN-EFB; *In re Garcia* (2012) 202 Cal.App.4th 892; and *Quine v. Beard*, No. C 14-02726 JST.

3023. Security Threat Group (STG) Behavior.

Subsection 3023(a) remains unchanged.

Subsection 3023(b) is amended to read:

3023(b) CDCR has zero tolerance for any STG behavior within its institutions. The STG Identification, Prevention, and Management Policy, as referenced in section 3378, recognizes that STG groups and STG group-like behavior pose a significant risk to the safety, security, and orderly operation of its institutions.

Subsections 3023(c) through Subsection 3023(d) remain unchanged.

Subsection 3023(e) is amended to read:

3023(e) Inmates shall not conspire, attempt, or participate in behavior specifically identified in Section 3314(a)(3)(L) and 3314(a)(3)(M), Administrative Rules Violations, STG Contraband and Behavior, or Section 3315(a)(3)(Z) and 3314(a)(3)(AA), Serious Rules Violations, STG Violent, Disruptive, or Controlling Behavior.

Subsection 3023(f) remains unchanged.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 1203.8, 1364, 2684, 2690, 2933, 2933.05, 2933.3, 2933.6, 5054 and 5068, Penal Code.

3043.8. Impact of Transfer on Credit Earning.

Subsections 3043.8(a) through 3043.8(e)(1) remain unchanged. Subsection 3043.8(e) is shown to provide context.

(e) Special housing unit transfers.

Subsection 3043.8(e)(2) is amended to read:

3043.8(e)(2) Inmates placed in a SHU, PSU, or in ASU for reasons specified in section 3043.4 shall be placed in workgroup D-2. All other inmates in SHU, PSU, or ASU shall be placed in Work Group D-1. The effective date of both workgroups shall be the first day of placement into SHU, PSU, or ASU.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 1203.8, 1364, 2684, 2690, 2933, 2933.05, 2933.3, 2933.6, 5054 and 5068, Penal Code.

3044. Inmate Work Groups and Privilege Groups.

Subsections 3044(a) through 3044(b)(1) remain unchanged.

Subsection 3044(b)(1)(A) is amended to read:

3044(b)(1)(A) Any inmate assigned to a rehabilitative program, including but not limited to, substance abuse treatment, cognitive behavioral treatment, transitions, education, career technical education, or any combination thereof, shall be assigned to Work Group A-1, except when the inmate qualifies for the assignment of Work Group M pursuant to section 3044(b)(8). An inmate assigned to the Security Threat Group Step Down Program shall be assigned a work group in accordance with sections 3044(b)(5) and 3044(b)(6).

Subsections 3044(b)(1)(B) through 3044(b)(4)(B) remain unchanged

Subsections 3044(b)(5) through 3044(b)(6) are amended to read:

(5) Work Group D-1 (Lockup Status). An inmate assigned to a segregated housing program, shall be assigned to Work Group D-1, unless the inmate qualifies for continued assignment to Work Group F or Work Group M or initial assignment to Work Group M in accordance with sections 3044(b)(7)(D), 3044(b)(7)(E), 3044(b)(8)(E), or 3044(b)(8)(F). Inmates assigned to Steps 1 through 4 of the Security Threat Group Step Down Program and who are eligible to earn credit pursuant to section 2933 of the Penal Code, shall be awarded one day of credit for each day assigned to this work group. Inmates who are not eligible to earn credit pursuant to section 2933 of the Penal Code shall receive credits pursuant to their sentence. Segregated housing shall include, but not be limited to, the following:

- (A) Administrative Segregation Unit (ASU);
 - (B) Security Housing Unit (SHU);
 - (C) Psychiatric Services Unit (PSU);
 - (D) Non-Disciplinary Segregation (NDS).
- (6) Work Group D-2 (Lockup Status: Zero Credit).

Subsections 3044(b)(6)(A) through 3044(b)(8) remain unchanged.

Subsections 3044(c) through 3044(c)(6) remain unchanged. Subsection 3044(c)(6) is provided to show context.

Subsection 3044(c)(6)(A) is amended to read:

(c)(6) Changes in privilege group status due to the inmate's placement in lockup:

(A) An inmate housed in an ASU, SHU, or PSU shall be designated Privilege Group D with the exception of:

1. Inmates designated as NDS who shall retain their privilege group prior to ASU placement;
2. Inmates placed in the Security Threat Group (STG) Step Down Program (SDP) in accordance with section 3044(i);
3. Inmates who are assigned to the Debrief Processing Unit (DPU) in accordance with Section 3378.7;
4. Inmates who are on Administrative SHU status in accordance with section 3044(j).

Subsections 3044(c)(7) through 3044(c)(9) remain unchanged.

Subsection 3044(c)(10) is added to read:

3044(c)(10) When assigned to a RCGP facility, the inmate's privileges shall be in accordance with section 3378.9.

Subsections 3044(d) through 3044(g) remain unchanged.

Subsection 3044(g) is shown to provide context.

(g) Privilege Group D:

Subsection 3044(g)(1) is amended to read:

3044(g)(1) Criteria: Any inmate, with the exception of validated STG affiliates participating in the SDP, placed on Administrative SHU status per section 3341.3, or designated NDS inmates, housed in a special segregation unit, voluntarily or under the provisions of sections 3335–3345 of these regulations who is not assigned to either a full-time or half-time assignment.

Inmates assigned to Steps 1 through 4 of the SDP while completing the Pre-Debrief Intake Panel (DIP) portion of Phase One of the debrief process, as described in section 3378.5, are entitled to privileges and non-privileges commensurate with the SDP step to which the offender is currently assigned, in accordance with sections 3044(i) and 3378.7.

Subsections 3044(g)(2) through 3044(i) remain unchanged. Subsection 3044(i) is shown to provide context.

Subsection 3044(i)(1) remains unchanged.

Subsection 3044(i)(2) is renumbered to 3044(i)(3) and relocated and remains unchanged.

3044(i) Privilege Group S1 through S4:

(1) Criteria: Participation in the STG SDP.

(2) Upon a guilty finding in a disciplinary hearing, the disposition may or when mandated include assessment of one or more penalties in accordance with sections 3314 or 3315.

Subsections 3044(i)(3)(A)1. through 3044(i)(3)(A)9. are amended to read:

(3) Privileges and non-privileges for Privilege Groups S1 through S4 are:

(A) S1 for Step 1.

1. No Family Visits.

2. Non-contact visiting during non-work/training hours, limited by available space within facility non-contact visiting room.

3. Twenty-five percent (25%) of the maximum monthly canteen draw as authorized by the secretary.

4. Telephone calls on an emergency basis as determined by institution/facility staff.

5. One telephone call every 90 days if the inmate has met program expectations and has not been found guilty of serious disciplinary behavior in that time period.

6. Yard access in accordance with Section 3343(h) which shall be a minimum of 10 hours per week.

7. The receipt of one inmate package, 30 pounds maximum weight, exclusive of special purchases as provided in Section 3190.
8. One photograph.
9. Electrical appliances are allowed in accordance with the Authorized Personal Property Schedule for SHU/PSU inmates, as described in Section 3190(b)(4).

Subsection 3044(i)(3)(B) remains unchanged. Subsection 3044(i)(3)(B) is shown to provide context.

Subsections 3044(i)(3)(B)1. through 3044(i)(3)(B)9. are amended to read:

(B) S2 for Step 2.

1. No Family Visits.
2. Non-contact visiting during non-work/training hours, limited by available space within facility non-contact visiting room.
3. Thirty-five percent (35%) of the maximum monthly canteen draw as authorized by the secretary.
4. Telephone calls on an emergency basis as determined by institution/facility staff.
5. One telephone call every 60 days if the inmate has met program expectations and has not been found guilty of serious disciplinary behavior in that time period.
6. Yard access in accordance with Section 3343(h) which shall be a minimum of 10 hours per week.
7. The receipt of one inmate package, 30 pounds maximum weight, exclusive of special purchases as provided in Section 3190.
8. Two photographs - if the inmate has met program expectations and has not been found guilty of serious disciplinary behavior in that time period, upon completion of Step 2.
9. Electrical appliances are allowed in accordance with the Authorized Personal Property Schedule for SHU/PSU inmates, as described in Section 3190(b)(4).

Subsection 3044(i)(3)(C) remains unchanged. Subsection 3044(i)(3)(C) is shown to provide context.

Subsections 3044(i)(3)(C)1. through 3044(i)(3)(C)9. are amended to read:

(C) S3 for Step 3.

1. No Family Visits.
2. Non-contact visiting during non-work/training hours, limited by available space within facility non-contact visiting room.
3. Forty-five percent (45%) of the maximum monthly canteen draw as authorized by the secretary.
4. Telephone calls on an emergency basis as determined by institution/facility staff.
5. One telephone call every 45 days if the inmate has met program expectations and has not been found guilty of serious disciplinary behavior in that time period.
6. Yard access in accordance with Section 3343(h) which shall be a minimum of 10 hours per week.
7. The receipt of one inmate packages, 30 pounds maximum weight, exclusive of special purchases as provided in Section 3190.

8. Three photographs if the inmate has met program expectations and has not been found guilty of serious disciplinary behavior in that time period, upon completion of Step 3.
9. Electrical appliances are allowed in accordance with the Authorized Personal Property Schedule for SHU/PSU inmates, as described in Section 3190(b)(4).
10. Small Group Programs at least two hours per week.
11. Access to appropriate educational programs.

Subsection 3044(i)(3)(D) remains unchanged. Subsection 3044(i)(3)(D) is shown to provide context.

Subsections 3044(i)(3)(D)1. through 3044(i)(3)(D)11. are amended to read:

(D) S4 for Step 4.

1. No Family Visits.
2. Non-contact visiting during non-work/training hours, limited by available space within facility non-contact visiting room.
3. Fifty percent (50%) of the maximum monthly canteen draw as authorized by the secretary.
4. Telephone calls on an emergency basis as determined by institution/facility staff.
5. One telephone call every 30 days if the inmate has met program expectations and has not been found guilty of serious disciplinary behavior in that time period.
6. Yard access in accordance with Section 3343(h) which shall be a minimum of 10 hours per week. Participation on small group yards as determined by the Institution Classification Committee (ICC).
7. The receipt of one inmate package, 30 pounds maximum weight each, exclusive of special purchases as provided in Section 3190. In addition, receipt of one inmate package, food only, 15 pounds maximum weight.
8. Four photographs every 90 days if the inmate has met program expectations and has not been found guilty of serious disciplinary behavior in that time period.
9. Electrical appliances are allowed in accordance with the Authorized Personal Property Schedule for SHU/PSU inmates, as described in Section 3190(b)(4).
10. Small group programs at least four hours per week.
11. Access to appropriate educational programs.

Subsection 3044(j)(3) is renumbered to 3044(j)(4) and remains unchanged.

Subsections 3044(j) through 3044(j)(3)(I) are added to read:

(j) Privilege Group AS:

- (1) Criteria: Any offender in SHU serving an Administrative SHU term as described in section 3000.
- (2) Upon a guilty finding in a disciplinary hearing, the disposition may or when mandated include assessment of one or more penalties in accordance with sections 3314 or 3315.
- (3) Privileges and non-privileges for Privilege Group AS are:
 - (A) No Family Visits.
 - (B) Non-contact visiting during non-work/training hours, limited by available space within facility non-contact visiting room.

(C) Canteen draw may range from twenty-five percent (25%) to seventy five percent (75%) of the maximum monthly canteen draw as authorized by the secretary and designated by ICC.

(D) Telephone calls on an emergency basis as determined by institution/facility staff.

(E) One phone call at least every 90 days, and ICC may modify the call frequency up to one phone call every month.

(F) Enhanced out of cell yard and programming for a combined total of 20 hours per week.

(G) Receipt of inmate packages, 30 pounds maximum weight each. Offenders may also receive special purchases, as provided in subsections 3190(j) and (k). ICC shall designate between one and four packages per year.

(H) Photographs every 90 days, if the inmate has met program expectations and has not been found guilty of serious disciplinary behavior in that time period. ICC shall designate between one and four photographs every 90 days.

(I) Electrical appliances are allowed in accordance with the Authorized Personal Property Schedule for SHU/PSU inmates, as described in Section 3190(b)(4).

(4) The local Inter-Disciplinary Treatment Team may further restrict or allow additional authorized personal property, in accordance with the Institution's Psychiatric Services Unit operational procedure, on a case-by-case basis above that allowed by the inmate's assigned Privilege Group.

Note: Authority cited: Cal. Const., art. 1, sec. 32(b); and Sections 2700, 2701 and 5058, Penal Code. Reference: Cal. Const., art. 1, sec. 32(a)(2); Sections 2932, 2933, 2933.05, 2933.3, 2933.6, 2935, 5005, 5054 and 5068, Penal Code; and *In re Monigold*, 205 Cal.App.3d 1224 (1988).

3084.9. Exceptions to the Regular Appeal Process.

Subsections 3084.9(a) through 3084.9(i)(6) remain unchanged.

Subsections 3084.9(j) through 3084.9(j)(8) are added to read:

(j) Appeal to the DRB of transfer decision to place an inmate in the RCGP.

(1) An inmate may appeal an ICC decision to the DRB when ICC determines placement in a RCGP facility is appropriate based on the inmate being found guilty of: three serious STG related; or five administrative STG related; or a total of five serious and administrative STG related rules violation reports while housed in the Security Housing Unit (SHU) Step Down Program (SDP).

(2) The appellant shall use a CDCR Form 602 (Rev. 08/09), Inmate/Parolee Appeal, to describe the specific issue under appeal. A CDCR Form 602-A (08/09), Inmate/Parolee Appeal Form Attachment, shall be used if additional space is needed to describe the issue under appeal or the relief requested. Such appeals shall bypass the first and second levels of review.

(3) The appellant shall submit the appeal within 30 days of receiving the CDC Form 128-G, (Rev. 10/89) Classification Chrono, in which the ICC decision is documented.

(4) The appellant shall mail the appeal and supporting documents to the third level Appeals Chief via the United States mail service utilizing his or her own funds, unless the appellant is indigent in which case the mailing of appeals to the third level of review

shall be processed in accordance with indigent mail provisions pursuant to section 3138.

(5) The Appeals Chief or designee shall log the appeal and forward to the Chief, Classification Services Unit (CSU) for response.

(6) The Chief, CSU shall review the materials provided and prepare the appeal for discussion with the DRB.

(7) The DRB will review the inmate's disciplinary history which caused placement in RCGP, pursuant to section 3378.9 and determine whether removal from the SHU SDP and transfer to the RCGP was appropriate. An appearance before the DRB by the inmate is not required for a determination on such an appeal.

(8) The decision of the DRB shall be documented on the CDCR Form 602 (Rev. 08/09), Inmate/Parolee Appeal and returned to the Appeals Chief where it will be logged and forwarded to the inmate.

Note: Authority cited: Section 5058, Penal Code; and Section 6304.3, Labor Code. Reference: Sections 148.6, 832.5, 832.7, 832.8, 5054 and 5058.4, Penal Code; Sections 935.6, 965, 3300-3313, 19570-19575.5, 19583.5 and 19635, Government Code; Sections 98.7 and 6304.3, Labor Code; Sections 337, 338 and 339, Code of Civil Procedure; Sections 344.40, 344.41, 344.42 and 344.43, Title 8, Industrial Relations, California Code of Regulations; Americans With Disabilities Act, Public Law 101-336, July 26, 1990, 104 Stat. 328; Civil Rights of Institutionalized Persons Act; Title 42 U.S.C. Section 1997 et seq., Public Law 96-247, 94 Stat. 349; 28 CFR Sections 35.107 and 115.52; Wolff v. McDonnell (1974) 418 U. S. 539, 558-560; and Vasquez v. State of California, 105 Cal.App.4th 849 (2003) as implemented by the Stipulated Injunction and Order entered by the Superior Court of San Diego County in Case No.GIC-740832.

3269. Inmate Housing Assignments.

Subsections 3269 Presentence through 3269(a) remain unchanged.

Subsection 3269(b) is amended to read:

(b) The screening authority shall complete the Initial Housing Review stating if the inmate is suitable for dorm/cell housing with or without special restrictions. Restrictions are any case factors which may limit the inmate's housing placement options such as, but not limited to:

- Security issues including ASU, Restricted Custody General Population (RCGP), and SHU placement.
- Request for Protective Custody.
- Medical or mental health issues.
- Personal factors such as age, weight, and height.
- Integrated Housing Code.

Staff shall ensure that the housing policies regarding special category inmates covered under specific litigation remain in place during the housing assignment.

Subsections 3269(c) through 3269(h) remain unchanged.

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

3335. Administrative Segregation.

Subsections 3335 Presentence through 3335(a)(1)(A) are amended to read:

When an inmate's presence in an institution's General Population (GP) inclusive of the Restricted Custody General Population (RCGP) facility presents an immediate threat to the safety of the inmate or others, endangers institution security or jeopardizes the integrity of an investigation of an alleged serious misconduct, criminal activity, or the safety of any person, the inmate shall be immediately removed from the GP and placed in administrative segregation. Administrative segregation may be accomplished by confinement in a designated Administrative Segregation Unit (ASU) or, in an emergency, to any single cell unit capable of providing secure segregation. CDCR staff shall not place inmates into a SHU, ASU, or the SDP solely on the basis of their validation status.

(a) Non Disciplinary Segregation.

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

(A) ASU placement for investigation of safety concerns not resulting from misconduct warranting a Rules Violation Report.

Subsections 3335(a)(1)(B) through 3335(e) remain unchanged.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 5054 and 5068, Penal Code; 28 CFR Sections 115.42 and 115.43; *Wright v. Enomoto*, (1976) 462 F Supp 397; and *Toussaint v. McCarthy* (9th Cir. 1986) 801 F2d 1080, cert. denied, 481 U.S. 1069.

3337. Classification Hearing of Administrative Segregation Placements.

Subsections 3337(a) through 3337(c) remain unchanged. Subsection 3337(c) is shown to provide context.

(c) Any inmate retained in administrative segregation at the initial ICC hearing shall be presented to a CSR within 30 days of the hearing date for review and approval. Subsequent ICC reviews shall proceed in accordance with the following timelines, considering any applicable projected Minimum Eligible Release Date (MERD) as defined in Section 3000, until the inmate is released to the GP:

Subsection 3337(c)(1) is amended to read:

(1) At intervals of not more than 180-days: when a pending Security Housing Unit (SHU) assessable Rules Violation Report (RVR) is postponed pending a court proceeding or referral to the District Attorney (DA) for possible prosecution. Administrative segregation

extension requests specific to pending disciplinary matters shall identify the inmate's intent to postpone the disciplinary hearing, as well as, the status of the pending DA referral. Upon resolution of such matters, an ICC shall review the inmate's case within 14 calendar days. Inmates who have postponed their RVR pending a court proceeding or a referral to the DA shall not be retained in ASU past the anticipated projected MERD unless ICC has reason to believe based on the inmate's disciplinary history and other case factors, including the existence of overwhelming evidence supporting an immediate threat to the security of the institution or the safety of others that referral to the Departmental Review Board is necessary for: 1) assessment of administrative SHU status for the safety and security of the institution or persons, following the adjudication of the RVR; or 2) the inmate's safety needs will require appropriate housing determination. In these cases a new CDC Form 114-D shall be immediately prepared and issued, clearly articulating the reasons for continued retention, in accordance with section 3335.

Subsections 3337(c)(2) through 3337(c)(3) remain unchanged.

Subsections 3337(c)(4) is amended to read:

(4) At intervals of not more than 90 days: pending completion of an investigation into the safety of any person, institutional security, serious misconduct or criminal activity. Should the completed investigation result in the issuance of a RVR and/or referral to the DA for criminal prosecution, the ICC shall review the case in accordance with the schedule set forth in subsections (1) or (3) above. Upon resolution of such matters, an ICC shall review the inmate's case within 14 calendar days.

Subsections 3337(c)(5) and 3337(c)(6) are added to read:

(5) At the pre-MERD and at intervals of not more than 90 days: when retention is warranted due to the inmate being assigned to the Security Threat Group (STG) Step Down Program (SDP) and transfer to the SHU is pending.

(6) At intervals of not more than 90 days: upon receipt of an inmate's request to initiate the Debrief Process, in accordance with CCR section 3378.5.

Subsections 3337(d) through 3337(e) remain unchanged.

Note: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code; *Wright v. Enomoto*, (1976) 462 F Supp 397; and *Toussaint v. McCarthy* (9th Cir. 1986) 801 F2d 1080, cert. denied, 481 U.S. 1069.

3341. Segregated Program Housing Units.

Subsections 3341(a) through 3341(c) are amended to read:

(a) Segregated Program Housing Units (SPHU) are designated for extended term programming of inmates not suited for housing in the general population. They are specialized programming units with established placement criteria. Placement into these units requires approval by a Classification Staff Representative (CSR) or by the

Departmental Review Board (DRB) if the inmate is being assessed an Administrative Security Housing Unit (SHU) term, on the basis of classification committee recommendations and referrals.

(b) With the exception of Protective Housing Unit (PHU) and as otherwise specified in subsections section 3378.3(b)(1) through 3378.3(b)(3), SPHU placement for administrative SHU purposes shall be reviewed by ICC at least every 180 days, or sooner as directed by a CSR. Prior to ICC's annual review, staff shall evaluate the inmate's program participation, current case factors, and his desire to leave administrative SHU housing. Staff will inform the inmate of other housing and program options such as the Restricted Custody General Population (RCGP), Debrief Processing Unit (DPU), or general population, for which his case factors may allow placement. Staff shall document this discussion on a CDC Form 128-B (Rev. 4/74), General Chrono including his interest in other alternative housing options and forward to ICC for consideration at the annual review. ICC's annual review shall result in referral to DRB if continued segregation is deemed appropriate. The DRB shall annually assess the inmate's case factors and disciplinary behavior and shall articulate the basis for continued retention on Administrative SHU status. For determinate SHU inmates, ICC reviews shall be no less frequently than every 180 days following their initial SHU annual review, or sooner as directed by a CSR. The purpose of such reviews is to evaluate the inmate's case factors to determine if specialized housing continues to be the most appropriate and least restrictive placement option commensurate with any existing threat to institutional security or the safety of any person.

(c) Special circumstances or exceptions to the placement criteria for SPHU must be referred to and decided by the DRB in accordance with section 3376.1.

Subsection 3341(d) remains unchanged.

Subsection 3341(e) is being added to read:

(e) When an inmate is removed from the SHU Step Down Program (SDP) due to the need for in-patient medical or mental health treatment and a determination is made that the inmate has completed the required treatment, the inmate shall be referred to the ICC for consideration of return to the SDP. ICC shall award credit for the time spent in this alternate housing, toward completion of the SDP.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 5054 and 5068, Penal Code; *Sandin v. Connor* (1995) 515 U.S. 472; *Toussaint v. McCarthy* (9th Cir. 1990) 926 F.2d 800; and *Toussaint v. Yockey* (9th Cir. 1984) 722 F.2d 1490.

3341.2. Psychiatric Services Unit.

Subsection 3341.2 Presentence through 3341.2(a) remain unchanged. Subsection 3341.2(a) is shown to provide context.

(a) An inmate shall be housed in a Psychiatric Services Unit (PSU), if:

Subsection 3341.2(a)(1) is amended to read:

(1) The inmate is included in the MHSDS at the Enhanced Outpatient Program (EOP) level of care and the inmate's conduct has resulted in either a determinate SHU term, administrative SHU term or requires placement in the Security Threat Group (STG) SDP.

Subsections 3341.2(a)(2) through 3341.2(b) remain unchanged.

Subsection 3341.2(c) is amended to read:

(c) The CSR shall document any pending issues, such as disciplinary matters, SDP program placement, DA referrals or investigations, on the CDC Form 128-G (Rev. 10/89) identifying the sending institutions responsibility for resolving any outstanding concerns.

Subsection 3341.2(d) remains unchanged.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 2933.6, 5054 and 5068, Penal Code; *Madrid v. Gomez* (N.D. Cal. 1995) 889 F.Supp. 1146, 1278; *Coleman v. Wilson* 912 F. Supp. 1282 (E.D. Cal. 1995); and *Clark v. California* 123 F. 3d 1267 (9th Cir. 1997).

3341.3. Security Housing Unit.

Subsection 3341.3 is amended to read:

An inmate whose conduct endangers the safety of others or the security of the institution shall be housed in a Security Housing Unit (SHU) to complete an administrative SHU term or for a determinate period of time, if found guilty for serious misconduct pursuant to section 3341.9(e). CDCR staff shall not place inmates into a SHU, Administrative Segregation Unit, or the SDP solely on the basis of their validation status.

(a) CDCR shall not house any inmate within the SHU at Pelican Bay State Prison (PBSP) for more than 5 continuous years. Inmates housed in the PBSP SHU requiring continued SHU placement beyond this limitation will be transferred to another SHU facility. Inmates who have previously been housed in the PBSP SHU for 5 continuous years can only be returned to PBSP SHU if that return has been specifically approved by the DRB and at least 5 years have passed since the inmate was last housed in PBSP SHU.

Inmates may request in writing that they be housed in the PBSP SHU in lieu of another SHU location, but such a request must be reviewed and approved by the DRB. An inmate's request to remain housed in the PBSP SHU shall be documented by the ICC in the CDC Form 128-G, (Rev. 10/89) Classification Chrono, which is incorporated by reference, at each scheduled ICC review.

(b) A break in continual restrictive housing is defined as the inmate being released from the SHU, received in non-restricted housing at the assigned institution/facility and has attended his Initial Classification Committee. In addition, when an inmate is paroled,

discharged or otherwise out of CDCR custody, that time shall be considered a break in continual restrictive housing.

Subsections 3341.3(c) through 3341.3(e) are amended to read:

(c) Placement in SHU shall be based on the following criteria:

(1) Administrative SHU as defined in Section 3000. An inmate in the following circumstances may be assessed an administrative SHU term by the DRB when: the DRB articulates a substantial justification for the need for SHU placement due to the inmate's ongoing threat to safety and security of the institution and/or others, and the inmate cannot be housed in a less restrictive environment and:

(A) ~~ICC identifies an inmate who, upon~~ Upon completion of a determinate SHU term, the DRB determines the inmate's case factors are such that overwhelming evidence exists supporting an immediate threat to the security of the institution or the safety of others, ~~and substantial justification has been articulated of the need for continued SHU placement.~~

(B) ~~ICC identifies an~~ The inmate has a substantial disciplinary history consisting of no less than three SHU terms within the past five.

(C) ~~ICC identifies an~~ The inmate who is currently serving an administrative SHU term and continued retention is required because, ~~may refer the case to the DRB when evidence exists supporting an on-going threat to the security of the institution or the safety of others.~~ 1) the inmate's case factors are such that overwhelming evidence exists supporting an immediate threat to the security of the institution or safety of others; or 2) the inmate has a substantial disciplinary history consisting of no less than three SHU terms within the past five years. ~~1) the inmate's case factors are such that overwhelming evidence exists supporting an immediate threat to the security of the institution or safety of others; or 2) the inmate has a substantial disciplinary history consisting of no less than three SHU terms within the past five years.~~

(D) ~~The DRB shall articulate a substantial justification for the need for SHU placement due to the inmate's ongoing threat to safety and security of the institution and/or others, and that the inmate cannot be housed in a less restrictive environment.~~

(2) Determinate SHU. An inmate shall be assessed a determinate SHU term when the inmate is found guilty of a Rules Violation Report for an offense specifically listed in subsection 3341.9(e) and ICC has determined the inmate presents a threat to the security of the institution and/or the safety of others.

(A) A determinate SHU term shall be computed using the SHU Term Assessment Chart, pursuant to subsection 3341.9(e), utilizing the SHU Term Assessment Worksheet. All determinate SHU terms shall be assessed at the expected term for the offense, in the absence of mitigating or aggravating factors, as listed in subsections 3341.9(b) & (c).

(B) The SHU term effective date shall be the date of placement in administrative segregation or upon the date of discovery of the information leading to the disciplinary charge, whichever occurs first.

(C) Inmates shall be assessed a determinate SHU term for serious misconduct occurring while on administrative SHU status provided the inmate is found guilty of an offense listed in subsection 3341.9(e). The administrative SHU status shall run concurrently to any/all assessed Determinate SHU terms, whether active or suspended, and upon the MERD the administrative status will continue.

(D) Only rule violations occurring within the past 5 years on an inmate's current CDCR number which warrant a SHU assessment shall be addressed by ICC and reviewed by

the CSR. ICC shall assess the appropriate SHU term per 3341.9(e) and one of the following actions:

1. Impose/Re-impose
2. Impose/Re-impose and Suspend
3. Impose/Re-impose and Suspend in Entirety
4. Commute

Re-imposed SHU terms shall be addressed in accordance with section 3341.6.

(3) SDP in SHU

(A) The inmate is a validated STG affiliate and placed in the SDP by ICC or DRB in accordance with the following:

1. STG-I Member, Associate, or Drop-out: the validated affiliate, being found guilty of STG related behavior, as identified in section 3378.4(a), STG Disciplinary Matrix and which is also identified in section 3341.9(e) SHU Term Assessment Chart, within the preceding two (2) years. For the Drop-out affiliate, the behavior must identify the inmate is a STG member or associate of the same STG with which the inmate was previously validated.

2. STG-II Member, Associate, or Drop-out: the validated affiliate being found guilty of two serious STG related rules violation reports as listed in section 3378.4(a) STG Disciplinary Matrix and which are also identified in section 3341.9(e) SHU Term Assessment Chart within the preceding four (4) years, and upon completion of the most recent expired MERD. For the Drop-out affiliate, the behavior must identify the inmate is a STG member or associate of the same STG with which the inmate was previously validated.

(d) SHU terms shall be served in a departmentally approved SHU, or a facility specifically designated for that purpose, except under those circumstances where the term may be served in ASU or PSU. SHU terms may also be served in secure inpatient medical or mental health settings, when deemed clinically necessary. Inmates who are serving a SHU term in ASU shall be reviewed by a classification committee pursuant to section 3341.8.

(e) SHU classification decisions, including notification of the reasons for a classification hearing, SHU term assessment, housing restrictions, and yard assignment shall be documented on the CDC Form 128-G (Rev. 10/89), Classification Chrono, with a copy provided to the inmate.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 2933.6, 5054 and 5068, Penal Code; *Sandin v. Connor*(1995) 515 U.S. 472; *Madrid v. Gomez* (N.D. Cal. 1995) 889 F.Supp. 1146; *Toussaint v. McCarthy* (9th Cir. 1990) 926 F.2d 800; *Toussaint v. Yockey* (9th Cir. 1984) 722 F.2d 1490; and *Castillo v. Alameida, et al.*, (N.D. Cal., No. C94-2847).

3341.5. Suspending Security Housing Unit Terms.

Subsections 3341.5(a) through 3341.5(b)(4) are adopted to read:

(a) Determinate SHU Terms.

(1) ICC may commute or suspend any portion of a Determinate SHU term. Once commuted, the term shall not be re-imposed. ICC may suspend a Determinate SHU

term any time it is determined an inmate no longer poses a threat to the safety of any person or the security of the institution. Additionally, ICC may suspend a Determinate SHU term for purposes of inpatient medical or mental health treatment when deemed clinically necessary. Any ICC action to suspend or commute a Determinate SHU term shall clearly articulate substantive justification for the decision on the CDC Form 128-G (Rev. 10/89) Classification Chrono.

(A) ICC shall suspend any portion of a SHU term during any time the inmate was not on segregation status.

(B) The remaining time of the suspended SHU term continues to run while the inmate is no longer in segregated housing as long as the inmate remains in custody.

(C) The ICC action to suspend a SHU term may require CSR review for placement consideration and/or audit. ICC has the authority to release an inmate to a GP or ASU within the same institution pending placement review, as appropriate. If multiple SHU terms are suspended, the SHU term with the most distant MERD need only be addressed. In this circumstance, any remaining SHU terms with unexpired MERD's shall be considered suspended.

(2) If an inmate paroled while serving a determinate SHU term, the remaining time on the SHU term is automatically suspended and any remaining time stayed. Any remaining SHU time shall be recalculated and assessed should the inmate return to custody, so long as the inmate maintains the same CDCR identification number.

(3) If an inmate paroled prior to assessment of a determinate SHU term, the ICC shall address the unresolved term should the inmate return to CDCR custody with the same CDCR identification number, in accordance with subsection 3341.3(a)(6).

(b) Administrative SHU terms.

(1) ICC may end an Administrative SHU term for purposes of inpatient medical or mental health treatment when deemed clinically necessary.

(2) ICC shall refer the case to DRB if a determination is made that an inmate no longer poses a threat to the safety of any person or the security of the institution. DRB shall assess the inmate's case factors and determine appropriate housing.

(3) ICC shall refer the case to DRB if a determination is made that retention on Administrative SHU status is warranted. DRB shall assess the inmate's case factors and disciplinary behavior and articulate the basis for the need to continue the inmate on Administrative SHU status in accordance with section 3341.3(c).

(4) If an inmate paroled while on an administrative SHU term, the SHU term will be stayed. If the inmate returns to CDCR custody, the administrative SHU term will be addressed in accordance with section 3341.6(c).

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 2933.6, 5054 and 5068, Penal Code; *Sandin v. Connor*(1995) 515 U.S. 472; *Madrid v. Gomez* (N.D. Cal. 1995) 889 F.Supp. 1146; *Toussaint v. McCarthy* (9th Cir. 1990) 926 F.2d 800; and *Coleman v. Wilson* 912 F. Supp. 1282 (E.D. Cal. 1995).

3341.6. Re-Imposed Security Housing Unit Terms.

Subsections 3341.6(a) through 3341.6(a)(2) remain unchanged.

Subsection 3341.6(b) is amended to read:

(b) If an inmate paroled with an active Determinate SHU term and subsequently returns to CDCR custody under the same CDCR number, ICC shall evaluate the Determinate SHU term for re-imposition. Re-imposed Determinate SHU terms shall be calculated utilizing the SHU Term Assessment Worksheet. Any unexpired SHU term shall be recalculated and addressed by ICC. If multiple CSR approved SHU terms are eligible for re-imposition, the SHU term with the most distant MERD need only be addressed. In this circumstance, any remaining SHU terms with unexpired MERD's shall be considered re-imposed. ICC retains the authority to impose or suspend any remaining time based upon the safety of persons or security of the institution.

Subsections 3341.6(b)(1) through 3341.6(b)(3) remain unchanged.

Subsections 3341.6(c) through 3341.6(d)(5) are amended to read:

(c) An inmate who paroled with an active Administrative SHU term and subsequently returns to CDCR custody under the same or a new CDCR number shall be addressed as follows:

(1) An inmate who previously paroled with MAX custody and is returned to CDCR's custody shall be placed in ASU and afforded all procedural safeguards for segregated inmates. ICC shall determine if the criteria for placement on Administrative SHU status is met, in accordance with section 3000. If ICC determines that: 1) safety of others, and substantial justification has been articulated of the need for Administrative SHU placement; or 2) substantial disciplinary history consisting of no less than three SHU terms within the past five years and substantial justification has been articulated of the need for Administrative SHU placement, the inmate shall be referred to the DRB.

(d) A validated STG affiliate who previously paroled or was discharged with MAX custody from the SHU Step Down Program (SDP) or ASU due to high control release and is returned to CDCR's custody shall be addressed as follows:

(1) The inmate will be placed in ASU and afforded all procedural safeguards for segregated inmates.

(2) If the inmate has been discharged/paroled from CDCR for more than 5 years or if he is returning with a new CDCR number, he shall not be required to complete the SDP and will be referred to ICC for appropriate housing.

(3) If the inmate paroled from Steps 1 - 3 of the SDP, has been out of CDCR custody for less than 5 years, and is returning with the same CDCR number, he shall be referred by ICC, as appropriate, to the Classification Staff Representative for transfer endorsement to the SHU SDP. The inmate will be assigned to the beginning of the next successive step from which he left to ensure that he does not spend more than 6 months in the assigned step.

(4) If the inmate paroled from Step 4 of the SDP, he will not be returned to the SDP; instead ICC will determine appropriate housing for the inmate based on current case factors and placement score.

(5) Although the inmate meets the criteria for placement in the SHU SDP, in accordance with CCR sections 3378.2 or 3378.4, ICC maintains discretion in evaluating an affiliate's overall disciplinary record and case factors in determining placement in the SDP or within a general population setting.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 314, 2933.6, 5054 and 5068, Penal Code; *Sandin v. Connor*(1995) 515 U.S. 472; *Madrid v. Gomez* (N.D. Cal. 1995) 889 F.Supp. 1146; *Toussaint v. McCarthy* (9th Cir. 1990) 926 F.2d 800; *Toussaint v. Yockey* (9th Cir. 1984) 722 F.2d 1490; *Coleman v. Wilson* 912 F. Supp. 1282 (E.D. Cal. 1995); and *Castillo v. Alameida, et al.*, (N.D. Cal., No.C94-2847).

3341.8. Security Housing Unit/Psychiatric Services Unit Classification Hearings.

Subsections 3341.8(a) through 3341.8(a)(7) are amended to read:

The ICC shall conduct all classification hearings of SHU/PSU status inmates.

(a) SHU/PSU Status Reviews. Except as otherwise provided, inmates on Administrative SHU status, shall be reviewed by the ICC no less frequently than every 180 days for release consideration to a GP with referral to the DRB on an annual basis. Inmates on Determinate SHU status shall be reviewed by the ICC no less frequently than every 180 days following their initial SHU annual review for release consideration to a GP. The ICC review shall include, but not be limited to, the availability of alternative housing, demonstrated evidence of behavioral change and expressed willingness to conform to CDCR rules in accordance with California Code of Regulations, Division 3, Title 15. A validated STG affiliate assigned to a security housing unit to participate in the Step Down Program (SDP) shall be reviewed by a classification committee on a schedule that is consistent with section 3378.3(b)(1) through 3378.3(b)(3) for consideration of program participation or movement to the next step of the SDP.

(1) Any inmate expected to be retained on SHU status beyond 360 days shall be provided a CDC Form 114-D documenting the SHU annual review, which shall be issued in accordance with section 3338(a)(1)-(3), 3338(b) and 3338(c), prior to the inmate's SHU annual review.

(2) An inmate shall not be retained on SHU status beyond the expiration of a determinate term or beyond 360 days with an unexpired MERD, unless the ICC has determined that continuance in the SHU is required.

(3) Administrative SHU inmates shall require referral to the DRB for annual assessment of the inmate's case factors and disciplinary behavior. The DRB shall articulate the basis for the need to continue to retain the inmate on Administrative SHU status in accordance with section 3341.3(c).

(4) A validated STG affiliate who is requesting to debrief from his STG shall be considered for release from a SHU, as follows:

(A) If serving an administrative SHU term and DRB did not maintain transfer control, shall be referred to ICC for transfer consideration to the Debrief Processing Unit (DPU) in accordance with section 3378.5.

(B) If serving an administrative SHU term and DRB maintained transfer control, the inmate shall be referred to DRB for transfer consideration to the Debrief Processing Unit (DPU) in accordance with section 3378.5.

(C) If serving a determinate SHU term, the inmate will be retained in SHU. The debrief process will continue and upon resolution of the determinate SHU term, the inmate will be considered for transfer to the DPU in accordance with section 3378.5.

(D) If currently assigned to the SHU SDP, shall be referred to ICC for transfer consideration to the DPU in accordance with 3378.5.

(5) A validated STG affiliate shall be released from SHU upon successful completion of Steps 1 through 4 of the SHU SDP, pursuant to section 3378.3. Inmates shall be transferred to the general population and be housed in a facility consistent with his or her case factors and placement score.

(6) A validated STG affiliate who has not successfully completed Steps 1 through 4 of the SHU SDP shall be transferred to the RCGP pursuant to section 3378.3.

(7) A validated STG affiliate who has been found guilty of: three serious STG related; or five administrative STG related; or a total of five serious and administrative STG related rules violation reports shall be transferred to the RCGP pursuant to section 3378.4.

Subsection 3341.8(b) is amended to read:

(b) Pre-MERD Hearing. A Pre-MERD hearing shall be held by ICC 120 days prior to the expiration of the controlling MERD. The ICC review shall include, but not be limited to, the availability of alternative housing, demonstrated evidence of behavioral change and expressed willingness to conform to CDCR rules, as well as determination of the housing and program assignment following completion of the SHU term, or sooner, if appropriate. If the MERD was associated with a SHU term that had a STG nexus and the inmate is validated, the ICC shall consider transferring the inmate to the SHU SDP at the completion of the controlling MERD.

Subsections 3341.8(b)(1) through 3341.8(b)(2) remain unchanged.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 2933.6, 5054 and 5068, Penal Code; *Sandin v. Connor*(1995) 515 U.S. 472; *Madrid v. Gomez* (N.D. Cal. 1995) 889 F.Supp. 1146; *Toussaint v. McCarthy* (9th Cir. 1990) 926 F.2d 800; *Toussaint v. Yockey* (9th Cir. 1984) 722 F.2d 1490; *Castillo v. Alameida, et al.*, (N.D. Cal., No.C94-2847); *Coleman v. Wilson* 912 F. Supp. 1282 (E.D. Cal. 1995); and *Clark v. California* 123 F. 3d 1267 (9th Cir. 1997).

3341.9. Security Housing Unit Term Calculation and Assessment.

Subsections 3341.9(a) through 3341.9(d) remain unchanged. Subsection 3341.9(d)(1) is added and subsection (e) is amended to read:

(1) CSR review and approval is required for SHU terms with an established STG nexus, as described in section 3378.4(a).

(e) SHU Term Assessment Chart (Calculating determinate confinement to SHU).

Offense	TYPICAL TERM		
	Low	Expected	High
(1) Homicide:			
(A) Murder, attempted murder, solicitation of murder, or voluntary	36	48	60

manslaughter of a non-inmate.			
(B) Murder, attempted murder, solicitation of murder, or voluntary manslaughter of an inmate.	24	36	48
(2) Violence Against Persons:			
(A) Battery on a non-inmate with a weapon capable of causing serious or mortal injury; caustic substance or other fluids capable of causing serious or mortal injury; or physical force causing serious injury.	18	30	42
(B) Assault on a non-inmate with a weapon, capable of causing serious or mortal injury; caustic substance or other fluids capable of causing serious or mortal injury.	9	15	21
(C) Rape, sodomy, or oral copulation on a non-inmate, or any attempt.	18	30	42
(D) Battery on an inmate with a weapon capable of causing serious or mortal injury; caustic substance or other fluids capable of causing serious or mortal injury or physical force causing serious injury.	12	18	24
(E) Assault on an inmate with a weapon capable of causing serious or mortal injury; caustic substance or other fluids capable of causing serious or mortal injury.	6	9	12
(F) Rape, sodomy, or oral copulation of an inmate accomplished against the inmate's will, or any attempt.	12	18	24
(G) Battery on a non-inmate without serious injury.	6	12	18
(H) Assault on a non-inmate.	3	6	9
(I) Battery on an inmate without serious injury. (2 or more offenses within a 12 month period or 1 with direct STG nexus)	2	4	6
(3) Threat to Kill or Assault Persons:			
(A) To take or use a non-inmate as a hostage.	18	30	42
(B) Threat of violence to non-inmate.	2	5	8
(4) Possession of a Weapon:			

(A) Possession of a firearm or possession or manufacturing of an explosive device.	18	30	42
(B) Possession or manufacture/manufacturing of a Weapon including materials altered from their original manufactured state or purpose and which can be made into a weapon-other than a firearm or explosive device and which has been manufactured or modified so as to have the obvious intent or capability of inflicting serious injury, and which is under the immediate or identifiable control of the inmate.	4	8	12
(5) Distribution of Controlled Substances as defined in Section 3000.	6	12	18
(6) Escape:			
(A) With force or attempted escape with force against a person.	12	24	36
(B) Or attempted escape from any departmental prison or institution other than a camp, MSF, or reentry facility.	6	12	18
(7) Disturbance , Riot, or Strike:			
(A) Leading a disturbance, riot, or strike	6	12	18
(B) Active participation in a disturbance, riot, or Strike (2 or more offenses within a 12 month period or 1 with direct STG nexus).	3	6	9
(C) Inciting conditions likely to threaten institutional security	3	6	9
(8) Harassment: a willful course of conduct that terrorizes a specific person, group, or entity either directly or indirectly	6	12	18
(9) STG Disruptive Behavior:			
(A) Acting in a leadership role by directing or controlling STG behavior that is a behavior listed in this SHU Assessment Chart	6	12	18

(B) Recruiting inmates to become an STG affiliate or to take part in STG activities that is a behavior listed in this SHU Assessment Chart.	<u>3</u>	<u>6</u>	<u>9</u>
(C) Acting in a leadership role to generate, move, or facilitate assets or proceeds as a result of or in support of prohibited STG business dealings	<u>3</u>	<u>6</u>	<u>9</u>
(10) Theft or destruction of State property by any means where the loss or potential loss exceeds \$10,000 or threatens the safety of others.	2	8	12
(11) Extortion or Bribery:			
(A) Extortion or bribery of a non-inmate.	4	8	12
(B) Extortion or bribery of an inmate.	2	3	4
(12) Sexual Misconduct:			
(A) Indecent Exposure	3	6	9
(B) Sexual Disorderly conduct (two or more offenses within a twelve month period).	3	6	9
(13) Except as otherwise specified in this section or identified as an assault, proven attempts to commit any of the above listed offenses shall receive one-half (1/2) of the term specified for that offense.			
(14) Any inmate who conspires to commit or solicits another person to commit any of the offenses above shall receive the term specified for that offense.			

Subsections 3341.9(f) through 3341.9(f)(3) remain unchanged.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 2933.6, 5054 and 5068, Penal Code; *Sandin v. Connor*(1995) 515 U.S. 472; *Madrid v. Gomez* (N.D. Cal. 1995) 889 F.Supp. 1146; *Toussaint v. McCarthy* (9th Cir. 1990) 926 F.2d 800; *Toussaint v. Yockey* (9th Cir. 1984) 722 F.2d 1490; *Castillo v. Alameida, et al.*, (N.D. Cal., No.C94-2847); *Coleman v. Wilson* 912 F. Supp. 1282 (E.D. Cal. 1995); and *Clark v. California* 123 F. 3d 1267 (9th Cir. 1997).

3375. Classification Process.

Subsections 3375(a) through 3375(f)(7) remain unchanged.

Subsection 3375(g) is amended to read:

(g) Every decision of a classification committee shall be documented on a CDC Form 128-G, Classification Chrono (Rev. 10/89).

Subsections 3375(g)(1) through 3375(l) remain unchanged.

Note: Authority cited: Sections 5058 and 5058.3, Penal Code. Reference: Sections 1203.8, 3020, 5054, 5068 and 11191, Penal Code; Sections 8550 and 8567, Government Code; and Governor's Prison Overcrowding State of Emergency Proclamation dated October 4, 2006; *Wright v. Enomoto* (1976) 462 F.Supp. 397; *Stoneham v. Rushen* (1984) 156 Cal.App.3d 302; and *Castillo v. Alameida, et al.*, (N.D. Cal., No. C94-2847).

3375.1. Inmate Placement.

Subsections 3375.1(a) through 3375.1(a)(4)(A)2.(vi) remain unchanged.

Subsection 3375.1(a)(4)(A)3. is amended to read:

3. Inmates released from SHU or a Psychiatric Services Unit (PSU) after serving an Administrative SHU Term shall be reviewed by DRB, in accordance with Section 3376.1(d) for appropriate housing.

Subsections 3375.1(a)(4)(A)4. through 3375.1(b)(2) remain unchanged.

Note: Authority cited: Sections 5058 and 5058.3, Penal Code. Reference: Sections 3020, 5054 and 5068, Penal Code; *Wright v. Enomoto* (1976) 462 F Supp. 397; and *Stoneham v. Rushen* (1984) 156 Cal. App. 3d 302.

3375.2. Administrative Determinants.

Subsections 3375.2(a) through 3375.2(b)(10) remain unchanged. Subsection 3375.2(b) is shown to provide context.

(b) The following three-letter codes are used to indicate those administrative or irregular placement conditions known as administrative determinants, which may be imposed by Departmental officials to override the placement of an inmate at a facility according to his/her placement score.

Subsections 3375.2(b)(11) through 3375.2(b)(30) are amended to read:

(11) HOL. Hold, warrant or detainer is likely to be exercised.

- (12) LIF. Inmate is serving a life sentence and requires placement in a facility with a security level higher than that indicated by his/her placement score.
- (13) MED. Inmate's medical condition requires treatment or continuing medical attention not available at all facilities.
- (14) OUT. Inmate requires placement at a specific facility for an out-to-court appearance. This factor shall also be used when a releasing authority appearance is nearing.
- (15) POP. Shall be used only by a CSR to indicate that no beds presently exist at a facility with a security level that is consistent with the inmate's placement score.
- (16) PRE. The short time remaining to serve limits or otherwise influences placement or program options for the inmate.
- (17) PSY. Inmate's psychological condition requires special treatment or may severely limit placement options. This factor shall also be used for those inmates who are designated as Category B.
- (18) PUB. Shall be used only by a CSR to indicate an inmate is identified as a Public Interest Case as defined in section 3000.
- (19) REN. Inmate is currently endorsed to or requires transfer to a Reentry Hub program and a Reentry Hub program is not available at a facility with a security level which is consistent with the inmate's placement score.
- (20) SCH. Inmate is involved in an academic program which is not available at a facility with a security level that is consistent with his/her placement score.
- (21) SDP. Step Down Program. Shall be used to identify an inmate who is currently assigned to the Security Threat Group (STG) Step Down Program (SDP) or who has been assigned in the SDP in the past. This designation shall be assigned upon the inmate's assignment to the SDP and shall be retained upon his transition to general population housing after completion of the SDP. This designation will remain assigned while the validation remains current.
- (22) SEC. Shall be used only by a CSR to indicate that the inmate has been designated as a Security Concern by an ICC and requires Close Custody.
- (23) SEX. Inmate has a prior incidence of rape, oral copulation, sodomy, or a lewd and lascivious act which requires restricted custody or placement.
- (24) SOR. Inmate's bisexual or homosexual orientation may require special placement.
- (25) ST1. Security Threat Group-I. Documentation establishes that the inmate's STG-I designation may require special attention or placement consideration, while the validation remains current.
- (26) ST2. Security Threat Group-II. Documentation establishes that the inmate's STG-II designation may require special attention or placement consideration, while the validation remains current.
- (27) TIM. Inmate's time to serve is long, requiring placement at a facility with a security level higher than that which is consistent with his/her placement score.
- (28) VIO. Inmate has a current or prior conviction for a violent felony, or a sustained juvenile adjudication including, but not limited to, those listed under Penal Code section 667.5(c), a felony conviction or equivalent finding for Penal Code section 192(b), a felony or misdemeanor conviction or equivalent finding for Penal Code section 422 or 646.9, or a guilty finding for Division A-1 or A-2 RVR offense that is the equivalent of a Penal Code section 667.5(c) offense which occurred on or after February 20, 2017,

which, as determined by the CSR, requires placement in a facility with a higher security level than that indicated by his/her placement score. For the purpose of this subsection, an equivalent finding means any finding specified within subsections 3375.2(b)(298)(A) through 3375.2(b)(298)(C). For the purpose of this subsection, a case-by-case review for VIO means a classification committee action in which the committee conducting the review examines the totality of the inmate's case factors including, but not limited to: the circumstances of the offense, extent of injury to the victim(s), rationale for committing the offense, criminal intent versus neglect, history of committing similar acts, and the safety of the public, staff, and other inmates.

(A) For the purposes of this subdivision, a "sustained juvenile adjudication" means a guilty determination or ruling rendered in a juvenile judicial proceeding.

(B) The following administrative determinations regarding allegations of violent acts, including but not limited to those offenses described in Penal Code Section 667.5(c), shall have the same force and effect as a current or prior conviction for a violent felony or a sustained juvenile adjudication:

1. Board of Parole Hearings or Parole Hearings Division good cause finding or probable cause finding, or;
2. California Youth Authority/Division of Juvenile Justice/Youth Offender Parole Board sustained allegation.

(C) A probation or Post-Release Community Supervision violation finding in a court of law involving, but not limited to those offenses described in Penal Code Section 667.5(c), shall have the same force and effect as a current or prior conviction in a court of law for a violent felony.

(D) A VIO administrative determinant shall be applied automatically for an inmate with a current or prior conviction or finding as described within subsection 3375.2(b)(298) including 3375.2(b)(298)(A)-(C) for a Penal Code section 667.5(c) offense or an equivalent conviction from another jurisdiction, unless expressly identified as requiring case-by-case review as directed within subsections 3375.2(b)(298)(F)-(I).

(E) A case-by-case review for a VIO administrative determinant as directed within subsection 3375.2(b)(298)(F)-(I) is not required when an inmate already has or will have an administrative determinant imposed which will permanently preclude minimum custody. Note: MED and PSY administrative determinants are not permanent exclusionary case factors.

(F) A classification committee shall conduct a case-by-case review to consider application of a VIO administrative determinant for felony convictions, to include enhancements, stayed enhancements, or one of the findings described within subsection 3375.2(b)(298) and 3375.2(b)(298)(A)-(C) for a Penal Code section 667.5(c) offense or an equivalent offense from another jurisdiction listed here: PC Section(s) 211, 211 with PC Section 12022(b), PC Section 212, 212.5, 212.5 with PC Section 12022(b), 213, 214, 215, 215(a) with PC Section 12022(b), 459 wherein it is charged and proved that another person, other than an accomplice, was present in the residence during the commission of the burglary, 460(a) wherein it is charged and proved that another person, other than an accomplice, was present in the residence during the commission of the burglary, 518 with PC Section 186.22, 519 with PC Section 186.22, 520 with PC Section 186.22, 12022.3(a), 12022.5, 12022.53, 12022.55, 12022.7, 12022.8, and 12022.9.

(G) A classification committee shall conduct a case-by-case review to consider application of a VIO administrative determinant for a felony conviction, to include stayed counts, or one of the other findings described within subsection 3375.2(b)(298)(A)-(C) for PC 192(b).

(H) A classification committee shall conduct a case-by-case review to consider application of a VIO administrative determinant for the following felony or misdemeanor convictions, to included stayed counts, or one of the other findings described within subsection 3375.2(b)(298)(A)-(C) for PC 422 and PC 646.9.

(I) A classification committee shall conduct a case-by-case review to consider application of a VIO administrative determinant for guilty findings of Division "A-1" and "A-2" offenses that are equivalent to PC Section 667.5(c) offenses or enhancements.

(J) An inmate who has a VIO administrative determinant imposed currently or who is determined to require review for consideration of a VIO administrative determinant pursuant to subsection 3375.2(b)(298) shall be eligible for consideration of removal of an existing VIO during the annual classification review consistent with subsection 3376(d)(2)(A) or to not have a VIO imposed initially where the following criteria is satisfied:

1. Life term inmates must be eligible for consideration of placement in a secure level I facility as required by subsection 3375.2(a)(10) or placement in a non-secure facility pursuant to the exceptions noted in subsection 3375.2(a)(8) and meet the additional criteria noted within subsections 3375.2(b)(298)(J)3. through 8.

2. An inmate serving a determinate term must be within five years of their Earliest Possible Release Date (EPRD) at the time of the review for removal of the VIO administrative determinant or the review to determine whether the VIO administrative determinant is or is not required.

3. A VIO administrative determinant must be the only criteria preventing placement in a secure level I facility and/or the assignment of Minimum Custody at the time of the review by the classification committee.

4. A minimum of seven years must have elapsed since the last violent offense which would require automatic application of the VIO administrative determinant or a case-by-case review pursuant to subsection 3375.2(b)(298)(D) and (F)-(I).

5. The classification committee conducting the review shall consider each of the following criteria and thoroughly summarize and document the committee's reason for its decision to remove, impose, or not impose the VIO administrative determinant within the Classification Chrono consistent with subsection 3375(g).

a. Circumstances of the violent offense(s) in question;

b. Positive in-custody behavior;

c. Negative in-custody behavior; and

d. Inmate's threat to the safety of public, staff, and inmates based upon the totality of the inmate's case factors.

6. Pursuant to subsection 3375.2(b)(298)(J), a classification committee shall review all cases meeting the criteria for removal of an existing VIO or an initial determination to not impose a VIO, where a VIO would have been applied on a case-by-case basis pursuant to subsection 3375.2(b)(298).

7. When a classification committee recommends to remove a VIO, the classification committee shall refer the case to the CSR for review and approval of the removal of the VIO, pursuant to subsection 3375.2(b)(298).

8. When a classification committee recommends VIO removal by the CSR, the classification committee shall also review the inmate's case for appropriate housing, based upon the totality of the inmate's case factors, in accordance with Article 10, Classification.

(29) VOC. Inmate is involved in a Career Technical Education program, also referred to as a vocational program, which is not available at a facility with a security level which is consistent with the inmate's placement score.

(30) WOR. Inmate has a work skill in a critical trade which warrants special placement consideration.

Note: Authority cited: Sections 5058 and 5058.3, Penal Code. Reference: Sections 3450, 5054 and 5068, Penal Code; *Sandin v. Connor* (1995) 515 U.S. 472; *Madrid v. Gomez* (N.D. Cal. 1995) 889 F.Supp. 1146; *Wright v. Enomoto* (N.D. Cal. 1976) 462 F. Supp. 397; and *Stoneham v. Rushen* (1984) 156 Cal. App. 3d 302.

3376. Classification Committees.

Subsections 3376(a) through Subsection 3376(c)(4)(A) remain unchanged.

Subsection 3376(c)(4)(B) is amended to read:

(B) Correctional Counselor II or alternate (Recorder).

Subsections 3376(c)(4)(C) through 3376(d)(2)(D) remain unchanged. Subsection 3376(d)(2) is shown to provide context.

(2) Unit Classification Committees shall:

Subsection 3376(d)(2)(E) is added to read:

(E) Review confidential information to ensure the standards for confidential information have been met, in accordance with section 3321.

Subsections 3376(d)(3) through 3376(d)(3)(D) remain unchanged. Subsection 3376(d)(3) through 3376(d)(3)(D) are shown to provide context.

(3) Institution and Facility Classification Committees shall:

(D) Make referrals and recommendations through the chief, classification services, for cases requiring Departmental Review Board (DRB) decisions.

Subsections 3376(d)(3)(D)1. through 3376(d)(3)(D)4. are added to read:

1. Any offender who is denied housing in a General Population (GP) setting based on possible safety concerns shall have an investigation into the inmate's safety concerns completed by designated staff. All confidential information referenced in the safety investigation shall be disclosed to the offender utilizing Confidential Information Disclosure Form(s) in accordance with section 3321.

2. Offenders shall be given at least 72-hours advance notice of the safety concern interview. The inmate shall be provided with disclosures of confidential information, and/or copies of non-confidential documents at least 72-hours prior to an interview with

the inmate. The interview with the Investigator may be held earlier if the offender waives, in writing, the 72-hour preparation period.

3. During the face to face interview with the investigator, the subject will be given a meaningful opportunity to be heard in regard to the information used in the validation of safety concerns. The inmate will be assigned a Staff Assistant when warranted and effective communication will be addressed. The inmate will be allowed the opportunity to refute any information, provide clarification, or provide additional information as to why the disclosed information may no longer be accurate.

4. Upon conclusion of the investigation, the safety concern evaluation shall be forwarded to classification staff for an ICC hearing. If applicable, the investigator's safety closure report must identify the information used as evidence to support that the prior conflict(s) included in the safety investigation no longer pose a threat to the inmate.

Subsection 3376(d)(3)(E) remains unchanged.

Subsections 3376(d)(3)(F) through 3376(d)(5)(E) are amended to read:

(F) Review confidential information to ensure the standards for confidential information have been met, in accordance with section 3321.

(G) For validated Security Threat Group (STG) cases:

1. Review the Validation Package and the CDC Form 128-G, Classification Chrono (Rev. 10/89), which is incorporated by reference.

2. Determine a validated STG inmate's housing and program needs. If the inmate meets the criteria for placement in the SHU Step Down Program (SDP), in accordance with CCR sections 3378.2 or 3378.4, ICC maintains discretion in evaluating an affiliate's overall disciplinary record and case factors in determining placement in the Step Down Program (SDP) or continued management within a general population setting in accordance with Section 3378.4(c).

(H) Evaluate the need for placement in the SDP when the Minimum Eligible Release Date (MERD) was associated with a Security Housing Unit (SHU) term that is STG related and the inmate is validated.

(I) Refer the case to the DRB, upon completion of a determinate SHU term when ICC determines that overwhelming evidence exists supporting an immediate threat to the security of the institution or the safety of others.

(J) Refer the case to the DRB, when an inmate with a substantial disciplinary history consisting of no less than three SHU terms within the past five years, substantial justification exists for the need for continued SHU placement due to the inmate's ongoing threat to safety and security of the institution and/or others, and the inmate cannot be housed in less restrictive housing.

(4) Camp classification committees shall perform all functions designated above for unit and initial classification committees.

(5) STG Unit Classification Committee shall:

(A) Review all STG validation packages for accuracy, compliance, and to ensure due process requirements have been met.

(B) Review Dropout status affiliate's new disciplinary behavior for documented nexus to STG behavior as noted in the RVR, or other source items of intelligence.

(C) Review information or intelligence received from outside law enforcement agencies to ensure formal documentation is completed and/or the disciplinary process is initiated, when appropriate.

(D) Refer validated STG cases to ICC for placement consideration in the Step Down Program when placement criteria is met.

(E) Review confidential information to ensure the standards for confidential information have been met, in accordance with section 3321.

Note: Authority cited: Sections 3303 and 3309, Welfare and Institutions Code; and Sections 5058 and 6252, Penal Code. Reference: Sections 2933, 5054 and 5068, Penal Code.

3376.1. Departmental Review Board

Subsections 3376.1 Presentence through 3376.1(d)(7) remain unchanged. Subsection 3376.1(d) is shown to provide context.

(d) Referrals shall be made to the DRB when:

Subsections 3376.1(d)(8) through 3376.1(i) are amended to read:

(8) An institution head determines there is a substantial threat to the inmate's personal safety, should he/she be released to the general population.

(A) Any offender who is denied housing in a General Population (GP) setting based on possible safety concerns shall have an investigation into the inmate's safety concerns completed by designated institution staff.

(B) Upon conclusion of the investigation, the safety concern evaluation shall be reviewed by ICC and referred to the DRB in accordance with section 3376(d)(3)(D)1.

(9) An institution head determines there continues to be a demonstrated threat to the inmate's personal safety and the inmate has been housed in Restricted Custody General Population (RCGP) based upon these safety concerns for a two-year period. Additional DRB review for safety concerns shall occur every two years from initial placement date.

(A) If the DRB determines that there is a substantial threat to the inmate's personal safety should they be released to the GP as determined by a preponderance of the evidence, the DRB retains the discretion, in accordance with existing authority to house that inmate in alternate appropriate non-SHU, non-Administrative segregation housing commensurate with his case factors, such as alternate general population housing or RCGP. The DRB shall articulate substantial justification for the need for alternative placement.

(9)10 An institution head determines upon completion of a determinate SHU term, that overwhelming evidence exists supporting an immediate threat to the security of the institution or the safety of others.

(4)11 An institution head determines an inmate has a substantial disciplinary history, consisting of no less than three SHU terms within the past five years and cannot be housed in a less restrictive environment.

- (e) The DRB retains discretion in determining appropriate housing for inmates against whom there is a substantial threat to the inmate's personal safety, should they be released to general population housing, where the DRB determines a preponderance of evidence exists to require placement in alternate appropriate non-SHU, non-ASU housing commensurate with the inmate's current case factors.
- (f) The DRB may retain an inmate in the SHU on Administrative SHU status if they have determined that case factors are such that overwhelming evidence exists supporting an immediate threat to the security of the institution or the safety of others, and substantial justification has been articulated of the need for SHU placement.
- (g) An annual assessment of the inmate's case factors and disciplinary behavior associated with the current Administrative SHU status is mandated.
- (h) Decisions of the DRB shall be in writing and implemented within 30 calendar days after the decision is made.
- (i) An inmate may appeal an ICC decision to the DRB when ICC determines placement in a Restricted Custody General Population (RCGP) facility is appropriate based on the inmate being found guilty of: three serious STG related; or five administrative STG related; or a total of five serious and administrative STG related rules violation reports while housed in the SHU SDP. The DRB will review the inmate's disciplinary history and determine whether removal from the SHU SDP and transfer to the RCGP was appropriate. A hearing before the DRB is not required for a determination on such an appeal.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 5054, 5068 and 11191, Penal Code; Sections 8550 and 8567, Government Code; Governor's Prison Overcrowding State of Emergency Proclamation dated October 4, 2006; *Sandin v. Connor* (1995) 515 U.S. 472; and *Madrid v. Gomez* (N.D. Cal. 1995) 889 F.Supp. 1146.

3378. Security Threat Group Identification, Prevention, and Management.

Subsections 3378(a) through 3378(b)(3) remain unchanged.

Subsection 3378(c) and (d) are amended to read:

- (c) STG related allegations shall be investigated by a STG coordinator/investigator or their designee.
- (d) The terms STG nexus and STG related are used synonymously in this section.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 5054 and 5068, Penal Code; *Sandin v. Connor* (1995) 515 U.S. 472; *Madrid v. Gomez* (N.D. Cal. 1995) 889 F.Supp. 1146; *Toussaint v. McCarthy* (9th Cir. 1990) 926 F.2d 800; *Toussaint v. Yockey* (9th Cir. 1984) 722 F.2d 1490; and *Castillo v. Alameida, et al.* (N.D. Cal., No. C94-2847).

3378.1. Security Threat Group Certification Process.

Subsections 3378.1 Presentence through 3378.1(c) remain unchanged.

Subsection 3378.1(c) is shown to provide context.

Subsections 3378.1(c)(1) through 3378.1(c)(2) are amended to read:

(c) Security Threat Group Designation Levels.

(1) Security Threat Group-I consists of groups, gangs, and/or historically based prison gangs that the CDCR has determined to be the most severe threat to the security of the institutions and communities based on a history and propensity for violence and/or influence over other groups.

(2) Security Threat Group-II consists of other groups or gangs such as street gangs or disruptive groups comprised of members and associates who may be determined to be in a subservient role to the more dominant STG-I groups. Groups identified as STG-II are not required to be certified, as described in this section.

Subsections 3378.1(d) through 3378.1(d)(3)(B) remain unchanged.

Subsection 3378.1(d)(3)(C) is amended to read:

(C) OCS shall document the results of the re-certification review on a STG Administrative Directive and route to the Secretary, CDCR, and shall request either re-certification or decertification, based upon the level of threat and STG behavior noted from the group during the previous four years.

Subsection 3378.1(e) remains unchanged. Subsection 3378.1(e) is shown to provide context.

Subsection 3378.1(e)(1) is amended is read:

(e) Requests for Recognition of a Group at the STG-II level shall include the following:

(1) Institution Staff or Division Staff shall prepare a CDCR Form 128-B8, Security Threat Group Certification Worksheet (10/17), which is incorporated by reference requesting that a STG Threat Assessment be initiated of the identified group. The CDCR Form 128-B8 shall be routed through the chain of command prior to submission to OCS.

Subsections 3378.1(e)(2) through 3378.1(f)(4) remain unchanged.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 5054 and 5068, Penal Code.

3378.2. Security Threat Group Validation Process.

Subsections 3378.2 Presentence through 3378.2(a) remain unchanged.

Subsection 3378.2(b) is amended to read:

(b) The validation process delineates the formal objective criteria utilized by an STG Investigator to determine an individual's affiliation with a certified or recognized STG. Each factor is determined by a weighted point system in order to conclude whether the information taken as a whole is sufficient to establish a nexus to the STG.

Validation process for identifying and documenting STG members, associates, or suspects, which are defined as follows:

Member: 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.

Initial Validation of an offender as a member requires at least three (3) independent source criteria items with a combined value of 10 points or greater coupled with information/behavior indicative of a member.

Validation of an offender as a member of a STG-I shall also require that at least one of the criteria source items be a direct link to a current or former validated member or associate of the STG, or to an offender or any person who is validated by the Department within six months of the established or estimated date of behavior identified in the evidence considered.

An upgrade from associate to member requires at least three (3) independent source criteria items, that were not previously used in a validation, with a combined value of 10 points or greater coupled with at least three (3) of the items of information/behavior being indicative of a member.

Associate: Any offender or any person who, based on documented evidence, is involved periodically or regularly with the members or associates of a STG. STG associates will be identified by the STG Investigator through the validation process, reviewed by OCS, and affirmed by the STG Unit Classification Committee. Initial validation of an offender as an associate requires at least three independent source criteria items with a combined value of 10 points or greater coupled with information/behavior indicative of an associate.

Validation of an offender as an associate of a STG-I shall also require that at least one source criteria item be a direct link to a current or former validated member or associate of the STG, or to an offender or any person who is validated by the Department within six months of the established or estimated date of behavior identified in the evidence considered.

Suspect: Any offender or any person who, based on documented evidence, is involved periodically or regularly with the members or associates of a STG. The STG suspect is tracked by STG Investigative staff pending validation. Suspects have attained two or more points of validation and would not be officially validated but tracked for intelligence purposes. Source item information must be referred to the STG Investigator for evaluation and recorded on the CDCR Form 128-B3 (11/13), Security Threat Group Identification Score Sheet, which is incorporated by reference.

A direct link, as defined in Section 3000, may be established by unilateral action by either party or by the subject's possession of any item connecting the subject to a validated STG affiliate; or for purposes of establishing a direct link, it shall not be necessary for CDCR to demonstrate that the subject had knowledge, actual or implied, of the validated STG affiliate's STG involvement.

CDCR staff shall not place inmates into a Security Housing Unit (SHU), Administrative Segregation Unit (ASU), or the SDP solely on the basis of their validation status.

Although placement into the SHU/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. If behavior is identified which violates section 3314 or 3315, it is staff's responsibility to ensure appropriate disciplinary procedures are applied. The determination for placement into the SHU/SDP by an Institution Classification Committee (ICC) must be based upon SHU eligible STG related behavior, except as provided in section 3378.2(e), upon expiration of the inmate's controlling projected/assessed SHU term consistent with section 3341.8(b) or 3378.4(b)(1), and has been adjudicated through the inmate disciplinary process.

Validation Source Criteria is documented on the CDCR Form 128-B3 (11/13), Security Threat Group Identification Score Sheet, which is incorporated by reference. This document is completed by the STG Investigator.

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.

Staff shall articulate the basis for determining the content or conduct at issue is STG related.

The source items shall be based on the following criteria:

Subsections 3378.2(b)(1) through 3378.2(b)(4) remain unchanged.

Subsection 3378.2(b)(5) is amended to read:

(5) Written Materials (Offender identified in written material not in his possession-Two Points; Personal Possession-Four Points): Any material or documents evidencing STG behavior such as the membership or enemy lists, roll call lists, constitutions, organizational structures, codes, training material, etc., of specific STGs or addresses, names, identities of validated STG affiliates. Although the item by itself may not evidence STG behavior, when considered with other STG behavior, it gives credence to a STG nexus. Staff shall articulate why, based on either the explicit or coded content, the written material is reliable evidence of affiliation 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.

Subsection 3378.2(b)(6) remains unchanged.

Subsection 3378.2(b)(7) is amended to read:

(7) Staff Information (Four Points): Documentation of staff's visual or audible observations which reasonably indicate STG behavior as described in Subsections 3314 (a)(3)(L) and (M), Administrative Rules Violations, STG Contraband and Behavior; or Subsections 3315 (a)(3)(Z) and (AA), Serious Rules Violations, STG Violent, Disruptive, or Controlling Behavior. Staff shall articulate the basis for determining the content or conduct at issue is STG related. 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.

Subsections 3378.2(b)(8) through 3378.2(c) remain unchanged.

Subsection 3378.2(c)(1) is amended to read:

(1) All source criteria items referenced in the validation package shall be disclosed to the offender utilizing a CDCR Form 128-B4 (Rev. 10/17), Evidence Disclosure and

Interview Notification, which is incorporated by reference. Staff shall identify which of the source items are being utilized as the direct link on the CDCR Form 128-B4. The identity of the individual being used as a direct link shall be disclosed unless it compromises the individual's safety or the safety of others. The offender shall be given copies of all non-confidential documents unless otherwise requested in writing by the offender. Confidential information used in the validation package shall be disclosed to the offender via a CDCR Form 1030 (Rev. 11/13), Confidential Information Disclosure Form, which is incorporated by reference.

Subsections 3378.2(c)(2) through 3378.2(c)(4) remain unchanged.

Subsections 3378.2(c)(5) through 3378.2(c)(7) are amended to read:

(5) 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 (10/17), Security Threat Group 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.

(6) The CDCR Form 128-B5 shall be submitted with the validation package to OCS for a recommendation to affirm or reject the validation.

(7) The recommendation for validation or rejection of evidence relied upon shall be documented on a CDCR Form 128-B2 (Rev. 06/14), Security Threat Group Validation/Rejection Review, which is incorporated by reference, and be forwarded to the facility or parole region of origin for processing. If the inmate is currently housed in a CDCR institution, the CDCR Form 128-B2 will be reviewed by the STG Unit Classification Committee. Upon receipt of the CDCR Form 128-B2, the Classification and Parole Representative, or their designee, shall clearly note in some permanent manner upon the face of every document whether or not the item met validation requirements.

Subsection 3378.2(d) through 3378.2(e)(3) are amended to read:

(d) STG Unit Classification Committee. The STG Investigator via the assigned counselor shall schedule the offender for appearance before the STG Unit Classification Committee within 30 days of receipt of the CDCR Form 128-B2, in accordance with subsection 3376(d)(5).

An investigative employee shall be assigned by the STG Unit Classification Committee Chairperson to assist the inmate with preparation for the STG Unit Classification Committee. The duties and functions of a staff member assigned to assist an inmate in the hearing on a validation will be the same as described in Section 3340 for Assistance to Inmates for Administrative Segregation Classification Hearings. In screening prospective witnesses, the investigative employee will do so in accordance with the information to be considered in the classification hearing. The investigative employee is designated to gather information for the STG Unit Classification Committee Chairperson and will submit a written report to the Chairperson which may include witness statements and a summary of the information collected.

The STG Unit Classification Committee shall review the validation package noting the recommendations of OCS and make the final determination on acceptance of the validation package based on the totality of the information.

(1) The STG Unit Classification Committee shall ensure:

(A) Documents listed on the Security Threat Group Validation/Rejection Review (CDCR 128-B2) are correctly identified, dated, match the corresponding source item, and are present in the file. (I.e., Confidential memorandum, dated xx/xx/xxxx, authored by Officer X.)

(B) Source items and supporting documents must be stamped indicating the documents meet the criteria for prison gang/STG validation, or does not meet criteria.

(C) Any applicable Confidential Information Disclosure Forms were issued to the inmate and are present in the file.

(D) SHU eligible STG related behavior Rules Violation Report (RVR) includes:

1. Review of compliance with procedural safeguards, i.e. time constraints and assistance to the inmate, in accordance with existing policy and regulation.

2. The specific act charged includes an STG nexus and coincides with the description of the circumstances that describes the STG behavior for which the inmate was found guilty.

3. The evidence and/or circumstances support the finding of guilt.

4. The evidence used to establish the nexus to the STG behavior is supported and thoroughly documented by the Senior Hearing Officer.

5. The use of confidential information adheres to the standards for the consideration of and reliance upon in accordance with section 3321.

(E) CDCR Form 128-B3 (11/13), Security Threat Group Identification Score Sheet, CDCR Form 128-B4 (10/17), Evidence Disclosure and Interview Notification, and CDCR 128-B5 (10/17), Security Threat Group Validation Chrono with attached Inmate's Rebuttal are present in the file.

(F) All validation documents are accurate and complete, all non-confidential/confidential evidence was provided to the inmate by the STG investigator at least 72 hours prior to any validation review, determine correct validation designation and status, and appropriately document their decision on a CDC Form 128-G (10/89).

(G) Validated STG-I or STG-II cases are referred to a SHU CSR for audit and approval.

(2) SHU CSR shall audit all STG-I and STG-II validations for accuracy and compliance with departmental regulations, in accordance with subsection (d) above. The CSR will approve the requested actions or return the case for corrections, referral to the Chief Deputy Warden, or, defer the requested actions upon discovery of any due process violations. If the case is returned, the CSR shall articulate the required corrections.

(3) If the STG affiliate is validated as an STG-I Member or Associate, and has one SHU eligible, STG related RVR, within the previous two years, as listed in section 3378.4(a) STG Disciplinary Matrix and which is also identified in section 3341.9(e), SHU Term Assessment Chart, that is being used as a validation source item, the offender shall be referred to ICC by the STG Unit Classification Committee for program review and transfer consideration to Step 1 of the SDP in the SHU.

(4) If the STG affiliate is validated as an STG-II Member or Associate, and has two SHU eligible, STG related RVRs, within the previous four years, as listed in section 3378.4(a) STG Disciplinary Matrix and which are also identified in section 3341.9(e), SHU Term Assessment Chart, the offender shall be referred to ICC by the STG Unit Classification

Committee for program review and transfer consideration to Step 1 of the SDP in the SHU.

(e) Institution Classification Committee. If the ICC concurs with the validation, the inmate's housing needs will be as follows:

(1) STG-I Member or Associate.

(A) If the validation source items include SHU eligible STG related behavior as listed in section 3378.4(a) STG Disciplinary Matrix and which is also identified in section 3341.9(e), SHU Term Assessment Chart, requires referral to a SHU CSR for transfer consideration to Step 1 of the SDP at a SHU. Placement shall occur upon expiration/suspension of the inmate's controlling projected/assessed SHU term.

1. Audit/endorsement by a SHU CSR shall include review of the SHU eligible STG related RVR in the same manner described in subsection (d) above.

2. SHU CSR shall ensure the assessment of the SHU term is consistent with the charge and within departmental standards outlined in section 3341.9(e).

(B) If the inmate has been found to be accountable for SHU eligible STG related behavior, as listed in section 3378.4(a) STG Disciplinary Matrix and which is also identified in Section 3341.9(e), SHU Term Assessment Chart, which occurred since the date of the Validation Interview, this will require consideration of referral to a SHU CSR for transfer endorsement to Step 1 of the SDP at a SHU.

(C) If the validation source items do not meet the designated behavioral criteria for SDP placement, release to general population unless case factors have changed and the inmate requires further housing consideration.

(D) Although the inmate meets the criteria for placement in the SHU SDP, in accordance with CCR sections 3378.2 or 3378.4 ICC maintains discretion in evaluating an affiliate's overall disciplinary record and case factors in determining placement in the SDP or continued management within a general population setting. If ICC determines placement in the SDP is warranted, the offender shall be placed at the beginning of Step 1.

(2) STG-II Member or Associate.

(A) If the validation source items include two RVRs, both of which have occurred within four years of SHU eligible STG related behavior, as listed in section 3378.4(a) STG Disciplinary Matrix and which are also identified in Section 3341.9(e), SHU Term Assessment Chart, requires referral to a SHU CSR for transfer consideration to Step 1 of the SDP at a SHU. Placement shall occur upon expiration/suspension of the inmate's controlling projected/assessed SHU term.

1. Audit/endorsement by a SHU CSR shall include review of the SHU eligible STG related RVRs in the same manner described in subsection (d) above.

2. SHU CSR shall ensure the assessment of the SHU term(s) is consistent with the charges and within departmental standards outlined in section 3341.9(e).

(B) If the inmate has been found to be accountable for SHU eligible STG related behavior, as listed in section 3378.4(a) STG Disciplinary Matrix and which is also identified in Section 3341.9(e), SHU Term Assessment Chart, which occurred since the date of the Validation Interview, this will require consideration of referral to a SHU CSR for transfer endorsement to Step 1 of the SDP at a SHU.

(C) If the validation source items do not meet the designated behavioral criteria for SDP placement release to general population unless case factors have changed and the inmate requires further housing consideration.

(D) Although the inmate meets the criteria for placement in the SHU SDP, in accordance with CCR sections 3378.2 or 3378.4, ICC maintains discretion in evaluating an affiliate's overall disciplinary record and case factors in determining placement in the SDP or continued management within a general population setting. If ICC determines placement in the SDP is warranted, the offender shall be placed at the beginning of Step 1.

(3) The date of the ICC's imposition of SDP placement, shall establish the start date toward completion of Step 1 of the SDP at a SHU. Applicable privileges, in accordance with Section 3044(i) shall be initiated upon the inmate's arrival at the SHU facility. All time spent in the SHU following completion of the determinate SHU term prior to actual transfer into the SDP shall be credited as part of the inmate's SDP time.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 5054 and 5068, Penal Code; *Sandin v. Connor* (1995) 515 U.S. 472; *Madrid v. Gomez* (N.D. Cal. 1995) 889 F.Supp. 1146; *Toussaint v. McCarthy* (9th Cir. 1990) 926 F.2d 800; *Toussaint v. Yockey* (9th Cir. 1984) 722 F.2d 1490; and *Castillo v. Alameida, et al.* (N.D. Cal., No. C94-2847).

3378.3. Security Threat Group Step Down Program.

Subsections 3378.3 Presentence through 3378.3(b)(3) are added to read:

Participation in the SDP is based on the individual accountability of each inmate for proven STG behavior, and not solely on the inmate's validation status or level of STG affiliation.

(a) The SDP is an incentive based multi-step process for the management of STG affiliates. The SDP shall not exceed 24 months within the SHU; each step being 6 months in duration. The SDP is designed to assist validated STG affiliates with transition to a general population program setting.

(1) Validated affiliates in steps 1 through 3 shall be scheduled for appearance before the ICC at least every 180 days for assessment of case factors and program participation to ensure appropriate step placement within the SDP. Validated affiliates in step 4 shall be scheduled for appearance before the ICC at least every 90 days for assessment of case factors and program participation to ensure appropriate step placement within the SDP. Successful completion of each step will require program participation, compliance with program expectations, completion of all mandatory components/curriculum, and the inmate remaining free of STG related disciplinary behavior. Each program step provides progressive programs and privileges and it is the responsibility of the affiliate to demonstrate they can be released to a less restrictive environment while abstaining from STG behaviors.

(2) Validated STG affiliates who are assigned to and participating in the SDP shall be assigned to a work group as follows:

(A) Inmates placed in Step 1, through 4 shall be assigned work group (WG) D1.

(3) Privilege group will be assigned in accordance with section 3044(i).

(4) Upon successful completion of step 4, as determined by ICC and based on the individual affiliate's behavior, the offender shall be referred to the CSR for transfer endorsement based on the offender's case factors and placement score.

(5) Participation in the SDP is mandatory for any inmate placed into the program. Non-participation or lack of completion that is due to the unavailability or inaccessibility of programming components necessary for SDP completion shall not impede an inmate's progress to the next step and shall not be considered as a factor in ICC's decision to progress the inmate.

(6) 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 inform staff of the occurrence of past incidents, present, or future STG threats of violence or disruption may be evaluated to maintain institutional and public safety.

(7) The date of ICC's assignment to each step of the SDP shall establish the start date toward completion of the assigned step.

(b) An inmate's refusal to participate in or complete the required programming in the SDP shall not result in regression or retention in the program, but shall be addressed as follows:

(1) At the 180-day review conducted at the end of Step 3, if the committee determines that the inmate refused to participate in or has not completed all components of the SDP, ICC shall retain the non-participating inmate in Step 3 for an additional 6 months.

(2) If, during the additional 6 months in SHU SDP, the inmate participates in and completes all required programming (Steps 1 through 4), ICC shall release the inmate from the program and refer the case to the Classification Staff Representative (CSR) for transfer to appropriate general population housing commensurate with his case factors and placement score.

(3) If at the end of the additional 6 months, the inmate continues to refuse or does not complete all SDP components (Steps 1 through 4); the ICC shall remove the inmate from the program and transfer him to a Restricted Custody General Population (RCGP) facility. Pending transfer to the RCGP, the ICC shall establish the workgroup (WG) as A2 in accordance with section 3044(b)(3) upon transfer unless the inmate was previously deemed a program failure as defined in section 3000. The inmate shall be assigned to privilege group (PG) S3 or S4, respective to their assigned step.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 5054 and 5068, Penal Code.

3378.4. Security Threat Group Behavior or Activity.

Subsection 3378.4 through 3378.4(c)(3) is amended to read:

CDCR inmates shall not participate in STG related behavior. The STG Disciplinary Matrix displayed in section 3378.4(a) identifies behavior that could be documented as having a nexus to STGs.

(a) The STG Disciplinary Matrix.

The following behaviors qualify as STG behavior, when a nexus has been established between the behavior and an identified STG. The nexus shall be clearly articulated in the specific act, as well as clearly described within the narrative of the associated Rules Violation Report (RVR). The Senior Hearing Officer/Hearing Officer is required to clearly

articulate the nexus to the STG related behavior in the Fact Finding and Disposition. If the Specific Act Section of the RVR and subsequent Fact Findings and Disposition do not clearly identify a nexus to STG behavior, the disciplinary process will proceed in accordance with Sections 3314 or 3315. If behavior is identified which violates section 3314 or 3315, it is staff's responsibility to ensure appropriate disciplinary procedures are applied.

Behavior With Nexus to STG	Administrative or Serious
Section 1: a) Murder, attempted murder, solicitation of murder, or voluntary manslaughter of a non-offender or offender; b) Assault or battery capable of causing serious injury; assault or battery with a deadly weapon or caustic substance capable of causing serious injury, solicitation for offense; c) Taking a hostage; d) Possession of a firearm, explosive device, or weapon which has been manufactured or modified so as to have the obvious intent or capability of inflicting traumatic injury, and which is under the immediate or identifiable control of the offender; e) Escape or attempted escape with force or violence f) Rape, sodomy, or oral copulation against the victim's will.	Serious
Section 2: a) Introduction, trafficking, or distribution of any Controlled Substance (as defined in Section 3000); b) Arson involving damage to a structure or causing serious bodily injury. c) Possession of flammable, explosive, or combustible material with intent to burn any structure or property; d) Extortion or threat by means of force or violence, including requiring payment for protection/insurance or intimidating any person on behalf of the STG; e) Threatening to kill or cause serious bodily injury to a public official, their immediate family, their staff, or their staff's immediate family; f) Any other felony involving violence or injury to a victim and not specifically identified on this chart.	Serious
Section 3: a) Battery on a Peace Officer or non-offender not involving use of a weapon; b) Assault on a Peace Officer or non-offender by any means likely or not likely to cause great bodily injury; c) Assault or battery on a prisoner with no serious injury; d) Destruction of state property valued in excess of	Serious

<p>\$400 dollars during a riot or disturbance;</p> <p>e) Theft, embezzlement, arson, destruction, or damage to another's personal property, state funds, or state property valued in excess of \$400;</p> <p>f) Any felony not involving violence or the use of a weapon not listed in this schedule with a direct nexus to STG Behavior.</p>	
<p>Section 4:</p> <p>a) Bribery of a non-offender;</p> <p>b) Leading/Inciting a disturbance, riot, or strike;</p> <p>c) Participation in, or attempting to cause conditions likely to threaten institution security;</p> <p>d) Willfully resisting, delaying, or obstructing any peace officer in the performance of duties;</p> <p>e) Possession of cell phone or components;</p> <p>f) Acting in a leadership role displaying behavior to organize and control other offenders within the STG;</p>	Serious
<p>Section 5:</p> <p>a) Gambling;</p> <p>b) Tagging, or otherwise defacing state property valued at less than \$950, with symbols or slogans intended to promote affiliation with a STG.</p>	Serious
<p>Section 6:</p> <p>a) STG-related tattoos and/or body markings (new since most recent arrival in CDCR and not previously documented);</p> <p>b) Recording/documentation of conversations evidencing STG behavior;</p> <p>c) Harassment of another person, group or entity either directly or indirectly through the use of the mail, telephone, or other means;</p> <p>d) Communications between offenders/others evidencing STG behavior;</p> <p>e) Leading STG roll call;</p> <p>f) Directing cadence for STG group exercise;</p> <p>g) In personal possession of STG-related written material, including membership or enemy list, roll call lists, constitution, organizational structures, codes, training material, etc.;</p> <p>h) In personal possession of mail, notes, greeting cards or other communication (electronic or non-electronic) which include coded or explicit messages evidencing STG behavior;</p>	Serious
<p>Section 7:</p> <p>Except as otherwise specified in this section, proven attempts to commit or an offender who conspires to commit any of the above listed offenses shall receive the term range specified for that offense.</p>	Serious
<p>Section 8:</p> <p>a) Participation in STG roll call;</p> <p>b) Participating in STG group exercise;</p> <p>c) Using hand signs, gestures, handshakes, slogans,</p>	Administrative

<p>distinctive clothing, graffiti which specifically relate to an STG;</p> <p>d) Wearing, possessing, using, distributing, displaying, or selling any clothing, jewelry, emblems, badges, certified symbols, signs, or other STG items which promote affiliation in a STG;</p> <p>e) In possession of artwork, mail, notes, greeting cards, letters or other STG items clearly depicting certified STG symbols;</p> <p>f) In possession of photographs that depict STG association. Must include STG connotations such as insignia, certified symbols, or other validated STG affiliates.</p> <p>g) In possession of contact information (i.e., addresses, telephone numbers, etc.) for validated STG affiliates or individuals who have been confirmed to have assisted the STG in illicit behavior.</p>	
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Condemned inmates are subject to section 3378.4(a). SDP placement is not applicable to the condemned population.

(b) SDP Placement subsequent to initial validation shall be based upon being found guilty of SHU eligible STG related behavior, as follows:

(1) Initial Placement (subsequent to validation): ICC shall consider initial placement in the SDP when the validated STG-I affiliate has been found guilty of one SHU eligible STG related rules violation report, as identified in section 3378.4(a), STG Disciplinary Matrix, and which is also identified in section 3341.9(e), SHU Term Assessment Chart. Consideration of placement into the SDP will occur upon expiration/suspension of the inmate's controlling projected/assessed SHU term. Although the inmate meets the criteria for placement in the SHU SDP, in accordance with CCR sections 3378.2 or 3378.4, ICC maintains discretion in evaluating an affiliate's overall disciplinary record and case factors in determining placement in the SDP or continued management within a general population setting. If ICC determines placement in the SDP is warranted, the offender shall be placed at the beginning of Step 1.

(A) Endorsement by the Classification Staff Representative (CSR) shall include audit of the SHU eligible STG related RVR to ensure:

1. Review of compliance with procedural safeguards, i.e., time constraints and assistance to the inmate, in accordance with existing policy and regulations.
2. The specific act charged includes an STG nexus and coincides with the description of the circumstances that describes the STG behavior for which the inmate was found guilty.
3. The evidence and/or circumstances support the finding of guilt.
4. The evidence used to establish the nexus to the STG is supported and thoroughly documented by the Senior Hearing Officer.
5. The use of confidential information adheres to the standards for the consideration of and reliance upon in accordance with section 3321.
6. SHU CSR shall ensure the assessment of the SHU term is consistent with the charge(s) and within departmental standards outlined in section 3341.9(e).

(2) Initial Placement (subsequent to validation): ICC shall consider initial placement in the SDP when the validated STG-II affiliate has been found guilty of two SHU eligible STG related rules violation reports which are also included in Section 3341.9(e) within the preceding four (4) years. Although the inmate meets the criteria for placement in the SHU SDP, in accordance with CCR sections 3378.2 or 3378.4, ICC maintains discretion in evaluating an affiliate's overall disciplinary record and case factors in determining placement in the SDP or continued management within a general population setting. If ICC determines placement in the SDP is warranted, the offender shall be placed at the beginning of Step 1.

(A) Endorsement by the SHU CSR shall include audit of the SHU eligible STG related RVRs in the same manner described in section 3378.2(d). The CSR will approve the requested actions or return the case for corrections, referral to the Chief Deputy Warden, or defer the requested actions upon discovery of any due process violations. If the case is return the CSR shall articulate the required corrections.

(3) The commission of repeated STG violations while in the SDP shall be addressed as follows:

(A) Disciplinary Violations while in the SDP:

1. If an inmate has been found guilty of: three serious STG related; five administrative STG related; or a total of five serious and administrative STG related rules violation reports, as listed in 3378.4(a), STG Disciplinary Matrix, the inmate will be referred to the ICC.

2. The ICC shall review the inmate's disciplinary history and make this determination during the 180-day review performed at the end of Steps 3 and 4. If, during the Step 3 review, the inmate has been found guilty of: three serious STG related; or five administrative STG related; or a total of five serious and administrative STG related rules violation reports, the ICC shall retain the inmate in Step 3 for an additional 6 months. Upon completion of the additional 6 months, the ICC shall refer the inmate to the CSR recommending placement in the RCGP.

3. If, during the second 90-day review in Step 4, the inmate has been found guilty of: three serious STG related; or five administrative STG related; or a total of five serious and administrative STG related rules violation reports, the ICC shall refer the inmate to the CSR recommending placement in the RCGP. Pending transfer to the RCGP, ICC shall establish the WG as A2 in accordance with section 3044(b)(2) upon transfer unless inmate was previously deemed a program failure as defined in section 3000. The inmate shall be assigned to PG S3 or S4 respective to their assigned step, upon transfer.

4. The inmate may appeal the RCGP placement to the DRB, without delay of transfer, which would review the inmate's disciplinary history and determine whether removal from the program and transfer to the RCGP is appropriate in accordance with section 3084.9(j). A hearing before the DRB is not required for a determination on such an appeal.

(B) Determinate SHU Term:

1. If an inmate is found guilty of committing a SHU eligible offense while assigned to the SDP or RCGP, he shall complete the intervening determinate SHU term as imposed by the ICC before returning to the SHU SDP. The inmate will be returned to the same step from which he was removed; however, he shall not serve more than a total of 6 months in each step.

2. If the inmate is a validated STG-I member or associate and such SHU eligible offense has a proven nexus to the STG, upon completion/suspension of the determinate SHU term imposed by ICC, the inmate shall be returned to the SDP at Step 1 or another step as determined by ICC. This action restarts the 24-month time limitation for program participation in the SDP.

3. If the inmate is a validated STG-II member or associate and has been found guilty of one SHU eligible offense with a proven nexus to the STG (since placement in the SDP), upon completion/suspension of the determinate term imposed by ICC, the inmate shall be returned to the same step from which he was removed; however, he shall not serve more than a total of 6 months in each step.

4. If the inmate is a validated STG-II member or associate and has been found guilty of two SHU eligible offenses with a proven nexus to the STG (since placement in the SDP), upon completion/suspension of the controlling determinate SHU term imposed by ICC, the inmate shall be returned to the SDP at Step 1 or another step as determined by ICC. This action restarts the 24-month time limitation for program participation in the SDP.

(c) If a STG nexus is identified for an offense after the disciplinary process has been completed, for a SHU eligible offense, as listed in section 3341.9(e); this information will be referred to the STG Lieutenant, who will document the information and forward to the hiring authority or designee where the inmate is currently housed. The hiring authority shall refer this to the Chief Disciplinary Officer (CDO) to review the information/evidence and determine if the original RVR should be reissued/reheard based upon this new STG related information/evidence which was not available or reasonably discoverable at the time of the original disciplinary action. The CDO may consider the following options:

(1) If the inmate's MERD has been commuted for the original disciplinary offense; then no further disciplinary action would be warranted.

(2) If the inmate is serving the unexpired MERD for the original disciplinary offense, the CDO may order the RVR reissued/reheard, to include the STG nexus.

(3) If an ICC has suspended any portion of the SHU term for the original disciplinary offense, no further disciplinary action would be warranted.

Subsection 3378.4(d) remains unchanged.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 5054 and 5068, Penal Code; *Sandin v. Connor* (1995) 515 U.S. 472; *Madrid v. Gomez* (N.D. Cal. 1995) 889 F.Supp. 1146; *Toussaint v. McCarthy* (9th Cir. 1990) 926 F.2d 800; *Toussaint v. Yockey* (9th Cir. 1984) 722 F.2d 1490; and *Castillo v. Alameida, et al.* (N.D. Cal., No. C94-2847).

3378.5. Debriefing Process.

Subsection 3378.5 through 3378.5(i) is amended to read:

Debriefing is the process by which a STG coordinator/investigator determines whether an offender (subject) has dropped out of a STG. A subject shall be debriefed only upon his or her request, although staff may ask a subject if he or she wants to debrief. The

Debrief Process may include a two-step process that consists of an interview phase (Phase I) and an observation phase (Phase II).

(a) CDCR has established a Debrief Processing Unit (DPU) to house inmates who are assigned to Phase I of the Debrief Process. A DPU may be established at any institution or facility the Department deems appropriate. An evaluation of the need for the observation phase will be based upon individual case factors including the STG affiliate's housing prior to beginning the debrief process. The observation phase of the Debrief Process shall begin when the inmate's autobiography is accepted and ICC changes his status to Post-Debrief Intake Panel (DIP). Time served in the observation phase may overlap with time spent in the interview phase. Time spent in the observation phase should be up to six months, as long as the inmate is actively participating in assigned program activities.

(b) The purpose of the debrief interview is to provide staff with information about the STG's structure, activities, and affiliates. The debrief process is not for the purpose of acquiring incriminating evidence against the subject. The object of the debrief process is to learn enough about the subject and the subject's current STG to: (1) allow staff to reasonably conclude that the subject has dropped out of the STG, and (2) allow staff to reclassify the subject based upon the offender's needs in conjunction with the security of the institution, as well as, the safety and security of staff and other offenders. A requirement of the interview phase is that the offender provides staff an autobiography of their STG involvement, which is then verified by staff for completeness and accuracy.

(c) Inmates undergoing the debrief process may be subject to a period of observation (Phase II) with other inmates who are also undergoing the debrief process. The period of observation shall be up to 6 months in duration and may occur in the DPU or the Transitional Housing Unit (THU).

(d) Upon completion of the debrief process, the inmate shall be housed in a facility commensurate with the inmate's safety needs, placement score and other case factors.

(e) A waiver of the right against self-incrimination is not a precondition of an offender (subject) undergoing the debrief process since the information is provided for administrative purposes. A subject shall not be required to complete the debrief process and the subject is free to terminate the debrief process at any time. If, during the debrief interviews, a subject makes 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 (Miranda). 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 debrief process.

(f) Inmates will be afforded expanded program opportunities as they progress through the DPU. Detailed information about the operation of the DPU is located in section 3378.7.

Upon receipt of notification of an inmate's intent to disassociate from an STG, the institutional STG investigator shall ensure the inmate has been placed in appropriate housing to address the inmate's safety in accordance with sections 3335 through 3338. The STG investigator shall contact the validated inmate within five business days of receipt of the notification to conduct an Initial Debrief Intake Interview.

The Initial Debrief Intake Interview document must be finalized and available at the initial ICC. During the initial ICC, the inmate will be notified of ICC's actions and will be

referred for transfer to the DPU in accordance with section 3378.7(b). Exceptions to transfer by ICC will be for:

(1) inmates serving an active determinate SHU term. In this instance, the debrief process will continue at the respective SHU or ASU institution and upon resolution of the determinate SHU term, the inmate will be considered for transfer to a facility commensurate with his current programming needs, to include the DPU for Phase I or THU for Phase II.

(2) inmates awaiting appearance before the Board of Parole Hearings (BPH), shall be retained at the local institution until completion of the BPH process in advance of a transfer to the DPU for Phase I or THU for Phase II in accordance with section 3379(a)(3).

(3) inmates who have a disciplinary case pending review/acceptance by the District Attorney, shall be retained locally until completion of any projected/active MERD, in advance of a transfer to the DPU. Thereafter, the respective Wardens will coordinate subsequent transfer needs to address required court hearing(s).

(4) Subsequent to ICC, the STG investigator will issue the autobiography instructions to the inmate, who will have 30 days to complete and submit the autobiography. If the inmate meets one of the transfer exceptions, he is still expected to complete the autobiography within 30 days. The STG lieutenant, at the inmate's assigned institution, will collect the autobiography and forward it to the Office of Correctional Safety (OCS), Gang Intelligence Operations (GIO) Lieutenant for processing.

(g) Upon an inmate's arrival at the DPU, an OCS investigator shall meet with the inmate and collect the completed autobiography. If extenuating circumstances have prevented the inmate from completing the autobiography, the inmate may be issued an extension to complete their autobiography at the discretion of the OCS GIO Senior Special Agent. If the extension extends beyond 45 days (from the original date of assignment), the case shall be scheduled for a case conference to include the Captain, responsible for DPU, and the Senior Special Agent, Special Services Unit (SSU), OCS.

(1) If the inmate fails/refuses to complete the debrief process, the inmate shall be placed (or retained) in the ASU for review of potential safety concerns. The inmate will be scheduled for appearance before ICC to further assess their status to include evaluation of Work Group/Privilege Group and a determination of appropriate housing. Appropriate housing may include return to the SDP, return to General Population housing, or referral to the DRB.

(h) The completed autobiography, including those received from inmates who are not currently housed at DPU, will be presented by OCS staff to the DIP. The DIP is a committee comprised of DAI and OCS representatives who have a primary role to evaluate debrief cases and delegate case responsibilities based upon the complexities of each case. The DIP is comprised of four members including one SSU Senior Special Agent, one representative from DAI at the level of Correctional Administrator, and two OCS GIO Lieutenants. A quorum will exist with the SSU Senior Special Agent, DAI representative, and one OCS GIO Lieutenant.

(1) Upon completion of each review, the DIP will determine one of two debrief categories and document the acceptance of the autobiography and the category chosen on a CDCR Form 128-B. The DIP will base their decision on the totality of case factors evidencing the inmate's status and behavior within the STG. The categories are defined as follows:

(A) Category 1 (Complex): Debriefs to be completed by the OCS GIO. Debriefs assigned to Category 1 will typically be inmates who have held a high ranking position within the STG; who have committed or participated in serious criminal activities, Division A and B offenses as listed in the current disciplinary matrix in the furtherance of the STG; and/or have had an extensive history with the STG. All debrief reports assigned to OCS GIO investigators will normally be completed within 90 business days of assignment.

(B) Category 2 (Less Complex): All other debriefs will be classified under Category 2. The OCS GIO Lieutenant will assign the debrief report to be completed by an institutional STG Investigator. All debriefs assigned to institutional STG Investigators will normally be completed within 60 business days of assignment. Debriefs will be assigned to institutional STG Investigators on a statewide rotating basis.

(i) Condemned inmates are subject to the debrief process as outlined in subsections (b), (e), and (h) of this section.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 5054 and 5068, Penal Code; *Sandin v. Connor* (1995) 515 U.S. 472; *Madrid v. Gomez* (N.D. Cal. 1995) 889 F.Supp. 1146; and *Toussaint v. McCarthy* (9th Cir. 1990) 926 F.2d 800.

3378.6. Review and Action Following Receipt of Debrief Reports.

Subsection 3378.6 is amended to read:

Upon receipt of a completed Debrief Report by institution staff, the following process will be completed:

(a) STG investigative staff will review the report to identify inmates (other than the debriefing inmate) who are addressed in the report and currently housed at the institution.

(1) Serious STG behavior determined to have occurred within CDCR jurisdiction shall be reviewed by the STG Lieutenant or an appropriate Lieutenant to determine if the behavior warrants further investigation to establish facts/corroborate the information being provided and issuance of a Rules Violation Report, in accordance with section 3378.4(a) STG Disciplinary Matrix.

(2) Staff shall prepare a Rules Violation Report, as appropriate, documenting the information as received from the confidential source and any pertinent information gleaned through the investigation.

(3) The disciplinary process will proceed as outlined in Sections 3310 through 3326, Inmate Discipline.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 5054 and 5068, Penal Code; *Sandin v. Connor* (1995) 515 U.S. 472; *Madrid v. Gomez* (N.D. Cal. 1995) 889 F.Supp. 1146; and *Toussaint v. McCarthy* (9th Cir. 1990) 926 F.2d 800.

3378.7. Debrief Processing Unit.

Subsections 3378.7 Presentence through 3378.7(h) are amended to read:

CDCR has established a DPU to house inmates who are assigned to Phase I and Phase II of the debrief process. A DPU may be established at any institution or facility the Department deems appropriate. The DPU shall provide a safe housing location for those inmates who have decided to disassociate from a STG. Placement within the DPU is in accordance with section 3378.5. Inmates will be afforded expanded program opportunities as they progress through the DPU.

(a) The minimum eligible criteria for placement in the DPU shall consist of:

- (1) The inmate must be validated.
- (2) The inmate must have completed the Initial Debrief Intake Interview.
- (3) The inmate must not be serving an active MERD.
- (4) The inmate does not have a BPH scheduled, in accordance with section 3379(a)(3).
- (5) The inmate does not have a disciplinary case pending review/acceptance by the District Attorney.

(b) Transfer to the DPU will be accomplished through the Strategic Offender Management System (SOMS) Non-Committee Endorsement process.

(c) When housing within the DPU has been determined by ICC, but medical, mental health, mobility or other case factors preclude the inmate from being transferred to the DPU, a conference call should be initiated to provide institutional staff with guidance concerning placement issues and privileges utilizing the case conference process with Classification Services Unit, Healthcare Placement Oversight Program (HCPOP), and the Division of Adult Institutions (DAI) Associate Director. This case conference shall be documented in the CDCR Form 128-G, Classification Chrono (Rev. 10/89). It is recognized that at times the inmate's overriding need for access to specific medical or mental health facilities will take priority over his housing in the DPU. These inmates should receive all privileges identified within this section, unless the privilege will create a significant security concern. If the hiring authority determines that the DPU privileges will be denied based on security concerns, the hiring authority shall contact the DAI Associate Director to obtain approval before denying the privileges.

(d) Inmates who have been received at the DPU, but who have not had their autobiography reviewed and accepted by the DIP shall be referred to as Pre-DIP and inmates who have had their autobiographies reviewed and accepted by the DIP shall be referred to as Post-DIP. Pre-DIP inmates shall normally be housed separately from Post-DIP inmates.

(e) Phase 1: Pre-DIP status.

(1) Inmates transferred for Phase I housing shall be assigned Pre-DIP status and Maximum custody until their autobiography has been reviewed and accepted by the DIP.

(2) All inmates participating in Phase I will be seen by ICC within 10 calendar days. Pre-DIP inmates will be scheduled for appearance before ICC, who will establish or affirm the inmate's work group and privilege group (WG/PG) consistent with NDS status unless the inmate was transferred from the SHU SDP or the RCGP. If the inmate was transferred to the DPU from the SHU SDP, he will retain his current WG/PG (S1 through S4). If the inmate is transferred to the DPU from the RCGP, he will retain his current WG/PG.

(3) Inmates will have access to yard and will be identified as Walk Alone. Yard will be a minimum of 10 hours per week.

(4) Inmates will be authorized to participate in non-contact visiting only.

(A) Non-contact visits are to be scheduled no less frequently than those afforded to inmates in restricted housing.

(B) ~~Pre-DIP inmates are not eligible for Family Visits.~~ Inmates will be allowed to participate in family visiting, in accordance with section 3177.

(5) Pre-DIP inmates are subject to application of mechanical restraints in accordance with section 3268.2.

(6) Pre-DIP inmates may participate in self-betterment programs and in-cell education.

(f) Phase 1: Post-DIP status.

(1) Upon acceptance of the autobiography by the DIP, the inmate will be scheduled for appearance before ICC within 10 days for movement/endorsement into the Post-DIP congregate housing program. During the ICC hearing, the committee will assign WG/PG and yard group.

Acceptance of the autobiography by the DIP recognizes that the inmate has demonstrated a significant level of sincerity in their desire to debrief, as well as establishes a foundation that their personal safety may be compromised if returned to a general population setting.

Acceptance of the autobiography by the DIP and ICC changing the inmate's status to Post-DIP will initiate the observation phase of the debrief process allowing for observation of the inmate while he is actively programming. Time spent as Post-DIP where the inmate is actively participating in assigned program activities shall be counted toward the observation phase of the debrief process.

(A) WG shall be established as follows:

1. An inmate who was transferred to the DPU from administrative segregation shall have his WG reverted to the WG assigned prior to placement in segregated housing.

2. An inmate who transitioned from the SHU SDP or was housed in the RCGP, due to failure to participate or because of receiving disciplinary reports while in the SDP, shall be assigned to WG A-2.

3. An inmate who was previously housed in the RCGP due to safety concerns, shall have his WG reverted consistent with the WG assigned while housed in the RCGP.

(B) PG shall be established as follows:

1. An inmate who was transferred to the DPU from administrative segregation shall have his PG reverted to the PG assigned prior to placement in segregated housing.

2. An inmate who transitioned from the SHU SDP or was housed in the RCGP, due to failure to participate or because of receiving disciplinary reports while in the SDP, shall be assigned to PG B.

3. An inmate who was previously housed in the RCGP due to safety concerns, shall have his PG reverted consistent with the PG assigned while housed in the RCGP.

(C) Once the inmate is endorsed as Post-DIP, he shall be considered for double cell housing in accordance with section 3269, as double cell housing is a required part of the Debrief Process unless precluded by ICC.

(D) A minimum of 10 hours of yard exercise per week will be provided pursuant to section 3343(h), incorporating yard interaction in a group yard setting with inmates of diverse affiliations. ICC will assign the inmate to the appropriate yard group.

(E) Post-DIP inmates will be authorized to participate in both contact and non-contact visiting during other than assigned program hours.

1. Non-contact visits are to be scheduled no less frequently than those afforded to inmates in segregated housing.

2. Post-DIP inmates will be allowed contact visits which shall be limited to approved visitors, who have been pre-approved in accordance with the existing visiting regulations.

3. ~~Post-DIP inmates are not eligible for Family Visits.~~ Inmates will be allowed to participate in family visiting, in accordance with section 3177.

(F) Use of restraint equipment shall be in accordance with section 3268.2.

(g) If the DPU inmate is found guilty of STG related behavior, identified in section 3378.4(a) STG Disciplinary Matrix, ICC shall determine the inmate's housing and program needs. Although the inmate meets the criteria for placement in the SHU SDP, ICC maintains discretion in evaluating an inmate's overall disciplinary record and case factors in determining return placement in the SDP, continued management within the DPU, or other appropriate housing, which may include referral to the DRB.

(h) In some instances, Phase II of the Debrief process may be completed at the DPU, when enemy, medical or other extenuating circumstances exist.

(i) When housing within the DPU has been determined appropriate by ICC, but medical, mental health, mobility or other case factors preclude the inmate from being transferred to the DPU, the inmate should be allowed to complete the Debrief process at an alternate location. Specific components of the process including the autobiography being submitted to the DIP for acceptance; the assignment of an investigator to complete the Debrief Report; the Debrief Report being approved by OCS; and a CDCR Form 128-B2, (Rev. 6/14) Security Threat Group Validation/Rejection Review, being issued for validation as a "drop out", are required and must be completed prior to the inmate being released to appropriate housing.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 5054 and 5068, Penal Code.

3378.8. Transitional Housing Unit.

Subsection 3378.8 is amended to read:

The Transitional Housing Unit (THU) shall provide a continued program of observation to evaluate that an inmate has successfully disassociated from STG behavior and is capable of programming in a general population (GP) setting. Placement into the THU can be from either a Security Housing Unit, Debrief Processing Unit (DPU), or from GP. THU inmates shall be housed separately from other GP inmates due to potential safety concerns.

(a) The debrief process is designed to review, monitor and evaluate each individual and ensure that the inmate participating in the debrief process is not a threat to staff or other inmates, and has sincerely renounced all STG related activities. A period of observation is included in the debrief process to ensure that an inmate will be able to program in a GP setting with inmates of diverse backgrounds, as well as other disassociated STG members/associates. STG affiliates housed in general population or similar specialized housing prior to beginning the debrief process may bypass placement in the Transitional Housing Unit, as authorized by ICC. Female offenders who complete the interview phase of the debrief process, shall complete the observation phase in a general population institution. The minimum eligible criteria to be placed into the THU shall consist of:

(1) The formal debrief process as set forth in section 3378.5 must be satisfactorily completed and approved through the Office of Correctional Safety (OCS) via a completed CDC Form 128-B (4/74), General Chrono, which is incorporated by reference.

(2) The inmate must be willing to commit to personal change, pursuant to section 3378.5.

(b) The observation phase of the debrief process shall be up to 6 months in duration consisting of components to include, but not be limited to, conflict resolution, anger control, substance abuse education, communication skills, individual counseling, educational skills, and group exercises. Inmates will be evaluated by the instructors throughout the program based on participation, behavior, and review of completed assignments. An inmate must be actively participating in the assigned program activities for the time to be counted toward completion of the observation phase.

(c) Upon arrival at the designated THU institution, THU inmates shall be housed in a THU orientation section for a period not to exceed 14 days. The inmate's placement in THU shall be reviewed by a classification committee for affirmation of the inmate's endorsement and consideration of appropriate housing. Inmates shall be advised of program/behavioral expectations, and the requirement that they must attend and actively participate in all assignments and activities.

(1) During the orientation period, inmate's program activities will be primarily limited to housing unit activities.

(2) Inmates shall be advised that participation in all assignments and activities is mandatory, and STG related behavior will not be tolerated. Any disciplinary behavior for which the inmate is found to be accountable through the disciplinary process, shall result in referral to the Institution Classification Committee for program review as described by section 3378.7.

(d) Upon completion of the orientation period, participants shall be placed in the THU GP portion of the program for approximately 5 months and 2 weeks. Inmates will be assigned work group/privilege group A-1.

(1) Inmates shall be considered for double cell housing in accordance with section 3269.

(2) Inmates must participate in one or more of the offered self help activities, and any assigned work or educational programs.

(3) Inmates shall be allowed special purchases, canteen draw, and allowed to attend religious services when offered within the THU area.

(4) Inmates shall be eligible for work assignments as THU mentors to other THU inmates, THU housing unit porters, or THU clerks.

(e) Upon satisfactory completion of the THU program, inmates shall be referred to a classification committee for transfer consideration. Inmates failing to satisfactorily complete the THU program shall be referred to classification committee for determination of future program and housing needs or possible referral to DRB.

(f) When housing within the THU has been determined by ICC, but medical, mental health, mobility or other case factors preclude the inmate from being transferred to the THU, a conference call should be initiated to provide institutional staff with guidance concerning placement issues and privileges utilizing the case conference process with Classification Services Unit, HCPOP, and the DAI Associate Director. This case conference shall be documented in the CDCR Form 128-G, Classification Chrono

(Rev.10/89). It is recognized that at times the inmate's overriding need for access to specific medical or mental health facilities will take priority over his housing in the THU. These inmates should receive all privileges identified within this section, unless the privilege will create a significant security concern. If the hiring authority determines that the THU privileges will be denied based on security concerns, the hiring authority shall contact the DAI Associate Director to obtain approval before denying the privileges.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 5054 and 5068, Penal Code.

3378.9. Restricted Custody General Population.

Section 3378.9 is amended to read:

The Restricted Custody General Population (RCGP) may be established at any institution or facility the Department deems appropriate and will provide a general population housing alternative for inmates who:

- have refused to participate/complete the Step Down Program (SDP);
- have been found guilty of repeated Security Threat Group (STG) Rules Violation Reports (RVR) while in the SDP; or
- have a substantial threat to their personal safety should they be released to the general population and are deemed appropriately housed, based upon a preponderance of evidence, by the Departmental Review Board (DRB).

(a) Programming for those inmates housed in the RCGP will provide increased opportunities for positive social interaction with other prisoners and staff, including but not limited to: Alternative Education Program and/or small group education opportunities; yard (minimum of 10 hours per week) in small group yards as determined by ICC; access to religious services, support services job assignments and leisure time activity groups; access to GED, high school, and college level educational programs, with adequate academic support, and electrical appliances commensurate with the Authorized Personal Property Scheduled for the designated level of the facility.

(b) All RCGP inmates will be scheduled for appearance before the Institutional Classification Committee (ICC) every 180 days in accordance with section 3376. For inmates with safety concerns, ICC shall verify whether there continues to be a demonstrated threat to the inmate's personal safety; and if such threat no longer exists the case shall be referred to the DRB for determination of appropriate housing. If such threat continues, the ICC shall refer the case to the DRB every two years from the initial placement date, unless the ICC referred the case during a 180-day review and the DRB has rehoused the inmate to general population housing.

(c) All inmates participating in the RCGP will be placed on orientation status commensurate with the general population for a period of no more than 14 calendar days.

(d) Application of restraint equipment for all RCGP inmates shall be in accordance with section 3268.2.

(e) Inmates assigned to the RCGP due to refusal to participate in or complete the SDP shall be addressed as follows:

(1) During the RCGP initial classification review, the ICC shall affirm the WG as A2 in accordance with section 3044(b)(2) unless the inmate was previously deemed a program failure as defined in section 3000, and provide the inmate with program expectations including completion of all components of the SDP. ICC shall affirm PG S3 or S4, respective of the assigned step.

(2) ICC may reassign the inmate to PG S4 based on his progression through the SDP components remaining to be completed.

(3) RCGP inmates will be authorized to participate in both contact and non-contact visiting during other than assigned work/program hours.

(A) The inmate shall be allowed a minimum of one contact visit every 120 days if programming and no disciplinary violations for which the loss of privileges imposes a restriction on visiting. ICC shall have the discretion to increase this schedule to one contact visit every 90 days, on a case-by-case basis.

(B) Inmates will be allowed contact visits which shall be limited to approved visitors, who have been pre-approved in accordance with the existing visiting regulations.

(C) Not eligible for Family Visits.

(4) If the inmate completes the SDP, while in the RCGP, and is not found guilty of either one serious STG related or two administrative STG related rules violation reports, as listed in section 3378.4(a), STG Disciplinary Matrix, during the 180-day review period, he will be considered for transfer to appropriate general population housing, commensurate with his case factors and placement score.

(5) If the inmate has completed the SDP but is found guilty of either: 1) one serious STG related rules violation; or 2) two administrative STG related RVRs; the ICC will retain the inmate in the RCGP and re-evaluate his behavior at his next 180-day ICC review. The inmate must remain disciplinary free of STG related behavior, as identified above, for a 180-day review period to be considered for release to general population housing. ICC maintains discretion in evaluating an affiliate's overall disciplinary record and case factors in determining appropriate housing.

(6) Upon a guilty finding in a disciplinary hearing, the disposition may or when mandated include assessment of one or more penalties in accordance with sections 3314 or 3315. RCGP inmates who receive a disciplinary violation which results in a loss of privileges, including restricted visiting, shall comply with the restrictions imposed in accordance with that loss of privileges.

(f) Inmates assigned to the RCGP due to receiving rules violations while in the SDP, as described in the presentence of section 3378.9, shall be addressed as follows:

(1) During the RCGP initial classification review, the ICC shall affirm the WG as A2 in accordance with section 3044(b)(2) unless the inmate was previously deemed a program failure as defined in section 3000, and provide the inmate with program expectations including remaining free of disciplinary behavior. ICC shall affirm the PG S3 or S4 respective to their assigned step.

(2) RCGP inmates will be authorized to participate in both contact and non-contact visiting during other than assigned work/program hours.

(A) The inmate shall be allowed a minimum of one contact visit every 120 days if programming and no disciplinary violations for which the loss of privileges imposes a restriction on visiting. ICC shall have the discretion to increase this schedule to one contact visit every 90 days, on a case-by-case basis.

(B) Inmates will be allowed contact visits which shall be limited to approved visitors, who have been pre-approved in accordance with the existing visiting regulations.

(C) Not eligible for Family Visits.

(3) If the inmate completes the SDP components and, while housed in the RCGP, is not found guilty of either one serious STG related or two administrative STG related RVRs within the 180-day review period, he shall be referred to the ICC for determination of appropriate housing based on case factors and placement score. ICC maintains discretion in evaluating an affiliate's overall disciplinary record and case factors in determining appropriate housing.

(4) Upon a guilty finding in a disciplinary hearing, the disposition may or when mandated include assessment of one or more penalties in accordance with sections 3314 or 3315. RCGP inmates who receive a disciplinary violation which results in a loss of privileges, including restricted visiting, shall comply with the restrictions imposed in accordance with that loss of privileges.

(g) Inmates assigned to the RCGP for safety needs shall be addressed as follows:

(1) During the RCGP Institutional Classification Committee, the assigned WG will be evaluated and retained unless case factors have changed which warrant modification of the assigned workgroup.

(2) The inmate shall be assigned a PG in accordance with section 3044(c). Privileges shall include:

(A) RCGP inmates will be authorized to participate in both contact and non-contact visiting during other than assigned work/program hours.

1. The inmate shall be allowed a minimum of one contact visit every 60 days unless the inmate incurs a disciplinary violation for which the loss of privileges imposes a restriction on visiting.

2. Inmates will be allowed contact visits which shall be limited to approved visitors, who have been pre-approved in accordance with the existing visiting regulations.

(B) Inmates will be allowed to participate in family visiting, in accordance with section 3177.

(C) Personal Property in accordance with the Authorized Personal Property Schedule for Level IV general population inmates.

(D) Telephone call shall be commensurate with assigned PG.

(3) Upon a guilty finding in a disciplinary hearing, the disposition may or when mandated include assessment of one or more penalties in accordance with sections 3314 or 3315. RCGP inmates who receive a disciplinary violation which results in a loss of privileges, including restricted visiting, shall comply with the restrictions imposed in accordance with that loss of privileges.

(h) If the RCGP inmate is found guilty of STG related behavior, identified in section 3378.4(a) STG Disciplinary Matrix, Although the inmate meets the criteria for placement in the SHU SDP, in accordance with CCR sections 3378.2 or 3378.4, ICC shall determine the inmate's housing and program needs. ICC maintains discretion in evaluating an affiliate's overall disciplinary record and case factors in determining continued management within the RCGP or other appropriate housing.

(i) When housing within the RCGP has been determined by ICC, but medical, mental health, mobility or other case factors preclude the inmate from being transferred to the RCGP, a conference call should be initiated to provide institutional staff with guidance concerning placement issues and privileges utilizing the case conference process with

Classification Services Unit, HCPOP, and the DAI Associate Director. This case conference shall be documented in the CDCR Form 128-G, Classification Chrono (Rev. 10/89). It is recognized that at times the inmate's overriding need for access to specific medical or mental health facilities will take priority over his housing in the RCGP. These inmates should receive all privileges identified within this section, unless the privilege will create a significant security concern. If the hiring authority determines that the RCGP privileges will be denied based on security concerns, the hiring authority shall contact the DAI Associate Director to obtain approval before denying the privileges.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 5054 and 5068, Penal Code.

3378.10. Termination of Security Threat Group (STG) Validation Status.

Subsections 3378.10(a)(1) through 3378.10(b)(5) are amended to read:

(a) STG-I or STG-II Associates:

(1) A validated STG-I or STG-II associate released from Step Down Program (SDP) to general population; those cases determined to be inactive or dropout status; or those remaining in any type of general population housing, who remains free of STG disciplinary behavior for a period of six (6) consecutive years, while incarcerated within CDCR, may be eligible to have their STG Validation Status terminated. The six years will begin counting toward completion of the required time period as follows:

(A) Validated Associates released from SDP to general population: the date committee approved release from segregation.

(B) Validated Associates who remain in general population housing: the date of initial validation

(C) Dropout status inmates: the date of the CDCR Form 128-B2 (Rev. 06/14) Security Threat Group Validation/Rejection Review, which is incorporated by reference, changing their status to "Dropout".

(2) The criteria for consideration of terminating an STG Validation Status include: within the most recent six consecutive years (while incarcerated within CDCR institutions) with no guilty findings of STG related behavior or additional source criteria items totaling 10 points (as described in section 3378.2.)

(3) Termination of the STG Validation Status will be evaluated during the next regularly scheduled Annual Review. The assigned counselor will review central file and notify the STG Investigator that the inmate is being scheduled for consideration of terminating the STG Validation status. If eligible, the inmate shall be referred to ICC for assessment and determination of terminating the STG status.

(4) Upon ICC terminating an inmate's validation status, the institution shall submit a copy of the CDC Form 128-G (10/89), Classification Chrono, which is incorporated by reference, to the Office of Correctional Safety (OCS), who shall generate an updated CDCR Form 128-B2 (Rev. 06/14), Security Threat Group Validation/Rejection Review, which is incorporated by reference, reflecting "Terminated". The original CDCR Form 128-B2 shall be returned to the institution. Review by the STG Unit Classification Committee will not be required to review/approve this document.

(5) Inmates who have had their STG status terminated shall be eligible to participate in any recognized housing/programs consistent with other general population inmates with similar case factors. If additional STG related behavior is subsequently discovered, a new validation package shall be required to change the inmate's STG status.

(b) STG-I or STG-II Members:

(1) A validated STG-I or STG-II member released from SDP to general population; those cases determined to be inactive or dropout status; or those remaining in any type of general population housing, who remains free of STG disciplinary behavior for a period of eleven (11) consecutive years, while incarcerated within CDCR, may be eligible to have their STG Validation Status terminated. The eleven years will begin counting toward completion of the required time period as follows:

(A) Validated Members released from SDP to general population: the date committee approved release from segregation.

(B) Validated Members who remain in general population housing: the date of initial validation.

(C) Dropout status inmates: the date of the CDCR Form 128-B2 changing their status to "Dropout".

(2) The criteria for consideration of terminating an STG Validation Status include: within the most recent eleven consecutive years while incarcerated within CDCR institutions there have been no guilty findings of STG related behavior or additional source criteria items totaling 10 points (as described in section 3378.2).

(3) Termination of the STG Validation Status will be evaluated during the next regularly scheduled Annual Review. The assigned counselor will review central file and notify the STG Investigator that the inmate is being scheduled for consideration of terminating the STG Validation status. If eligible, the inmate shall be referred to ICC for assessment and determination of terminating the STG status.

(4) Upon ICC terminating an inmate's validation status, the institution shall submit a copy of the CDC Form 128-G, Classification Chrono, to OCS, who shall generate an updated CDCR Form 128-B2 reflecting "Terminated". The original CDCR Form 128-B2 shall be returned to the institution. Review by the STG Unit Classification Committee will not be required to review/approve this document.

(5) Inmates, who have had their STG status terminated, shall be eligible to participate in any recognized housing/programs consistent with other general population inmates with similar case factors. If additional STG related behavior is subsequently discovered, a new validation package shall be required to change the inmate's STG status.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 5054 and 5068, Penal Code.

FINAL STATEMENT OF REASONS:

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

UPDATES TO THE INITIAL STATEMENT OF REASONS:

The Notice of Regulations was published in the California Regulatory Notice register on January 19, 2018, which began the public comment period. The Notice of Change to Regulations 18-01 was mailed on by January 19, 2018 and also posted on the Department's Internet and Intranet websites.

During the 45-day public comment period nine commenters submitted public comments.

After publication of the Initial Statement of Reason (ISOR), the Department became aware that further amendments to the ISOR were necessary to meet the clarity and necessity standards of the Administrative Procedures Act. The Department included the Economic Impact Statement determinations that were inadvertently absent from the ISOR. Also included was information regarding the revisions to forms relative to these regulations that was inadvertently absent when these regulations were initially noticed to the public. Additionally, clarification changes to the text as originally proposed were also necessary due to negotiations and agreed upon language with Plaintiff's counsel in *Ashker v. State of California*.

Based upon these comments and above factors, it was determined that a 15-day re-notice was necessary. A request for re-adoption of the emergency regulations initially adopted on October 10, 2017 was granted on March 5, 2018 in order for the Department to respond to comments and to develop agreed upon language prior to the emergency regulations expiring on March 19, 2018.

A 15-day re-notice was duly posted and mailed on July 13, 2018. During the 15-day re-notice, no comments were received.

The comments received during the initial 45-day public comment period are discussed below under the heading "*Summaries and Responses To Written Public Comments.*"

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 these regulations are 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. No reasonable alternatives were brought to the attention of the Department that would alter the Department's initial determination.

Regarding benefits, the Department anticipates that these regulations will bring the Department into compliance with the *Ashker v. State of California* settlement agreement to address and settle claims for declaratory and injunctive relief regarding policies and practices of the CDCR for placing, housing, managing, and retaining inmates validated as prison gang members and

associates in the Security Housing Unit (SHU), as well as the conditions of confinement in the SHU at Pelican Bay State Prison and other CDCR SHU facilities.

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.

PUBLIC HEARING COMMENTS:

A public hearing was held on March 16, 2018 at 10:00 a.m. No one provided public comment at the hearing.

SUMMARIES AND RESPONSES TO WRITTEN PUBLIC COMMENTS:

Commenter #1:

Comment 1A: Commenter expresses concerns that the validation process has not changed with the exception of adding the point system. The commenter also addresses removal of the validation label and how this would benefit an inmate who is going before the Board of Parole Hearings.

Response to 1A: Although the comment does identify some aspect of the proposed regulatory action and must be summarized pursuant to Government Code Section 11346.9(a)(3), the comment is not sufficiently related to the specific action as there were no changes made to the text referenced in the comment.

Commenter #2:

Comment 2A: The commenter states that the proposed regulations will create a new category of SHU prisoner which may be retained in Administrative SHU.

Accommodation: Modifications were made to the text, as a result of the public comments, to ensure it reads clearly and can no longer be interpreted that the Department is creating a new category of SHU prisoner.

Response to 2A: The proposed regulations do not create a new category of SHU prisoner. They follow the language in the Settlement Agreement.

Comment 2B: The commenter expresses concern that in sections 3000 and 3378, the proposed regulations fail to provide any meaningful clarification and run afoul of the Due Process Clause where the language "involved" or "involved...with" is not sufficiently defined.

Response to 2B: There was only a minor change made to the definition of "Associate". This change was the addition of the verbiage "or associates" because it was inadvertently omitted

from the text during the previous promulgation of the regulations. There were no changes made to the definitions for Suspect or Direct Link in these proposed regulations.

Comment 2C: The commenter states that in section 3378.4, the proposed regulations fail to provide specific definitions of proscribed conduct, the proposed regulations use vague and overbroad language or terms that fail to provide notice that meets constitutional due process standards. Concerns with “STG Group Exercise”, “Certified STG Symbols” and “Possession of Contact Information”.

Response to 2C: There were no changes made to the text of the Disciplinary Matrix except for the elimination of the Step Down Program (SDP) Placement Options Column, which was removed. The removal of this column was necessary because the options for placement in the SDP are based on the settlement agreement and the information contained in the column is no longer applicable. The behaviors recognized as Security Threat Group (STG) behavior are clearly identified in existing regulations and the Department believes the regulations to be appropriate and clearly defined.

Commenter #3

Comment 3A: Commenter states that he has been incarcerated with a life with possibility of parole sentence since 1989, was validated and housed in the Security Housing Unit in 2006, and then released to General Population in 2014. Commenter states in 2016 that he chose to change his life and disassociated with the STG so he could have access to more programs and a chance at parole. Commenter states that the only choice he had was to participate in the debrief procedure. Commenter states that the vague and arbitrary policies regarding the debrief procedure resulted in staff delaying his process and not providing a copy of his autobiography to the Office of Correctional Safety until October of 2017.

Response to 3A: The Department believes the Debrief Processing Unit (DPU) has been developed to provide the most timely completion of the debrief process and the best opportunity for an inmate who has chosen to leave the STG to successfully transition into a general population environment. Privileges in the DPU are greatly expanded over what they were previously.

Comment 3B: Commenter states that he was placed in Phase 1: Post-Debrief Intake Panel (DIP) with similar inmates and was only allowed contact visits and not family visits. Commenter states that according to the new STG debrief procedures adopted in Section 3378.7(f)(1)(E)3. Inmates in post-DIP are not eligible for family visits. Commenter states that he feels punished by not being eligible for family visits merely because he wanted to debrief and that having to wait until the entire debrief procedure is completed is inconsistent with California Penal Code Section 6404, and California Code of Regulations, Title 15, Section 3177.

Accommodation: Modifications were made to the text, as a result of the public comments, to allow an inmate, who is otherwise eligible to receive a family visit, to be allowed to schedule a family visit, once the inmate has been assigned post-DIP status by the Institution Classification Committee.

Response to 3B: A review of this comment lead to modification of subsection 3378.7, Debrief Processing Unit. Sections (e)(4)(B) and (f)(1)(E)3 are being amended to read: “Inmates will be allowed to participate in family visiting, in accordance with section 3177.”

Comment 3C: Commenter states that inmates who desired to debrief from the General Population should be allowed to full privileges upon acceptance of their autobiography and housed with similarly situated inmates. Commenter states that because those inmates are housed in General Population and not SHU or Step Down Program, that those placed in post-DIP should be allowed a family visit pursuant to Section 3177.

Accommodation: Modifications were made to the text, as a result of the public comments, to allow an inmate, who is otherwise eligible to receive a family visit, to be allowed to schedule a family visit, once the inmate has been assigned post-DIP status by the Institution Classification Committee.

Response to 3C: A review of this comment led to modification of subsection 3378.7, Debrief Processing Unit. Sections (e)(4)(B) and (f)(1)(E)3 are being amended to read: “Inmates will be allowed to participate in family visiting, in accordance with section 3177.”

Commenter #4 and #5

Comment A: Commenter states they oppose the revisions to Section 3000 Step down Program. Commenter recommends that it should be a mandatory extended to 60 month in duration instead of the 24 months proposed.

Response to A: These regulations memorialize the reforms undertaken by the Department and approved by the court in the *Ashker v. State of California* settlement agreement. Paragraph 19 of the settlement agreement specifically requires the Step Down Program to be no longer than 24 months in duration.

Comment B: Commenter states that they recommend that validated STG inmates should not receive any credit in Section 3044(b)(5) unless they successfully graduate from the Step Down Program.

Response to B: These regulations memorialize the reforms undertaken by the Department and approved by the court in the *Ashker v. State of California* settlement agreement.

Comment C: Commenter is opposed to revisions to Section 3341.6(d)(2), Re-imposed SHU Terms and recommends that only validated STG members and associates whom are a habitual danger to society and prison community, should be mandatorily required to be placed back into the SHU, even if paroled 15 years ago from there.

Response to C: These regulations memorialize the reforms undertaken by the Department and approved by the court in the *Ashker v. State of California* settlement agreement.

Comment D: Commenter states that they are opposed to Section 3341.5(a)(1) and are strongly against the Institution Classification Committee being able to commute or suspend any validated STG member and associate when they have not graduated from the Step Down program or disavowed from their dangerous criminal terrorist group.

Response to D: These regulations memorialize the reforms undertaken by the Department and approved by the court in the *Ashker v. State of California* settlement agreement. Criteria for placement into the Step Down Program are outlined in paragraphs 18 through 24 of the settlement agreement.

Comment E: Commenter states opposition to Section 3341.8(a)(7) and recommend that it should change any validated STG or Associates should be transferred to the Restricted Custody General Population (RGCP) pursuant to 3378.4, if found guilty of one serious STG related offense, or two administrative STG related offense, or a total of 1 serious or two administrative related STG Rules violation reports.

Response to E: These regulations memorialize the reforms undertaken by the Department and approved by the court in the *Ashker v. State of California* settlement agreement. Criteria for placement into the Step Down Program are outlined in paragraphs 18 through 24 of the settlement agreement.

Comment F: Commenter states opposition to subsection 3341.9(e)(9)(A-C) because they believe the typical offense terms for validated STG are extremely low for those dangerous and failed programming inmates. Commenter recommends that the STG disciplinary score should be raised from Low-20, Expected-40, High-60 for all categories (A) through(C) offenses.

Response to F: These regulations memorialize the reforms undertaken by the Department and approved by the court in the *Ashker v. State of California* settlement agreement. Attachment B of the settlement agreement identifies the typical terms for the offenses identified as STG related behavior.

Comment G: Commenter opposes subsection 3378.9 Presentence because they believe all validated STG members, associates, and former STG found guilty of only one STG related Rules Violation Report while in the Step Down Program, a sensitive needs yard, and general population should be mandatorily required to be permanently retained in the Restricted Custody General Population. Commenter states that RCGP should be reserved for only for STG members and associates.

Response to G: These regulations memorialize the reforms undertaken by the Department and approved by the court in the *Ashker v. State of California* settlement agreement. Criteria for placement into the Step Down Program are outlined in paragraphs 18 through 24 of the settlement agreement.

Comment H: Commenter states that STG are an extreme danger to both public and prison community. Commenter recommends that all validated STG Level 1 and 2 members and associates be removed from both General Population and sensitive needs yards designations and be permanently retained at the RCGP until they have completely disavowed and disassociated from any STG. Commenter states that STG must prove themselves through acts of positive behavior for a 10 year period, graduation from the Step Down Program, passing a lie-detector test, and not receiving any Rules violation reports.

Response to H: These regulations memorialize the reforms undertaken by the Department and approved by the court in the *Ashker v. State of California* settlement agreement. Criteria for placement in the RCGP is outlined in paragraph 28 of the settlement agreement.

Commenters #6 through #8

Replicate- See Comment #2

Commenter #9

Comment 9A: Commenter states that they object to the change in the regulations from “Activity(ies)” to “Behavior” as it lowers the standard for culpability. Commenter states that the term “behavior” is vague and overly broad, and subject to misinterpretation and misrepresentation by CDCR employees.

Response to 9A: Only those behaviors that are identified as STG behavior in the STG Disciplinary Matrix, can be used for the purpose of validation, and only those violations that rise to the level of SHU-eligible would be cause for SHU placement. The behaviors identified in the STG Disciplinary Matrix did not change as part of this regulation change process.

Comment 9B: Commenter objects to the revisions proposed to Section 3378.4 and states that re-opening disciplinary cases post-disposition violates due process principles. Commenter states that memories fade, potential evidence is lost or unavailable, people parole, etc. Commenter states that in criminal law cases are not re-opened under such circumstances.

Response to 9B: These regulations memorialize the reforms undertaken by the Department and approved by the court in the *Ashker v. State of California* settlement agreement.

Comment 9C: Commenter objects to revisions in Subsection 3378.9(b) affording ICC’s authority to refer inmates to the DRB.

Response to 9C: These regulations memorialize the reforms undertaken by the Department and approved by the court in the *Ashker v. State of California* settlement agreement.

Comment 9D: Commenter objects to the revisions to Subsection 3378.9(A)1.’s minimum of 1 visit per sixty days. Commenter states that currently they are afforded visiting every two weeks, and that state law mandates a minimum of 12 hours contact visiting per week.

Response to 9D: These regulations memorialize the reforms undertaken by the Department and approved by the court in the *Ashker v. State of California* settlement agreement. Attachment A of the settlement agreement outlines the minimum privileges that are required for each privilege group.

Comment 9E: Commenter states that the revisions to Subsection 3378.10(a)(1) and (b)(1) are unreasonably prejudicial, and lengthy, that the “washout” period should begin at the time of the prisoner’s last documented STG activity to which they have been timely noticed and heard. Commenter gives some history of personal case and states that he was found inactive in 2012 but retained in SHU until 2016. Commenter states that he and others are prejudiced by

Subsection 3378.10's requirements of either "general population" or "committee approved release from segregation", because they were retained in segregation through no will of their own, and did nothing wrong. Commenter states that is is unfair that he had spent 16 years in SHU and the regulations now require that he spend another 11 years with a validation stigma.

Response to 9E: Although the comment does identify some aspect of the proposed regulatory action and must be summarized pursuant to Government Code Section 11346.9(a)(3), the comment is not sufficiently related to the specific action as there were no changes made to the timeframes that are referenced in the text.