

19-15224, 19-15359

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

TODD ASHKER, et al.,

Plaintiffs-Appellees/Cross-Appellants,

v.

G. NEWSOM, et al.,

Defendants-Appellants/Cross-Appellees.

On Appeal from the United States District Court
for the Northern District of California

No. 4:09-cv-05796-CW (RMI)
The Honorable Robert M. Illman, Magistrate Judge

**DEFENDANTS-APPELLANTS'
OPENING BRIEF**

XAVIER BECERRA
Attorney General of California
MONICA N. ANDERSON
Senior Assistant Attorney General
ADRIANO HRVATIN
NEAH HUYNH
Supervising Deputy Attorneys General
JEFFREY T. FISHER
Deputy Attorney General
State Bar No. 303712
455 Golden Gate Avenue, Suite 11000
San Francisco, California 94102
Telephone: (415) 510-3568
Fax: (415) 703-5843
Email: Jeffrey.Fisher@doj.ca.gov
*Attorneys for Defendants-Appellants
Newsom, Lewis, Chau and Cate*

TABLE OF CONTENTS

	Page
Introduction	1
Statement of Jurisdiction.....	2
Statement of Issues	2
Addendum	4
Statement of the Case.....	5
I. Plaintiffs’ Lawsuit Challenged Conditions in the SHU and the Policy of Housing Inmates There Indefinitely Based Solely on Gang Status.	5
II. The Parties Settled the Case, Ending CDCR’s Policy of Indefinite SHU Housing Based Solely on Gang Status.	7
A. The Parties Acknowledged that the Agreement Did Not Address Parole Policies or Gang Validations.	8
B. CDCR Transferred 94% of Gang-Validated Inmates Out of the SHU.....	9
C. CDCR Moved Inmates with Unique Safety Concerns to the Restricted Custody General Population Housing Unit.....	10
1. A two-step review and approval process precedes any RCGP placement.	11
2. After CDCR places inmates in the RCGP, it cautiously assigns them to groups for positive social interaction.....	12
3. All RCGP inmates receive significant opportunities for activity and social interaction.	14
D. The Agreement Was to Terminate Automatically After 24 Months.....	15
III. Plaintiffs Moved to Extend the Settlement Agreement Based on Alleged Due-Process Violations.	16

TABLE OF CONTENTS
(continued)

	Page
IV. The District Court Granted Plaintiffs’ Motion on Two of the Three Asserted Grounds.....	17
Summary of the Argument.....	18
Standard of Review.....	21
Argument.....	22
I. Judicial Estoppel Bars Plaintiffs from Moving to Extend the Agreement Based on Parole Processes or Existing Gang Validations.	22
A. Plaintiffs Took Contradictory Positions When It Served Their Purposes.	23
B. The District Court Accepted the Parties’ Settlement Relying on Plaintiffs’ Prior, Inconsistent Position.	24
C. Without Estoppel, Plaintiffs Will Be Unfairly Advantaged, and Defendants Unfairly Prejudiced.....	25
II. The District Court Improperly Extended the Agreement in Contravention of Its Express Terms.	28
A. The Plain Language of the Agreement Expressly Limits the Grounds for Extending Court Oversight Beyond Two Years.	28
B. Neither of the Grounds on Which the District Court Granted the Extension Motion Were Permitted Under the Agreement.....	31
1. The purported due-process violations are not “as alleged in” the operative complaints.	32
2. The purported due process violations did not result from CDCR’s reforms to its Step Down Program or SHU policies.....	36
3. The district court’s interpretation would frustrate the Agreement’s purpose.....	39

TABLE OF CONTENTS
(continued)

	Page
III. The District Court’s Due-Process Analyses Are Flawed.	41
A. Class Members Received Due Process Before Being Denied Parole.	42
1. Parole denials comport with due process if the inmates receive an opportunity to be heard and a statement of reasons why parole was denied.	42
2. Class members received an opportunity to be heard and a statement of reasons why parole was denied.	45
3. Class members’ parole hearings were not “meaningless.”	46
B. Class Members Received Due Process Before Being Found Guilty of Specific Rules Violations.....	48
1. In the prison-discipline context, due process is satisfied if the record contains any evidence that could support the disciplinary finding.	48
2. The district court identified practices of which it disapproved, but not due-process violations.	50
C. Class Members Have No Liberty Interest in Avoiding RCGP Placement.....	57
Conclusion.....	61

TABLE OF AUTHORITIES

	Page
 CASES	
 <i>AIU Ins. Co. v. Superior Court</i>	
51 Cal. 3d 807 (1990)	29
 <i>Bruce v. Ylst</i>	
351 F.3d 1283 (9th Cir. 2003).....	47
 <i>Camreta v. Greene</i>	
563 U.S. 692 (2011).....	58
 <i>Carnegie v. Household Int’l, Inc.</i>	
376 F.3d 656 (7th Cir. 2004).....	25
 <i>Castaneda v. Marshall</i>	
No. 93-cv-03118 CW, 1997 WL 123253 (N.D. Cal. Mar. 10, 1997)	49
 <i>Castillo v. McDowell</i>	
No. 16-cv-2283-PSG-AS, 2017 WL 2857524 (C.D. Cal. May 25, 2017).....	49
 <i>Castro v. Terhune</i>	
712 F.3d 1304 (9th Cir. 2013).....	47, 49
 <i>Cato v. Rushen</i>	
824 F.2d 703 (9th Cir. 1987).....	49
 <i>Chan v. Soc’y Expeditions, Inc.</i>	
123 F.3d 1287 (9th Cir. 1997).....	21
 <i>Charles v. Evans</i>	
No. 05-cv-1367-DFL-CMK, 2006 WL 39096 (E.D. Cal. Jan. 4, 2006).....	52
 <i>City of Sausalito v. O’Neill</i>	
386 F.3d 1186 (9th Cir. 2004).....	6

TABLE OF AUTHORITIES
(continued)

	Page
<i>Crime Justice & Am., Inc. v. Honea</i> 876 F.3d 966 (9th Cir. 2017).....	21
<i>Curry v. Moody</i> 40 Cal. App. 4th 1547 (1995).....	29
<i>Davis v. Reynoso</i> 755 F. App'x 693 (9th Cir. 2019).....	48
<i>DC Comics v. Pac. Pictures Corp.</i> 706 F.3d 1009 (9th Cir. 2013).....	2
<i>Dorough v. Ruff</i> 552 F. App'x 728 (9th Cir. 2014).....	56
<i>Estrada v. Horel</i> 474 F. App'x 580 (9th Cir. 2012).....	48
<i>Greenholtz v. Inmates of Neb. Panel & Corr. Complex</i> 442 U.S. 1 (1979).....	<i>passim</i>
<i>Griffin v. Gomez</i> 741 F.3d 10 (9th Cir. 2014).....	5
<i>Hamilton v. State Farm Fire & Cas. Co.</i> 270 F.3d 778 (9th Cir. 2001).....	24
<i>Jeff D. v. Andrus</i> 899 F.2d 753 (9th Cir. 1989).....	28
<i>Johnson v. Lindon City Corp.</i> 405 F.3d 1065 (10th Cir. 2005).....	25
<i>Kelley v. Peters</i> 747 F. App'x 588 (9th Cir. 2019).....	48

TABLE OF AUTHORITIES
(continued)

	Page
<i>Linton v. Cty. of Contra Costa</i> 31 Cal. App. 5th 628 (2019).....	29, 41
<i>Mackey v. Montrym</i> 443 U.S. 1 (1979).....	51
<i>Madrid v. Gomez</i> 889 F. Supp. 1146 (N.D. Cal. 1995).....	52
<i>Meachum v. Fano</i> 427 U.S. 215 (1976).....	58
<i>Milton H. Greene Archives, Inc. v. Marilyn Monroe LLC</i> 692 F.3d 983 (9th Cir. 2012).....	21, 22, 23, 25
<i>Parsons v. Bristol Dev. Co.</i> 62 Cal. 2d 861 (1965)	21
<i>Quine v. Kernan</i> 741 F. App'x 358 (9th Cir. June 29, 2018).....	28
<i>Reynolds v. Comm'r</i> 861 F.2d 469 (6th Cir. 1988).....	25
<i>Roberts v. Hartley</i> 640 F.3d 1042 (9th Cir. 2011).....	44, 45, 46
<i>Sandin v. Conner</i> 515 U.S. 472 (1995).....	58, 60
<i>Superintendent v. Hill</i> 472 U.S. 445 (1985).....	57
<i>Swarthout v. Cooke</i> 562 U.S. 216 (2011) (per curiam)	27, 41, 43, 44

TABLE OF AUTHORITIES
(continued)

	Page
<i>Takechi v. Adame</i> 635 F. App'x 377 (9th Cir. 2016).....	48
<i>Walnut Creek Pipe Distribs., Inc. v. Gates Rubber Co.</i> 228 Cal. App. 2d 810 (1964).....	38
<i>Wilkinson v. Austin</i> 545 U.S. 209 (2005).....	58
<i>William Keeton Enters., Inc. v. A All Am. Strip-O-Rama, Inc.</i> 74 F.3d 178 (9th Cir. 1996).....	28
<i>Wolff v. McDonnell</i> 418 U.S. 539 (1974).....	48, 49, 54
<i>Zimmerlee v. Keeney</i> 831 F.2d 183 (9th Cir. 1987).....	21, 49, 50, 56
 STATUTES	
United States Code Title 28	
§ 1291.....	2
§ 1331.....	2
California Civil Code	
§ 1638.....	29
§ 1639.....	29
§ 1647.....	40
§ 1648.....	31
§ 1649.....	29
 CONSTITUTIONAL PROVISIONS	
United States Constitution	
Eighth Amendment.....	<i>passim</i>
Fourteenth Amendment	32

TABLE OF AUTHORITIES
(continued)

Page

OTHER AUTHORITIES

California Code of Regulations, Title 15.....4

INTRODUCTION

This institutional-reform case targeted a specific inmate population that comprised roughly 1–2% of the inmates within the California Department of Corrections and Rehabilitation (CDCR), and sought to end CDCR’s practice of housing inmates in Security Housing Units (SHUs) indefinitely based solely on their gang status. After extensive negotiations, the parties executed a Settlement Agreement under which Defendants agreed to reform CDCR’s SHU policies, review the records and conduct hearings for approximately 1,600 class members, move eligible class members out of the SHU, and create a special housing unit for a small group of inmates with extensive safety concerns. Plaintiffs, in exchange, agreed to allow the case to terminate automatically after two years of court supervision, unless they meet specific requirements to warrant an extension. CDCR fulfilled its obligations under the Agreement, but Plaintiffs have failed to honor their only promise: to allow the case to terminate.

Instead, Plaintiffs persuaded the district court to extend its supervision over the case based on purported due-process violations that they never before raised, one of which relates to the parole process, which they had affirmatively represented was outside the scope of this case. The Agreement does not permit extending the case on those bases. Moreover, the evidence

Plaintiffs put forth does not show due-process violations, even if such violations would otherwise be within the Agreement's scope.

As Plaintiffs have shown no basis to extend the Agreement, this Court should reverse and order the district court to deny Plaintiffs' Extension Motion, thereby allowing this settled case to terminate.

STATEMENT OF JURISDICTION

The district court had subject-matter jurisdiction under 28 U.S.C. 1331. (Court Docket (CD) 388, Defendants-Appellants' Excerpts of Record (ER) 331–40.) This Court has jurisdiction under 28 U.S.C. 1291. *See DC Comics v. Pac. Pictures Corp.*, 706 F.3d 1009, 1012 (9th Cir. 2013). The magistrate judge, with the parties' consent, entered the challenged order on January 25, 2019. (CD 1122; CD 1129, ER 156–57.) Defendants timely appealed that order on February 6 (CD 1126), and filed an amended notice of appeal on February 8 (CD 1130) to capture new documents in the appellate record. Plaintiffs filed their notice of cross-appeal on February 25, 2019. (CD 1131.)

STATEMENT OF ISSUES

1. Judicial estoppel bars a party that persuaded a court to accept one position at one point in a case from taking a contradictory position later. Here, Plaintiffs represented that the Agreement was fair, reasonable, and adequate, even though it did not change parole policies or exonerate gang

validations. The district court accepted the representations and approved the Agreement. Now, Plaintiffs argue the court must extend the Agreement because the Board of Parole Hearings—a nonparty—considers gang validations when making parole decisions. Does judicial estoppel bar Plaintiffs from relying on that argument?

2. Under the Agreement, the district court may extend its two-year supervision period only if Plaintiffs prove a systemic due-process violation “as alleged in” the complaints or “as a result of CDCR’s reforms to its Step Down Program or [] SHU policies.” The district court ordered an extension based on purported issues with the parole process and Defendants’ use of confidential information during prison-disciplinary proceedings, neither of which are within the agreed-upon scope. Did the district court exceed its authority by extending the Agreement based on such extra-textual terms?

3. Due process requires only that an inmate receive an opportunity to be heard and a statement of the reasons why parole was denied. Here, the record shows that class members received those protections. Did the district court err in finding a systemic due-process violation because the Board of Parole Hearings considers gang validations, among other information, when making parole decisions?

4. In the prison-discipline context, due process is satisfied if there is *any* reliable evidence from which one *could* conclude the inmate is guilty of the infraction. Here, the evidence shows that CDCR bases its disciplinary decisions on sufficient evidence. Did the district court err in finding a systemic due-process violation based on a series of unrelated and disparate incidents that it categorized as “misuse” of confidential information?

5. A prison-housing decision implicates an inmate’s liberty interest, and must satisfy due process, only if it constitutes an atypical and significant hardship in relation to the ordinary incidents of prison life. Here, the Restricted Custody General Population housing unit provides conditions and privileges similar to those of the general prison population. Did the district court err in concluding that inmates have a protected liberty interest in avoiding Restricted Custody General Population placement?

ADDENDUM

Complying with Ninth Circuit Rule 28-2.7, the addendum to this brief contains copies of the following regulations, in effect at the relevant times: Cal. Code Regs. tit. 15 (Title 15) §§ 2281, 2316, 2402, 3000, 3341.5 (2014); Title 15 § 2449.4 (2017); and Title 15 §§ 3000, 3044, 3376.1, 3378.9 (2018).

STATEMENT OF THE CASE

I. PLAINTIFFS' LAWSUIT CHALLENGED CONDITIONS IN THE SHU AND THE POLICY OF HOUSING INMATES THERE INDEFINITELY BASED SOLELY ON GANG STATUS.

To protect inmates and staff from the dangerous illicit activities of prison gangs, CDCR had a policy of housing inmates who are classified (or, in prison parlance, “validated”) as gang members or associates in the SHU indefinitely, based solely on evidence of their gang activity or involvement. *See Griffin v. Gomez*, 741 F.3d 10, 12 (9th Cir. 2014); *see also* Title 15, § 3341.5(c)(2)(A) (2014).¹ Under the prior regulations, CDCR would only move validated gang affiliates out of the SHU if they completed a “Step Down Program” by avoiding gang activity for six years, “debriefed” by dropping out of their gang and providing officials with information about it, or were released from prison. Title 15, §§ 3341.5(c)(3)(C)(4), (5) (2014).

In December 2009, Plaintiffs Todd Ashker and Danny Troxell brought a pro-se civil-rights action challenging the living conditions in Pelican Bay State Prison’s SHU, and the statewide policy of housing inmates there indefinitely based on gang status. (CD 1, ER 435–42.) In September 2012,

¹ CDCR defines “prison gangs” as gangs that originated in prison. Title 15, § 3000 (2014). This brief refers to prison gangs simply as “gangs.”

now with counsel, Plaintiffs filed a Second Amended Complaint (SAC) that raised putative class claims. (CD 94, 98, 136.)

In June 2014, the district court certified two classes, one comprising “all inmates who are assigned to an indeterminate term at the Pelican Bay SHU on the basis of gang validation,” and a second of “all inmates who are now, or will be in the future, assigned to the Pelican Bay SHU for a period of more than ten continuous years.” (CD 317, ER 149.) In March 2015, Plaintiffs filed a Supplemental Complaint adding allegations about SHU facilities other than at Pelican Bay. (CD 388, ER 322–31, 338–40.) The class amounted to approximately 1–2% of CDCR’s nearly 130,000 total inmates. *See* Fall 2016 Population Projection at 2 (Jan. 2017), *available at* <https://sites.cdcr.ca.gov/research/wp-content/uploads/sites/9/2018/04/Fall-2016-Population-Projections.pdf> (last visited July 2, 2019).²

Plaintiffs’ complaint raised two claims.³ First, Plaintiffs alleged that housing inmates indefinitely in the SHU based solely on gang status, rather than specific conduct, was cruel and unusual punishment in violation of the

² The Court may take judicial notice of this government publication. *See City of Sausalito v. O’Neill*, 386 F.3d 1186, 1224 n.2 (9th Cir. 2004).

³ Because the Supplemental Complaint contains all claims and allegations of the SAC (*compare* CD 136 with CD 388; *see also* Agreement ¶ 7), Defendants cite only to the Supplemental Complaint.

Eighth Amendment. (CD 388, ER 331–35, ¶¶ 227–42 (first cause of action); *id.*, ER 338–40, ¶¶ 253–66 (third cause of action).) Second, Plaintiffs asserted that Defendants violated class members’ due-process rights by: (1) housing inmates in the SHU indefinitely based on gang status, rather than specific misconduct; (2) not adequately explaining what inmates must do to get out of the SHU; and (3) performing periodic reviews of SHU housing that were infrequent and “meaningless.” (*Id.*, ER 335–37, ¶¶ 243–52.)

II. THE PARTIES SETTLED THE CASE, ENDING CDCR’S POLICY OF INDEFINITE SHU HOUSING BASED SOLELY ON GANG STATUS.

The parties negotiated a settlement in August 2015 “without any admission ... of any current and ongoing violations of a federal right.” (CD 424-2 (Agreement), ER 254.) The district court preliminarily approved the Agreement in October 2015. (CD 445, ER 109–10; CD 477, ER 127.) After taking comments and objections and holding a fairness hearing, the court approved the Agreement in January 2016. (CD 488, ER 98–99.)

The Agreement aimed to resolve Plaintiffs’ claims by eliminating the policy of indefinite SHU housing based on gang status, and by moving most validated gang affiliates to the general population. (Agreement ¶¶ 13–17, 25–27.) The Agreement outlined how CDCR would revise its Step Down Program for moving gang affiliates to the general population (*id.* ¶¶ 18–24),

created a special housing unit (the Restricted Custody General Population) for inmates with serious safety concerns (*id.* ¶ 28), and set the criteria for keeping inmates on “Administrative SHU” status (*id.* ¶¶ 29–31). The Agreement also limited the time inmates could be housed in Pelican Bay’s SHU, required CDCR to abide by existing regulations on the use of confidential information, and identified what documents CDCR must produce during a two-year monitoring period. (*Id.* ¶¶ 32–39.)

A. The Parties Acknowledged that the Agreement Did Not Address Parole Policies or Gang Validations.

During the comment period, one inmate proposed that the settlement should exonerate existing gang validations. (CD 486, ER 239–40.) In their joint motion to approve the settlement (the Approval Motion), the parties rejected the proposal, explaining that the settlement was “forward-looking” and “does not contemplate the ‘exoneration’ of past validations.” (*Id.*) The parties emphasized the “critical importance” of releasing class members from “indeterminate SHU confinement,” and insisted that the lack of an exoneration provision “does not detract from, let alone outweigh, the overall fairness, reasonableness, and adequacy of the Agreement.” (*Id.*)

Another inmate suggested including a provision addressing the alleged impact of past SHU confinement on parole eligibility. (*Id.*, ER 241–42.) The

parties rejected that suggestion as well, stating, “Plaintiffs did not seek to change parole policies, and those policies were not a subject of the parties’ negotiations.” (*Id.*)

Based on both the parties’ responses to the inmates’ concerns, and its examination of the Agreement as a whole, the district court found that the Agreement was “fair, adequate, and reasonable” to resolve Plaintiffs’ claims, and praised it as “remarkable,” “extremely fair, extremely humane, and extremely innovative.” (CD 488, ER 98–99; CD 493, ER 105–06.)

B. CDCR Transferred 94% of Gang-Validated Inmates Out of the SHU.

CDCR replaced its old status-based gang-management policy with a behavioral approach to dealing with gangs. (Agreement ¶¶ 13–17; CD 985-4, ER 177, ¶¶ 2, 4.) CDCR reviewed the files of approximately 1,600 validated gang affiliates and moved eligible ones (*i.e.*, those who had not recently engaged in gang activity) into general-population facilities. (Agreement ¶ 25; CD 985-4, ER 177, ¶¶ 2–4.) Those inmates now live alongside other general-population inmates and are subject to the same rules governing the general population. (CD 985-4, ER 177–78, ¶¶ 4, 7.)

Because of these reforms, CDCR moved over 94% of gang-validated inmates out of SHUs and into general-population facilities. (CD 985-4, ER

177, ¶ 2.) The SHU population has since shrunk by 85%, from roughly 2,900 inmates to 420, nearly all of whom were serving fixed terms for disciplinary infractions. (*Id.*, ER 177–78, ¶¶ 3, 5.)⁴ Due to this reduction, CDCR shuttered or re-purposed many of its SHU units. (*Id.*, ER 178, ¶ 6.)

C. CDCR Moved Inmates with Unique Safety Concerns to the Restricted Custody General Population Housing Unit.

The Agreement recognizes that not all class members would be safe in the general population. The parties agreed that CDCR would place inmates for whom the general population would be too dangerous in the Restricted Custody General Population (RCGP) unit. (Agreement ¶ 28; *see also* CD 985-5, ER 183, ¶ 3.) The RCGP is intended for inmates who cannot safely be housed in the general population (*see* Title 15, § 3000 (2018) (defining RCGP)). As of March 2018, there were 64 inmates in the RCGP, all of whom were there because “identified safety concerns prevent [the inmate’s] release to General Population.” (*See* Agreement ¶ 28; CD 985-5. ER 183,

⁴ These numbers are as of March 8, 2018. At that time, four inmates were serving indefinite SHU terms, and each was on “Administrative SHU” status consistent with the Agreement. (CD 985-4, ER 177–78, ¶ 5.) Plaintiffs did not challenge these placements.

¶ 4; CD 985-4, ER 178–79, ¶ 8; *see also* CD 927-8, ER 193, ¶ 3; Title 15, § 3378.9, preamble (2018).⁵

1. A two-step review and approval process precedes any RCGP placement.

The process for determining whether to house an inmate in the RCGP begins with an internal committee called the Institutional Classification Committee. (Agreement ¶ 25; CD 985-5, ER 187–88, ¶ 15.) If the committee concludes, based on a review of the inmate’s file, that a preponderance of the evidence shows “a substantial threat to [the inmate’s] personal safety should they be released to the General Population,” it refers the matter to the Departmental Review Board (*id.*), which makes the final decision on the inmate’s housing, *see* Title 15, § 3376.1 (2018). The Review Board hears from the inmate and decides whether to place him in the general population or in alternative housing, such as the RCGP. (Agreement ¶ 27; CD 985-5, ER 187–88, ¶ 15.) If the Review Board selects the RCGP, it must “substantial[ly] justif[y]” its decision. (*Id.*)

Once CDCR places an inmate in the RCGP, the prison’s classification committee reviews that placement every 180 days. (Agreement ¶ 27.) If the

⁵ The RCGP population fluctuates. Numbers regarding the RCGP are as of March 2018, unless otherwise noted. (CD 985-5, ER 188.)

committee determines that the safety threat no longer exists, it refers the case to the Review Board for a final decision. (*Id.*; *see also* CD 985-5, ER 187–88, ¶ 15.) The Review Board reviews the inmate’s file in light of the committee’s recommendation, conducts a hearing at which the inmate may present his case, and decides whether to move the inmate out of the RCGP. (Agreement ¶ 27; CD 985-5, ER 187–88, ¶ 15.) If the committee or the Review Board cannot confirm that the safety threats have been resolved, the inmate will remain in the protective RCGP environment until the next 180-day review. (CD 985-5, ER 187–88, ¶ 15.) In addition, separate from the 180-day reviews, the Review Board will independently reviews the inmate’s RCGP placement every two years. (CD 985-4, ER 180, ¶ 11.)

2. After CDCR places inmates in the RCGP, it cautiously assigns them to groups for positive social interaction.

CDCR places new RCGP arrivals on “walk-alone” status for an observation period. (CD 985-5, ER 183, ¶ 4; *see also* CD 927-8, ER 193–94, ¶ 4.) During that period, staff observe and evaluate them for placement in one of several RCGP groups, in which they can engage in positive social interaction. (CD 985-5, ER 183–84, ¶¶ 4–5, 7; *see also* CD 927-8, ER 193–

94, ¶ 4.)⁶ Once staff identifies a compatible group, it adds the inmate to that group. (CD 985-5, ER 183–84, ¶ 5; CD 927-8, ER 193–94, ¶ 4.)

Some RCGP inmates have such pervasive safety issues that CDCR cannot immediately identify a group in which it can safely place them. (CD 927-8, ER 193–96, ¶¶ 2–9.) These inmates stay on walk-alone status until CDCR identifies a suitable group or moves them out of the RCGP based on a 180-day review. (CD 999-5, ER 168, ¶ 3; CD 927-8, ER 193–94, ¶ 4.)⁷

CDCR is cautious because this population is at a high risk for violence, and the dangers of placing an inmate in an incompatible group can be lethal. Between January 2016 (when the RCGP opened) and April 2018, there were more than fifty documented incidents of violence, conspiracy to commit violence, or weapons possession in the RCGP. (CD 999-5, ER 168, ¶ 3; *see also* CD 927-8, ER 197, ¶ 15.) In several documented instances, violence quickly ensued after a walk-alone inmate was placed in a group. (SEALED ER 822, 1350–51.)

⁶ The RCGP had three groups as of March 2018, but CDCR is continuously evaluating the population for additional group placement and programming. (CD 985-5, ER 184–85, ¶¶ 6–8.)

⁷ The propriety of this use of walk-alone status under the Agreement is presently on appeal in Ninth Circuit Case No. 18-16427.

3. All RCGP inmates receive significant opportunities for activity and social interaction.

RCGP inmates in groups have many opportunities to leave their cells and socialize with other inmates. (CD 985-5, ER 185, ¶ 9.) They can spend time with other group-members on an exercise yard with pull-up bars and a basketball hoop. (*Id.*) They have a day room, where they may congregate, play board games, socialize, and make telephone calls. (*Id.*) They may interact with other inmates and staff throughout the day, such as when they go to the law library, attend medical appointments, and shop for sundries at the canteen. (*Id.*) They have access to jobs. (*Id.* ¶ 14.) They also have access to various rehabilitative and educational programs, such as Alcoholics and Narcotics Anonymous, Adult Basic Education and General Education Diploma programs, and college courses. (*Id.* ¶ 10.) And they have access to a teacher to assist them. (*Id.*)

CDCR also strives to provide walk-alone inmates with opportunities to socialize, exercise, and learn, despite their safety concerns. (*See id.* ¶¶ 9–10; *see also* CD 927-8, ER 194, ¶ 5.) Walk-alone inmates generally receive ten or more hours per week of yard time, which occurs outdoors in the company of other walk-alone inmates, but in individual, fenced exercise yards that each measure 20 feet long and 10 feet wide. (CD 927-8, ER 194, ¶ 6.) The

fencing prevents inmates from physically harming each other, but the yards are adjacent to one another so that inmates can interact while they walk, jog, or perform other exercises. (*Id.*)

Walk-alone inmates may also spend time individually in the dayroom, during which they can approach other inmates' cells and speak with them face to face through the cell door. (*Id.*, ER 195, ¶ 8.) They can make phone calls to family and friends, and may have contact visits during visiting hours. (*Id.*) They have access to rehabilitative and educational programs. (*Id.*, ER 195–96, ¶ 9.) And they can discuss coursework with their teachers at least two afternoons per week. (*Id.*) Walk-alone inmates also have access to religious services, job assignments, and other leisure activities. (CD 985-5, ER 185–87, ¶¶ 9–10, 14; *see also* CD 927-8, ER 194, ¶ 5.)⁸

D. The Agreement Was to Terminate Automatically After 24 Months.

Paragraph 41 provides that the Agreement and court supervision will terminate automatically 24 months after preliminary approval. (Agreement ¶¶ 37 & 41.) Plaintiffs may extend the Agreement only by proving, by a preponderance of the evidence:

⁸ The RCGP program is still developing, and CDCR continues to seek new ways to provide social interaction to all RCGP inmates, including those on walk-alone status. (CD 927-8, ER 194–95, ¶¶ 7–8.)

that current and ongoing systemic violations of the Eighth Amendment or the Due Process Clause ... exist as alleged in Plaintiffs' [complaints] or as a result of CDCR's reforms to its Step Down Program or the SHU policies contemplated by this Agreement.

(*Id.* ¶ 41; *see also* ¶ 43.)

If Plaintiffs meet their burden, the court may extend the Agreement and its period of supervision, as well as CDCR's obligations to produce data and facilitate attorney-client communications for Plaintiffs, for another year. (*Id.* ¶¶ 40, 44.) Absent an extension, the "Agreement and the Court's jurisdiction over this matter shall automatically terminate, and the case shall be dismissed." (*Id.* ¶ 41.) "Brief or isolated" violations are not "grounds for continuing this Agreement or the Court's jurisdiction[.]" (*Id.* ¶ 42.)

III. PLAINTIFFS MOVED TO EXTEND THE SETTLEMENT AGREEMENT BASED ON ALLEGED DUE-PROCESS VIOLATIONS.

After the 24-month monitoring period, Plaintiffs moved to extend the Agreement under paragraph 41 (the Extension Motion). (CD 898-3, ER 209–10.) They raised three grounds, all due-process related. First, Plaintiffs argued that the Board of Parole Hearings violates due process by considering prior gang validations in making parole decisions. (*Id.*, ER 212–13.) Second, Plaintiffs argued that CDCR violates due process by "misusing" confidential information in disciplinary proceedings. (*Id.*, ER 211.) Finally, Plaintiffs

argued that CDCR's placement and review procedures for the RCGP violate due process. (*Id.*, ER 211–12.) Defendants opposed the motion (CD 985-3), Plaintiffs filed a reply (CD 1000), and both parties filed supplemental briefs (CD 1027, 1084).

IV. THE DISTRICT COURT GRANTED PLAINTIFFS' MOTION ON TWO OF THE THREE ASSERTED GROUNDS.

On January 25, 2019, the district court granted Plaintiffs' motion on two of the three grounds. It found that Defendants violated class members' due-process rights by relying on prior gang validations in making parole decisions and by "misus[ing] confidential information in disciplinary proceedings." (CD 1122, ER 65–67.) The court rejected Plaintiffs' argument that placement and retention of inmates in the RCGP violated due process. (*Id.*, ER 67–68.) The court found that RCGP-placement implicated a protected liberty interest, but held that Plaintiffs' complaints about RCGP procedures did not "rise to the level of 'systemic' due process violations as contemplated by the Settlement Agreement." (*Id.*)

The district court found the parole issue was "as alleged in" the complaints because Plaintiffs had alleged facts indicating that gang validations "unfairly deprived [Plaintiffs] (among other things) of a fair opportunity to seek parole." (*Id.*, ER 68.) As to the information-misuse

issue, the district court found that it was “by its nature ... intertwined with CDCR’s reforms of its SHU policies” because it “effectively frustrates the purpose of the [A]greement” (*id.*), and it therefore satisfies paragraph 41.

Defendants appealed the district court’s extension order on February 6, 2019, and filed an amended notice of appeal on February 8. (CD 1126, 1130.) Plaintiffs filed their cross-appeal on February 25. (CD 1131.)

Defendants moved to stay the underlying litigation pending this appeal. (CD 1132.) Plaintiffs opposed. (CD 1145; *see also* CD 1153 (reply).) The magistrate judge denied the motion as moot, finding that the court lacked jurisdiction to proceed until the appeal is resolved. (CD 1174, ER 41–42.) Plaintiffs sought *de novo* review by the district judge. (CD 1180, 1187, 1191, 1192, 1196, 1197.) The district judge reversed the magistrate judge’s decision, concluded the court had jurisdiction to enforce the extension order during this appeal, denied Defendants’ stay motion, and ordered Defendants to “forthwith” begin producing all documents outlined in the Agreement. (CD 1198, ER 33–34.)

SUMMARY OF THE ARGUMENT

The district court erred in several respects when it granted Plaintiffs’ Extension Motion. First, it failed to apply judicial estoppel, which bars Plaintiffs from prevailing on one of the two grounds on which it granted the

motion. Next, it extended the Agreement on grounds that the extension provision does not authorize. Finally, it found due-process violations where the evidence did not support them. For these reasons, this Court should reverse and order the district court to deny the Extension Motion.

Paragraph 41 is the only term of the Agreement that authorizes the court to extend the Agreement. It allows an extension if Plaintiffs prove, by a preponderance of the evidence, that “current and ongoing systemic violations of the Eighth Amendment or the Due Process Clause ... exist as alleged in Plaintiffs’ [complaint] or as a result of CDCR’s reforms to its Step Down Program or the SHU policies contemplated by this Agreement.”

The district court erred in extending the Agreement because judicial estoppel bars Plaintiffs’ challenge to the parole board’s reliance on prior gang validations during the parole process. In the parties’ motion for final approval of the class settlement, which the court granted, Plaintiffs urged the court to approve the Agreement even though it did not change parole policies or exonerate past validations. They cannot now argue the court should extend the Agreement because it did not do those things.

The court also erred in extending the Agreement based on Plaintiffs’ allegations regarding “misuse” of confidential information and issues related to parole. Paragraph 41 expressly permits relief only if Plaintiffs prove

systemic Eighth Amendment or due-process violations “as alleged in” the complaints or “as a result of CDCR’s reforms to its Step Down Program or the SHU policies contemplated by this Agreement.” But the purported violations underpinning Plaintiffs’ motion were not alleged in the complaints or a result of CDCR’s reforms.

Finally, the court erred in finding violations of due process. Regarding the parole issue, the court applied the wrong legal standard and ignored Defendants’ evidence, which showed parole candidates receive the requisite opportunity to speak and statement of reasons why parole was denied. As to the purported “misuse” of confidential information, the court again applied an incorrect legal standard and ignored evidence, which showed that CDCR only disciplined inmates based on sufficient evidence of guilt. (And, to the extent any of the alleged “misuse” of confidential information violated due process, such violations were not “systemic,” as paragraph 41 requires.) Moreover, regarding placement and retention of inmates in the RCGP, the court was correct that CDCR’s procedures satisfy due process. But it erred in finding that RCGP conditions are so atypical and harsh that inmates have a due-process liberty interest in avoiding them.

STANDARD OF REVIEW

The Court should apply California law to the contract issues in this case because the parties elected California law to govern (Agreement ¶ 60), and because all underlying events occurred, and all parties reside, in California. *See Chan v. Soc’y Expeditions, Inc.*, 123 F.3d 1287, 1297 (9th Cir. 1997). Under California law, contract-construction issues are reviewed de novo. *Parsons v. Bristol Dev. Co.*, 62 Cal. 2d 861, 865–66 (1965).

Regarding judicial estoppel, this Court reviews de novo whether the district court identified the correct legal rule, and reviews application of that rule for an abuse of discretion. *See Milton H. Greene Archives, Inc. v. Marilyn Monroe LLC*, 692 F.3d 983, 992–93 (9th Cir. 2012). The Court reviews de novo mixed questions of law and fact, such as whether certain facts establish a due-process violation, and it reviews a district court’s factual findings, if any, for clear error. *See Crime Justice & Am., Inc. v. Honea*, 876 F.3d 966, 971 (9th Cir. 2017). It reviews de novo a district court’s decision whether some evidence supported a prison disciplinary decision. *Zimmerlee v. Keeney*, 831 F.2d 183, 185–86 (9th Cir. 1987).

ARGUMENT

I. JUDICIAL ESTOPPEL BARS PLAINTIFFS FROM MOVING TO EXTEND THE AGREEMENT BASED ON PAROLE PROCESSES OR EXISTING GANG VALIDATIONS.

At the outset, the Court should reverse as to the issue regarding the parole board considering gang validations because judicial estoppel bars Plaintiffs from seeking an extension on that ground. Plaintiffs persuaded the district court of one position when seeking approval of the Agreement, then took a contrary position to convince the court to extend the Agreement. The Court should not allow Plaintiffs to benefit from their duplicity.

Judicial estoppel is an equitable doctrine intended to prevent a party from gaining an unfair advantage by opportunistically taking inconsistent positions at various stages of a lawsuit. *Marilyn Monroe LLC*, 692 F.3d at 993. The doctrine preserves judicial integrity by protecting against a litigant duping the court by “playing fast and loose.” *Id.* (quoting *Hamilton v. State Farm Fire & Cas. Co.*, 270 F.3d 778, 782 (9th Cir. 2001).) If judicial estoppel applies, the court will not entertain any argument based on the inconsistent position. *Id.* at 1000.

Courts consider three factors before applying judicial estoppel:

(1) whether the party’s later position is clearly inconsistent with its earlier position; (2) whether the party successfully persuaded the court to accept the

earlier position, such that accepting the later position would make it appear the court was misled; and (3) whether the party would obtain an unfair advantage, or the other party would be unfairly prejudiced, if estoppel is not applied. *Id.* at 994–95 (citation omitted).

Although the Court generally reviews application of judicial estoppel for an abuse of discretion, the district court did not address the issue, despite Defendants raising it in their opposition to the Extension Motion (*see* CD 985-3, ER 173–74; CD 1122, ER 60–61, 64–65). The Court should therefore resolve the issue *de novo*. *See Marilyn Monroe LLC*, 692 F.3d at 992. In either case, all three factors demand applying judicial estoppel here.

A. Plaintiffs Took Contradictory Positions When It Served Their Purposes.

Plaintiffs’ position in the Extension Motion—particularly, their claim about considering gang validations in parole proceedings—contradicts their position in the Approval Motion. In the Approval Motion, Plaintiffs asserted that the Agreement does not exonerate past gang validations, and submitted that the lack of an exoneration provision “does not detract from, let alone outweigh, the overall fairness, reasonableness, and adequacy of the Agreement.” (CD 486, ER 239–40.) Plaintiffs also submitted that they “did

not seek to change parole policies,” and that parole policies “were not a subject of the parties’ negotiations.” (*Id.*, ER 241–42)

Plaintiffs’ Extension Motion reflects an about-face. There, Plaintiffs argued the court should extend the Agreement because the Board of Parole Hearings considers gang validations in making parole decisions. (CD 898-3, ER 219–20.) To remedy the alleged violation, Plaintiffs asked the court to “order that Defendants expunge all past validations and revalidations,” and to invalidate certain regulations because they allow the parole board to consider past gang validations when making parole decisions. (*Id.*, ER 221.)

In short, Plaintiffs urged the court to accept the Agreement by insisting that they were satisfied with it, even though it did not exonerate past gang validations or make changes to parole policies. Now, Plaintiffs turn 180 degrees, seeking to extend the Agreement based on positions they expressly disclaimed in the Approval Motion. Plaintiffs’ past and current positions are irreconcilable.

B. The District Court Accepted the Parties’ Settlement Relying on Plaintiffs’ Prior, Inconsistent Position.

Persuading a court to approve a settlement, where court approval is required, suffices to support judicial estoppel. *See Hamilton*, 270 F.3d at 784 (order discharging debts in bankruptcy shows sufficient judicial acceptance

of debtor's list of assets to bar undisclosed legal claims); *Johnson v. Lindon City Corp.*, 405 F.3d 1065, 1069–70 (10th Cir. 2005) (court accepted pleas in abeyance, such that accepting a later, contradictory position would indicate that either the first or the second court was misled); *Carnegie v. Household Int'l, Inc.*, 376 F.3d 656, 659–60 (7th Cir. 2004) (defendants were judicially estopped from challenging feasibility of a global settlement where they had persuaded the court that global settlement was proper); *Reynolds v. Comm'r*, 861 F.2d 469, 473 (6th Cir. 1988) (statement to obtain court approval of a bankruptcy settlement “is sufficient ‘judicial acceptance’ to estop the party from later advancing an inconsistent position”).

Here, the district court accepted Plaintiffs' earlier position by approving the settlement. Plaintiffs' later reversal of that position indicates they misled the court and Defendants in order to secure an extension of the Agreement and subject CDCR to further costly monitoring. Judicial estoppel bars such tactics. *See Marilyn Monroe LLC*, 692 F.3d at 994–99.

C. Without Estoppel, Plaintiffs Will Be Unfairly Advantaged, and Defendants Unfairly Prejudiced.

Finally, denying estoppel would unfairly advantage Plaintiffs and unfairly disadvantage Defendants. *See Marilyn Monroe LLC*, 692 F.3d at 999–1000. If the Court allows Plaintiffs to change positions post-settlement,

they could obtain a more expansive remedy than they agreed to accept when they settled the case. To avoid the expense of litigation and the risk that their claims would fail, Plaintiffs agreed to settle in exchange for certain reforms to CDCR's SHU policies. Plaintiffs' motion does not challenge those reforms. Instead, Plaintiffs insist that Defendants must now do more. (*See, e.g.*, CD 898-3, ER 219–20.) Allowing Plaintiffs to extend this relatively narrow, yet costly, class action until Defendants “fix” California's parole system, after previously insisting that the issue is not part of the case, would unfairly benefit Plaintiffs.

Conversely, it would unfairly prejudice Defendants, who have defended this case for ten years. They agreed to settle, in part, to avoid the prospect of litigating for untold years into the future. (*See* Agreement ¶ 11.) To avoid that possibility, CDCR agreed to reform its policies, without holding Plaintiffs to their evidentiary burden, on the condition that the Agreement and litigation would end two years later (unless Plaintiffs satisfy paragraph 41). (*See id.* ¶ 41.) In the Approval Motion, Plaintiffs represented that the Agreement “does not contemplate ‘exoneration’ of past validations,” and that Plaintiffs “did not seek to change parole policies.” (CD 486, ER 239–42.) Defendants relied on those positions in deciding to settle. Defendants will be unfairly prejudiced if, having given up the right to

vindicate themselves before a factfinder, they now must resolve legal claims that are not in the complaint, not contemplated by the Agreement, and which Plaintiffs previously insisted were not part of the case.

CDCR would not have agreed to limit the parole board's consideration of past gang validations based on a claim Plaintiffs disclaimed at the fairness hearing, and which would fail as a matter of law. As explained *infra*, almost five years before the Agreement, the Supreme Court held that, for purposes of due process, federal courts should not be weighing in on whether "some evidence" supports a parole decision. *Swarthout v. Cooke*, 562 U.S. 216, 222 (2011) (per curiam). Because inmates have no right to release before their sentence expires, and States are not required to offer parole, due process requires that inmates receive "an opportunity to be heard" and "a statement of the reasons why parole was denied," and nothing more. *Id.* at 220.

Defendants relied on Plaintiffs' positions in entering into the Agreement; the court relied on Plaintiffs' representations in approving the Agreement; Defendants have performed; and Plaintiffs received the benefit of their bargain. Weighing the relevant factors, this Court should find that judicial estoppel bars Plaintiffs from now taking a contradictory position in an effort to extend the Agreement to encompass parole proceedings.

II. THE DISTRICT COURT IMPROPERLY EXTENDED THE AGREEMENT IN CONTRAVENTION OF ITS EXPRESS TERMS.

This Court should reverse the extension order because it is premised on impermissible grounds. A court’s power to enforce a settlement is generally limited by the terms to which the parties agreed. *See William Keeton Enters., Inc. v. A All Am. Strip-O-Rama, Inc.*, 74 F.3d 178, 182 (9th Cir. 1996) (reversing injunction because it fell outside the scope of the parties’ agreement); *see also Quine v. Kernan*, 741 F. App’x 358 (9th Cir. June 29, 2018) (partially reversing order enforcing a settlement because it relied on erroneous contract construction). Here, the Agreement expressly limited the circumstances justifying an extension to constitutional violations “as alleged in” the operative complaints, or “as a result of CDCR’s reforms to its Step Down Program or [] SHU policies.” (Agreement ¶ 41.) The district court granted an extension despite the absence of either circumstance. Because the court’s construction was erroneous, this Court should reverse.

A. The Plain Language of the Agreement Expressly Limits the Grounds for Extending Court Oversight Beyond Two Years.

Settlement agreements are “governed by familiar principles of contract law.” *Jeff D. v. Andrus*, 899 F.2d 753, 759 (9th Cir. 1989). Under California law, which the parties agreed would govern (Agreement ¶ 60), the parties’

mutual intent, as reflected in the contract’s language, controls. *See AIU Ins. Co. v. Superior Court*, 51 Cal. 3d 807, 821–22 (1990); *see also* Cal. Civ. Code §§ 1638, 1639. Where the parties disagree about what a contract term means, the first step is to determine whether the term is ambiguous. *Curry v. Moody*, 40 Cal. App. 4th 1547, 1552 (1995). If it is not ambiguous, the court applies its plain meaning. *AIU Ins. Co.*, 51 Cal. 3d at 822. If it is ambiguous, the court interprets it “in the sense in which the promisor believed, at the time of making it, that the promisee understood it.” Cal. Civ. Code § 1649; *see also Linton v. Cty. of Contra Costa*, 31 Cal. App. 5th 628, 636 (2019), *reh’g denied* (Feb. 19, 2019), *review denied* (Apr. 10, 2019).

Plaintiffs pursued this action to challenge CDCR’s policy of housing inmates in the SHU indefinitely based solely on their gang status. (CD 388, ER 341–42.) And, when the parties executed the Agreement, CDCR agreed to change that policy, on the condition that the Agreement and judicial supervision would automatically end after 24 months. (Agreement ¶ 41.)

Paragraph 41—the automatic-termination clause—includes the sole mechanism by which Plaintiffs may extend the Agreement and the district court’s jurisdiction. It authorizes the court to extend the Agreement if Plaintiffs prove, by a preponderance of the evidence,

that current and ongoing systemic violations of the Eighth Amendment or the Due Process Clause ... exist [1] as alleged in Plaintiffs' Second Amended Complaint or Supplemental Complaint or [2] as a result of CDCR's reforms to its Step Down Program or the SHU policies contemplated by this Agreement.

(*Id.* ¶ 41 (numbering added).) "Systemic" violations are those "affecting [the] entire system." Bryan A. Garner, *Garner's Modern American Usage* 795 (3rd ed. 2009). "Brief or isolated" violations cannot satisfy this burden. (Agreement ¶ 42.) And, unless Plaintiffs make this showing, the Agreement automatically terminates. (*Id.* ¶ 41.)

The parties' intent is clear from the Agreement's plain terms. The parties expressly tied the phrase "current and ongoing systemic violations" to the pleadings, addressing the constitutional claims raised in Plaintiffs' complaints. If CDCR did not execute its promised reforms, or if the reforms did not resolve those specific constitutional violations, the court could extend the Agreement and litigation so the parties could try to resolve them. That is why an adequate showing of violations "as alleged in" the complaint would justify extension.

The parties also addressed the possibility that CDCR's reforms to its Step Down Program and SHU policies might cause new, unexpected constitutional violations. If so, the court could extend the Agreement and

litigation so the parties could address those unintended consequences. That is why violations “as a result of CDCR’s reforms to its Step Down Program or [] SHU policies” justify extension.

Purported constitutional violations falling outside of those two categories do not provide a basis to extend the Agreement. *See* Cal. Civ. Code § 1648 (a contract “extends only to those things concerning which it appears that the parties intended to contract”). By expressly limiting what types of purported violations may justify an extension, other alleged violations, even if well founded, must be pursued in separate actions.

B. Neither of the Grounds on Which the District Court Granted the Extension Motion Were Permitted Under the Agreement.

The district court exceeded its authority by granting the Extension Motion because the purported constitutional violations are neither “as alleged in” the complaints, nor “as a result of CDCR’s reforms to its Step Down Program or ... SHU policies[.]” (Agreement ¶ 41.) In extending the Agreement, the court found: (1) Defendants “us[ed] unreliable gang validations to deny class members a fair opportunity to seek parole”; and (2) “systemic misuse of confidential information in what appear to be meaningless disciplinary hearings such as to return class members to solitary confinement.” (CD 1122, ER 68.) As discussed below, these do not amount

to due-process violations, *see* pp. 41–57, *infra*, and they are neither “as alleged in” the complaints nor “as a result of CDCR’s reforms” to its Step Down Program or SHU policies. (Agreement ¶ 41.)

1. The purported due-process violations are not “as alleged in” the operative complaints.

The purported due-process violations the district court found are new claims that Plaintiffs must bring, if at all, as new lawsuits. That they resemble the original claims, or reference facts mentioned in the complaints, does not make the supposed violations “as alleged in” the complaints.

The operative complaints allege three constitutional violations: two under the Eighth Amendment (CD 388, ER 331–35, ¶¶ 227–42; *id.*, ER 338–40, ¶¶ 253–66 (first and third claims)) and one under the due-process clause of the Fourteenth Amendment (*id.*, ER 335–37, ¶¶ 243–52 (second claim)). The Eighth Amendment claims were directed to SHU conditions and the duration of class members’ confinement there (*id.*, ER 331–35, ¶¶ 227–42; *id.*, ER 338–40, ¶¶ 253–66), and the due-process claim related to CDCR’s former policy of housing inmates in the SHU based on gang status, rather than on specific instances of gang-related misconduct (*id.*, ER 335–37, ¶¶ 243–52).

The complaints do not allege due process violations related to the parole process. Plaintiffs admit this when, in their motion, they refer to it as “a *new incarnation* of what Plaintiffs alleged in” their complaints. (CD 898-3, ER 219–20 (emphasis added).) Indeed, the complaints contain no due-process claim relating to the use of gang validations in parole proceedings. The word “parole” appears only 13 times in the Supplemental Complaint’s 266 paragraphs, never in connection with gang validations, and never as an independent basis for an due-process violation. (*See* CD 388 ¶¶ 14, 20, 24 (describing the Plaintiffs’ backgrounds); 87–90 (alleging an unwritten policy of denying parole to those housed in SHU); 171 (listing questions of fact allegedly common to all class members); 230 & 256 (listing parole denial based on SHU status as a factor contributing to an Eighth Amendment claim); 237, 246, 249 & 261 (alleging SHU housing prolongs confinement).)

Plaintiffs did not, as the district court suggested, allege a due-process claim based on gang-validation decisions “unfairly depriv[ing] them ... of a fair opportunity to seek parole.” (CD 1122, ER 68 (citing CD 136, ER 427–32.)) The statements on which the court relied alleged only that SHU placement (not gang validations) extends an inmate’s confinement. Plaintiffs emphasized this distinction in the Approval Motion, when they asserted that the use of gang validations in parole decisions was not the basis of their due-

process claim—or any other claim. (CD 486, ER 241–42.) They said they did not intend to change parole policies through this lawsuit. (*See id.*) And they explained that their reference to parole denials was intended to show “the effect that SHU confinement had on extending the overall length of inmates’ prison sentences.” (*Id.*) It was not a separate due-process claim.

Plaintiffs’ Approval Motion also made clear that Plaintiffs’ claims do not encompass the use of gang validations for reasons other than SHU placement, such as in parole determinations. (*Id.*, ER 239–42.) Plaintiffs stated that their “overarching goal”—which the Agreement accomplished—was to end “indeterminate SHU confinement” and ensure that gang validations “standing alone” do not dictate prisoners’ housing placements. (*Id.*) The references to gang validations, other than as the basis for SHU placement, did not constitute a separate due-process claim.

For similar reasons, the purported due-process violation based on “misuse of confidential information” in disciplinary hearings (CD 1122, ER 68) is not “as alleged in” the complaints. The purported “misuse” found in the extension order was, in fact, a collection of unrelated issues relating to CDCR’s handling of confidential information. (CD 1122, ER 46–53, 57–60.) The extension order purports to find some instances where confidential information was fabricated, some instances where it was disclosed in a way

that was too vague, some in which arguably exculpatory details were not disclosed, and some where reports are described as “corroborating” one another when they include some discrete facts that differ. (*See id.*)

The complaints, by contrast, do not allege any “misuse” of confidential information. None of the complaints’ references to confidential information allege that it was being “misused” as discussed by the district court. (*Cf.* CD 1122, ER 46–53, 57–60.) Rather, they note that CDCR used confidential information, for example, in validation decisions, decisions not to place validated gang members on “inactive” status, and decisions to keep an “inactive” gang member in the SHU. (CD 388, ¶¶ 16, 17, 21, 93, 107–10.) In one paragraph, Plaintiffs allege that one use of confidential information (the use of “laundry lists” of purported gang affiliates) violates the settlement agreement in *Castillo v. Almeida*, C-94-2847 (N.D. Cal. 1994). (CD 388, ¶¶ 118–19.) But the complaints do not reference the sort of “misuse” issues discussed in the extension order. They do not allege that CDCR fabricated confidential information or disclosed it in an incomplete or excessively vague way. Nor do they allege specific reliability problems. So any due-process claim based on such “misuse” of confidential information is not “as alleged in” the complaints.

2. The purported due process violations did not result from CDCR's reforms to its Step Down Program or SHU policies.

CDCR's "reforms to its Step Down Program [and] SHU policies" are defined in paragraphs 13 through 33. They include changing policies so inmates are not placed in the SHU based solely on gang status (§§ 13–17); revising the Step Down Program to be based on gang activity rather than status (§§ 18–24); providing that CDCR will review gang-validated inmates' files for potential placement in non-SHU housing (§§ 25–27); creating the RCGP unit (§ 28); defining "Administrative SHU" status and how CDCR may use it (§§ 29–31); and limiting how long an inmate may remain in Pelican Bay's SHU (§§ 32–33).

The Agreement's other terms do not reform CDCR's Step Down Program or SHU policies. Most of those are implementation details, such as how CDCR will ensure compliance with certain regulations and embody the Agreement's reforms in new regulations (§§ 34–36); the documents CDCR must produce during the supervision period (§§ 37–39); how the Agreement shall terminate (§§ 41–46); how disputes will be resolved (§§ 48–53); and guides for construing the Agreement (§§ 59–64).

With respect to considering gang validations in parole proceedings, Plaintiffs acknowledged during the settlement-approval process that the

Agreement does not reform the parole system or exonerate past validations. (CD 486, ER 239–42.) So the purported due-process violation relating to parole eligibility is not “as a result of CDCR’s reforms,” and cannot be the basis of an extension under paragraph 41.

The same is true of the alleged “misuse” of confidential information. Even if some forms of “misuse” would constitute due-process violations, there is no evidence that they resulted from CDCR’s reforms. There is no indication the purported “misuse” resulted from CDCR changing its policy of housing inmates in the SHU based solely on gang status (¶¶ 13–17), or from revising the Step Down Program to focus on gang activity rather than status (¶¶ 18–24). Nor is there evidence that the “misuse” resulted from CDCR reviewing gang-validated inmates’ files and moving eligible inmates out of the SHU (¶¶ 25–27), from creating the RCGP unit (¶ 28), from having defined criteria for use of “Administrative SHU” status (¶¶ 29–31), or from limiting how long an inmate may remain in Pelican Bay’s SHU (¶¶ 32–33). There is no evidence that these reforms changed how CDCR used confidential information, much less that it caused the purported “misuse.”

Moreover, none of the Agreement’s terms that make promises relating to confidential information—*i.e.*, paragraphs 34, 37, and 38—contemplate any reform to CDCR’s “Step Down Program ... or SHU policies.” There are

no policy reforms in paragraphs 37 and 38, which describe what data CDCR will provide during the monitoring period. And paragraph 34 only requires CDCR to adhere to pre-existing regulations regarding the use of confidential information and “develop and implement” staff training on the subject. None of those paragraphs “reform” the “Step Down Program” or “SHU policies.”

The district court’s analysis shows just how far outside of paragraph 41 this “misuse” issue falls. The court first described the issue as “intertwined with” the reforms to CDCR’s SHU policies. (CD 1122, ER 68.) It then suggested that the issue “frustrates” the Agreement’s purpose by sending class members back to SHU (*id.*), a conclusion belied by the 85% drop in SHU population after the Agreement (*see pp. 9–10, supra*). Then the court announced that the issue is “related to, and is a result of, CDCR’s reforms to its SHU policies,” without identifying what reforms, or what policies, it was referring to. This analysis cannot overcome the logic of applying paragraph 41’s plain language: the purported “misuse of confidential information” is not “as a result of” the Agreement’s reforms to the Step Down Program or SHU policies. *Cf. See Walnut Creek Pipe Distribs., Inc. v. Gates Rubber Co. Sales Div.*, 228 Cal. App. 2d 810, 815 (1964) (“The courts cannot make better agreements for parties than they themselves have been satisfied to enter into or rewrite contracts because they operate harshly or inequitably.”).

Furthermore, the instances of supposed “misuse” do not “frustrat[e]” the Agreement’s purpose, as the district court believed. (CD 1122, ER 68.) The Agreement’s purpose was not to correct all perceived shortcomings in CDCR’s policies touching on SHU housing or gang validation. (*E.g.*, CD 486, ER 239–42.) Nor was it to insulate class members from consequences of their own misconduct. (*See, e.g.*, Agreement ¶¶ 23, 25.) The Agreement’s purpose, as defined by its terms, includes eliminating indefinite SHU housing, moving eligible class members out of the SHU, and creating a new housing unit for inmates with unique safety concerns, among other things. (*See* Agreement ¶¶ 13–33; CD 486, ER 239–48.) The record shows that purpose was realized, not frustrated.

3. The district court’s interpretation would frustrate the Agreement’s purpose.

Finally, in addition to comports with the Agreement’s plain language, the construction that Defendants’ propose is the only reasonable one. In settling this prison-reform case, both parties compromised to avoid the uncertainty and expense of trial. (Agreement ¶ 11.) CDCR agreed to reform its Step Down Program and SHU policies as set out in the Agreement, to review class members’ files, and to move eligible class members out of the SHU. (*Id.* ¶¶ 13–36.) And Plaintiffs agreed to let their lawsuit be dismissed

after two years of judicial supervision. (*Id.* ¶ 41.) As an added assurance, the parties agreed that the Agreement and court supervision could continue if Plaintiffs proved by a preponderance of the evidence that CDCR's did not perform, its reforms did not resolve the specific claims in Plaintiffs' complaint, or the reforms caused new constitutional violations. (*Id.*)

If, as the district court found, paragraph 41 allows Plaintiffs to extend the Agreement based on something other than the specific violations alleged in the complaints, then Defendants will have received nothing in exchange for their performance under the Agreement. If, as the extension order implies, Plaintiffs can extend the Agreement based on any fact asserted in their voluminous complaints, they may obtain, in piecemeal fashion, more relief than they would have obtained by winning this lawsuit, even though they agreed to settle. And Defendants will have forfeited their right to defend this action and given Plaintiffs the primary policy reform they sought, only to be subjected to continuous remediation until the district court is satisfied that it has cured all Eighth Amendment and due-process issues referenced—however obliquely—in Plaintiffs' complaints. No reasonable defendant would accept that bargain. *See* Cal. Civ. Code § 1647 (“[a] contract may be explained by reference to the circumstances under which it was made, and the matter to which it relates”). And Plaintiffs could not have

reasonably believed that CDCR intended the Agreement to have such an amorphous meaning, especially given its intent to avoid indefinite judicial oversight by negotiating for automatic termination after two years of court supervision. *See Linton*, 31 Cal. App. 5th at 636.

III. THE DISTRICT COURT’S DUE-PROCESS ANALYSES ARE FLAWED.

If the Agreement authorized an extension based on the purported due-process violations alleged in the Extension Motion, the Court should still reverse because the evidence did not establish due-process violations.

The due-process clause guarantees procedures that “minimize the risk of erroneous decisions” taking away protected liberty or property interests. *Greenholtz v. Inmates of Neb. Penal & Corr. Complex*, 442 U.S. 1, 13 (1979). The due-process analysis begins by asking whether the interest at issue is one the law recognizes. *See Swarthout*, 562 U.S. at 219. If it is, courts ask whether existing procedures were adequate to protect the interest from wrongful deprivation. *Id.* The analysis at step two is extremely situation-specific and fact-bound. *See Greenholtz*, 442 U.S. at 13.

In the extension order, the district court erroneously found that Defendants violated class members’ due-process rights by “us[ing] unreliable gang validations to effectively bar class members a meaningful

opportunity for parole,” and by “misus[ing] confidential information in disciplinary proceedings.” (CD 1122, ER 65, 67.) It also erroneously found that inmates have a due-process liberty interest in avoiding placement in the RCGP, though it correctly found that CDCR’s procedures for RCGP placement satisfy due process. (*Id.*, ER 67–68.)

A. Class Members Received Due Process Before Being Denied Parole.

The district court erred in concluding that, if the parole board considers past gang validations (which the Agreement intentionally left undisturbed (CD 486, ER 239–40)), the parole hearing is meaningless. (CD 1122, ER 64–65.) The hearing transcripts Defendants submitted show that class members continue to receive due process in their parole hearings.

1. Parole denials comport with due process if the inmates receive an opportunity to be heard and a statement of reasons why parole was denied.

The Supreme Court defined the due-process standard for parole proceedings in *Greenholtz, supra*, a § 1983 class action brought by a class of Nebraska inmates. 442 U.S. at 3–4. The plaintiffs claimed that the state’s parole procedures violated due process. *Id.* The district court and Eighth Circuit agreed, and ordered the state to provide more protections, including a

formal hearing and a written explanation of the facts relied on and reasons parole was denied. *Id.* at 5–6. The Supreme Court reversed. *Id.* at 15–16.

The *Greenholtz* Court began its analysis by noting that inmates have no substantive constitutional right to parole. *Id.* at 7; *see also Swarthout*, 562 U.S. at 222 (noting that, in the parole context, “the only federal right at issue is procedural”). But, if a state creates a parole system, due process requires only that any inmate denied parole receive (1) “an opportunity to be heard” and (2) a statement explaining the reasons why parole was denied. *Id.* at 16. The Court rejected the argument that due process requires an evidentiary hearing or other procedures “designed to elicit specific facts,” because that would convert a parole decision—inherently subjective and discretionary—into an “adversarial” proceeding. *Id.* at 13–16. It also rejected the contention that a parole board must explain the facts on which parole was denied, noting that the statement of reasons for denial is intended “as a guide to the inmate for his future behavior,” and not as a roadmap for challenging the denial. *See id.* at 15–16. Requiring a summary of evidence, the Court explained, “would tend to convert the process into an adversarial proceeding and to equate the Board’s parole-release determination with a guilt determination.” *See id.* at 15–16.

The Supreme Court reaffirmed the *Greenholtz* standard in *Swarthout*. In *Swarthout*, the inmate-petitioners filed habeas petitions alleging that their parole denials were unconstitutional because the evidence supporting them did not meet California’s “some evidence” legal standard. 562 U.S. at 217–19. The Ninth Circuit had held that the “some evidence” standard was a component of the petitioner’s due-process liberty interest, and that denying parole without satisfying it denied due process. *Id.*

The Supreme Court reversed, reiterating the *Greenholtz* rule: in denying parole, due process requires only that the inmate be “allowed an opportunity to be heard” and be given “a statement of the reasons why parole was denied.” *Id.* at 220–22. The Court rejected the Ninth Circuit’s position that constitutional due process would incorporate legal standards from state law, like California’s “some evidence” rule. *Id.* The Court stated that, if the plaintiffs received the *Greenholtz* protections, that “should have been the beginning and the end” of the due-process inquiry. *Id.*

This Court applied *Greenholtz* in *Roberts v. Hartley*, 640 F.3d 1042 (9th Cir. 2011). The Court stated that, “[i]f the state affords the procedural protections required by *Greenholtz* and *Swarthout*, that is the end of the matter[.]” *Id.* at 1046. And, because the Board “permitted Roberts to speak

on his own behalf and to contest the evidence against him,” and “provided ... an explanation of its decision,” due process was satisfied. *Id.*

2. Class members received an opportunity to be heard and a statement of reasons why parole was denied.

The district court did not find, and Plaintiffs did not argue, that class members were denied the *Greenholtz* protections. In fact, the evidence shows they received those protections. The hearing transcripts show that each parole candidate received an opportunity to explain why he should receive parole.⁹ And each candidate was told why parole was denied, which generally involved many factors, such as circumstances of the commitment offense, prior and subsequent crimes, prison rules violations, substance abuse, gang involvement, and lack of credibility or remorse.¹⁰ Under

⁹ (*See* SEALED ER 869–75 (Hvatin Ex. A), 927–28 (Ex. B), 968–69 (Ex. C), 992 (Ex. D), 1020–23 (Ex. E), 1068–70 (Ex. F), 1090–92 (Ex. G), 1118–22 (Ex. H), 1144–49 (Ex. I), 1173–74 (Ex. J), 1197–99 (Ex. K), 1225–26 (Ex. L), 1257 (Ex. M), 1287–89 (Ex. N), 1323–25 (Ex. O).) Those transcripts also show that inmates interact with the parole board throughout the hearing, responding to its concerns in real-time, and are represented by an attorney who makes an affirmative case for parole before the inmate’s official opportunity to respond. (*E.g.*, SEALED ER 842–61 & 865–69 (Hrvatin Ex. A), 900–11 & 922–27 (Ex. B), 963–68 (Ex. C).) Such protections exceed the *Greenholtz* minimum.

¹⁰ (*See* SEALED ER 876–92 (Ex. A); 932–48 (Ex. B), 970–78 (Ex. C), 993–1002 (Ex. D), 1024–51 (Ex. E), 1071–79 (Ex. F), 1093–104 (Ex. G), 1127–34 (Ex. H), 1150–65 (Ex. I), 1175–87 (Ex. J), 1200–13 (Ex. K), 1230–45 (Ex. L), 1259–76 (Ex. M), 1290–309 (Ex. N), 1326–44 (Ex. O).)

Greenholtz, that should have ended the matter. *See Roberts*, 640 F.3d at 1045–46. But the district court found that, by considering prior gang validations, the parole board rendered otherwise-proper parole hearings “meaningless” and unconstitutional. The Court should reverse that error.

3. Class members’ parole hearings were not “meaningless.”

This Court should reject the district court’s conclusion that a single piece of evidence may render “meaningless” an otherwise constitutional parole hearing. (*See* CD 1122, ER 64–65.) “Due process” describes procedures that adequately safeguard a legally recognized interest from erroneous deprivation. The procedures in this case satisfied due process.

The district court found parole hearings meaningless, even if inmates received the *Greenholtz* protections, if the parole board considered—along with all the other evidence—a gang validation with which the district court disagreed. But considering gang validations—even flawed ones—during a parole hearing would not render the hearing meaningless. Parole decisions are inherently subjective and fact-based. As the Supreme Court recognized, they “involve[] a synthesis of record facts and personal observation filtered through the experience of the decisionmaker and leading to a predictive judgment as to what is best both for the individual inmate and for the

community.” *Greenholtz*, 442 U.S. at 7, 9–10. Under California’s parole system, the parole board may consider anything it finds relevant to whether the inmate, if released early, might be dangerous. *See* Title 15, § 2449.4 (2017); Title 15, §§ 2281, 2316, 2402(b) (2014). It may consider whether the inmate associates with gang members, even if the inmate has not engaged in gang-related misconduct. *See id.* And it may consider any evidence underlying a prior gang validation, even if it ignores the validation itself (which is often what happens (*e.g.*, SEALED ER 1073–74, 1096–98)).

If an inmate disagrees with his validation, or denies gang involvement, he can explain that during his hearing. Many do so. (*E.g.*, SEALED ER 862–64, 912–20, 957–62, 985–87, 1011–19.) That the Board may not always credit the denial (*see* CD 1122, ER 63) does not render the opportunity to speak “meaningless.” Moreover, the availability of judicial review by state or federal habeas serves as a check against arbitrary decisions.

In addition, the Court should reject the district court’s finding that all existing gang validations are presumed to be “constitutionally infirm.” (CD 1122, ER 64.) The relevant legal standard, which the district court failed to identify or apply, is minimal, and this Court has regularly upheld CDCR’s validation process against due-process challenges. *See, e.g., Bruce v. Ylst*, 351 F.3d 1283, 1287–88 (9th Cir. 2003); *Castro v. Terhune*, 712 F.3d 1304,

1313 (9th Cir. 2013); *see also Davis v. Reynoso*, 755 F. App'x 693, 694 (9th Cir. 2019) (affirming dismissal of due-process claim based on gang validation); *Kelley v. Peters*, 747 F. App'x 588, 589 (9th Cir. 2019) (same); *Takechi v. Adame*, 635 F. App'x 377 (9th Cir. 2016) (same); *Estrada v. Horel*, 474 F. App'x 580 (9th Cir. 2012) (same).

Because there was no proper basis to find that the challenged parole denials violated due process—much less that they evinced an “ongoing” and “systemic” due-process violation—the Court should reverse the district court’s order granting the Extension Motion on that basis.

B. Class Members Received Due Process Before Being Found Guilty of Specific Rules Violations.

Class members also received due process in disciplinary proceedings, contrary to the district court’s holding. (*Cf.* CD 1122, ER 67.) The alleged “misuse” of confidential information, which is a mischaracterization, did not present a “systemic” due-process violation. (*Id.*)

1. In the prison-discipline context, due process is satisfied if the record contains any evidence that could support the disciplinary finding.

Inmates disciplined for violating prison rules are not entitled to the same procedural safeguards as criminal defendants. *See Wolff v. McDonnell*, 418 U.S. 539, 556 (1974). Due process in the prison-discipline context

requires only that the inmate receive “advance written notice” of the violation and a statement of the “evidence relied upon and the reasons for the disciplinary action[.]” *Id.* at 563. There is an evidentiary threshold, but it is “minimally stringent,” *Castro*, 712 F.3d at 1314, and satisfied if “there is any evidence in the record that *could* support” the disciplinary decision, *Cato v. Rushen*, 824 F.2d 703, 705 (9th Cir. 1987) (quoting *Superintendent v. Hill*, 472 U.S. 445, 455–56 (1985) (emphasis in *Cato*)). Courts do not reweigh the evidence or second-guess prison officials’ credibility determinations. *Id.*

Where a disciplinary action is based solely on confidential information, the source of which must be withheld from the inmate, the “some evidence” standard is satisfied if there are: (1) some facts from which one could find the information was reliable; and (2) a statement that safety concerns require keeping the source confidential. *Zimmerlee v. Keeney*, 831 F.2d 183, 186–87 (9th Cir. 1987); *see Castillo v. McDowell*, No. 16-cv-2283-PSG-AS, 2017 WL 2857524, at *8 (C.D. Cal. May 25, 2017) (rejecting challenge to rules-violation report based on confidential sources, both because the sources had adequate indicia of reliability and because there was other corroborating evidence); *Castaneda v. Marshall*, No. 93-cv-03118 CW, 1997 WL 123253, at *5 (N.D. Cal. Mar. 10, 1997), *aff’d*, 142 F.3d 442 (9th Cir. 1998) (noting

Zimmerlee's reliability criteria are part of the "some evidence" analysis).

Proof of reliability may take many forms, such as corroboration from another source (confidential or not), or evidence that the source provided reliable information in the past. *See Zimmerlee*, 831 F.2d at 186–87.

2. The district court identified practices of which it disapproved, but not due-process violations.

The district court did not base its "misuse" holding on any denial of the above-described protections. (*See* CD 1122, ER 65–67.) Rather, the court found purported irregularities in CDCR's use of confidential information, collectively categorized them as "misuse," and thus found CDCR disciplines inmates without adequate evidence or based on unreliable confidential evidence. (*Id.*)¹¹ The court did not apply the relevant due-process standard, nor did it conduct a due-process analysis for the alleged irregularities; rather, it lumped them together and concluded that they show a "systemic" problem of "fail[ing] to conduct *meaningful* disciplinary hearings." (*Id.* (emphasis in original).) That was error, and this Court should reverse.

¹¹ The Court should also reject the district court's approach of lumping dissimilar forms of purported "misuse" into a single category to manufacture something it could describe as "systemic." (*See* CD 1122, ER 46–53, 57–60.) Even if one or two of these forms of purported misuse categorically reflect due-process violations, the issue would not be "systemic," as required to extend the Agreement under paragraph 41.

The record does not disclose any instance in which CDCR failed to comply with the relevant due-process standard, much less enough instances to constitute a “systemic” due-process violation. (Agreement ¶ 41.) The district court relied on Plaintiff’s characterization of the evidence (CD 1122, ER 46–53, 57–60), but the source documents show that CDCR staff tried in good faith to summarize confidential information without endangering its sources. *See* pp. 51–57, *infra*. The results may not be perfect, but due process does not require perfection. *See Greenholtz*, 442 U.S. at 7; *Mackey v. Montrym*, 443 U.S. 1, 13 (1979).

Examining the documents underlying the examples of “misuse” that the court and Plaintiffs found most egregious reveal no systemic due-process violation. For example, Plaintiffs opened with an inmate who was twice found to have ordered another inmate’s murder. (SEALED ER 1412–17, 1458–63.) Two confidential sources supported each finding. (SEALED ER 1417–20, 1463–65.) In both cases, the disclosure forms told the inmate that confidential sources said that he ordered the murders. (SEALED ER 1424–29, 1470–73.) But Plaintiffs insisted that the disclosures concealed the fact that the source documents differed in some details—in one case, that they relayed different purported motives for the murder and, in the other, that one source did not mention a third person being present during a conversation.

(SEALED ER 1354–56; *see also* SEALED ER 1431–48.) Failure to disclose such details to the inmate does not offend due process because the hearing officer, who decides whether the inmate will be disciplined, would have the underlying confidential documents, and would therefore know about any inconsistencies between them. *Cf. Charles v. Evans*, No. 05-cv-1367-DFL-CMK, 2006 WL 39096, at *4 (E.D. Cal. Jan. 4, 2006), *R. & R. adopted*, 2006 WL 2331119 (Aug. 10, 2006) (claim that hearing officer failed to consider exculpatory evidence is a challenge to the evidence’s sufficiency); *Madrid v. Gomez*, 889 F. Supp. 1146, 1278 (N.D. Cal. 1995) (same).

Plaintiffs next relied on the rules-violation reports issued to a group of four inmates. (SEALED ER 1356.) Plaintiffs complain that the confidential disclosures overstated a source’s confidence in whether the gang would issue a “death warrant” for the victim of an alleged murder conspiracy. (SEALED ER 1356–57.) The source said it was a “possibility,” but someone conflated that with their opinion and relayed that it was “almost certain.” (SEALED ER 1486–87, 1512–13.) Either way, the issue does not touch on the reliability of the confidential source; and the hearing officer, who had the underlying documents, would know what the source said. (*See id.*) And there is no reason to believe a more accurate disclosure would have changed how the inmates defended against the rules-violation report. (Notably, Plaintiffs

already raised this issue as an alleged breach of the Agreement and the district court rejected it. (CD 898-3, ER 214–15 n.4; CD 676, ER 95–96; CD 771, ER 87 (affirming magistrate’s decision).))

As to two other inmates, the evidence supporting their rules-violation reports included numerous inmate-generated notes, and Plaintiffs took issue with one sentence in one of them. (SEALED ER 1358–59; SEALED ER 1518–26.) Moreover, the letter that Plaintiffs argue undermines that sentence does the opposite: it confirms that one of those inmates ordered the murder, and the other intended to carry it out. (SEALED ER 1528–40.) (Once again, Plaintiffs raised this issue in a failed enforcement motion. (CD 898-3, ER 216 n.5; CD 786, ER 75–76; CD 978, ER 74 (affirming magistrate order).))

As to yet another inmate, Plaintiffs challenge whether staff fairly characterized statements by a confidential source as “indicat[ing]” that the inmate conspired to murder another inmate. (SEALED ER 634–35.) Fairly read, the statements could “indicate” such a conspiracy (SEALED ER 743–45), particularly when viewed in light of corroborating evidence, such as interviews with other confidential sources and intercepted telephone calls. (SEALED ER 747–58.)

Similarly, Plaintiffs challenge another inmate’s rules-violation report because it refers to two confidential sources when, Plaintiffs assert, it was

merely one source who was interviewed twice. (SEALED ER 635–36.) Even if that were true—which is not obvious (*see* SEALED ER 788–801)—it would make no difference. The hearing officer did not rely on confidential sources in making his decision; he relied on the eyewitness accounts and personal knowledge of three officer-witnesses and a videotape of the incident. (SEALED ER 775–81.) In any case, the inmate was able to mount a thorough defense. (SEALED ER 765–66, 773–75.) *See, e.g., Wolff*, 418 U.S. at 564 (explaining that the notice requirement of the due-process standard is to give prisoners an opportunity to mount a defense).

Next, Plaintiffs claim that the evidence used against an inmate to establish a gang nexus, and thus support a misconduct charge, was “fabricated.” (SEALED ER 636.) But Plaintiffs do not dispute that the inmate, along with three other inmates that CDCR believes to be affiliated with one gang, attacked someone from a rival gang. (SEALED ER 803–04, 818.) From that, one could reasonably conclude that the attack was gang-related, even if CDCR did not otherwise know the inmate’s gang affiliation.

The actions or facts that Plaintiffs categorize as “reliability” issues are equally harmless. For example, regarding one inmate, Plaintiffs complain that the hearing officer in that inmate’s rules-violation hearing found an informant reliable, whereas a different hearing officer in a different hearing

found him unreliable. (SEALED ER 1360–61.) They fail to note, however, that nearly a dozen other sources corroborated the informant’s statements regarding the inmate’s authority to order murders in prison. (SEALED ER 1542–46.) It does not appear that the informant’s statements relevant to the other hearing had such corroboration, which may explain why the other officer did not find them reliable. (SEALED ER 1550–51.)

Regarding yet another inmate, the evidence involved two confidential informants. The disclosures painstakingly lay out the statements from each informant (denoted CRI#1 and CRI#2). (SEALED ER 1555–57 & 1579–94, 1645–50.) Then, in a sub-section denoted “STG Nexus,” they summarize the information to indicate what “CRI#1 and CRI#2,” collectively, said. (*Id.*) Plaintiffs insist this summary, which attributes each informant’s statements to both of them, misstates the evidence and violates due process. (SEALED ER 1362–64.) But the documents’ meaning is clear—the “STG Nexus” sections were meant to summarize parts of what preceded them, not as further evidence. (*E.g.*, SEALED ER 1579–91.)

In several cases, Plaintiffs essentially complain that whoever filled out the confidential disclosure form checked a box indicating there was corroborating confidential information, but no such information appears in the record. (SEALED ER 1364–68.) It is unclear whether the corroborating

information related to a different rules-violation report (one inmate, for example, was facing two other rules violations, and the informant gave evidence as to all three), or the check-box was selected in error. Either way, it is irrelevant. In each case, there were other grounds on which the sources were found reliable, and Plaintiffs raised no issue with those grounds.

(SEALED ER 1672–74, 1725–27 (noting the information was self-incriminating and corroborated by non-confidential sources).) *See Dorrough v. Ruff*, 552 F. App'x 728, 730 (9th Cir. 2014) (noting that one indicia of reliability is sufficient to satisfy the “some evidence” standard).

Ultimately, Plaintiffs put forth no evidence of instances in which CDCR disciplined a class member based on no evidence, or based solely on confidential information that lacked the necessary reliability. *See Zimmerlee*, 831 F.2d at 186–87. The closest they come is in the first case raised in their supplemental briefing. (SEALED ER 633.) Three inmates were disciplined for attempted murder of another inmate. (SEALED ER 649–62, 664–65, 681–82.) But the underlying confidential memorandum identified only two of them, not the third. (SEALED ER 655, 699–704.) Even in that case, however, other evidence supported the charge. Officers found the inmates near the crime scene, out of breath, and with reddened knuckles. (SEALED ER 690–92.) Moreover, they were the only three inmates in the area without

their jackets, and officers found a jacket with what appeared to be blood on it near the scene. (*Id.*) That alone would sustain the charge, so there was no due-process violation. *See Hill*, 472 U.S. at 457 (finding that, although the prison had no “direct evidence identifying any one of three inmates as the assailant, the record [was] not so devoid of evidence that the findings of the disciplinary board were without support or otherwise arbitrary”).

As none of what Plaintiffs regarded as the most egregious “misuses” were due-process violations, neither were the other, less significant issues. And, even if the Court were to conclude that some of the particular cases might reach the level of violating due process, “brief or isolated” violations are not “grounds for continuing th[e] Agreement or the Court’s jurisdiction.” (Agreement ¶ 42.) It thus would still have been error for the district court to grant the Extension Motion.

C. Class Members Have No Liberty Interest in Avoiding RCGP Placement.

Finally, the district court correctly held that Plaintiffs failed to establish a systemic due-process violation with respect to class members’ placement and retention in the RCGP (CD 1122, ER 67–68), a ruling that is the subject of Plaintiffs’ cross-appeal. In so holding, however, the court erroneously found that inmates have a protected liberty interest in avoiding RCGP

placement. (*See id.*) Defendants raise the issue now to preserve the challenge and prevent the erroneous ruling from becoming law of the case, in case Plaintiffs abandon their cross-appeal. *See Camreta v. Greene*, 563 U.S. 692, 702–05 (2011) (citing examples where prevailing parties were allowed to challenge unfavorable rulings, including, in the qualified-immunity context, where an official prevailed on the “clearly established law” issue, but lost on the constitutional-violation issue).

The first question in a due-process analysis is whether the complained-of deprivation implicated a cognizable liberty interest. *Wilkinson v. Austin*, 545 U.S. 209, 221–24 (2005). Where the claimant is an inmate complaining of placement in less favorable housing, the question is whether that housing “imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life.” *Sandin v. Conner*, 515 U.S. 472, 483–87 (1995); *see also Meachum v. Fano*, 427 U.S. 215, 225 (1976) (inmates have no due-process right to hearing before being transfer to a less-favorable institution). If the conditions complained of do not “present a drastic departure from the basic conditions of [the inmate’s] sentence,” the inmate has no liberty interest to vindicate. *See Wilkinson*, 545 U.S. at 223.

Conditions in the RCGP are not a “drastic departure” from conditions in CDCR’s other high-security housing units, and thus do not “impose an

atypical and significant hardship” relative to those units. To the contrary, CDCR takes care to ensure that all RCGP inmates receive opportunities for exercise, social interaction, and education that are comparable to those of other inmates in high-security units. (CD 985-5, ER 183–87, ¶¶ 3–14.)

RCGP inmates in groups have many opportunities to leave their cells and socialize with inmates, staff, and others. (*Id.*, ER 184–87, ¶¶ 7–14.) They have yard time; a dayroom in which to congregate, play games, and make telephone calls; and opportunities go to the library, visit canteen, and attend medical appointments. (*Id.*, ER 185, ¶ 9.) They can have jobs. (*Id.*, ER 187, ¶ 14.) And they have access to rehabilitative and educational programs, as well as a teacher to assist them. (*Id.*, ER 185, ¶ 10.)

Walk-alone inmates’ opportunities are comparable. (*See id.* ¶¶ 9–10; *see also* CD 927-8, ER 194, ¶ 5.) They generally receive ten or more hours per week of yard time in individual, outdoor exercise yards, during which they regularly socialize with one another. (CD 927-8, ER 194, ¶ 6.) They receive dayroom time, during which they can speak to other inmates through their cell doors. (*Id.*, ER 195, ¶ 8.) They can make telephone calls to family and friends, and may have contact visits. (*Id.*) Walk-alone inmates have access to rehabilitative and educational programs, and opportunities to discuss coursework with a teacher at their cell-fronts. (*Id.*, ER 195–96, ¶ 9.)

They have access to jobs, religious services, and other leisure activities. (CD 985-5, ER 185–87, ¶¶ 9–10, 14; *see also* CD 927-8, ER 194, ¶ 5.)

The district court found the RCGP “limits prisoners’ parole eligibility, is singular, remotely located, prolonged, and stigmatizing,” and that it is “sufficiently different from the general population” to warrant due-process protection. (CD 1122, ER 67.) But in light of the conditions outlined above, the factors the district court identified do not show an “atypical and significant hardship” for several reasons.

First, in the context of this hardship inquiry, the Supreme Court has expressly rejected weighing the speculative impact a circumstance may have on parole eligibility. *See Sandin*, 515 U.S. at 487. Second, Pelican Bay—where the RCGP is located—might be “singular” and “remotely located,” but it is one of CDCR’s general-population facilities, and therefore its conditions reflect “the ordinary incidents of prison life.” Third, whether RCGP housing is “prolonged” should only influence the hardship analysis to the extent its conditions are significantly harsher than the general population, which they are not. *See pp. 14–15, supra*. Finally, the court did not explain what “stigma” it believes attach to the RCGP, but there is no evidence of any stigma from the RCGP beyond distrust among inmates. (*See* CD 898-3, ER 217-18; SEALED ER 1369–70, 1380–94.) The Court should not allow

inmates to create liberty interests by attaching stigmas to any form of housing they dislike.

As there is no “atypical and significant hardship” associated with being housed in the RCGP, there is no liberty interest to vindicate. As such, there was no need for the district court to analyze whether CDCR’s procedures for placing and retaining inmates in the RCGP violated due process.

CONCLUSION

The district court should not have granted the Extension Motion. Judicial estoppel bars Plaintiffs from relying on one of the two grounds on which the court granted the motion, paragraph 41 does not permit an extension on either ground, and the evidence did not prove systemic due-process violations. Moreover, the court erred by finding that class members have a protected liberty interest in avoiding RCGP placement. For all of these reasons, the Court should reverse, and should instruct the district court to deny Plaintiffs’ Extension Motion and allow this class action to terminate.

Dated: July 17, 2019

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
MONICA N. ANDERSON
Senior Assistant Attorney General
ADRIANO HRVATIN
NEAH HUYNH
Supervising Deputy Attorneys General

/s/ Jeffrey T. Fisher
JEFFREY T. FISHER
Deputy Attorney General
Attorneys for Defendants-Appellants
Newsom, Lewis, Chaus and Diaz

SF2019400105; 13454750.docx

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

Form 17. Statement of Related Cases Pursuant to Circuit Rule 28-2.6

Instructions for this form: <http://www.ca9.uscourts.gov/forms/form17instructions.pdf>

9th Cir. Case Number(s)

The undersigned attorney or self-represented party states the following:

- I am unaware of any related cases currently pending in this court.
- I am unaware of any related cases currently pending in this court other than the case(s) identified in the initial brief(s) filed by the other party or parties.
- I am aware of one or more related cases currently pending in this court. The case number and name of each related case and its relationship to this case are:

Related Case:
Ashker, et al. v. Brown, et al., 9th Cir. Case No. 18-16427 (appealing prior order in same case); and
Ashker, et al., v. Newsom, et al., 9th Cir. Case No. 19-15359 (cross-appeal)

Signature

Date

(use "s/[typed name]" to sign electronically-filed documents)

19-15224, 19-15359

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

TODD ASHKER, et al.,

Plaintiffs-Appellees/Cross-Appellants,

v.

G. NEWSOM, et al.,

Defendants-Appellants/Cross-Appellees.

On Appeal from the United States District Court
for the Northern District of California

No. 4:09-cv-05796-CW (RMI)
The Honorable Robert M. Illman, Magistrate Judge

**DEFENDANTS-APPELLANTS' ADDENDUM
PER NINTH CIRCUIT RULE 28-2.7**

XAVIER BECERRA
Attorney General of California
MONICA N. ANDERSON
Senior Assistant Attorney General
ADRIANO HRVATIN
NEAH HUYNH
Supervising Deputy Attorneys General
JEFFREY T. FISHER
Deputy Attorney General
State Bar No. 303712
455 Golden Gate Avenue, Suite 11000
San Francisco, California 94102
Telephone: (415) 510-3568
Fax: (415) 703-5843
Email: Jeffrey.Fisher@doj.ca.gov
*Attorneys for Defendants-Appellants
Newsom, Lewis, Chau and Cate*

19-15224

**DEFENDANTS-APPELLANTS' ADDENDUM
TABLE OF CONTENTS**

Description	ADD Pages
Cal. Code Regs., tit. 15, § 2281 (rev. 2014)	1–3
Cal. Code Regs., tit. 15, § 2316 (rev. 2014)	4
Cal. Code Regs., tit. 15, § 2402 (rev. 2014)	5–7
Cal. Code Regs., tit. 15, § 3000 (rev. 2014)	10–19
Cal. Code Regs., tit. 15, § 3341.5 (rev. 2014)	20–23
Cal. Code Regs., tit. 15, § 2449.4 (rev. 2017)	24–25
Cal. Code Regs., tit. 15, § 3000 (rev. 2018)	28–40
Cal. Code Regs., tit. 15, § 3044 (rev. 2018)	41–47
Cal. Code Regs., tit. 15, § 3376.1 (rev. 2018)	48
Cal. Code Regs., tit. 15, § 3378.9 (rev. 2018)	49–53

SF2019400105
21536219.docx

California Administrative Code - 2014

Barclays Official California Code of Regulations [Currentness](#)
Title 15. Crime Prevention and Corrections
Division 2. Board of Parole Hearings
Chapter 3. Parole Release
Article 5. Parole Consideration Criteria and Guidelines for Life Prisoners

15 CCR § 2281

§ 2281. Determination of Suitability.

(a) General. The panel shall first determine whether a prisoner is suitable for release on parole. Regardless of the length of time served, a life prisoner shall be found unsuitable for and denied parole if in the judgment of the panel the prisoner will pose an unreasonable risk of danger to society if released from prison.

(b) Information Considered. All relevant, reliable information available to the panel shall be considered in determining suitability for parole. Such information shall include the circumstances of the prisoner's: social history; past and present mental state; past criminal history, including involvement in other criminal misconduct which is reliably documented; the base and other commitment offenses, including behavior before, during and after the crime; past and present attitude toward the crime; any conditions of treatment or control, including the use of special conditions under which the prisoner may safely be released to the community; and any other information which bears on the prisoner's suitability for release. Circumstances which taken alone may not firmly establish unsuitability for parole may contribute to a pattern which results in a finding of unsuitability.

(c) Circumstances Tending to Show Unsuitability. The following circumstances each tend to indicate unsuitability for release. These circumstances are set forth as general guidelines; the importance attached to any circumstance or combination of circumstances in a particular case is left to the judgment of the panel. Circumstances tending to indicate unsuitability include:

(1) Commitment Offense. The prisoner committed the offense in an especially heinous, atrocious or cruel manner. The factors to be considered include:

(A) Multiple victims were attacked, injured or killed in the same or separate incidents.

(B) The offense was carried out in a dispassionate and calculated manner, such as an execution-style murder.

(C) The victim was abused, defiled or mutilated during or after the offense.

(D) The offense was carried out in a manner which demonstrates an exceptionally callous disregard for human suffering.

(E) The motive for the crime is inexplicable or very trivial in relation to the offense.

(2) Previous Record of Violence. The prisoner on previous occasions inflicted or attempted to inflict serious injury on a victim, particularly if the prisoner demonstrated serious assaultive behavior at an early age.

(3) Unstable Social History. The prisoner has a history of unstable or tumultuous relationships with others.

(4) Sadistic Sexual Offenses. The prisoner has previously sexually assaulted another in a manner calculated to inflict unusual pain or fear upon the victim.

(5) Psychological Factors. The prisoner has a lengthy history of severe mental problems related to the offense.

(6) Institutional Behavior. The prisoner has engaged in serious misconduct in prison or jail.

(d) Circumstances Tending to Show Suitability. The following circumstances each tend to show that the prisoner is suitable for release. The circumstances are set forth as general guidelines; the importance attached to any circumstance or combination of circumstances in a particular case is left to the judgment of the panel. Circumstances tending to indicate suitability include:

(1) No Juvenile Record. The prisoner does not have a record of assaulting others as a juvenile or committing crimes with a potential of personal harm to victims.

(2) Stable Social History. The prisoner has experienced reasonably stable relationships with others.

(3) Signs of Remorse. The prisoner performed acts which tend to indicate the presence of remorse, such as attempting to repair the damage, seeking help for or relieving suffering of the victim, or the prisoner has given indications that he understands the nature and magnitude of the offense.

(4) Motivation for Crime. The prisoner committed his crime as the result of significant stress in his life, especially if the stress had built over a long period of time.

(5) Battered Woman Syndrome. At the time of the commission of the crime, the prisoner suffered from Battered Woman Syndrome, as defined in section 2000(b), and it appears the criminal behavior was the result of that victimization.

(6) Lack of Criminal History. The prisoner lacks any significant history of violent crime.

(7) Age. The prisoner's present age reduces the probability of recidivism.

(8) Understanding and Plans for Future. The prisoner has made realistic plans for release or has developed marketable skills that can be put to use upon release.

(9) Institutional Behavior. Institutional activities indicate an enhanced ability to function within the law upon release.

Note: Authority cited: [Sections 3041, 3052](#) and [5076.2, Penal Code](#). Reference: [Sections 3041](#) and [4801, Penal Code](#).

HISTORY

1. Amendment of subsection (c) filed 6-28-79; effective thirtieth day thereafter (Register 79, No. 26).
2. Amendment of subsection (d)(7) filed 5-1-80; effective thirtieth day thereafter (Register 80, No. 18).
3. New subsection (d)(5), subsection renumbering, and amendment of Note filed 3-16-2001 as an emergency; operative 3-16-2001 (Register 2001, No. 11). A Certificate of Compliance must be transmitted to OAL by 7-16-2001 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 3-16-2001 order transmitted to OAL 7-16-2001 and filed 8-20-2001 (Register 2001, No. 34).

This database is current through 12/26/14 Register 2014, No. 52

15 CCR § 2281, 15 CA ADC § 2281

End of Document

© 2019 Thomson Reuters. No claim to original U.S. Government Works.

California Administrative Code - 2014

Barclays Official California Code of Regulations [Currentness](#)
Title 15. Crime Prevention and Corrections
Division 2. Board of Parole Hearings
Chapter 3. Parole Release
Article 7. Parole Consideration Criteria and Guidelines for ISL Prisoners

15 CCR § 2316

§ 2316. Unsuitability Criteria.

In determining whether an ISL prisoner is unsuitable for parole the hearing panel shall consider factors which affect the severity of the offense and the risk of danger to society if the prisoner were released. Examples of factors indicating the prisoner is unsuitable for parole include:

- (a) A history of violent attacks.
- (b) A history of forcible sexual attacks on others.
- (c) A persistent pattern of criminal behavior and a failure to demonstrate evidence of a substantial change for the better.
- (d) The presence of a psychiatric or psychological condition related to the prisoner's criminality which creates a high likelihood that new serious crimes will be committed if released.

This database is current through 12/26/14 Register 2014, No. 52

15 CCR § 2316, 15 CA ADC § 2316

End of Document

© 2019 Thomson Reuters. No claim to original U.S. Government Works.

California Administrative Code - 2014

Barclays Official California Code of Regulations [Currentness](#)

Title 15. Crime Prevention and Corrections

Division 2. Board of Parole Hearings

Chapter 3. Parole Release

Article 11. Parole Consideration Criteria and Guidelines for Murders Committed on or After November 8, 1978, and Specified Attempted Murders

15 CCR § 2402

§ 2402. Determination of Suitability.

(a) General. The panel shall first determine whether the life prisoner is suitable for release on parole. Regardless of the length of time served, a life prisoner shall be found unsuitable for and denied parole if in the judgment of the panel the prisoner will pose an unreasonable risk of danger to society if released from prison.

(b) Information Considered. All relevant, reliable information available to the panel shall be considered in determining suitability for parole. Such information shall include the circumstances of the prisoner's social history; past and present mental state; past criminal history, including involvement in other criminal misconduct which is reliably documented; the base and other commitment offenses, including behavior before, during and after the crime; past and present attitude toward the crime; any conditions of treatment or control, including the use of special conditions under which the prisoner may safely be released to the community; and any other information which bears on the prisoner's suitability for release. Circumstances which taken alone may not firmly establish unsuitability for parole may contribute to a pattern which results in a finding of unsuitability.

(c) Circumstances Tending to Show Unsuitability. The following circumstances each tend to indicate unsuitability for release. These circumstances are set forth as general guidelines; the importance attached to any circumstance or combination of circumstances in a particular case is left to the judgment of the panel. Circumstances tending to indicate unsuitability include:

(1) Commitment Offense. The prisoner committed the offense in an especially heinous, atrocious or cruel manner. The factors to be considered include:

(A) Multiple victims were attacked, injured or killed in the same or separate incidents.

(B) The offense was carried out in a dispassionate and calculated manner, such as an execution-style murder.

(C) The victim was abused, defiled or mutilated during or after the offense.

(D) The offense was carried out in a manner which demonstrates an exceptionally callous disregard for human suffering.

(E) The motive for the crime is inexplicable or very trivial in relation to the offense.

(2) Previous Record of Violence. The prisoner on previous occasions inflicted or attempted to inflict serious injury on a victim, particularly if the prisoner demonstrated serious assaultive behavior at an early age.

(3) Unstable Social History. The prisoner has a history of unstable or tumultuous relationships with others.

(4) Sadistic Sexual Offenses. The prisoner has previously sexually assaulted another in a manner calculated to inflict unusual pain or fear upon the victim.

(5) Psychological Factors. The prisoner has a lengthy history of severe mental problems related to the offense.

(6) Institutional Behavior. The prisoner has engaged in serious misconduct in prison or jail.

(d) Circumstances Tending to Show Suitability. The following circumstances each tend to show that the prisoner is suitable for release. The circumstances are set forth as general guidelines; the importance attached to any circumstance or combination of circumstances in a particular case is left to the judgment of the panel. Circumstances tending to indicate suitability include:

(1) No Juvenile Record. The prisoner does not have a record of assaulting others as a juvenile or committing crimes with a potential of personal harm to victims.

(2) Stable Social History. The prisoner has experienced reasonably stable relationships with others.

(3) Signs of Remorse. The prisoner performed acts which tend to indicate the presence of remorse, such as attempting to repair the damage, seeking help for or relieving suffering of the victim, or indicating that he understands the nature and magnitude of the offense.

(4) Motivation for Crime. The prisoner committed his crime as the result of significant stress in his life, especially if the stress has built over a long period of time.

(5) Battered Woman Syndrome. At the time of the commission of the crime, the prisoner suffered from Battered Woman Syndrome, as defined in section 2000(b), and it appears the criminal behavior was the result of that victimization.

(6) Lack of Criminal History. The prisoner lacks any significant history of violent crime.

(7) Age. The prisoner's present age reduces the probability of recidivism.

(8) Understanding and Plans for Future. The prisoner has made realistic plans for release or has developed marketable skills that can be put to use upon release.

(9) Institutional Behavior. Institutional activities indicate an enhanced ability to function within the law upon release.

Note: Authority cited: [Sections 3041](#) and [5076.2, Penal Code](#). Reference: [Sections 3041](#) and [4801, Penal Code](#).

HISTORY

1. New subsection (d)(5), subsection renumbering, and amendment of Note filed 3-16-2001 as an emergency; operative 3-16-2001 (Register 2001, No. 11). A Certificate of Compliance must be transmitted to OAL by 7-16-2001 or emergency language will be repealed by operation of law on the following day.

2. Certificate of Compliance as to 3-16-2001 order transmitted to OAL 7-16-2001 and filed 8-20-2001 (Register 2001, No. 34).

This database is current through 12/26/14 Register 2014, No. 52

15 CCR § 2402, 15 CA ADC § 2402

State of California
California Code of Regulations
Title 15. Crime Prevention and Corrections



Division 3
Rules and Regulations of
Adult Institutions, Programs, and Parole
Department of Corrections and Rehabilitation

Updated through January 1, 2014

State of California
California Code of Regulations
Title 15. Crime Prevention and Corrections



Division 3

Rules and Regulations of

Adult Institutions, Programs, and Parole

Department of Corrections and Rehabilitation

Updated through January 1, 2014

Information and updates available online at:
http://www.cdcr.ca.gov/regulations/adult_operations
CDCR Intranet: <http://intranet/adm/dss/rpmb>

DIVISION 3. ADULT INSTITUTIONS, PROGRAMS AND PAROLE

CHAPTER 1. RULES AND REGULATIONS OF ADULT OPERATIONS AND PROGRAMS

HISTORY:

1. Change without regulatory effect repealing preface filed 10-29-90 pursuant to section 100, title 1, California Code of Regulations (Register 91, No. 6).

Article 1. Behavior

3000. Definitions.

The following are definitions of terms as used in these regulations:

Accessory means a person who, after a felony has been committed, harbors, conceals or aids a principal in such felony, with the intent that the principal may avoid punishment, and has knowledge that said principal committed the felony.

Administrative Officer of the Day (AOD) means an administrative staff member possessing managerial or supervisory experience and authority to make decisions in the absence of an Institution Head or Region Parole Administrator.

Adverse Witness means a person who has given or will give information against a prisoner or parolee. For the purpose of conducting parole revocation hearings, adverse witness means a person whose expected testimony supports the violation charged.

Alternative Custody Program (ACP) means a voluntary program developed for female inmates whose current commitment offense is neither violent nor serious and whose prior or current commitment offense is not a registerable sex offense pursuant to PC section 1170.05 that allows eligible inmates committed to state prison to serve their sentence in the community in lieu of confinement in state prison. Provisions for ACP are located in Title 15, Division 3, Chapter 1, Article 6.8 commencing with section 3078.

Alternative Custody Program Participant means any offender who is approved for and placed in the Alternative Custody Program as defined in this section.

Appeal means a formal request for, or the act of requesting, an official change of a decision, action, or policy.

Architectural and Engineering Services means those services procured outside of the State's Civil Service procedures and which are rendered by an architect or engineer, but may include ancillary services logically or justifiably performed in connection therewith.

Arrest means the taking of a person into custody, in a case and in a manner authorized by law.

Asylum State means the state other than California in which a parolee-at-large is in custody.

Attempted Escape means an unsuccessful effort to breach a secured perimeter or the use of force against a person to attempt access into an unauthorized area. Some progress toward implementing an escape must be made to implement a plan. This includes, but is not limited to the following overt acts: acquiring unauthorized clothing or identification, preparing a hiding place in an unauthorized area, lying in wait for a potential hostage, attempting access to a perimeter that was unsupervised, unlawfully obtaining tools to aid in an escape, manufacturing a likeness of a person in order to substitute for the inmate's presence, or receiving assistance from other conspirators who acted upon an escape plan, e.g. a plan to escape uncovered from verbal, telephone or mail communication.

Automated Needs Assessment Tool means a systematic process which consists of a series of questions and a review of the inmate's

criminal data in order to establish a baseline for the offender's criminogenic needs to assist in determining appropriate placement in a rehabilitative program.

Behavior Management Unit is alternate general population housing and programming which is designed to reduce inmate's continuing involvement in disruptive behavior, violence, or noncompliance with CDCR rules and regulations, allowing non-disruptive inmates in the general population the opportunity to program without continual interruption due to the behavior of a smaller, more disruptive segment of the inmate population.

Board of Parole Hearings (Board) means the state agency which is responsible for the administration of parole for those persons committed to the department under Penal Code section 1168 and those committed under Penal Code section 1170 who also meet the criteria found in Penal Code section 2962.

California Agency Parolee means a person released from department facility to parole supervision in a California community who subsequently is within the custody of any California agency, or subdivision thereof, except the department.

California Agency Prisoner means a prisoner who has been transferred from the custody of the department to the custody of any other California agency or subdivision thereof.

California Concurrent Parolee means a person on parole for a California sentence and a sentence of another jurisdiction who is being supervised in a California community pursuant to the Uniform Act for Out-of-State Parole Supervision (Penal Code sections 11175–11179).

California Law Enforcement Telecommunications System (CLETS) means a statewide telecommunications system for the use of law enforcement agencies maintained by the California Department of Justice.

California Out-of-State Correctional Facility (COCF). The COCF is a program through which male CDCR inmates are transferred to out-of-state correctional facilities that have contracted with the CDCR to provide housing, security, health care and rehabilitative programming services to CDCR inmates.

CalParole means a centralized statewide parolee information data system.

Case Conference means a documented communication between the parole agent and the parole unit supervisor concerning a parolee (i.e., placing a parole hold).

Case Conference Review means a documented review of the progress made in the Case Plan and the effectiveness of the current plan to determine necessary modifications. It will also include a review to determine if the parole supervision/case management expectations have been met.

Case records file means the file which contains the information concerning an inmate which is compiled by the department pursuant to Penal Code Section 2081.5 and includes such components as the central file, education file, visiting file and parole field file.

Central File (C-File) means a master file maintained by the department containing records regarding each person committed to its jurisdiction.

Central Office Calendar means the calendar which is composed of administrative hearing officers as designated by the deputy director, parole hearings division. They are authorized to make decisions regarding matters reported to the parole hearings division, including the decision to order a hearing scheduled.

Central Office Hearing Coordinator means the parole hearings division employee at headquarters who is responsible for hearing schedules, attorney appointments, and other hearing-related services.

Certification means that a business concern has obtained verification that it meets the definition of disabled veteran business

§ 3000

DEPARTMENT OF CORRECTIONS AND REHABILITATION

TITLE 15

enterprise pursuant to Military and Veterans Code section 999(g) from an agency that has been authorized by law to issue such certification.

Chaplain means an individual duly designated by a religious denomination to discharge specified religious duties, including a native American Indian spiritual leader.

Child means a person under the age of 18 years.

Chronological History means a CDC Form 112 (Rev. 9/83), Chronological History, prepared for each inmate, upon which significant dates and commitment information affecting the inmate are logged.

Classification and Parole Representative (C&PR) means the department employee designated at each institution to be that institution's liaison with releasing boards and parole staff.

Cognitive Behavioral Therapy is evidence-based psychotherapeutic treatment which addresses dysfunctional emotions, maladaptive behaviors, and cognitive processes, using incremental monitoring and assessment of progress in all three areas to reach prescribed goals.

Collateral Contact means any communication between a Division of Adult Parole Operations staff and another person concerning a parolee.

Concurrent Parolee means a person on parole for a California sentence and a sentence of another jurisdiction who is being supervised in a state other than California pursuant to the Uniform Act for Out-of-State Parole Supervision (Penal Code sections 11175–11179).

Conditions of Parole mean the specific conditions under which a prisoner is released to parole supervision.

Confinement to Quarters (CTQ) means an authorized disciplinary hearing action whereby an inmate is restricted to their assigned quarters for a period not to exceed five days for administrative rule violations and ten days for serious rule violations.

Contraband means anything which is not permitted, in excess of the maximum quantity permitted, or received or obtained from an unauthorized source.

Control Service means the middle supervision category of a person on parole.

Controlled Substance means any substance, drug, narcotic, opiate, hallucinogen, depressant, or stimulant as defined by California Health and Safety Code section 11007. Also included are prescribed medications containing any of the substances identified in the H&SC section above.

Cooperative Parolee means a person on parole for a California sentence who is under parole supervision in a state other than California pursuant to the Uniform Act for Out-of-State Parole Supervision (Penal Code sections 11175–11179).

Course of conduct means two or more acts over a period of time, however short, evidencing a continuity of purpose.

Court Order means a custody determination decree, judgment, or order issued by a court of competent jurisdiction, whether permanent or temporary, initial or modified, that affects the custody or visitation of a child, when issued in the context of a custody proceeding. An order, once made, shall continue in effect until it expires, is modified, is rescinded, or terminates by operation of law.

Criminal Identification and Investigation (CI&I) Report means the report defined by Penal Code section 11105, commonly referred to as "Rap Sheet".

Criminogenic Need means an attribute of the inmate that is directly linked to criminal behavior.

Cumulative Case Summary means the cumulative summary of specific portions of the record maintained by the department regarding each prisoner from reception to discharge.

Custody of the department means the inmate is in the physical custody of the department. The inmate would be considered out of the custody of the department when; out to court and housed in a County or Federal facility, escaped and not returned to departmental custody, in a non-departmental mental health facility, and in a medical facility under non-departmental supervision.

Dangerous contraband means materials or substances that could be used to facilitate a crime or could be used to aid an escape or that have been altered from their original manufactured state or purpose and which could be fashioned into a weapon. Examples would include, but not be limited to, metal, plastic, wood, or wire. Also included are: sharpened objects such as scissors or other tools not authorized to be in the inmate's possession, as well as poison, caustic substances, flame producing devices i.e. matches or lighters or cellular telephones or wireless communication devices or any components thereof, including, but not limited to, a subscriber identity module (SIM card), memory storage device, cellular phone charger.

Deadly weapon means any weapon identified in Penal Code section 4502. Any item or substance not readily identified as a weapon becomes a deadly weapon when used in a manner that could reasonably result in serious bodily injury or death.

Department means the California Department of Corrections and Rehabilitation.

Deputy Regional Parole Administrator means the department's administrator within a Division of Adult Parole Operations region.

Detainer means a written document received from an official representing a district attorney office, court, or correctional or law enforcement agent which indicates that an inmate is wanted by that office and the basis for the detainer.

Determinate Sentencing Law (DSL) Prisoner means a person sentenced to prison under Penal Code section 1170 for a crime committed on or after July 1, 1977.

Direct and Constant Supervision means an inmate shall be monitored and observed by CDCR staff, either custody staff or work supervisor as indicated in these regulations, sufficiently to account for the specific whereabouts of the inmate at all times.

Disabled Veteran Business Enterprise means a business concern as defined in Military and Veterans Code section 999(g).

Disabled Veteran Business Enterprise focus paper means a publication that meets all of the following criteria: (1) has an orientation relating to the disabled veteran business enterprise; (2) is known and utilized by members of the disabled veteran business enterprise community; (3) primarily offers articles, editorials (if any), and advertisements of business opportunities aimed at disabled veteran business enterprises; and (4) is readily available within the geographical area for which the advertisement is placed and for which the services are to be performed.

Disabled Veteran Business Enterprise focus paper and trade paper means a publication that meets all of the criteria of a disabled veteran business enterprise focus paper and all of the criteria of a trade paper.

Disciplinary Detention means a temporary housing status which confines inmates so assigned to designated rooms or cells for prescribed periods of time as punishment for serious rule violations.

Disciplinary Free means without any finding of guilt of a disciplinary infraction filed on a CDC Form 115, Rule Violation Report, classified as either administrative or serious.

Disciplinary Free Period means the period that commences immediately following the date and time an inmate is identified (date of discovery of information leading to the charge) as committing a rules violation classified as serious.

Disruptive Behavior means behavior which might disrupt orderly operations within the institutions, which could lead to violence or

TITLE 15

DEPARTMENT OF CORRECTIONS AND REHABILITATION

§ 3000

disorder, or otherwise endangers facility, outside community or another person as defined in sections 3004(b), 3005(a) and 3023(a).

Disruptive Group 1—means any gang, other than a prison gang.

Distribution means the sale or unlawful dispersing, by an inmate or parolee, of any controlled substance; or the solicitation of or conspiring with others in arranging for, the introduction of controlled substances into any institution, camp, contract health facility, or community correctional facility for the purpose of sales or distribution.

District Administrator means the department's administrator of a Division of Adult Parole Operations unit, district, or geographical area.

Drug paraphernalia means any device, contrivance, instrument, or paraphernalia intended to be used for unlawfully injecting or consuming into the human body a controlled substance as identified in Health and Safety Code section 11007.

Drugs means substances intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease, and as defined in Health and Safety Code section 11014.

Effective communication means providing the inmate, to the extent possible, the means to understand and participate in the disciplinary process to the best of their ability. This may be accomplished through reasonable accommodation or assignment of a staff assistant. If the inmate's Test of Adult Basic Education (TABE) score is 4.0 or lower, employees are required to query the inmate to determine whether or not assistance is needed to achieve effective communication. The employee is required to document on appropriate CDCR forms his/her determination of whether the inmate appeared to understand, the basis for that determination and how it was made. For contacts involving due process, employees shall give priority to the inmate's primary means of communication, which may include but is not limited to; auxiliary communication aids, sign language interpreter, and bilingual interpreter.

Escape History refers to any reliable information or inmate self-admission in the central file to an escape, attempted escape, walkaway, or plan to escape. The available information describing the circumstances of the escape or attempted escape shall be evaluated in determining the level of risk to correctional safety and security posed by the inmate.

Examinee means a person who voluntarily takes a polygraph examination.

Exceptional Circumstances means circumstances beyond the control of the department or the inmate that prevent the inmate or requested witnesses from participating in the disciplinary hearing within established time limitations. Examples of this as applied to an inmate would include a serious temporary mental or physical impairment verified in writing by a licensed clinical social worker, licensed psychologist, psychiatrist, or physician. Some examples of exceptional circumstances preventing staff witnesses, to include the reporting employee, from attending the disciplinary hearing would be extended sick leave, bereavement leave, personal emergency, or extended military duty. Exceptional circumstances, as described above, would allow for suspension of time limitations pending resolution of the instances.

Ex-Offender means a person previously convicted of a felony in California or any other state, or convicted of an offense in another state which would have been a felony if committed in California.

Face-to-Face Contact means an in-person contact with a parolee, or an Alternative Custody Program Participant, by a CDCR parole agent.

Facility means any institution; community-access facility or community correctional facility; or any camp or other subfacility of an institution under the jurisdiction of the department.

Facility Security Perimeter is any combination of living unit, work area and recreation area perimeters that is set aside to routinely restrict inmate movement based on custody level. This perimeter will contract and expand depending upon the weather, lighting conditions and hours of operation.

Federal Consecutive Prisoner means a California prisoner who is also under sentence of the United States and is confined in a federal correctional facility, and whose California term shall commence upon completion of the United States' sentence.

Felony means a crime which is punishable with death or by imprisonment in the state prison. Every other crime or public offense is a misdemeanor except those offenses that are classified as infractions.

Field Contact means face-to-face contact by Division of Adult Parole Operations staff with a parolee away from the parole office or office parking area.

Firm means any individual, firm, partnership, corporation, association, joint venture or other legal entity permitted by law to practice the professions of architecture, landscape architecture, engineering, environmental services, land surveying or construction project management.

Force, as applied to escape or attempted escape refers to physical contact or threat of physical harm against a person to enable or attempt the escape.

Frequent and Direct Supervision means that staff supervision of an inmate shall be sufficient to ensure that the inmate is present within the area permitted.

Friendly Witness means any witness who is not an adverse witness.

Gang means any ongoing formal or informal organization, association or group of three or more persons which has a common name or identifying sign or symbol whose members and/or associates, individually or collectively, engage or have engaged, on behalf of that organization, association or group, in two or more acts which include, planning, organizing threatening, financing, soliciting, or committing unlawful acts or acts of misconduct classified as serious pursuant to section 3315.

General Chrono means a CDC Form 128-B (Rev. 4-74) which is used to document information about inmates and inmate behavior. Such information may include, but is not limited to, documentation of enemies, records of disciplinary or classification matters, pay reductions or inability to satisfactorily perform a job, refusal to comply with grooming standards, removal from a program, records of parole or social service matters.

General Conditions of Parole mean general rules regarding behavior required or prohibited during parole for all parolees.

Goal means a numerically expressed disabled veteran business enterprise objective as set out in Public Contract Code section 10115(c), that awarding departments and contractors are required to make efforts to achieve.

Good Cause means a finding based upon a preponderance of the evidence that there is a factual basis and good reason for the decision made.

Good Faith Effort means a concerted effort on the part of a potential contractor to seek out and consider disabled veteran-owned and operated business enterprises as potential contractors, and/or subcontractors in order to meet the program participation goals.

Great bodily injury (GBI) means any bodily injury that creates a substantial risk of death.

Grievance means a complaint about a decision, action, or policy which an inmate, parolee or staff wish to have changed.

Harassment means a willful course of conduct directed at a specific person, group, or entity which seriously alarms, annoys, or

§ 3000

DEPARTMENT OF CORRECTIONS AND REHABILITATION

TITLE 15

terrorizes that person, group, or entity and which serves no legitimate purpose.

Hearing Committee means a panel of three certified Senior Hearing Officers comprised of: one Correctional Lieutenant or Correctional Counselor II, one Facility/Correctional Captain or Correctional Counselor III, and one staff member at the level of Associate Warden or above, or any combination thereof.

High Control means the highest supervision category of a person on parole.

Hold means to retain an inmate or parolee, who is under the Secretary's jurisdiction, in custody at an institution or a local detention facility in response to the legal request of a law enforcement or correctional agency representative.

Immediate Family Members means legal spouse; registered domestic partner, natural parents; adoptive parents, if the adoption occurred and a family relationship existed prior to the inmate's incarceration; step-parents or foster parents; grandparents; natural, step, or foster brothers or sisters; the inmate's natural and adoptive children; grandchildren; and legal stepchildren of the inmate. Aunts, uncles and cousins are not immediate family members unless a verified foster relationship exists.

Incarcerating Jurisdiction means the jurisdiction where an Interstate or Western Interstate Corrections Compact, federal contract, federal concurrent, or concurrent prisoner is incarcerated.

Indecent Exposure means every person who willfully and lewdly, either: exposes his or her person, or the private parts thereof, in any public place, or in any place where there are present other persons to be offended or annoyed thereby; or, procures, counsels, or assists any person so to expose him or her self or take part in any model artist exhibition, or to make any other exhibition of him or her self to public view, or the view of any number of persons, such as is offensive to decency, or is adapted to excite to vicious or lewd thoughts or acts.

Indeterminate Sentence Law (ISL) means a person sentenced to prison for a crime committed on or before June 30, 1977, who would have been sentenced under Penal Code section 1170 if he/she had committed the crime on or after July 1, 1977.

Indigent Inmate means an inmate who is wholly without funds at the time they were eligible for withdrawal of funds for canteen purchases.

Inmate means a person under the jurisdiction of the Secretary and not paroled. Inmate and prisoner are synonymous terms.

Inmate Match means a one-on-one match of a citizen volunteer and an inmate who receives few or no visits to establish a relationship which encourages positive inmate behavior and programming.

Institution means a large facility or complex of subfacilities with a secure (fenced or walled) perimeter headed by a warden.

Institution Head means a warden, regional parole administrator, or designated manager of a facility housing inmates.

Intake Control Unit (ICU) means a unit that schedules and coordinates weekly movement of CDCR new commitment inmates from the counties to the CDCR Reception Centers. The ICU is also a liaison between the counties and CDCR in the event that CDCR is unable to accept delivery of its new commitment inmates and payments are due to the counties.

Interstate Unit means the Division of Adult Parole Operations which coordinates the supervision of California cooperative parolee and the return of parolees-at-large from asylum states. The unit is responsible for Interstate and Western Interstate Corrections Compacts, federal contrast, federal concurrent, and consecutive prisoners and multijurisdiction parolees incarcerated in the prison of another jurisdiction.

Intoxicant not identified as a controlled substance means toluene or any bi-product i.e. paint thinners, paint, fingernail polish,

lacquers, gasoline, kerosene, adhesives or other substance that markedly diminishes physical and/or mental control.

Joint Venture Employer (JVE) means any public entity, nonprofit or for profit entity, organization, or business which contracts with the director for the purpose of employing inmate labor.

Joint Venture Program (JVP) means a contract entered into between the director and any public entity, nonprofit or for profit entity, organization, or business for the purpose of employing inmate labor.

Laboratory means any toxicological or forensic laboratory which has been recognized by the state, other certifying agency, or which is accepted by any local, county, or state prosecuting authority to provide evidence as to the presence of controlled substances in human body fluids or confirm that a substance is or contains any controlled substance.

Legal process means a writ, summons, warrant or mandate issued by a court.

Legal Status Sheet (LSS) means a CDC Form 188, Legal Status Summary, containing the commitment and release status of an inmate.

Life Prisoner means a prisoner whose sentence includes a term of life.

Lockdown means the restriction of all inmates to their cells/dormitory beds encompassing no less than a Facility. True lockdowns are rare occasions, generally following very serious threats to institutional security and the safety of staff and inmates. The movement of any inmate to an assignment or resumption of any program would change the lockdown status of the program, returning the institution/facility to a diminished level of modified program or to normal program.

Lockout means any refusal by an employer to permit any group of five or more employees to work as a result of a dispute with such employees affecting wages, hours or other terms or conditions of employment of such employees.

Manuscript means any written, typed or printed articles of fiction and nonfiction; poems; essays; gags; plays; skits; paintings; sketches; drawings; or musical compositions created by an inmate.

Material Evidence means evidence which has a substantial bearing on matters in dispute and legitimate and effective influence on the decision of a case.

Medical Parolee means a person released from confinement pursuant to Penal Code section 3550.

Minimum Eligible Parole Date (MEPD) means the earliest date on which an Indeterminate Sentence Law or life prisoner may legally be released on parole.

Modified Program means the suspension or restriction of inmate program activities and/or movement that impacts less than all programs or less than all inmates. A Modified Program may either occur independently in response to an incident or unusual occurrence or may occur as a facility transitions from a lockdown to regular programming. Imposed restrictions may fluctuate as circumstances dictate with the goal of resuming regular programming as soon as it is practical. Modified programming will last no longer than necessary to restore institutional safety and security or to investigate the triggering event, and shall not target a specific racial or ethnic group unless it is necessary and narrowly tailored to further a compelling government interest. For those inmates whose movement has been restricted, movement may be authorized on a case-by-case basis for essential or emergency services such as medical, dental, mental health or law library visits. The routine and/or temporary restrictions on inmate movement or yard activities, which do not last longer than 24 hours, are not considered a program modification.

TITLE 15

DEPARTMENT OF CORRECTIONS AND REHABILITATION

§ 3000

Multijurisdiction Parolee means any concurrent, California concurrent, California agency, or cooperative parolee.

Multijurisdiction Prisoner means any federal contract, federal concurrent, federal consecutive, concurrent, consecutive, California agency, Interstate or Western Interstate Corrections Compact prisoner.

Non-Revocable Parole is a form of unsupervised community release pursuant to the provisions of Penal Code section 3000.03, wherein the parolee is not subject to placement of a parole hold, revocation, or referral to the Board of Parole Hearings for violation of any condition of parole.

Non-secure Facility means any of the following Departmental facilities: Minimum Support Facilities, Camps and Community Correctional Centers (i.e. Community Correctional Reentry Centers, Restitution Centers, Community Correctional Facilities, Drug Treatment Furlough, halfway back facilities, etc.); and comparable facilities in another law enforcement jurisdiction (i.e. county road camps, county detoxification center, etc.)

Our Hold Only (OHO) means a parolee is in custody under a Penal Code section 3056 parole hold and has no other charges or detainees pending.

Out-to-Court means an inmate is temporarily removed from a facility to be brought before a court to be tried for an offense, to be examined by a grand jury or magistrate, or for any other court proceedings.

Parole Administrator means the Department's administrator of a Division of Adult Parole Operations headquarters unit, district, program or geographic location.

Parole Agent means an employee and his/her supervisors in the department who are assigned to supervise those persons released from incarceration to the supervision of the Division of Adult Parole Operations.

Parolee Field File means a file maintained by a parole unit office containing information about a parolee and his or her current parole.

Parole Hearings Division means the division of the department which is responsible for the department's administration of paroles for those persons committed to the department under Penal Code section 1170, except those who also meet the criteria of Penal Code section 2962.

Parole Hold means authorization by a departmental employee to hold a parolee in custody pursuant to section 3056 of the Penal Code.

Parole Violation means conduct by a parolee which violates the conditions of parole or otherwise provides good cause for the modification or revocation of parole.

Parole Violation Disposition Tracking System (PVDTS) means an electronic database utilized by Division of Adult Parole Operations field staff to track all remedial sanctions, warrant requests, and petitions to the local court for revocation of parole.

Parole Violation Extension means an extension of return-to-custody time for a parolee in revoked status.

Parole Violator means a parolee who is found to have violated parole and who may be returned to custody pursuant to Penal Code section 3057.

Parolee means an offender placed on supervised or non-revocable parole by the department.

Parolee-at-Large means an absconder from parole supervision, who is declared a fugitive by releasing authority action suspending parole.

Polygraph Examination means the procedure by which a polygraph examiner renders an opinion as to the veracity of statements made by an examinee.

Polygraph Examiner means a person who purports to be able to determine the truthfulness of statements through the use of a polygraph instrument.

Possession is defined as either actual possession or constructive possession of an object. Actual possession exists when a person has physical custody or control of an object. Constructive Possession exists where a person has knowledge of an object and control of the object or the right to control the object, even if the person has no physical contact with it.

Postrelease Community Supervision is a form of supervision provided after a period of incarceration wherein the inmate is released to the jurisdiction of a county agency pursuant to the Postrelease Community Supervision Act of 2011.

Preprison Credit means credit for time in custody as certified by the court and provided for in Penal Code section 2900.5.

Principal means any person involved in the commission of a crime, felony or misdemeanor, whether they directly commit the act constituting the offense, or aid and abet in its commission, or not being present, have advised and encouraged its commission, or who, by threats, menaces, command or coercion, compel another to commit any crime.

Prison Gang means any gang which originated and has its roots within the department or any other prison system.

Prisoner means a person in custody of the Secretary and not paroled. Prisoner and inmate are synonymous terms.

Probation Officer's Report means a CDC Form 174 (Rev. 3/87), Probation Officer's Report, prepared by the probation officer in the county where the offense was committed.

Program failure means any inmate who generates a significant disciplinary history within the last 180 days from the current date. A guilty finding for two serious Rules Violation Reports or one serious and two administrative Rules Violation Reports within that 180 day time period is reasonable evidence of a significant disciplinary history and may be considered a program failure.

Project, as used in sections 3475 through 3478, means a proposal of something to be done for which a contract has not yet been awarded.

Public Interest Case describes an inmate whose crime/criminal history, public recognition, family ties, career or behavior in custody has resulted in extensive media coverage beyond the closest large city and its surrounding areas.

Public official means any person identified in Penal Code Section 76. CDCR staff are considered the staff of an exempt appointee of the Governor.

Received Date means the date an inmate is initially received into a facility of the department.

Receiving State means the state which supervises a cooperative parolee or a concurrent parolee.

Reentry Hubs are designated facilities within an institution which provide enhanced rehabilitative programs to inmates who meet Reentry Hub placement criteria.

Regional Parole Administrator means the department's administrator of a Division of Adult Parole Operations region.

Released on Parole means released from custody to a term of parole supervision and includes: initial releases from custody; parolees released after having served a period of parole revocation; parole violators with a new term; parolees released from any other jurisdiction, for example, federal custody; and offenders ordered directly to parole by a sentencing court, also referred to as "court walkovers."

Relevant Evidence means evidence which tends to prove or disprove an issue or fact in dispute.

§ 3000

DEPARTMENT OF CORRECTIONS AND REHABILITATION

TITLE 15

Religious Item means any bag, cross, medallion, totem, pipe, or other item in which the possessor places religious or spiritual significance.

Religious Review Committee (RRC) means a committee formed and maintained at each institution that reviews and reaches a decision regarding requests for reasonable accommodation and/or access to religious services.

Residence means one or more addresses at which a person regularly resides, regardless of the number of days or nights spent there, such as a shelter or structure that can be located by a street address, including, but not limited to, houses, apartment buildings, motels, hotels, homeless shelters, and recreational and other vehicles.

Residential Facility means a property that is operated for the purpose of providing lodging and services for two or more persons. Residential facilities include sober living facilities and transitional housing facilities that provide services such as money management, substance abuse prevention, relationship and self-esteem workshops, skills for employment stability, job training, and referrals to local community, social, and health services.

Responsible Bidder means, in addition to other State contracting requirements, a bidder who has either met the disabled veteran business enterprise goal or who has demonstrated that a good faith effort was made to meet the goal.

Restricted or controlled inmate movement means that the affected inmates are not permitted normal release schedules and that all or specified movement may require a greater degree of supervision than normal. Such restriction may include, but is not limited to controlled feeding, a section at a time, rather than the entire unit or sub-facility being released. Such restrictions do not constitute a State of Emergency as determined in Section 3383.

Room and Board means all that the department provides for the inmate's care, housing and retention.

Screening means evaluation by staff to ascertain that specified requirements or criteria are met.

Secretary means the secretary of the Department of Corrections and Rehabilitation, who serves as the Chief Executive Officer.

Secure Perimeter means the largest Security Perimeter that physically retains inmates in custody on facility property.

Security Concern means the inmate does not otherwise meet the Close Custody case factor criteria established in section 3377.2(b); however, based upon an Institution Classification Committee (ICC) review of all available case factors and disciplinary history, the inmate demonstrates an ongoing heightened security risk that potentially threatens institution safety and security and thereby warrants the direct and constant supervision provided by a Close Custody designation.

Security Perimeter means any unbroken physical barrier or combination of physical barriers that restricts inmate movement to a contained area without being processed through a door, gate, or sallyport.

Senate Bill (SB) 618 Participant means an adult inmate who is deemed eligible and agrees to participate in a SB 618 Program, as defined in section 3000, which includes that prior to reception by the California Department of Corrections and Rehabilitation, the inmate will be assessed and classified at the county in which he or she is adjudged to have committed his or her crime.

Senate Bill (SB) 618 Program means a program developed for nonviolent felony offenders pursuant to SB 618 (2005/2006 session), which added Penal Code section 1203.8, which provides in part that programs shall be available for inmates, including Career Technical Education programs and educational programs that are designed to prepare nonviolent felony offenders for successful reintegration back into the community.

Serious bodily injury (SBI) means a serious impairment of physical condition, including, but not limited to, the following: loss of consciousness; concussion; bone fracture; protracted loss or impairment of function of any bodily member or organ; a wound requiring suturing; and disfigurement.

Serious Offense, for the purpose of conducting parole revocation hearings, refers to any felony listed in section 1192.7(c) of the Penal Code.

Sexual Activity means any behavior of a sexual nature between an inmate and a visitor including, but not limited to:

- (1) Sexual intercourse, oral copulation, or masturbation.
- (2) The rubbing or touching of breast(s), buttock(s) or sexual organ(s) for the purpose of arousing, appealing to, or gratifying lust, passions, or sexual desires.
- (3) Exposure of breast(s), buttocks or sexual organ(s) for the purpose of arousing, appealing to, or gratifying lust, passions, or sexual desires.

Sexual Disorderly Conduct means every person who touches, without exposing, his or her genitals, buttocks or breasts in a manner that demonstrates it is for the purpose of sexual arousal, gratification, annoyance, or offense, and that any reasonable person would consider this conduct offensive.

Single Family Dwelling means a real property improvement, such as a house, apartment, or mobile home that is used or is intended for use as a dwelling for one family.

Small Business Firm means a business in which the principal office is located in California and the officers of such business are domiciled in California which is independently owned and operated and which is not dominant in its field of operation. The maximum dollar volume that a small business may generate shall vary from industry to industry to the extent necessary to reflect differing characteristics of such industries.

Special Assignment means a departmentally-approved special program, temporary or short-term assignment for departmental convenience, or medical or psychiatric treatment category with exceptional credit-earning provisions.

Special Conditions of Parole means conditions of parole placed by the Board of Parole Hearings or Division of Adult Parole Operations and restricted to the individual.

Street gang refers to a gang as defined herein except that it is not a prison gang.

Strike means any concerted act of more than 50 percent of the bargaining unit employees in a lawful refusal of such employees under applicable state or federal law to perform work or services for an employer, other than work stoppages based on conflicting union jurisdictions or work stoppages unauthorized by the proper union governing body.

Subcontractor means any person or entity that enters into a subcontract with a prime contractor for work, materials, supplies and/or labor.

Sweat Lodge means a native American Indian ceremonial hut.

Terminal illness means an incurable disease process with progression unresponsive to medical intervention where a medical doctor estimates that death will occur within a six-month period.

Time Computation means the department's uniform method for calculating an inmate's term and minimum and maximum release dates as governed by law.

Time Served means that time an inmate is imprisoned with the department between their received date and a given date.

Trade Paper means a publication that meets all of the following criteria: (1) has a business orientation relating to the trade or industry for which the advertisement is being placed; (2) is known and utilized by members of that trade or industry; (3) primarily offers articles, editorials (if any), and advertisements of business oppor-

TITLE 15

DEPARTMENT OF CORRECTIONS AND REHABILITATION

§ 3000

tunities aimed at that trade or industry; and (4) is readily available within the geographical area for which the advertisement is placed and for which the services are to be performed.

Transient Sex Offender means a parolee who has a statutory requirement to register as a sex offender and who has no residence.

Transitional Housing Unit is a general population program designated for the observation phase of the Prison Gang Debriefing process. This program houses those inmates that are in the second phase of the debriefing process.

Transitions Programs are employment training classes to assist inmates with job readiness and job seeking skills to overcome barriers to obtaining employment upon release from an institution.

Under the influence of alcohol, any drug, controlled substance, toluene or any combination thereof means being in a condition that he/she is unable to exercise care for his/her safety or the safety of others pursuant to Penal Code 647(f) and confirmed by a positive test from a departmentally approved testing method, to include field sobriety testing.

Unit Supervisor means a supervisor of case-carrying parole agents in the Division of Adult Parole Operations.

Vexatious Litigant means a person who does any of the following: (1) in the immediately preceding seven-year period has commenced, prosecuted, or maintained in propria persona at least five litigations other than in a small claims court that have been (a) finally determined adversely to the person or; (b) unjustifiably permitted to remain pending at least two years without having been brought to trial or hearing; (2) after a litigation has been finally determined against the person, repeatedly relitigates or attempts to relitigate in propria persona either; (a) the validity of the determination against the same defendant or defendants as to whom the litigation was finally determined or; (b) the cause of action, claim, controversy, or any of the issues of fact or law, determined or concluded by the final determination against the same defendant or defendants as to whom the litigation was finally determined; (3) in any litigation while acting in propria persona, repeatedly files unmeritorious motions, pleadings, or other papers, conducts unnecessary discovery, or engages in other tactics that are frivolous or solely intended to cause unnecessary delay; (4) has previously been declared to be a vexatious litigant by any state or federal court of record in any actions or proceeding based upon the same or substantially similar facts, transaction, or occurrence. Pursuant to *In re Bittaker*, Writs of Habeas Corpus are not included under vexatious litigation.

Violent Offense, for the purpose of conducting parole revocation hearings, refers to any felony listed in section 667.5(c) of the Penal Code.

Work Change Area means a portal controlled by staff and/or locking gates that is used to control access and includes the area where staff search inmates prior to permitting inmates in or out of adjacent areas such as Prison Industry Authority yards.

Worktime Credit means credit towards a prisoner's sentence for satisfactory performance in work, training or education programs.

Writ means a court order in writing, requiring the performance of a specified act, or giving authority to have it done.

NOTE: Authority cited: Sections 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, 646.9, 653m, 832.5, 1170.05, 1203.8, 1389, 2080, 2081.5, 2600, 2601, 2700, 2717.1, 2717.6, 2932.5, 3003.5(a), 3020, 3450, 3550, 4570, 4576, 5009, 5050, 5054, 5068, 7000 et seq. and 11191, Penal Code; Sections 1132.4 and 1132.8, Labor Code; Sections 10106, 10108, 10108.5, 10115, 10115.1, 10115.2, 10115.3 and 10127, Public Contract Code; and Section 999, Military and Veterans Code; Section 391, Code of Civil Procedure; Section 297.5, Family Code; Sections 8550, 8567, 12838 and 12838.7, Government Code; Governor's Prison Overcrowding State of Emer-

gency Proclamation dated October 4, 2006; *In re Bittaker*, 55 Cal.App. 4th 1004, 64 Cal. Rptr. 2d 679; Section 11007, Health and Safety Code; and *Madrid v. Cate* (U.S.D.C. N.D. Cal. C90-3094 TEH).

HISTORY:

1. Amendment of subsection (a)(19) filed 12-1-78 as an emergency; designated effective 1-1-79 (Register 78, No. 48). For prior history, see Register 77, No. 40.
2. Certificate of Compliance filed 2-22-79 (Register 79, No. 8).
3. Amendment filed 11-20-79 as an emergency; designated effective 1-1-80 (Register 79, No. 47). A Certificate of Compliance must be filed within 120 days or emergency language will be repealed on 3-20-80.
4. Certificate of Compliance filed 2-15-80 (Register 80, No. 7).
5. Amendment filed 3-2-83; effective thirtieth day thereafter (Register 83, No. 12).
6. Change without regulatory effect repealing and adopting new section filed 10-29-90 pursuant to section 100, title 1, California Code of Regulations (Register 91, No. 6).
7. Amendment filed 11-28-90 as an emergency; operative 11-28-90 (Register 91, No. 6). A Certificate of Compliance must be transmitted to OAL by 3-28-91 or emergency language will be repealed by operation of law on the following day.
8. Amendment adding definitions of "disruptive group," "gang," and "prison gang" filed 5-20-91; operative 6-19-91 (Register 91, No. 26).
9. Amendment adding definition for "Media representative" filed 12-19-91 as an emergency; operative 12-19-91 (Register 92, No. 4).
10. Amendment adding definitions for "Disciplinary Free," "Inmate Match," and "Special Assignment" and amending Note filed 12-20-91 as an emergency; operative 12-20-91 (Register 92, No. 4). A Certificate of Compliance must be transmitted to OAL 4-20-92 or emergency language will be repealed by operation of law on the following day.
11. Amendment adding definition for "Case records file" and amendment of Note filed 12-20-91 as an emergency; operative 12-20-91 (Register 92, No. 4). A Certificate of Compliance must be transmitted to OAL 4-20-92 or emergency language will be repealed by operation of law on the following day.
12. Amendment adding definition for "Detainer" and amendment of Note filed 12-19-91 as an emergency; operative 12-19-91 (Register 92, No. 4). A Certificate of Compliance must be transmitted to OAL 4-17-92 or emergency language will be repealed by operation of law on the following day.
13. Amendment adding definitions for "Received Date," "Time Computation," and "Time Served" filed 12-20-91 as an emergency; operative 12-20-91 (Register 92, No. 4). A Certificate of Compliance must be transmitted to OAL 4-20-92 or emergency language will be repealed by operation of law on the following day.
14. Editorial correction of "Firm" and "Grievance" filed 12-20-91; operative 12-20-91 (Register 92, No. 4).
15. Amendment adding definition for "Terminal illness" filed 5-20-92; operative 5-20-92 (Register 92, No. 21). A Certificate of Compliance must be transmitted to OAL 9-17-92 or emergency language will be repealed by operation of law on the following day.
16. Editorial correction of printing error restoring inadvertently deleted definitions originally filed 12-20-91 (Register 92, No. 24).
17. Certificate of Compliance as to 12-20-91 order adding definition for "case records file" transmitted to OAL 4-15-92 and filed 5-27-92 (Register 92, No. 24).
18. Certificate of Compliance as to 12-29-91 order adding definitions for "Disciplinary Free," "Inmate Match," and "Special Assignment" transmitted to OAL 4-20-92 and filed 5-28-92 (Register 92, No. 24).
19. Certificate of Compliance as to 12-19-91 order adding definition of "Detainer" transmitted to OAL 4-20-92 and filed 5-28-92 (Register 92, No. 24).
20. Certificate of Compliance as to 12-19-91 order transmitted to OAL 4-17-92 and filed 6-1-92 (Register 92, No. 24).
21. Certificate of Compliance as to 12-20-91 order transmitted to OAL 4-20-92 and filed 6-2-92 (Register 92, No. 24).

22. Certificate of Compliance as to 5-20-92 order transmitted to OAL 9-9-92; disapproved by OAL and order of repeal of 5-20-92 order filed on 10-22-92 (Register 92, No. 43).
23. Amendment adding definition for "Terminal illness" refiled 10-23-92 as an emergency; operative 10-22-92 pursuant to Government Code section 11346.1(h) (Register 92, No. 43). A Certificate of Compliance must be transmitted to OAL 2-23-93 or emergency language will be repealed by operation of law on the following day.
24. Amendment adding "Cumulative case summary," "Chronological history," "Legal status sheet," "Probation officer's report" and "Criminal identification and investigation report" and amendment of Note filed 11-5-92; operative 12-7-92 (Register 92, No. 45).
25. Change without regulatory effect amending "Immediate Family Members" filed 1-26-93 pursuant to section 100, title 1, California Code of Regulations (Register 93, No. 5).
26. Certificate of Compliance as to 10-23-92 order transmitted to OAL 12-18-92 and filed 2-3-93 (Register 93, No. 6).
27. Amendment adding "Harassment" and amendment of Note filed 7-29-93 as an emergency; operative 7-29-93 (Register 93, No. 31). A Certificate of Compliance must be transmitted to OAL 11-26-93 or emergency language will be repealed by operation of law on the following day.
28. Amendment filed 9-3-93; operative 9-3-93 pursuant to Government Code section 11346.2(d) (Register 93, No. 36).
29. Amendment of "Good Faith Effort," "Minority Business Enterprise," "Responsible Bidder" and "Women Business Enterprise" and Note and new definitions "Disabled Veteran Business Enterprise," "Goal," "Minority and/or Women and/or Disabled Veteran Business Enterprise focus paper," "Minority and/or Women and/or Disabled Veteran Business Enterprise focus paper and trade paper," "Project," "Subcontractor," and "Trade Paper" filed 10-18-93 as an emergency; operative 10-18-93 (Register 93, No. 43). A Certificate of Compliance must be transmitted to OAL by 2-15-94 or emergency language will be repealed by operation of law on the following day.
30. Definitions added for "Chaplain," "Religious Artifact," and "Sweat Lodge" and amendment of Note filed 11-1-93; operative 12-13-93 (Register 93, No. 45).
31. Amendment adding "Ex-Offender" filed 11-30-93; operative 12-30-93 (Register 93, No. 49).
32. Certificate of Compliance as to 7-29-93 order transmitted to OAL 11-18-93 and filed 12-31-93 (Register 94, No. 1).
33. Certificate of Compliance as to 10-18-93 order transmitted to OAL 2-15-94 and filed 3-16-94 (Register 94, No. 11).
34. Amendment of "Inmate," new definition "Serious injury", and amendment of Note filed 5-5-95; operative 6-5-95 (Register 95, No. 18).
35. Amendment of "Institution Head" filed 9-13-96 as an emergency; operative 9-13-96. A Certificate of Compliance must be transmitted to OAL by 2-24-97 or emergency language will be repealed by operation of law on the following day.
36. Amendment adding definition of "Certification" filed 11-22-96 as an emergency; operative 11-22-96 (Register 96, No. 47). A Certificate of Compliance must be transmitted to OAL by 5-1-97 pursuant to Penal Code section 5058(e) or emergency language will be repealed by operation of law on the following day.
37. Certificate of Compliance as to 9-13-96 order transmitted to OAL 11-22-96 and filed 1-6-97 (Register 97, No. 2).
38. Certificate of Compliance as to 11-22-96 order, including amendment of definition of "Certification," transmitted to OAL 3-20-97 and filed 5-1-97 (Register 97, No. 18).
39. Amendment adding definitions of "Lockdown" and "Restricted or controlled inmate movement" filed 10-16-97; operative 11-15-97 (Register 97, No. 42).
40. Amendment adding definition of "Program failure" filed 10-16-97 as an emergency; operative 10-16-97 (Register 97, No. 42). Pursuant to Penal Code section 5058(e), a Certificate of Compliance must be transmitted to OAL by 3-25-98 or emergency language will be repealed by operation of law on the following day.
41. Amendment adding definition of "Vexatious Litigant" and amending Note filed 11-12-97 as an emergency; operative 11-12-97 (Register 97, No. 46). A Certificate of Compliance must be transmitted to OAL by 3-13-98 or emergency language will be repealed by operation of law on the following day.
42. Editorial correction of definition of "Vexatious Litigant" and Histories 40 and 41 (Register 98, No. 18).
43. Amendment adding definition of "Vexatious Litigant" and amending Note refiled 4-29-98 as an emergency; operative 4-29-98 (Register 98, No. 18). A Certificate of Compliance must be transmitted to OAL by 10-6-98 or emergency language will be repealed by operation of law on the following day.
44. Certificate of Compliance as to 10-16-97 order, including removal of definition of "Program failure" to section 3062(n), transmitted to OAL 3-23-98 and filed 5-4-98 (Register 98, No. 19).
45. Certificate of Compliance as to 4-29-98 order, including further amendment of definition of "Vexatious Litigant" and Note, transmitted to OAL 6-12-98 and filed 7-21-98 (Register 98, No. 30).
46. Amendment adding new definitions of "Controlled Medication," "Controlled Substance," "Distribution" and "Laboratory" and amendment of Note filed 8-27-98 as an emergency; operative 8-27-98 (Register 98, No. 35). A Certificate of Compliance must be transmitted to OAL by 2-3-99 or emergency language will be repealed by operation of law on the following day.
47. Amendment filed 11-13-98 as an emergency; operative 11-13-98 (Register 98, No. 46). A Certificate of Compliance must be transmitted to OAL by 3-15-99 or emergency language will be repealed by operation of law on the following day.
48. Amendment adding new definitions of "Controlled Medication," "Controlled Substance," "Distribution" and "Laboratory" and amendment of Note refiled 2-3-99 as an emergency; operative 2-3-99 (Register 99, No. 6). Pursuant to Penal Code section 5058(e), a Certificate of Compliance must be transmitted to OAL by 7-13-99 or emergency language will be repealed by operation of law on the following day.
49. Certificate of Compliance as to 11-13-98 order transmitted to OAL 2-10-99 and filed 3-8-99 (Register 99, No. 11).
50. Certificate of Compliance as to 2-3-99 order transmitted to OAL 5-12-99 and filed 6-24-99 (Register 99, No. 26).
51. Amendment filed 3-27-2000 as an emergency; operative 3-27-2000 (Register 2000, No. 13). Pursuant to Penal Code section 5058(e), a Certificate of Compliance must be transmitted to OAL by 9-5-2000 or emergency language will be repealed by operation of law on the following day.
52. Amendment of definition of "Chronological History" filed 8-28-2000; operative 9-27-2000 (Register 2000, No. 35).
53. Certificate of Compliance as to 3-27-2000 order transmitted to OAL 9-5-2000; disapproval and order of repeal and deletion reinstating section as it existed prior to emergency amendment by operation of Government Code 11346.1(f) filed 10-18-2000 (Register 2000, No. 42).
54. Amendment filed 10-19-2000 deemed an emergency pursuant to Penal Code section 5058(e); operative 10-19-2000 (Register 2000, No. 42). Pursuant to Penal Code section 5058(e), a Certificate of Compliance must be transmitted to OAL by 3-27-2001 or emergency language will be repealed by operation of law on the following day.
55. Amendment adding definition of "General Chrono" filed 11-16-2000; operative 12-16-2000 (Register 2000, No. 46).
56. Certificate of Compliance as to 10-19-2000 order, including further amendment of definitions of "Execution Type Murder," "High Notoriety" and "Public Interest Case," transmitted to OAL 3-27-2001 and filed 5-3-2001 (Register 2001, No. 18).
57. Amendment of definitions of "Firm" and "Small Business Firm" and amendment of Note filed 7-12-2002; operative 8-11-2002 (Register 2002, No. 28).
58. Amendment adding definition of "Street gang" and amendment of Note filed 8-27-2002 as an emergency; operative 8-27-2002 (Register 2002, No. 35). Pursuant to Penal Code section 5058.3 a Certificate of Compliance must be transmitted to OAL by 2-4-2003 or emergency language will be repealed by operation of law on the following day.
59. Certificate of Compliance as to 8-27-2002 order transmitted to OAL 1-21-2003 and filed 3-6-2003 (Register 2003, No. 10).

TITLE 15

DEPARTMENT OF CORRECTIONS AND REHABILITATION

§ 3000

60. Amendment adding definitions of "Program failure" and "Significant work related disciplinary history" filed 1-9-2004 as an emergency; operative 1-9-2004 (Register 2004, No. 2). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 6-17-2004 or emergency language will be repealed by operation of law on the following day.
61. Amendment adding definitions of "Program failure" and "Significant work related disciplinary history" refiled 6-17-2004 as an emergency; operative 6-17-2004 (Register 2004, No. 25). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 11-24-2004 or emergency language will be repealed by operation of law on the following day.
62. Certificate of Compliance as to 6-17-2004 order transmitted to OAL 11-16-2004 and filed 12-29-2004 (Register 2004, No. 53).
63. New definition of "Religious Review Committee (RRC)" filed 1-17-2006 as an emergency; operative 1-17-2006 (Register 2006, No. 3). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 6-26-2006 or emergency language will be repealed by operation of law on the following day.
64. Amendment of definition of "Program failure" filed 6-9-2006; operative 7-9-2006 (Register 2006, No. 23).
65. Certificate of Compliance as to 1-17-2006 order transmitted to OAL 6-22-2006 and filed 7-27-2006 (Register 2006, No. 30).
66. Change without regulatory effect amending division heading and chapter heading filed 12-4-2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 49).
67. New definitions of "Indecent Exposure" and "Sexual Disorderly Conduct" and amendment of Note filed 2-23-2007 as an emergency; operative 2-23-2007 (Register 2007, No. 8). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 8-2-2007 or emergency language will be repealed by operation of law on the following day.
68. Certificate of Compliance as to 2-23-2007 order transmitted to OAL 7-27-2007 and filed 9-5-2007 (Register 2007, No. 36).
69. New definitions of "Non-serious offender" and "Non-violent offender" filed 10-1-2007 as an emergency; operative 10-1-2007 (Register 2007, No. 40). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 3-10-2008 or emergency language will be repealed by operation of law on the following day.
70. Amendment of definition of "Immediate Family Members" and amendment of Note filed 10-16-2007; operative 11-15-2007 (Register 2007, No. 42).
71. New definitions of "Non-serious offender" and "Non-violent offender" refiled 2-25-2008 as an emergency; operative 2-25-2008 (Register 2008, No. 9). A Certificate of Compliance must be transmitted to OAL by 5-26-2008 or emergency language will be repealed by operation of law on the following day.
72. Reinstatement of section as it existed prior to 10-1-2007 emergency amendment by operation of Government Code section 11346.1(f) (Register 2008, No. 22).
73. New definitions of "Behavior Management Unit" and "Disruptive Behavior" filed 7-8-2008 as an emergency; operative 7-8-2008 (Register 2008, No. 28). Pursuant to Penal Code section 5058.3(a)(1), a Certificate of Compliance must be transmitted to OAL by 12-15-2008 or emergency language will be repealed by operation of law on the following day.
74. Amendment filed 8-4-2008; operative 8-4-2008 pursuant to Government Code section 11343.4 (Register 2008, No. 32).
75. Repealer of definition of "Media representative" filed 8-29-2008; operative 9-28-2008 (Register 2008, No. 35).
76. New definition of "California Out-of-State Correctional Facility" and amendment of Note filed 10-30-2008 as an emergency; operative 10-30-2008 (Register 2008, No. 44). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 4-8-2009 or emergency language will be repealed by operation of law on the following day.
77. Amendment filed 12-9-2008; operative 1-8-2009 (Register 2008, No. 50).
78. New definitions of "Behavior Management Unit" and "Disruptive Behavior" refiled 12-15-2008 as an emergency; operative 12-15-2008 (Register 2008, No. 51). Pursuant to Penal Code section 5058.3(a)(1), a Certificate of Compliance must be transmitted to OAL by 3-16-2009 or emergency language will be repealed by operation of law on the following day.
79. New definitions of "Senate Bill (SB) 618 Participant" and "Senate Bill (SB) 618 Program" and amendment of Note filed 2-5-2009 as an emergency; operative 2-5-2009 (Register 2009, No. 6). This filing contains a certification that the operational needs of the Department required filing of these regulations on an emergency basis and were deemed an emergency pursuant to Penal Code section 5058.3. A Certificate of Compliance must be transmitted to OAL by 7-15-2009 or emergency language will be repealed by operation of law on the following day.
80. Certificate of Compliance as to 12-15-2008 order transmitted to OAL 2-23-2009 and filed 4-2-2009 (Register 2009, No. 14).
81. Certificate of Compliance as to 10-30-2008 order transmitted to OAL 4-1-2009 and filed 5-12-2009 (Register 2009, No. 20).
82. Certificate of Compliance as to 2-5-2009 order transmitted to OAL 6-25-2009 and filed 7-28-2009 (Register 2009, No. 31).
83. New definition of "Sexual Activity" filed 10-6-2009; operative 10-6-2009 pursuant to Government Code section 11343.4 (Register 2009, No. 41).
84. New definition of "Transitional Housing Unit" filed 12-29-2009; operative 1-28-2010 (Register 2010, No. 1).
85. New definition of "Non-Revocable Parole," amendment of definition of "Parolee" and amendment of Note filed 1-25-2010 as an emergency pursuant to Penal Code section 5058.3(a)(2); operative 1-25-2010 (Register 2010, No. 5). Pursuant to Penal Code section 5058.3(c), a Certificate of Compliance must be transmitted to OAL by 7-6-2010 or emergency language will be repealed by operation of law on the following day.
86. Certificate of Compliance as to 1-25-2010 order transmitted to OAL 6-17-2010 and filed 7-13-2010 (Register 2010, No. 29).
87. New definitions of "Administrative Officer of the Day," "Facility," "Great Bodily Harm" and "Institution" and amendment of definition of "Serious Bodily Injury" and Note filed 8-19-2010; operative 8-19-2010 pursuant to Government Code section 11343.4 (Register 2010, No. 34).
88. Repealer of definition of "Appeal Form" filed 12-13-2010 as an emergency; operative 1-28-2011 (Register 2010, No. 51). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 7-7-2011 or emergency language will be repealed by operation of law on the following day.
89. New definition of "Medical Parolee" and amendment of Note filed 4-29-2011 as an emergency pursuant to Penal Code section 5058.3(a)(2); operative 4-29-2011 (Register 2011, No. 17). Pursuant to Penal Code section 5058.3(a)(1), a Certificate of Compliance must be transmitted to OAL by 10-6-2011 or emergency language will be repealed by operation of law on the following day.
90. Repealer and new definition of "Lockdown" and new definition of "Modified Program" filed 6-14-2011; operative 7-14-2011 (Register 2011, No. 24).
91. New definitions of "Released on Parole," "Residential Facility," "Single Family Dwelling" and "Transient Sex Offender" and amendment of Note filed 6-15-2011 as an emergency; operative 6-15-2011 (Register 2011, No. 24). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 11-22-2011 or emergency language will be repealed by operation of law on the following day.
92. Certificate of Compliance as to 12-13-2010 order transmitted to OAL 6-15-2011 and filed 7-28-2011 (Register 2011, No. 30).
93. Change without regulatory effect amending definition of "Modified Program" filed 8-3-2011 pursuant to section 100, title 1, California Code of Regulations (Register 2011, No. 31).
94. New definitions of "Alternative Custody Program" and "Alternative Custody Program Participant" and amendment of definitions of "Case Conference Review" and "Face-to-Face Contact" and Note filed 9-27-2011 as an emergency; operative 9-27-2011 (Register 2011, No. 39). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 3-5-2012 or emergency language will be repealed by operation of law on the following day.

§ 3000.5

DEPARTMENT OF CORRECTIONS AND REHABILITATION

TITLE 15

95. Certificate of Compliance as to 4-29-2011 order transmitted to OAL 10-5-2011 and filed 11-10-2011 (Register 2011, No. 45).
96. Reinstatement of section as it existed prior to 6-15-2011 emergency amendment by operation of Government Code section 11346.1(f) (Register 2011, No. 48).
97. New definitions of “Released on Parole,” “Residential Facility,” “Single Family Dwelling” and “Transient Sex Offender” and amendment of Note refiled 12-1-2011 as an emergency; operative 12-1-2011 (Register 2011, No. 48). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 2-29-2012 or emergency language will be repealed by operation of law on the following day.
98. Amendment of definition of “Dangerous Contraband,” new definition of “Possession” and amendment of Note filed 12-9-2011 as an emergency; operative 12-9-2011 (Register 2011, No. 49). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 5-17-2012 or emergency language will be repealed by operation of law on the following day.
99. Certificate of Compliance as to 9-27-2011 order transmitted to OAL 2-3-2012; Certificate of Compliance withdrawn 3-19-2012 (Register 2012, No. 12).
100. New definitions of “Alternative Custody Program” and “Alternative Custody Program Participant” and amendment of definitions of “Case Conference Review” and “Face-to-Face Contact” and Note refiled 3-19-2012 as an emergency; operative 3-19-2012 (Register 2012, No. 12). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 6-18-2012 or emergency language will be repealed by operation of law on the following day.
101. Certificate of Compliance as to 12-1-2011 order transmitted to OAL 2-27-2012 and filed 4-2-2012 (Register 2012, No. 14).
102. New definitions of “Automated Needs Assessment Tool” and “Crimogenic Need” and amendment of Note filed 5-10-2012 as an emergency; operative 5-10-2012 (Register 2012, No. 19). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 10-17-2012 or emergency language will be repealed by operation of law on the following day.
103. Certificate of Compliance as to 12-9-2011 order, including further amendment of definition of “Possession,” transmitted to OAL 5-3-2012 and filed 6-6-2012 (Register 2012, No. 23).
104. New definition of “Postrelease Community Supervision” filed 6-26-2012 as an emergency; operative 6-26-2012 (Register 2012, No. 26). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 12-3-2012 or emergency language will be repealed by operation of law on the following day.
105. Repealer of definitions of “Designated Level II Housing,” “Execution Type Murder,” “High Notoriety,” “Management Concern,” “Multiple Murders” and “Unusual Violence,” amendment of definitions of “Force,” “Life Prisoner” and “Public Interest Case” and new definitions of “Non-secure Facility” and “Security Concern” filed 6-26-2012 as an emergency; operative 7-1-2012 (Register 2012, No. 26). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 12-10-2012 or emergency language will be repealed by operation of law on the following day.
106. Reinstatement of section as it existed prior to 3-19-2012 emergency amendment by operation of Government Code section 11346.1(f) (Register 2012, No. 28).
107. New definitions of “Alternative Custody Program (ACP)” and “Alternative Custody Program Participant,” amendment changing definition of “Case Conference” to “Case Conference Review” (with further revisions), amendment of definition of “Face-to-Face Contact” and amendment of Note filed 9-13-2012 as an emergency; operative 9-13-2012 (Register 2012, No. 37). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 2-20-2013 or emergency language will be repealed by operation of law on the following day.
108. New definitions of “Automated Needs Assessment Tool” and “Crimogenic Need” and amendment of Note refiled 10-17-2012 as an emergency; operative 10-17-2012 (Register 2012, No. 42). A Certificate of Compliance must be transmitted to OAL by 1-15-2013 or emergency language will be repealed by operation of law on the following day.
109. Editorial correction of History 108 providing corrected Certificate of Compliance date (Register 2012, No. 44).
110. Certificate of Compliance as to 6-26-2012 order referenced in History 104 transmitted to OAL 11-5-2012 and filed 12-20-2012 (Register 2012, No. 51).
111. Editorial correction of History 110 (Register 2013, No. 3).
112. Certificate of Compliance as to 6-26-2012 order referenced in History 105 transmitted to OAL 12-5-2012 and filed 1-17-2013 (Register 2013, No. 3).
113. Amendment replacing and revising former definition of “Religious Artifact” with new definition of “Religious Item” filed 2-21-2013 as an emergency; operative 2-21-2013 (Register 2013, No. 8). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 7-31-2013 or emergency language will be repealed by operation of law on the following day.
114. Certificate of Compliance as to 10-17-2012 order transmitted to OAL 1-15-2013 and filed 2-25-2013 (Register 2013, No. 9).
115. Certificate of Compliance as to 9-13-2012 order transmitted to OAL 1-11-2013 and filed 2-25-2013 (Register 2013, No. 9).
116. Change without regulatory effect adding definition of “Secretary” and amending Note filed 3-11-2013 pursuant to section 100, title 1, California Code of Regulations (Register 2013, No. 11).
117. Amendment replacing and revising former definition of “Religious Artifact” with new definition of “Religious Item” refiled 7-29-2013 as an emergency; operative 7-29-2013 (Register 2013, No. 31). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 10-28-2013 or emergency language will be repealed by operation of law on the following day.
118. New definitions of “Cognitive Behavioral Therapy,” “Reentry Hubs” and “Transitions Programs” and amendment of definition of “Senate Bill 618 Program” filed 10-29-2013 as an emergency; operative 10-29-2013 (Register 2013, No. 44). A Certificate of Compliance must be transmitted to OAL by 4-7-2014 or emergency language will be repealed by operation of law on the following day.
119. Certificate of Compliance as to 7-29-2013 order transmitted to OAL 10-24-2013 and filed 12-9-2013 (Register 2013, No. 50).
120. Change without regulatory effect amending definitions of “Direct and Constant Supervision” and “Interstate Unit” filed 1-8-2014 pursuant to section 100, title 1, California Code of Regulations (Register 2014, No. 2).
121. New definition of “Intake Control Unit (ICU)” filed 1-23-2014; operative 1-23-2014 pursuant to Government Code section 11343.4(b)(3) (Register 2014, No. 4).
122. Amendment of definition of “Administrative Officer of the Day” and new definitions of “California Law Enforcement Telecommunications System,” “CalParole,” “Case Conference,” “Parole Administrator” and “Parole Violation Disposition Tracking System” filed 2-6-2014 as an emergency; operative 2-6-2014 (Register 2014, No. 6). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 7-16-2014 or emergency language will be repealed by operation of law on the following day.

3000.5. Rules of Construction.

The following rules of construction apply to these regulations, except where otherwise noted:

(a) The enumeration of some criteria for the making of discretionary decisions does not prohibit the application of other criteria reasonably related to the decision being made.

(b) The order in which criteria are listed does not indicate their relative weight or importance.

(c) “Shall” is mandatory, “should” is advisory, and “may” is permissive.

(d) The past, present, or future tense includes the others.

(e) The masculine gender includes the feminine gender; the singular includes the plural.

TITLE 15

DEPARTMENT OF CORRECTIONS AND REHABILITATION

§ 3341.5**3339. Release from Administrative Segregation and Retention in Administrative Segregation.**

(a) Release: Release from segregation status shall occur at the earliest possible time in keeping with the circumstances and reasons for the inmate's initial placement in administrative segregation. Nothing in this article shall prevent the official ordering an inmate's placement in administrative segregation, or a staff member of higher rank in the same chain of command, from withdrawing an administrative segregation order before it is acted upon or prior to a hearing on the order after consulting with and obtaining the concurrence of the administrator of the general population unit to which the inmate will be returned or assigned. Release from segregated housing after such placement shall be effected only upon the written order of an equal or higher authority.

(b) Retention: Subsections (b)(1)–(b)(5) set forth procedural safeguards. These procedural safeguards apply to inmates retained for administrative reasons after the expiration of a definite term or terms of confinement for disciplinary reasons. Definite terms of confinement shall be set or reduced by classification or administrative action.

(1) A segregated housing order, CDC Form 114-D, shall be initiated, giving written notice of the reasons for such retention in sufficient detail to enable the inmate to prepare a response or defense. Except in case of a genuine emergency, a copy of the order shall be given to the inmate prior to the expiration of the determinate term or terms of confinement. In no case shall notice be given later than 48 hours after the expiration of the determinate term or terms.

(2) A fair hearing before one or more classification officials shall be held not more than 96 hours after the inmate is given a copy of the segregated housing order, unless the inmate requests, in writing, and is granted additional time to prepare a defense.

(3) Representation by a staff assistant shall be provided if institution officials determine that the inmate is illiterate or that the complexity of the issues make it unlikely that the inmate can collect or present the evidence necessary for an adequate comprehension of the case. The determination and designation is to be made at the time the segregated housing order is prepared and shall be included on the copy of the order given the inmate.

(4) The inmate shall be given a reasonable opportunity to present witnesses and documentary evidence unless institution officials determine in good faith that presentation of the evidence would be unduly hazardous to institutional safety or correctional goals. The reason for disallowing designated evidence will be explained in writing by the hearing body on the segregated housing order.

(5) A copy of the completed segregated housing order containing a written decision, including references to the evidence relied upon and the reasons for retention in segregated housing beyond the expiration of the expired term of confinement, if so retained, shall be given the inmate upon completion of the hearing.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code; and *Taylor v. Rushen* (N.D. Cal.) L-80-0139 SAW.

HISTORY:

1. Repealer and new section filed 3-2-83; effective thirtieth day thereafter (Register 83, No. 12).
2. Editorial correction of printing error in subsection (b)(2) (Register 92, No. 5).

3340. Exclusions.

Separation from general population for the reasons and under the circumstances described in this section is not considered administrative segregation and is specifically excluded from the other provisions of this article.

(a) Medical. When an inmate is involuntarily removed from general inmate status for medical or psychiatric reasons by order of medical staff and the inmate's placement is in a hospital setting or in other housing as a medical quarantine, the inmate will not be deemed as segregated for the purpose of this article. When personnel other than medical staff order an inmate placed in administrative segregation for reasons related to apparent medical or psychiatric problems, that information will be immediately brought to the attention of medical staff. The appropriateness of administrative segregation or the need for movement to a hospital setting will be determined by medical staff. When medical and psychiatric reasons are involved, but are not the primary reasons for an inmate's placement in administrative segregation, administrative segregation status will be continued if the inmate is moved to a hospital setting and the requirements of this article will apply.

(b) Orientation and Lay-Over. Newly received inmates and inmates in transit or lay-over status may be restricted to assigned quarters for that purpose. Such restrictions should not be more confining than is required for institution security and the safety of persons, nor for a period longer than the minimum time required to evaluate the safety and security factors and reassignment to more appropriate housing.

(c) Disciplinary Detention. Placement in disciplinary detention as an ordered action of a disciplinary hearing is not subject to the provisions of this article except as provided in section 3338(a)(2) and (3).

(d) Confinement to Quarters. Confinement to quarters as an ordered action of a disciplinary hearing is not subject to the provisions of this article.

(e) Segregated Inmates. When an inmate has been classified for segregated housing in accordance with this article and commits a disciplinary offense while so confined, or is returned to segregated housing upon completion of a disciplinary detention sentence for an offense committed in a segregated unit, the provision of this article will not apply.

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

3341. Staff Assistance.

The duties and functions of a staff member assigned to assist an inmate in a classification hearing on a segregated housing order will be the same as described in section 3318 for a disciplinary hearing. When an inmate requests witnesses at a classification hearing on a segregation order and an investigative employee is assigned, the investigative employee's duties and functions will be essentially the same as described in section 3318 for predisciplinary hearing investigations. In screening prospective witnesses, the investigative employee will do so in accordance with the information to be considered in the classification hearing, as described in section 3338(e) and (f).

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

HISTORY:

1. Editorial correction removing extraneous text (Register 97, No. 5).
2. Change without regulatory effect amending section filed 1-29-97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 5).

3341.5. Segregated Program Housing Units.

Special housing units are designated for extended term programming of inmates not suited for general population. Placement into and release from these units requires approval by a classification staff representative (CSR).

§ 3341.5

DEPARTMENT OF CORRECTIONS AND REHABILITATION

TITLE 15

(a) Protective Housing Unit (PHU). An inmate whose safety would be endangered by general population placement may be placed in the PHU providing the following criteria are met:

(1) The inmate does not require specialized housing for reasons other than protection.

(2) The inmate does not have a serious psychiatric or medical condition requiring prompt access to hospital care.

(3) The inmate is not documented as a member or an affiliate of a prison gang.

(4) The inmate does not pose a threat to the safety or security of other inmates in the PHU.

(5) The inmate has specific, verified enemies identified on CDC Form 812 likely to and capable of causing the inmate great bodily harm if placed in general population.

(6) The inmate has notoriety likely to result in great bodily harm to the inmate if placed in general population.

(7) There is no alternative placement which can ensure the inmate's safety and provide the degree of control required for the inmate.

(8) It has been verified that the inmate is in present danger of great bodily harm. The inmate's uncorroborated personal report, the nature of the commitment offense or a record of prior protective custody housing shall not be the sole basis for protective housing unit placement.

(b) Psychiatric Services Unit (PSU). A PSU provides secure housing and care for inmates with diagnosed psychiatric disorders not requiring inpatient hospital care, but who require placement in housing equivalent to Security Housing Unit (SHU), as described in subsection 3341.5(c), at the Enhanced Outpatient Program level of the mental health delivery system.

(c) Security Housing Unit (SHU). An inmate whose conduct endangers the safety of others or the security of the institution shall be housed in a SHU.

(1) Assignment criteria. The inmate has been found guilty of an offense for which a determinate term of confinement has been assessed or is deemed to be a threat to the safety of others or the security of the institution.

(2) Length of SHU Confinement. Assignment to a SHU may be for an indeterminate or for a fixed period of time.

(A) Indeterminate SHU Segregation.

1. An inmate assigned to a security housing unit on an indeterminate SHU term shall be reviewed by a classification committee at least every 180 days for consideration of release to the general inmate population. An investigative employee shall not be assigned at these periodic classification committee reviews.

2. Except as provided at section 3335(a), section 3378(d) and subsection (c)(5), a validated prison gang member or associate is deemed to be a severe threat to the safety of others or the security of the institution and will be placed in a SHU for an indeterminate term.

3. Indeterminate SHU terms suspended based solely on the need for inpatient medical or mental health treatment may be reimposed without subsequent misbehavior if the inmate continues to pose a threat to the safety of others or the security of the institution.

(B) Determinate SHU Segregation.

1. A determinate period of confinement in SHU may be established for an inmate found guilty of a serious offense listed in section 3315 of these regulations. The term shall be established by the Institutional Classification Committee (ICC) using the standards in this section, including the SHU Term Assessment Chart (see section 3341.5(c)(9)), Factors in Mitigation or Aggravation (see section 3341.5(c)(10)), SHU Term Assessment Worksheet CDC Form 629-A, Rev. 3/96, Assessment of Subsequent SHU

Term Worksheet CDC Form 629-B, Rev. 9/90, and SHU Time Computation Table (see CDC Form 629-D, Rev. 7/88).

2. The term shall be set at the expected term for the offense in the absence of mitigating or aggravating factors. Deviation from the expected term shall be supported by findings pursuant to subsection (c)(7).

3. The terms shall be recorded on CDC Form 629-A, SHU Term Assessment Worksheet, using the SHU Time Computation Table which incorporates one-fourth clean conduct credit in the term. The computation shall establish a maximum release date and a minimum eligible release date (MERD). A copy of the CDC Form 629-A shall be given to the inmate.

4. Serious misconduct while in SHU may result in loss of clean conduct credits or an additional determinate term for an inmate serving a determinate term. Such additional term may be concurrent or consecutive and shall be recorded on CDC Form 629-B with a copy given to the inmate. Such cases shall be referred to a CSR for approval; however, all release and retention requirements of section 3339 shall remain in effect pending CSR approval.

5. Up to 45 days of a SHU inmate's clean conduct credits may be forfeited for disciplinary infractions that are not serious enough to warrant the assessment of a subsequent or concurrent SHU term. Such forfeiture may be assessed against credits already earned or future credits.

6. Consecutive SHU terms shall be assessed only for offenses occurring after commencement of a prior determinate SHU term.

7. The ICC may commute or suspend any portion of a determinate term. Once commuted, the term shall not be reimposed. If suspended, the period of suspension shall not exceed the length of the original term imposed. When either action occurs, the case shall be referred to a classification staff representative (CSR) with a placement recommendation.

8. A SHU Term may be reimposed if an inmate placed in the Administrative Segregation Unit (ASU) is found guilty of a serious rule violation and the ICC concludes the inmate poses a threat to the safety of others or the security of the institution.

9. Determinate SHU terms suspended based solely on the need for inpatient medical or mental health treatment may be reimposed without subsequent misbehavior if the inmate continues to pose a threat to the safety of others or the security of the institution.

10. The Unit Classification Committee shall conduct hearings on all determinate cases at least 30 days prior to their MERD or during the eleventh month from the date of placement, whichever comes first.

(C) Anytime a SHU term is reimposed, ICC shall record the basis of their decision in the CDC Form 128-G, Classification Chrono (Rev. 10/89), which is incorporated by reference, clearly articulating the inmate's continued threat to the safety of others or the security of the institution.

(3) Release from SHU. An inmate shall not be retained in SHU beyond the expiration of a determinate term or beyond 11 months, unless the classification committee has determined before such time that continuance in the SHU is required for one of the following reasons:

(A) The inmate has an unexpired MERD from SHU.

(B) Release of the inmate would severely endanger the lives of inmates or staff, the security of the institution, or the integrity of an investigation into suspected criminal activity or serious misconduct.

(C) The inmate has voluntarily requested continued retention in segregation.

(4) A validated prison gang member or associate shall be considered for release from a SHU, as provided above, after the inmate is verified as a gang dropout through a debriefing process.

TITLE 15

DEPARTMENT OF CORRECTIONS AND REHABILITATION

§ 3341.5

(5) As provided at section 3378(e), the Departmental Review Board (DRB) may authorize SHU release for prison gang members or associates categorized as inactive. The term inactive means that the inmate has not been involved in gang activity for a minimum of six (6) years. Inmates categorized as inactive who are suitable for SHU release shall be transferred to the general population of a Level IV facility for a period of observation that shall be no greater than 12 months. Upon completion of the period of observation, the inmate shall be housed in a facility commensurate with his or her safety needs. In the absence of safety needs, the inmate shall be housed in a facility consistent with his or her classification score. The DRB is authorized to retain an inactive gang member or associate in a SHU based on the inmate's past or present level of influence in the gang, history of misconduct, history of criminal activity, or other factors indicating that the inmate poses a threat to other inmates or institutional security.

(6) As provided at section 3378(f), an inmate categorized as inactive or validated as a dropout of a prison gang and placed in the general population may be returned to segregation based upon one reliable source item identifying the inmate as a currently active gang member or associate of the prison gang with which the inmate was previously validated. Current activity is defined as, any documented gang activity within the past six (6) years. The procedures described in this Article shall be utilized for the removal of the inmate from the general population, the review of the initial segregation order, and all periodic reviews of the indeterminate SHU term.

(7) Determinate/Indeterminate 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. Determinate/Indeterminate SHU terms may also be served in secure inpatient medical or mental health settings, when deemed clinically necessary.

(8) When an inmate is paroled while serving a determinate term, the remaining time on the term is automatically suspended. When an inmate returns to prison, either as a parole violator or with a new prison commitment, ICC shall evaluate the case for reimposition of the suspended determinate term. If reimposed, the term shall not exceed the time remaining on the term at the time of parole.

(9) SHU Term Assessment Chart (fixing of determinate confinement to SHU).

OFFENSE	TYPICAL TERM (Mos)		
	Low	Expected	High
(A) Homicide:			
1. Murder, attempted murder, solicitation of murder, or voluntary manslaughter of a non-inmate.	(36)	48	(60)
2. Murder, attempted murder, solicitation of murder, or voluntary manslaughter of an inmate.	(15)	26	(36)
(B) Violence Against Persons:			
1. Assault on a non-inmate with a weapon or physical force capable of causing mortal or serious injury.	(09)	28	(48)
2. Assault on an inmate with a weapon or physical force capable of causing mortal or serious injury.	(06)	15	(24)
3. Assault on a non-inmate with physical force insufficient to cause serious injury.	(06)	12	(18)
4. Assault on an inmate with physical force insufficient to cause serious injury.	(02)	03	(06)
5. Throwing a caustic substance on a non-inmate.	(02)	03	(04)

OFFENSE	TYPICAL TERM (Mos)		
	Low	Expected	High
(C) Threat to Kill or Assault Persons:			
1. Use of non-inmate as hostage.	(18)	27	(36)
2. Threat to a non-inmate.	(02)	05	(09)
3. Threat to an inmate.	(02)	03	(04)
(D) Possession of a Weapon:			
1. Possession of a firearm or explosive device.	(18)	27	(36)
2. Possession of a weapon, other than a firearm or explosive device 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 inmate.	(06)	10	(15)
(E) Trafficking in Drugs:			
Distributing controlled substances in an institution or camp or causing controlled substances to be brought into an institution or camp for the purpose of distribution.	(06)	09	(12)
(F) Escape with Force or Attempted Escape with Force.	(09)	16	(24)
(G) Disturbance, Riot, or Strike:			
1. Leading a disturbance, riot, or strike.	(06)	12	(18)
2. Active participation in, or attempting to cause conditions likely to threaten institution security.	(02)	04	(06)
(H) Harassment of another person, group, or entity either directly or indirectly through the use of the mail or other means.	(06)	12	(18)
(I) Arson, Theft, Destruction of Property:			
Theft or destruction of State property where the loss or potential loss exceeds \$10,000 or threatens the safety of others.	(02)	08	(12)
(J) Extortion and Bribery: extortion or bribery of a non-inmate.	(02)	06	(09)
(K) Sexual Misconduct			
1. Indecent Exposure	(03)	06	(09)
2. Sexual Disorderly Conduct (two or more offenses within a twelve month period)	(03)	06	(09)
(L) Refusal to Accept Assigned Housing	(03)	06	(09)
(M) Except as otherwise specified in this section, proven attempts to commit any of the above listed offenses shall receive one-half (1/2) of the term specified for that offense.			
(N) Any inmate who conspires to commit any of the offenses above shall receive the term specified for that offense.			

(10) Factors in mitigation or aggravation of SHU term. The SHU term shall be set at the expected range unless a classification committee finds factors exist which warrant the imposition of a lesser or greater period of confinement. The total period of confinement assessed shall be no less than nor greater than the lowest or highest months listed for the offense in the SHU Term Assessment Chart. In setting the term, the committee shall determine the base offense. If the term being assessed includes multiple offenses, the offense which provides for the longest period of confinement shall be the base offense. Lesser offenses may be used to increase the period beyond expected term. After determining the base offense, the committee shall review the circumstances of the disciplinary

§ 3341.5

DEPARTMENT OF CORRECTIONS AND REHABILITATION

TITLE 15

offense and the inmate's institutional behavior history using the factors below. The committee shall then determine that either no unusual factors exist or find that specific aggravating or mitigating factors do exist and specify a greater or lesser term. The reasons for deviation from the expected term shall be documented on a CDC 128-G, Classification Chrono, and SHU Term Assessment Worksheet, a copy of which shall be provided to the inmate.

(A) Factors in Mitigation.

1. The inmate has a minor or no prior disciplinary history.
2. The inmate has not been involved in prior acts of the same or of a similar nature.
3. The misconduct was situational and spontaneous as opposed to planned in nature.
4. The inmate was influenced by others to commit the offense.
5. The misconduct resulted, in part, from the inmate's fear for safety.

(B) Factors in Aggravation.

1. The inmate's prior disciplinary record includes acts of misconduct of the same or similar nature.
2. The misconduct was planned and executed as opposed to situational or spontaneous.
3. The misconduct for which a SHU term is being assessed resulted in a finding of guilty for more than one offense.
4. The inmate influenced others to commit serious disciplinary infractions during the time of the offense.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 314, 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).

HISTORY:

1. New section filed 8-7-87 as an emergency; operative 8-7-87 (Register 87, No. 34). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 12-7-87.
2. Certificate of Compliance as to 8-7-87 order transmitted to OAL 12-4-87; disapproved by OAL (Register 88, No. 16).
3. New section filed 1-4-88 as an emergency; operative 1-4-88 (Register 88, No. 16). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 5-3-88.
4. Certificate of Compliance as to 1-4-88 order transmitted to OAL 5-3-88; disapproved by OAL (Register 88, No. 24).
5. Amendment filed 6-2-88 as an emergency; operative 6-2-88 (Register 88, No. 24). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 9-30-88.
6. Certificate of Compliance including amendment transmitted to OAL 9-26-88 and filed 10-26-88 (Register 88, No. 50).
7. Editorial correction of printing errors in subsection (c)(2)(B)1 and CDC Forms 629-B and 629-D (Register 92, No. 5).
8. New subsection (c)(6)(H), subsection relettering, and amendment of Note filed 7-29-93 as an emergency; operative 7-29-93 (Register 93, No. 31). A Certificate of Compliance must be transmitted to OAL 11-26-93, or emergency language will be repealed by operation of law on the following day.

9. Certificate of Compliance as to 7-29-93 order transmitted to OAL 11-18-93 and filed 12-31-93 (Register 94, No. 1).
10. Amendment of subsection (c)(2)(B)1. and 4., new subsection (c)(2)(B)5. and subsection renumbering, repealer of form CDC 629-A, and new form CDC 629-A filed 2-8-96 as an emergency per Penal Code section 5058(e); operative 2-8-96 (Register 96, No. 6). A Certificate of Compliance must be transmitted to OAL by 7-18-96 or emergency language will be repealed by operation of law on the following day.
11. Certificate of Compliance as to 2-8-96 order including amendment of form CDC 629-A transmitted to OAL 6-17-96 and filed 7-30-96 (Register 96, No. 31).
12. New subsection (c)(2)(A)1. designator, new subsections (c)(2)(A)2. and (c)(4) and subsection relettering filed 1-21-99 as an emergency; operative 1-21-99 (Register 99, No. 4). Pursuant to Penal Code section 5058(e), a Certificate of Compliance must be transmitted to OAL by 6-30-99 or emergency language will be repealed by operation of law on the following day.
13. Certificate of Compliance as to 1-21-99 order transmitted to OAL 6-30-99 and filed 8-12-99 (Register 99, No. 33).
14. Amendment of subsections (c)(2)(A)1. and 2. and (c)(4), new subsections (c)(5) and (c)(6), subsection renumbering, amendment of newly designated subsection (c)(10) and amendment of Note filed 8-30-99 as an emergency; operative 8-30-99 (Register 99, No. 36). Pursuant to Penal Code section 5058(e), a Certificate of Compliance must be transmitted to OAL by 2-8-2000 or emergency language will be repealed by operation of law on the following day.
15. Certificate of Compliance as to 8-30-99 order transmitted to OAL 2-7-2000 and filed 3-21-2000 (Register 2000, No. 12).
16. Change without regulatory effect amending subsection (c)(2)(B)1. filed 10-16-2001 pursuant to section 100, title 1, California Code of Regulations (Register 2001, No. 42).
17. Amendment of subsection (c)(6) and Note filed 5-25-2006; operative 5-25-2006 pursuant to Government Code section 11343.4 (Register 2006, No. 21).
18. Change without regulatory effect amending subsection (b) filed 6-27-2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 26).
19. New subsections (c)(9)(K)-(c)(9)(K)2., subsection relettering and amendment of Note filed 2-23-2007 as an emergency; operative 2-23-2007 (Register 2007, No. 8). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 8-2-2007 or emergency language will be repealed by operation of law on the following day.
20. Certificate of Compliance as to 2-23-2007 order, including amendment of subsection (c)(9)(K)1.-2., transmitted to OAL 7-27-2007 and filed 9-5-2007 (Register 2007, No. 36).
21. New subsection (c)(9)(L) and subsection relettering filed 12-28-2007; operative 12-28-2007 pursuant to Government Code section 11343.4 (Register 2007, No. 52).
22. Amendment of subsection (b) filed 9-29-2009; operative 10-29-2009 (Register 2009, No. 40).
23. New subsections (c)(2)(A)3. and (c)(2)(B)8.-9., subsection renumbering, new subsection (c)(2)(C) and amendment of subsection (c)(7) filed 11-14-2011 as an emergency; operative 11-14-2011 (Register 2011, No. 46). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 4-23-2012 or emergency language will be repealed by operation of law on the following day.
24. Certificate of Compliance as to 11-14-2011 order transmitted to OAL 2-29-2012 and filed 4-5-2012 (Register 2012, No. 14).

California Administrative Code - 2017

Barclays Official California Code of Regulations [Currentness](#)

Title 15. Crime Prevention and Corrections

Division 2. Board of Parole Hearings

Chapter 3. Parole Release

Article 15. Parole Consideration for Determinately-Sentenced Nonviolent Offenders

15 CCR § 2449.4

§ 2449.4. Review on the Merits.

(a) Upon determination that the board has jurisdiction, a hearing officer shall complete a nonviolent offender parole consideration review on the merits.

(b) Information considered. The hearing officer shall review and consider all relevant and reliable information about the inmate including, but not limited to:

(1) Information contained in the inmate's central file and documented criminal history, including current RAP sheets and any return to prison with a new conviction after being released as a result of this section; and

(2) Written statements submitted by the inmate, any victims registered at the time of the referral, and the prosecuting agency or agencies that received notice under section 2449.2.

(c) Standard of Review. After reviewing the relevant and reliable information, the hearing officer shall determine whether the inmate poses an unreasonable risk of violence to the community. In reaching this determination, the hearing officer shall consider the totality of the circumstances, including the following four factors:

(1) The circumstances surrounding the current conviction;

(2) The inmate's prior criminal record;

(3) The inmate's institutional behavior including both rehabilitative programming and institutional misconduct; and

(4) Any input from the inmate, any victims registered at the time of the referral, and the prosecuting agency or agencies that received notice under section 2449.2.

(d) Nonviolent Offender Parole Determinations.

(1) If the hearing officer finds the inmate poses an unreasonable risk of violence, the hearing officer shall deny parole.

(2) If the hearing officer finds the inmate does not pose an unreasonable risk of violence, the hearing officer shall approve parole.

(3) The hearing officer shall document his or her decision in writing with a statement of reasons. The inmate, any victims registered at the time of the referral, and the prosecuting agency that received notice under section 2449.2 shall be notified.

(4) If the decision will result in the inmate being released two or more years prior to his or her Earliest Possible Release Date, the decision shall require a second signature from an Associate Chief Deputy Commissioner or the board's Chief Hearing Officer.

(e) Nonviolent offender parole determinations under this section are not subject to the Inmate Appeal Process under division 3, chapter 1, article 8 of this title; however, an inmate may request review of the decision under section 2449.5 of this article.

Note: Authority cited: [Cal. Const., art. 1, sec. 32\(b\)](#). Reference: [Cal. Const., art. 1, sec. 32\(a\)](#).

HISTORY

1. New section filed 4-13-2017 as an emergency; operative 4-13-2017 (Register 2017, No. 15). Pursuant to [Penal Code section 5058.3](#), a Certificate of Compliance must be transmitted to OAL by 9-20-2017 or emergency language will be repealed by operation of law on the following day.

2. New section refiled 9-19-2017 as an emergency; operative 9-21-2017 (Register 2017, No. 38). Pursuant to [Penal Code section 5058.3](#), a Certificate of Compliance must be transmitted to OAL by 12-20-2017 or emergency language will be repealed by operation of law on the following day.

3. New section refiled 12-18-2017 as an emergency; operative 12-21-2017 (Register 2017, No. 51). Pursuant to [Penal Code section 5058.3](#), a Certificate of Compliance must be transmitted to OAL by 3-21-2018 or emergency language will be repealed by operation of law on the following day.

This database is current through 12/29/17 Register 2017, No. 52

15 CCR § 2449.4, 15 CA ADC § 2449.4

End of Document

© 2019 Thomson Reuters. No claim to original U.S. Government Works.

State of California
California Code of Regulations
Title 15. Crime Prevention and Corrections



Division 3
Rules and Regulations of
Adult Institutions, Programs, and Parole
Department of Corrections and Rehabilitation

Updated through June 1, 2018

State of California
California Code of Regulations
Title 15. Crime Prevention and Corrections



Division 3

Rules and Regulations of

Adult Institutions, Programs, and Parole

Department of Corrections and Rehabilitation

Updated through June 1, 2018

Information and updates available online at:
http://www.cdcr.ca.gov/regulations/adult_operations
CDCR Intranet: <http://intranet/adm/dss/rpmb>

DIVISION 3. ADULT INSTITUTIONS, PROGRAMS AND PAROLE

CHAPTER 1. RULES AND REGULATIONS OF ADULT OPERATIONS AND PROGRAMS

HISTORY:

1. Change without regulatory effect repealing preface filed 10-29-90 pursuant to section 100, title 1, California Code of Regulations (Register 91, No. 6).

Article 1. Behavior

3000. Definitions.

The following are definitions of terms as used in these regulations:

Accessory means a person who, after a felony has been committed, harbors, conceals or aids a principal in such felony, with the intent that the principal may avoid punishment, and has knowledge that said principal committed the felony.

Administrative Officer of the Day (AOD) means an administrative staff member possessing managerial or supervisory experience and authority to make decisions in the absence of an Institution Head or Region Parole Administrator.

Administrative Security Housing Unit (SHU) Term means a determination of the need for retention of any inmate 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) 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.

Adverse Witness means a person who has given or will give information against a prisoner or parolee. For the purpose of conducting parole revocation hearings, adverse witness means a person whose expected testimony supports the violation charged.

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

Air Scan Search means when a departmental canine is instructed to "scan" or sniff the air in an attempt to detect the odor of drugs, tobacco, or cell phones on a person or within specific articles of property. The canine handler will allow the dog to move freely past individuals and objects. Should the canine detect the odor of any drugs, tobacco, or cell phones the canine will display a positive canine alert.

Alternative Custody Program (ACP) means a voluntary program that allows eligible inmates committed to state prison to serve their sentence in the community in lieu of confinement in state prison.

Alternative Custody Program Participant means any offender who is approved for and placed in the Alternative Custody Program as defined in this section.

Appeal means a formal request for, or the act of requesting, an official change of a decision, action, or policy.

Architectural and Engineering Services means those services procured outside of the State's Civil Service procedures and which

are rendered by an architect or engineer, but may include ancillary services logically or justifiably performed in connection therewith.

Arrest means the taking of a person into custody, in a case and in a manner authorized by law.

Asylum State means the state other than California in which a parolee-at-large is in custody.

Attempted Escape means an unsuccessful effort to breach a secured perimeter or the use of force against a person to attempt access into an unauthorized area. Some progress toward implementing an escape must be made to implement a plan. This includes, but is not limited to the following overt acts: acquiring unauthorized clothing or identification, preparing a hiding place in an unauthorized area, lying in wait for a potential hostage, attempting access to a perimeter that was unsupervised, unlawfully obtaining tools to aid in an escape, manufacturing a likeness of a person in order to substitute for the inmate's presence, or receiving assistance from other conspirators who acted upon an escape plan, e.g. a plan to escape uncovered from verbal, telephone or mail communication.

Automated Needs Assessment Tool means a systematic process which consists of a series of questions and a review of the inmate's criminal data in order to establish a baseline for the offender's criminogenic needs to assist in determining appropriate placement in a rehabilitative program.

Board of Parole Hearings (Board) means the state agency which is responsible for the administration of parole for those persons committed to the department under Penal Code section 1168 and those committed under Penal Code section 1170 who also meet the criteria found in Penal Code section 2962.

California Agency Parolee means a person released from department facility to parole supervision in a California community who subsequently is within the custody of any California agency, or subdivision thereof, except the department.

California Agency Prisoner means a prisoner who has been transferred from the custody of the department to the custody of any other California agency or subdivision thereof.

California Concurrent Parolee means a person on parole for a California sentence and a sentence of another jurisdiction who is being supervised in a California community pursuant to the Uniform Act for Out-of-State Parole Supervision (Penal Code sections 11175-11179).

California Law Enforcement Telecommunications System (CLETS) means a statewide telecommunications system for the use of law enforcement agencies maintained by the California Department of Justice.

California Out-of-State Correctional Facility (COCF). The COCF is a program through which male CDCR inmates are transferred to out-of-state correctional facilities that have contracted with the CDCR to provide housing, security, health care and rehabilitative programming services to CDCR inmates.

CalParole means a centralized statewide parolee information data system.

Canine means a dog that is trained specifically to assist CDCR personnel. Departmental canines are primarily responsible for searching for illegal drugs, tobacco, and cell phones. The department's most commonly used breeds are Labrador Retrievers, German Shepherds, and Belgian Malinois; however, Beagles and German Shorthaired Pointers may also be used. Any intentional injury of a departmental canine will be prosecuted as described in Penal Code section 600.

Canine Handler means a departmental Peace Officer trained in the handling, care, instruction, and use of a departmental canine, including recognition of the canine's alert to the odor of items the canine is trained to detect.

§ 3000

DEPARTMENT OF CORRECTIONS AND REHABILITATION

TITLE 15

Case Conference means a documented communication between the parole agent and the parole unit supervisor concerning a parolee (i.e., placing a parole hold).

Case Conference Review means a documented review of the progress made in the Case Plan and the effectiveness of the current plan to determine necessary modifications. It will also include a review to determine if the parole supervision/case management expectations have been met.

Case records file means the file which contains the information concerning an inmate which is compiled by the department pursuant to Penal Code Section 2081.5 and includes such components as the central file, education file, visiting file and parole field file.

Central File (C-File) means a master file maintained by the department containing records regarding each person committed to its jurisdiction.

Central Office Calendar means the calendar which is composed of administrative hearing officers as designated by the deputy director, parole hearings division. They are authorized to make decisions regarding matters reported to the parole hearings division, including the decision to order a hearing scheduled.

Central Office Hearing Coordinator means the parole hearings division employee at headquarters who is responsible for hearing schedules, attorney appointments, and other hearing-related services.

Certification means that a business concern has obtained verification that it meets the definition of disabled veteran business enterprise pursuant to Military and Veterans Code section 999(g) from an agency that has been authorized by law to issue such certification.

Chaplain is a staff member, including a Native American Spiritual Leader, who provides religious/spiritual care and counseling to inmates, affords inmates reasonable opportunities to practice the religious/spiritual beliefs of their choice, and organizes, coordinates, and manages various religious/spiritual group activities.

Child means a person under the age of 18 years.

Chronological History means a CDC Form 112 (Rev. 9/83), Chronological History, prepared for each inmate, upon which significant dates and commitment information affecting the inmate are logged.

Classification and Parole Representative (C&PR) means the department employee designated at each institution to be that institution's liaison with releasing boards and parole staff.

Classification Staff Representative (CSR) means a departmental employee designated to represent the Director in the classification process during the review, approval, or deferral of actions by institution classification committees, including but not limited to inmate transfers, inmate special housing program placements/retention, and custody designations. Any Correctional Counselor (CC) III may be designated to perform the duties of a CSR.

Clean Conduct Credit means a combination of months, followed by days which represent credits that shall be applied to the maximum determinate SHU term, as long as the inmate remains free of any subsequent serious misconduct through the MERD. Clean conduct credit is calculated as one-half or 50% of the assessed SHU term.

Cognitive Behavioral Treatment is evidence based treatment which helps inmates understand the thoughts and feelings which influence behaviors. Treatment is generally short-term and focused on helping inmates deal with a specific problem. During the course of treatment, inmates learn how to identify and change destructive or disturbing thought patterns which have a negative influence on behavior.

Collateral Contact means any communication between a Division of Adult Parole Operations staff and another person concerning a parolee.

Concurrent Parolee means a person on parole for a California sentence and a sentence of another jurisdiction who is being supervised in a state other than California pursuant to the Uniform Act for Out-of-State Parole Supervision (Penal Code sections 11175–11179).

Conditions of Parole mean the specific conditions under which a prisoner is released to parole supervision.

Confinement to Quarters (CTQ) means an authorized disciplinary hearing action whereby an inmate is restricted to their assigned quarters for a period not to exceed five days for administrative rule violations and ten days for serious rule violations.

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.

Contraband means anything which is not permitted, in excess of the maximum quantity permitted, or received or obtained from an unauthorized source.

Control Service means the middle supervision category of a person on parole.

Controlled Substance means any substance, drug, narcotic, opiate, hallucinogen, depressant, or stimulant as defined by California Health and Safety Code section 11007. Also included are prescribed medications containing any of the substances identified in the H&SC section above.

Cooperative Parolee means a person on parole for a California sentence who is under parole supervision in a state other than California pursuant to the Uniform Act for Out-of-State Parole Supervision (Penal Code sections 11175–11179).

Course of conduct means two or more acts over a period of time, however short, evidencing a continuity of purpose.

Court Order means a custody determination decree, judgment, or order issued by a court of competent jurisdiction, whether permanent or temporary, initial or modified, that affects the custody or visitation of a child, when issued in the context of a custody proceeding. An order, once made, shall continue in effect until it expires, is modified, is rescinded, or terminates by operation of law.

Criminal Identification and Investigation (CI&I) Report means the report defined by Penal Code section 11105, commonly referred to as "Rap Sheet".

Criminogenic Need means an attribute of the inmate that is directly linked to criminal behavior.

Cumulative Case Summary means the cumulative summary of specific portions of the record maintained by the department regarding each prisoner from reception to discharge.

Custody of the department means the inmate is in the physical custody of the department. The inmate would be considered out of the custody of the department when; out to court and housed in a County or Federal facility, escaped and not returned to departmental custody, in a non-departmental mental health facility, and in a medical facility under non-departmental supervision.

Dangerous contraband means materials or substances that could be used to facilitate a crime or could be used to aid an escape or that have been altered from their original manufactured state or purpose and which could be fashioned into a weapon. Examples would include, but not be limited to, metal, plastic, wood, or wire. Also included are: sharpened objects such as scissors or other tools not authorized to be in the inmate's possession, as well as poison,

TITLE 15

DEPARTMENT OF CORRECTIONS AND REHABILITATION

§ 3000

caustic substances, flame producing devices (i.e. matches or lighters) or cellular telephones or wireless communication devices capable of making or receiving wireless communications.

Deadly weapon means any weapon identified in Penal Code section 4502. Any item or substance not readily identified as a weapon becomes a deadly weapon when used in a manner that could reasonably result in serious bodily injury or death.

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.

Debriefing is the formal process by which a Security Threat Group (STG) coordinator/investigator determines whether an offender has abandoned STG affiliation and dropped out of a STG. A subject shall only be debriefed upon their request, although staff may ask if he or she wants to debrief.

Department means the California Department of Corrections and Rehabilitation.

Deputy Regional Parole Administrator means the department's administrator within a Division of Adult Parole Operations region.

Detainer means a written document received from an official representing a district attorney office, court, or correctional or law enforcement agent which indicates that an inmate is wanted by that office and the basis for the detainer.

Determinate Sentencing Law (DSL) Prisoner means a person sentenced to prison under Penal Code section 1170 for a crime committed on or after July 1, 1977.

Direct and Constant Supervision means an inmate shall be monitored and observed by CDCR staff, either custody staff or work supervisor as indicated in these regulations, sufficiently to account for the specific whereabouts of the inmate at all times.

Direct Link means any connection between a subject and any person who has been validated as an STG affiliate. This connection does not need to be independently indicative of STG association beyond the requirements for validation source items listed in Title 15, Section 3378.

Disabled Veteran Business Enterprise means a business concern as defined in Military and Veterans Code section 999(g).

Disabled Veteran Business Enterprise focus paper means a publication that meets all of the following criteria: (1) has an orientation relating to the disabled veteran business enterprise; (2) is known and utilized by members of the disabled veteran business enterprise community; (3) primarily offers articles, editorials (if any), and advertisements of business opportunities aimed at disabled veteran business enterprises; and (4) is readily available within the geographical area for which the advertisement is placed and for which the services are to be performed.

Disabled Veteran Business Enterprise focus paper and trade paper means a publication that meets all of the criteria of a disabled veteran business enterprise focus paper and all of the criteria of a trade paper.

Disciplinary Detention means a temporary housing status which confines inmates so assigned to designated rooms or cells for prescribed periods of time as punishment for serious rule violations.

Disciplinary Free means without any finding of guilt of a disciplinary infraction filed on a Rules Violation Report, classified as either administrative or serious.

Disciplinary Free Period means the period that commences immediately following the date and time an inmate is identified (date of discovery of information leading to the charge) as committing a rules violation classified as serious.

Disruptive Behavior means behavior which might disrupt orderly operations within the institutions, which could lead to violence or

disorder, or otherwise endangers facility, outside community or another person as defined in sections 3004(b), 3005(a) and 3023(a).

Disruptive Group 1—means any gang, other than a prison gang.

Distribution means the sale or unlawful dispersing, by an inmate or parolee, of any controlled substance; or the solicitation of or conspiring with others in arranging for, the introduction of controlled substances into any institution, camp, contract health facility, or community correctional facility for the purpose of sales or distribution.

District Administrator means the department's administrator of a Division of Adult Parole Operations unit, district, or geographical area.

Dropout means a validated affiliate who has cooperated in and successfully completed Phase One and Two of the debriefing process.

Drug paraphernalia means any device, contrivance, instrument, or paraphernalia intended to be used for unlawfully injecting or consuming into the human body a controlled substance as identified in Health and Safety Code section 11007.

Drugs means substances intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease, and as defined in Health and Safety Code section 11014.

Effective communication means providing the inmate, to the extent possible, the means to understand and participate in the disciplinary process to the best of their ability. This may be accomplished through reasonable accommodation or assignment of a staff assistant. If the inmate's Test of Adult Basic Education (TABE) score is 4.0 or lower, employees are required to query the inmate to determine whether or not assistance is needed to achieve effective communication. The employee is required to document on appropriate CDCR forms his/her determination of whether the inmate appeared to understand, the basis for that determination and how it was made. For contacts involving due process, employees shall give priority to the inmate's primary means of communication, which may include but is not limited to; auxiliary communication aids, sign language interpreter, and bilingual interpreter.

Electronic Records Management Systems (ERMS) is a document management system operating alongside the Strategic Offender Management System (SOMS) that provides a digitally scanned and uploaded central records repository.

Escape History refers to any reliable information or inmate self-admission in the central file to an escape, attempted escape, walkaway, or plan to escape. The available information describing the circumstances of the escape or attempted escape shall be evaluated in determining the level of risk to correctional safety and security posed by the inmate.

Examinee means a person who voluntarily takes a polygraph examination.

Exceptional Circumstances means circumstances beyond the control of the department or the inmate that prevent the inmate or requested witnesses from participating in the disciplinary hearing within established time limitations. Examples of this as applied to an inmate would include a serious temporary mental or physical impairment verified in writing by a licensed clinical social worker, licensed psychologist, psychiatrist, or physician. Some examples of exceptional circumstances preventing staff witnesses, to include the reporting employee, from attending the disciplinary hearing would be extended sick leave, bereavement leave, personal emergency, or extended military duty. Exceptional circumstances, as described above, would allow for suspension of time limitations pending resolution of the instances.

Ex-Offender means a person previously convicted of a felony in California or any other state, or convicted of an offense in another state which would have been a felony if committed in California.

§ 3000

DEPARTMENT OF CORRECTIONS AND REHABILITATION

TITLE 15

Face-to-Face Contact means an in-person contact with a parolee, or an Alternative Custody Program Participant, by a CDCR parole agent.

Facility means any institution; community-access facility or community correctional facility; or any camp or other subfacility of an institution under the jurisdiction of the department.

Facility Security Perimeter is any combination of living unit, work area and recreation area perimeters that is set aside to routinely restrict inmate movement based on custody level. This perimeter will contract and expand depending upon the weather, lighting conditions and hours of operation.

Federal Consecutive Prisoner means a California prisoner who is also under sentence of the United States and is confined in a federal correctional facility, and whose California term shall commence upon completion of the United States' sentence.

Felony means a crime which is punishable with death or by imprisonment in the state prison. Every other crime or public offense is a misdemeanor except those offenses that are classified as infractions.

Field Contact means face-to-face contact by Division of Adult Parole Operations staff with a parolee away from the parole office or office parking area.

Firm means any individual, firm, partnership, corporation, association, joint venture or other legal entity permitted by law to practice the professions of architecture, landscape architecture, engineering, environmental services, land surveying or construction project management.

Force, as applied to escape or attempted escape refers to physical contact or threat of physical harm against a person to enable or attempt the escape.

Frequent and Direct Supervision means that staff supervision of an inmate shall be sufficient to ensure that the inmate is present within the area permitted.

Friendly Witness means any witness who is not an adverse witness.

Gang means any ongoing formal or informal organization, association or group of three or more persons which has a common name or identifying sign or symbol whose members and/or associates, individually or collectively, engage or have engaged, on behalf of that organization, association or group, in two or more acts which include, planning, organizing threatening, financing, soliciting, or committing unlawful acts, or acts of misconduct outside of the California Department of Corrections and Rehabilitation jurisdiction.

Gender Dysphoria means distress caused by a conflict between a person's gender identity and the sex the person had or was identified as having at birth.

Gender Identity means a person's sense of identification as male, female, neither, or both.

General Chrono means a CDC Form 128-B (Rev. 4-74) which is used to document information about inmates and inmate behavior. Such information may include, but is not limited to, documentation of enemies, records of disciplinary or classification matters, pay reductions or inability to satisfactorily perform a job, refusal to comply with grooming standards, removal from a program, records of parole or social service matters.

General Conditions of Parole mean general rules regarding behavior required or prohibited during parole for all parolees.

Goal means a numerically expressed disabled veteran business enterprise objective as set out in Public Contract Code section 10115(c), that awarding departments and contractors are required to make efforts to achieve.

Good Cause means a finding based upon a preponderance of the evidence that there is a factual basis and good reason for the decision made.

Good Faith Effort means a concerted effort on the part of a potential contractor to seek out and consider disabled veteran-owned and operated business enterprises as potential contractors, and/or subcontractors in order to meet the program participation goals.

Great bodily injury (GBI) means any bodily injury that creates a substantial risk of death.

Grievance means a complaint about a decision, action, or policy which an inmate, parolee or staff wish to have changed.

Harassment means a willful course of conduct directed at a specific person, group, or entity which seriously alarms, annoys, or terrorizes that person, group, or entity and which serves no legitimate purpose.

Hearing Committee means a panel of three certified Senior Hearing Officers comprised of: one Correctional Lieutenant or Correctional Counselor II, one Facility/Correctional Captain or Correctional Counselor III, and one staff member at the level of Associate Warden or above, or any combination thereof.

High Control means the highest supervision category of a person on parole.

Hold means to retain an inmate or parolee, who is under the Secretary's jurisdiction, in custody at an institution or a local detention facility in response to the legal request of a law enforcement or correctional agency representative.

Immediate Family Members means legal spouse; registered domestic partner, natural parents; adoptive parents, if the adoption occurred and a family relationship existed prior to the inmate's incarceration; step-parents or foster parents; grandparents; natural, step, or foster brothers or sisters; the inmate's natural and adoptive children; grandchildren; and legal stepchildren of the inmate. Aunts, uncles and cousins are not immediate family members unless a verified foster relationship exists.

Incarcerating Jurisdiction means the jurisdiction where an Interstate or Western Interstate Corrections Compact, federal contract, federal concurrent, or concurrent prisoner is incarcerated.

Indecent Exposure means every person who willfully and lewdly, either: exposes his or her person, or the private parts thereof, in any public place, or in any place where there are present other persons to be offended or annoyed thereby; or, procures, counsels, or assists any person so to expose him or her self or take part in any model artist exhibition, or to make any other exhibition of him or her self to public view, or the view of any number of persons, such as is offensive to decency, or is adapted to excite to vicious or lewd thoughts or acts.

Indeterminate Sentence Law (ISL) means a person sentenced to prison for a crime committed on or before June 30, 1977, who would have been sentenced under Penal Code section 1170 if he/she had committed the crime on or after July 1, 1977.

Indigent Inmate means an inmate who is wholly without funds at the time they were eligible for withdrawal of funds for canteen purchases.

Inmate means a person under the jurisdiction of the Secretary and not paroled. Inmate and prisoner are synonymous terms.

Inmate Match means a one-on-one match of a citizen volunteer and an inmate who receives few or no visits to establish a relationship which encourages positive inmate behavior and programming.

Institution means a large facility or complex of subfacilities with a secure (fenced or walled) perimeter headed by a warden.

Institution Head means a warden, regional parole administrator, or designated manager of a facility housing inmates.

Intake Control Unit (ICU) means a unit that schedules and coordinates weekly movement of CDCR new commitment inmates

TITLE 15

DEPARTMENT OF CORRECTIONS AND REHABILITATION

§ 3000

from the counties to the CDCR Reception Centers. The ICU is also a liaison between the counties and CDCR in the event that CDCR is unable to accept delivery of its new commitment inmates and payments are due to the counties.

Interstate Unit means the Division of Adult Parole Operations which coordinates the supervision of California cooperative parolee and the return of parolees-at-large from asylum states. The unit is responsible for Interstate and Western Interstate Corrections Compacts, federal contrast, federal concurrent, and consecutive prisoners and multijurisdiction parolees incarcerated in the prison of another jurisdiction.

Intoxicant not identified as a controlled substance means toluene or any bi-product i.e. paint thinners, paint, fingernail polish, lacquers, gasoline, kerosene, adhesives or other substance that markedly diminishes physical and/or mental control.

Joint Venture Employer (JVE) means any public entity, nonprofit or for profit entity, organization, or business which contracts with the director for the purpose of employing inmate labor.

Joint Venture Program (JVP) means a contract entered into between the director and any public entity, nonprofit or for profit entity, organization, or business for the purpose of employing inmate labor.

Laboratory means any toxicological or forensic laboratory which has been recognized by the state, other certifying agency, or which is accepted by any local, county, or state prosecuting authority to provide evidence as to the presence of controlled substances in human body fluids or confirm that a substance is or contains any controlled substance.

Legal process means a writ, summons, warrant or mandate issued by a court.

Legal Status Sheet (LSS) means a CDC Form 188, Legal Status Summary, containing the commitment and release status of an inmate.

Lethal electrified fence is a high voltage fence installed for the lethal infliction of injury to escaping inmates.

Life Prisoner means a prisoner whose sentence includes a term of life.

Lockdown means the restriction of all inmates to their cells/dormitory beds encompassing no less than a Facility. True lockdowns are rare occasions, generally following very serious threats to institutional security and the safety of staff and inmates. The movement of any inmate to an assignment or resumption of any program would change the lockdown status of the program, returning the institution/facility to a diminished level of modified program or to normal program.

Lockout means any refusal by an employer to permit any group of five or more employees to work as a result of a dispute with such employees affecting wages, hours or other terms or conditions of employment of such employees.

Long Term Offender Program means a voluntary program that provides Cognitive Behavioral Treatment and other rehabilitative programs to inmates who are subject to parole suitability hearings conducted by the Board of Parole Hearings.

Manuscript means any written, typed or printed articles of fiction and nonfiction; poems; essays; gags; plays; skits; paintings; sketches; drawings; or musical compositions created by an inmate.

Material Evidence means evidence which has a substantial bearing on matters in dispute and legitimate and effective influence on the decision of a case.

Medical Parolee means a person released from confinement pursuant to Penal Code section 3550.

Minimum Eligible Parole Date (MEPD) means the earliest date on which an Indeterminate Sentence Law or life prisoner may legally be released on parole.

Minimum Eligible Release Date (MERD) means a combination of months, followed by days which represent the minimum amount of time that must pass before a determinate SHU term expires. The MERD initially represents 50% or one-half of the maximum SHU term, as it incorporates 50% or one-half clean conduct credit, for eligible inmates. The MERD may be adjusted based upon subsequent serious misconduct.

Modified Program means the suspension or restriction of less than all inmate program activities and/or movement. A Modified Program may either occur independently in response to an incident or unusual occurrence or may occur as a facility transitions from a lockdown to regular programming. Imposed restrictions may fluctuate as circumstances dictate with the goal of resuming regular programming as soon as it is practical. Modified programming will last no longer than necessary to restore institutional safety and security or to investigate the triggering event, and shall not target a specific racial or ethnic group. For those inmates whose movement has been restricted, movement may be authorized on a case-by-case basis for essential or emergency services such as medical, dental, mental health or law library visits. The routine and/or temporary restrictions on inmate movement or yard activities, which do not last longer than 24 hours, are not considered a program modification.

Multijurisdiction Parolee means any concurrent, California concurrent, California agency, or cooperative parolee.

Multijurisdiction Prisoner means any federal contract, federal concurrent, federal consecutive, concurrent, consecutive, California agency, Interstate or Western Interstate Corrections Compact prisoner.

Native American Sweat Lodge Grounds are an outside area at an institution designated to be used for approved Native American religious/spiritual group activities.

Non-Revocable Parole is a form of unsupervised community release pursuant to the provisions of Penal Code section 3000.03, wherein the parolee is not subject to placement of a parole hold, revocation, or referral to the Board of Parole Hearings for violation of any condition of parole.

Non-secure Facility means any of the following Departmental facilities: Minimum Support Facilities, Camps and Community Correctional Centers (i.e. Community Correctional Reentry Centers, Restitution Centers, Community Correctional Facilities, Drug Treatment Furlough, halfway back facilities, Community Reentry Programs, etc.); and comparable facilities in another law enforcement jurisdiction (i.e. county road camps, county detoxification center, etc.)

Notice Agent/Court Agent is the Division of Adult Parole Operations' primary revocation and Americans with Disabilities Act representative to the local court, sheriff's department, district attorneys, public defenders, and Department staff.

Offender means any inmate, ward, parolee, or other person currently under the jurisdiction of the CDCR.

Our Hold Only (OHO) means a parolee is in custody under a Penal Code section 3056 parole hold and has no other charges or detainers pending.

Out-to-Court means an inmate is temporarily removed from a facility to be brought before a court to be tried for an offense, to be examined by a grand jury or magistrate, or for any other court proceedings.

Outdoor Religious/Spiritual Grounds are an outside area at an institution designated to be used for any approved religious/spiritual group activities. Outdoor Religious/Spiritual Grounds does not include Native American Sweat Lodge Grounds, as defined in this section.

Parole Administrator means the Department's administrator of a Division of Adult Parole Operations headquarters unit, district, program or geographic location.

Parole Agent means an employee and his/her supervisors in the department who are assigned to supervise those persons released from incarceration to the supervision of the Division of Adult Parole Operations.

Parolee Field File means a file maintained by a parole unit of office containing information about a parolee and his or her current parole.

Parole Hearings Division means the division of the department which is responsible for the department's administration of paroles for those persons committed to the department under Penal Code section 1170, except those who also meet the criteria of Penal Code section 2962.

Parole Hold means authorization by a departmental employee to hold a parolee in custody pursuant to section 3056 of the Penal Code.

Parole Violation means conduct by a parolee which violates the conditions of parole or otherwise provides good cause for the modification or revocation of parole.

Parole Violation Disposition Tracking System (PVDTS) means an electronic database utilized by Division of Adult Parole Operations field staff to track all remedial sanctions, warrant requests, and petitions to the local court for revocation of parole.

Parole Violation Extension means an extension of return-to-custody time for a parolee in revoked status.

Parole Violator means a parolee who is found to have violated parole and who may be returned to custody pursuant to Penal Code section 3057.

Parolee means an offender placed on supervised or non-revocable parole by the department.

Parolee-at-Large means an absconder from parole supervision, who is declared a fugitive by releasing authority action suspending parole.

Polygraph Examination means the procedure by which a polygraph examiner renders an opinion as to the veracity of statements made by an examinee.

Polygraph Examiner means a person who purports to be able to determine the truthfulness of statements through the use of a polygraph instrument.

Positive Canine Alert means a change in behavior that departmental canines are trained to perform when they detect the odor of marijuana, heroin, cocaine, methamphetamine, tobacco, and cell phones. This change in behavior alerts the handler the canine has detected the odor of drugs, tobacco, or cell phones. Passive canines are trained to perform signals including but not limited to sitting and/or staring at the detected contraband. Active canines are trained to perform signals including but not limited to scratching and/or staring at the detected contraband.

Possession is defined as either actual possession or constructive possession of an object. Actual possession exists when a person has physical custody or control of an object. Constructive Possession exists where a person has knowledge of an object and control of the object or the right to control the object, even if the person has no physical contact with it.

Postrelease Community Supervision is a form of supervision provided after a period of incarceration wherein the inmate is released to the jurisdiction of a county agency pursuant to the Postrelease Community Supervision Act of 2011.

Preprison Credit means credit for time in custody as certified by the court and provided for in Penal Code section 2900.5.

Principal means any person involved in the commission of a crime, felony or misdemeanor, whether they directly commit the

act constituting the offense, or aid and abet in its commission, or not being present, have advised and encouraged its commission, or who, by threats, menaces, command or coercion, compel another to commit any crime.

Prison Gang means any gang which originated and has its roots within the department or any other prison system.

Prisoner means a person in custody of the Secretary and not paroled. Prisoner and inmate are synonymous terms.

Probation Officer's Report means a CDC Form 174 (Rev. 3/87), Probation Officer's Report, prepared by the probation officer in the county where the offense was committed.

Program failure means any inmate who generates a significant disciplinary history within the last 180 days from the current date. A guilty finding for two serious Rules Violation Reports or one serious and two administrative Rules Violation Reports within that 180 day time period is reasonable evidence of a significant disciplinary history and may be considered a program failure.

Project, as used in sections 3475 through 3478, means a proposal of something to be done for which a contract has not yet been awarded.

Public Interest Case describes an inmate whose crime/criminal history, public recognition, family ties, career or behavior in custody has resulted in extensive media coverage beyond the closest large city and its surrounding areas.

Public official means any person identified in Penal Code Section 76. CDCR staff are considered the staff of an exempt appointee of the Governor.

Received Date means the date an inmate is initially received into a facility of the department.

Receiving State means the state which supervises a cooperative parolee or a concurrent parolee.

Reentry Hubs are designated facilities within an institution which provide enhanced rehabilitative programs to inmates who meet Reentry Hub placement criteria.

Regional Parole Administrator means the department's administrator of a Division of Adult Parole Operations region.

Released on Parole means released from custody to a term of parole supervision and includes: initial releases from custody; parolees released after having served a period of parole revocation; parole violators with a new term; parolees released from any other jurisdiction, for example, federal custody; and offenders ordered directly to parole by a sentencing court, also referred to as "court walkovers."

Relevant Evidence means evidence which tends to prove or disprove an issue or fact in dispute.

Religious Item means any bag, cross, medallion, totem, pipe, or other item in which the possessor places religious or spiritual significance.

Religious Review Committee (RRC) means a committee formed and maintained at each institution that reviews and reaches a decision regarding requests for reasonable accommodation and/or access to religious services.

Remedial sanction means any instruction, referral, penalty, or restriction, other than the filing of a petition for revocation, imposed upon a person under Division of Adult Parole Operations supervision, as a result of finding that the person has violated a condition of supervision.

Residence means one or more addresses at which a person regularly resides, regardless of the number of days or nights spent there, such as a shelter or structure that can be located by a street address, including, but not limited to, houses, apartment buildings, motels, hotels, homeless shelters, and recreational and other vehicles.

Residential Facility means a property that is operated for the purpose of providing lodging and services for two or more persons.

TITLE 15

DEPARTMENT OF CORRECTIONS AND REHABILITATION

§ 3000

Residential facilities include sober living facilities and transitional housing facilities that provide services such as money management, substance abuse prevention, relationship and self-esteem workshops, skills for employment stability, job training, and referrals to local community, social, and health services.

Responsible Bidder means, in addition to other State contracting requirements, a bidder who has either met the disabled veteran business enterprise goal or who has demonstrated that a good faith effort was made to meet the goal.

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.

Restricted or controlled inmate movement means that the affected inmates are not permitted normal release schedules and that all or specified movement may require a greater degree of supervision than normal. Such restriction may include, but is not limited to controlled feeding, a section at a time, rather than the entire unit or sub-facility being released. Such restrictions do not constitute a State of Emergency as determined in Section 3383.

Room and Board means all that the department provides for the inmate's care, housing and retention.

Same and Similar Behavior means comparable serious misconduct warranting SHU term assessment, contained in section 3341.9(e), that may be used to aggravate and/or mitigate a SHU term. Specifically, acts of homicide, violence against persons, threats to kill or assault persons, as listed in subsection 3341.9(e)(1), (2) & (3), or any homicide, violence against persons or threats to kill or assault persons in conjunction with any other offense listed in 3341.9(e), are all considered same/similar to one another regardless of victim. Any possession of a weapon, as listed in 3341.9(e)(4), or any possession of a weapon in conjunction with any other offense listed in 3341.9(e), are all considered same/similar. Any distribution of a controlled substance, as listed in 3341.9(e)(5) is same/similar only to itself (possession of a controlled substance is not same/similar). Escapes, as listed in subsection 3341.9(e)(6), are same/similar only to themselves. Disturbances, riots or strikes as listed in subsection 3341.9(e)(7), are same/similar only to themselves. Harassment, as listed in subsection 3341.9(e)(8) is same/similar only to itself. Any theft or destruction of state property offenses, as listed in 3341.9(e)(9) or any theft or destruction of state property in conjunction with any other offense listed in 3341.9(e), are all considered same/similar. Any extortion or bribery offenses listed in subsection 3341.9(e)(10) are same/similar to one another. Sexual misconduct offenses listed in 3341.9(e)(11) are same/similar only to themselves.

Screening means evaluation by staff to ascertain that specified requirements or criteria are met.

Secretary means the secretary of the Department of Corrections and Rehabilitation, who serves as the Chief Executive Officer.

Secure Level I facility is a Level I facility with a secure perimeter as defined in section 3000 that includes razor wire to prevent the escape of inmates.

Secure Perimeter means the largest Security Perimeter that physically retains inmates in custody on facility property.

Security Concern means the inmate does not otherwise meet the Close Custody case factor criteria established in section 3377.2(b); however, based upon an Institution Classification Committee (ICC) review of all available case factors and disciplinary history, the inmate demonstrates an ongoing heightened security risk that potentially threatens institution safety and security and thereby

warrants the direct and constant supervision provided by a Close Custody designation.

Security Module means any department-approved security desk or security table used to facilitate educational, recreational and/or therapeutic activities for maximum custody inmates and are designed for use with State-issued restraint gear.

Security Perimeter means any unbroken physical barrier or combination of physical barriers that restricts inmate movement to a contained area without being processed through a door, gate, or sallyport.

Security Threat Group (STG) means any ongoing formal or informal organization, association, or group of three or more persons which has a common name or identifying sign or symbol whose members and/or associates, individually or collectively, engage or have engaged, on behalf of that organization, association or group, in two or more acts which include, planning, organizing, threatening, financing, soliciting or committing unlawful acts, or acts of misconduct.

Security Threat Group I (STG-I) is a term used to identify and prioritize the level of threat the group presents that affects the safety and security of the institution and public safety. STG-I designation will be reserved for STGs that pose the greatest of these threats. STG-I designation will include, but may not be limited to, traditional prison gangs or similar disruptive groups or gangs that the department has certified to have a history and propensity for violence and/or influence over subservient STGs.

Security Threat Group II (STG-II) is a term used to identify and prioritize the level of threat the group presents that affects the safety and the security of the institution and public safety. The STG-II designation may include, but is not limited to, traditional disruptive groups/street gangs.

Security Threat Group Administrative Directive is an administrative order, approved by the Secretary (or designee) of the CDCR, certifying a group's threat to the safety of staff, offenders, and the security of the institution based on a documented history of and future propensity for violence.

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

Security Threat Group (STG) Behavior is any documented behavior that promotes, furthers, or assists a STG. This includes, but is not limited to conduct of any person that leads to and includes the commission of an unlawful act and/or violation of policy demonstrating a nexus to a STG.

Security Threat Group (STG) Member means any offender or any person who, based on documented evidence, has been accepted into membership by a STG. STG Members will be identified through the validation process.

Security Threat Group (STG) Suspect means 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 more than one but less than ten points of validation as described in Section 3378.2(b).

Security Threat Group (STG) Unit Classification Committee is a unit classification committee responsible for making the determination of an inmate's validation status, reviewing Dropout status affiliate's new disciplinary behavior to determine nexus to STG, and reviewing information/intelligence regarding inmate-involved incidents occurring outside CDCR jurisdiction to ensure disciplinary processes and/or formal documentation were applied.

Senate Bill (SB) 618 Participant means an adult inmate who is deemed eligible and agrees to participate in a SB 618 Program, as

§ 3000

DEPARTMENT OF CORRECTIONS AND REHABILITATION

TITLE 15

defined in section 3000, which includes that prior to reception by the California Department of Corrections and Rehabilitation, the inmate will be assessed and classified at the county in which he or she is adjudged to have committed his or her crime.

Senate Bill (SB) 618 Program means a program developed for nonviolent felony offenders pursuant to SB 618 (2005/2006 session), which added Penal Code section 1203.8, which provides in part that programs shall be available for inmates, including Career Technical Education programs and educational programs that are designed to prepare nonviolent felony offenders for successful reintegration back into the community.

Serious bodily injury (SBI) means a serious impairment of physical condition, including, but not limited to the following: loss of consciousness; concussion; bone fracture; protracted loss or impairment of function of any bodily member or organ; a wound requiring extensive suturing; and serious disfigurement.

Serious Offense, for the purpose of conducting parole revocation hearings, refers to any felony listed in section 1192.7(c) of the Penal Code.

Sexual Activity means any behavior of a sexual nature between an inmate and a visitor including, but not limited to:

- (1) Sexual intercourse, oral copulation, or masturbation.
- (2) The rubbing or touching of breast(s), buttock(s) or sexual organ(s) for the purpose of arousing, appealing to, or gratifying lust, passions, or sexual desires.
- (3) Exposure of breast(s), buttocks or sexual organ(s) for the purpose of arousing, appealing to, or gratifying lust, passions, or sexual desires.

Sexual Disorderly Conduct means every person who touches, without exposing, his or her genitals, buttocks or breasts in a manner that demonstrates it is for the purpose of sexual arousal, gratification, annoyance, or offense, and that any reasonable person would consider this conduct offensive.

Single Family Dwelling means a real property improvement, such as a house, apartment, or mobile home that is used or is intended for use as a dwelling for one family.

Small Business Firm means a business in which the principal office is located in California and the officers of such business are domiciled in California which is independently owned and operated and which is not dominant in its field of operation. The maximum dollar volume that a small business may generate shall vary from industry to industry to the extent necessary to reflect differing characteristics of such industries.

Special Assignment means a departmentally-approved special program, temporary or short-term assignment for departmental convenience, or medical or psychiatric treatment category with exceptional credit-earning provisions.

Special Conditions of Parole means conditions of parole placed by the Board of Parole Hearings or Division of Adult Parole Operations and restricted to the individual.

Statewide Religious Review Committee (SRRC) is a committee established to ensure that a framework for religious/spiritual program policy exists, and that program continuity from institution to institution is maintained. The SRRC also provides an avenue for addressing statewide inmate religious/spiritual issues and offers recommendations to the Director of the Division of Adult Institutions (DAI) for consideration of policy development and/or enactment. The SRRC is comprised of the following: Associate Director, DAI (General Population—Males); one Warden from each mission within DAI; Headquarters Community Resources Manager (HCRM), Religious Programs; one CRM from each mission within DAI; a Captain; a designee from the Office of Legal Affairs; the departmental Food Administrator, and other stakeholders as required.

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.

Strategic Offender Management System (SOMS) is an electronic automated offender management system that consolidates existing databases and records to a fully automated system and replaces certain manual paper processes. SOMS is a cumulative data collection process that will autopopulate specific information on all documentation, such as an inmate's name and number, current date, county of last residence, institution/facility housing, etc.

Street gang refers to a gang as defined herein except that it is not a prison gang.

Strike means any concerted act of more than 50 percent of the bargaining unit employees in a lawful refusal of such employees under applicable state or federal law to perform work or services for an employer, other than work stoppages based on conflicting union jurisdictions or work stoppages unauthorized by the proper union governing body.

Subcontractor means any person or entity that enters into a subcontract with a prime contractor for work, materials, supplies and/or labor.

Technical violation means conduct that may not violate a state or federal statute, but is a violation of a condition of parole supervision.

Terminal illness means an incurable disease process with progression unresponsive to medical intervention where a medical doctor estimates that death will occur within a six-month period.

Time Computation means the department's uniform method for calculating an inmate's term and minimum and maximum release dates as governed by law.

Time Served means that time an inmate is imprisoned with the department between their received date and a given date.

Totally disabled means a diagnosis provided by a physician and/or psychiatrist indicating that an inmate is incapable of performing an assignment.

Trade Paper means a publication that meets all of the following criteria: (1) has a business orientation relating to the trade or industry for which the advertisement is being placed; (2) is known and utilized by members of that trade or industry; (3) primarily offers articles, editorials (if any), and advertisements of business opportunities aimed at that trade or industry; and (4) is readily available within the geographical area for which the advertisement is placed and for which the services are to be performed.

Transgender means a person whose gender identity is different from the person's assigned sex at birth.

Transient Sex Offender means a parolee who has a statutory requirement to register as a sex offender and who has no residence.

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.

Transitions Programs are employment training classes to assist inmates with job readiness and job seeking skills to overcome barriers to obtaining employment upon release from an institution.

Under the influence of alcohol, any drug, controlled substance, toluene or any combination thereof means being in a condition that he/she is unable to exercise care for his/her safety or the safety of others pursuant to Penal Code 647(f) and confirmed by a positive test from a departmentally approved testing method, to include field sobriety testing.

Unit Supervisor means a supervisor of case-carrying parole agents in the Division of Adult Parole Operations.

TITLE 15

DEPARTMENT OF CORRECTIONS AND REHABILITATION

§ 3000

Urinalysis Testing (previously referred to as Anti-Narcotic Testing) is a process to detect the presence of prohibited substances used by parolees.

Validation means the formal and objective process for identifying and documenting STG affiliates.

Vexatious Litigant means a person who does any of the following: (1) in the immediately preceding seven-year period has commenced, prosecuted, or maintained in propria persona at least five litigations other than in a small claims court that have been (a) finally determined adversely to the person or; (b) unjustifiably permitted to remain pending at least two years without having been brought to trial or hearing; (2) after a litigation has been finally determined against the person, repeatedly relitigates or attempts to relitigate in propria persona either; (a) the validity of the determination against the same defendant or defendants as to whom the litigation was finally determined or; (b) the cause of action, claim, controversy, or any of the issues of fact or law, determined or concluded by the final determination against the same defendant or defendants as to whom the litigation was finally determined; (3) in any litigation while acting in propria persona, repeatedly files unmeritorious motions, pleadings, or other papers, conducts unnecessary discovery, or engages in other tactics that are frivolous or solely intended to cause unnecessary delay; (4) has previously been declared to be a vexatious litigant by any state or federal court of record in any actions or proceeding based upon the same or substantially similar facts, transaction, or occurrence. Pursuant to *In re Bittaker*, Writs of Habeas Corpus are not included under vexatious litigation.

Violent Offense, for the purpose of conducting parole revocation hearings, refers to any felony listed in section 667.5(c) of the Penal Code.

Work Change Area means a portal controlled by staff and/or locking gates that is used to control access and includes the area where staff search inmates prior to permitting inmates in or out of adjacent areas such as Prison Industry Authority yards.

Worktime Credit means credit towards a prisoner's sentence for satisfactory performance in work, training or education programs.

Writ means a court order in writing, requiring the performance of a specified act, or giving authority to have it done.

NOTE: Authority cited: Sections 243(f)(4), 2717.3, 3000.03, 5058, 5058.3 and 1170.05, Penal Code; Section 10115.3(b), Public Contract Code; and Sections 4525(a), 4526 and 14837, Government Code. Reference: Sections 186.22, 243, 314, 530, 532, 600, 646.9, 653m, 832.5, 1170.05, 1203.8, 1389, 2080, 2081.5, 2600, 2601, 2700, 2717.1, 2717.6, 2932.5, 3003.5(a), 3020, 3450, 3550, 4570, 4576, 5009, 5050, 5054, 5068, 7000 et seq. and 11191, Penal Code; Sections 1132.4 and 1132.8, Labor Code; Sections 10106, 10108, 10108.5, 10115, 10115.1, 10115.2, 10115.3 and 10127, Public Contract Code; 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.

HISTORY:

1. Amendment of subsection (a)(19) filed 12-1-78 as an emergency; designated effective 1-1-79 (Register 78, No. 48). For prior history, see Register 77, No. 40.
2. Certificate of Compliance filed 2-22-79 (Register 79, No. 8).
3. Amendment filed 11-20-79 as an emergency; designated effective 1-1-80 (Register 79, No. 47). A Certificate of Compliance must be filed within 120 days or emergency language will be repealed on 3-20-80.
4. Certificate of Compliance filed 2-15-80 (Register 80, No. 7).

5. Amendment filed 3-2-83: effective thirtieth day thereafter (Register 83, No. 12).
6. Change without regulatory effect repealing and adopting new section filed 10-29-90 pursuant to section 100, title 1, California Code of Regulations (Register 91, No. 6).
7. Amendment filed 11-28-90 as an emergency; operative 11-28-90 (Register 91, No. 6). A Certificate of Compliance must be transmitted to OAL by 3-28-91 or emergency language will be repealed by operation of law on the following day.
8. Amendment adding definitions of "disruptive group," "gang," and "prison gang" filed 5-20-91; operative 6-19-91 (Register 91, No. 26).
9. Amendment adding definition for "Media representative" filed 12-19-91 as an emergency; operative 12-19-91 (Register 92, No. 4).
10. Amendment adding definitions for "Disciplinary Free," "Inmate Match," and "Special Assignment" and amending Note filed 12-20-91 as an emergency; operative 12-20-91 (Register 92, No. 4). A Certificate of Compliance must be transmitted to OAL 4-20-92 or emergency language will be repealed by operation of law on the following day.
11. Amendment adding definition for "Case records file" and amendment of Note filed 12-20-91 as an emergency; operative 12-20-91 (Register 92, No. 4). A Certificate of Compliance must be transmitted to OAL 4-20-92 or emergency language will be repealed by operation of law on the following day.
12. Amendment adding definition for "Detainer" and amendment of Note filed 12-19-91 as an emergency; operative 12-19-91 (Register 92, No. 4). A Certificate of Compliance must be transmitted to OAL 4-17-92 or emergency language will be repealed by operation of law on the following day.
13. Amendment adding definitions for "Received Date," "Time Computation," and "Time Served" filed 12-20-91 as an emergency; operative 12-20-91 (Register 92, No. 4). A Certificate of Compliance must be transmitted to OAL 4-20-92 or emergency language will be repealed by operation of law on the following day.
14. Editorial correction of "Firm" and "Grievance" filed 12-20-91; operative 12-20-91 (Register 92, No. 4).
15. Amendment adding definition for "Terminal illness" filed 5-20-92; operative 5-20-92 (Register 92, No. 21). A Certificate of Compliance must be transmitted to OAL 9-17-92 or emergency language will be repealed by operation of law on the following day.
16. Editorial correction of printing error restoring inadvertently deleted definitions originally filed 12-20-91 (Register 92, No. 24).
17. Certificate of Compliance as to 12-20-91 order adding definition for "case records file" transmitted to OAL 4-15-92 and filed 5-27-92 (Register 92, No. 24).
18. Certificate of Compliance as to 12-29-91 order adding definitions for "Disciplinary Free," "Inmate Match," and "Special Assignment" transmitted to OAL 4-20-92 and filed 5-28-92 (Register 92, No. 24).
19. Certificate of Compliance as to 12-19-91 order adding definition of "Detainer" transmitted to OAL 4-20-92 and filed 5-28-92 (Register 92, No. 24).
20. Certificate of Compliance as to 12-19-91 order transmitted to OAL 4-17-92 and filed 6-1-92 (Register 92, No. 24).
21. Certificate of Compliance as to 12-20-91 order transmitted to OAL 4-20-92 and filed 6-2-92 (Register 92, No. 24).
22. Certificate of Compliance as to 5-20-92 order transmitted to OAL 9-9-92; disapproved by OAL and order of repeal of 5-20-92 order filed on 10-22-92 (Register 92, No. 43).
23. Amendment adding definition for "Terminal illness" refiled 10-23-92 as an emergency; operative 10-22-92 pursuant to Government Code section 11346.1(h) (Register 92, No. 43). A Certificate of Compliance must be transmitted to OAL 2-23-93 or emergency language will be repealed by operation of law on the following day.
24. Amendment adding "Cumulative case summary," "Chronological history," "Legal status sheet," "Probation officer's report" and "Criminal identification and investigation report" and amendment of Note filed 11-5-92; operative 12-7-92 (Register 92, No. 45).

25. Change without regulatory effect amending "Immediate Family Members" filed 1-26-93 pursuant to section 100, title 1, California Code of Regulations (Register 93, No. 5).
26. Certificate of Compliance as to 10-23-92 order transmitted to OAL 12-18-92 and filed 2-3-93 (Register 93, No. 6).
27. Amendment adding "Harassment" and amendment of Note filed 7-29-93 as an emergency; operative 7-29-93 (Register 93, No. 31). A Certificate of Compliance must be transmitted to OAL 11-26-93 or emergency language will be repealed by operation of law on the following day.
28. Amendment filed 9-3-93; operative 9-3-93 pursuant to Government Code section 11346.2(d) (Register 93, No. 36).
29. Amendment of "Good Faith Effort," "Minority Business Enterprise," "Responsible Bidder" and "Women Business Enterprise" and Note and new definitions "Disabled Veteran Business Enterprise," "Goal," "Minority and/or Women and/or Disabled Veteran Business Enterprise focus paper," "Minority and/or Women and/or Disabled Veteran Business Enterprise focus paper and trade paper," "Project," "Subcontractor," and "Trade Paper" filed 10-18-93 as an emergency; operative 10-18-93 (Register 93, No. 43). A Certificate of Compliance must be transmitted to OAL by 2-15-94 or emergency language will be repealed by operation of law on the following day.
30. Definitions added for "Chaplain," "Religious Artifact," and "Sweat Lodge" and amendment of Note filed 11-1-93; operative 12-13-93 (Register 93, No. 45).
31. Amendment adding "Ex-Offender" filed 11-30-93; operative 12-30-93 (Register 93, No. 49).
32. Certificate of Compliance as to 7-29-93 order transmitted to OAL 11-18-93 and filed 12-31-93 (Register 94, No. 1).
33. Certificate of Compliance as to 10-18-93 order transmitted to OAL 2-15-94 and filed 3-16-94 (Register 94, No. 11).
34. Amendment of "Inmate", new definition "Serious injury", and amendment of Note filed 5-5-95; operative 6-5-95 (Register 95, No. 18).
35. Amendment of "Institution Head" filed 9-13-96 as an emergency; operative 9-13-96. A Certificate of Compliance must be transmitted to OAL by 2-24-97 or emergency language will be repealed by operation of law on the following day.
36. Amendment adding definition of "Certification" filed 11-22-96 as an emergency; operative 11-22-96 (Register 96, No. 47). A Certificate of Compliance must be transmitted to OAL by 5-1-97 pursuant to Penal Code section 5058(e) or emergency language will be repealed by operation of law on the following day.
37. Certificate of Compliance as to 9-13-96 order transmitted to OAL 11-22-96 and filed 1-6-97 (Register 97, No. 2).
38. Certificate of Compliance as to 11-22-96 order, including amendment of definition of "Certification," transmitted to OAL 3-20-97 and filed 5-1-97 (Register 97, No. 18).
39. Amendment adding definitions of "Lockdown" and "Restricted or controlled inmate movement" filed 10-16-97; operative 11-15-97 (Register 97, No. 42).
40. Amendment adding definition of "Program failure" filed 10-16-97 as an emergency; operative 10-16-97 (Register 97, No. 42). Pursuant to Penal Code section 5058(e), a Certificate of Compliance must be transmitted to OAL by 3-25-98 or emergency language will be repealed by operation of law on the following day.
41. Amendment adding definition of "Vexatious Litigant" and amending Note filed 11-12-97 as an emergency; operative 11-12-97 (Register 97, No. 46). A Certificate of Compliance must be transmitted to OAL by 3-13-98 or emergency language will be repealed by operation of law on the following day.
42. Editorial correction of definition of "Vexatious Litigant" and Histories 40 and 41 (Register 98, No. 18).
43. Amendment adding definition of "Vexatious Litigant" and amending Note refiled 4-29-98 as an emergency; operative 4-29-98 (Register 98, No. 18). A Certificate of Compliance must be transmitted to OAL by 10-6-98 or emergency language will be repealed by operation of law on the following day.
44. Certificate of Compliance as to 10-16-97 order, including removal of definition of "Program failure" to section 3062(n), transmitted to OAL 3-23-98 and filed 5-4-98 (Register 98, No. 19).
45. Certificate of Compliance as to 4-29-98 order, including further amendment of definition of "Vexatious Litigant" and Note, transmitted to OAL 6-12-98 and filed 7-21-98 (Register 98, No. 30).
46. Amendment adding new definitions of "Controlled Medication," "Controlled Substance," "Distribution" and "Laboratory" and amendment of Note filed 8-27-98 as an emergency; operative 8-27-98 (Register 98, No. 35). A Certificate of Compliance must be transmitted to OAL by 2-3-99 or emergency language will be repealed by operation of law on the following day.
47. Amendment filed 11-13-98 as an emergency; operative 11-13-98 (Register 98, No. 46). A Certificate of Compliance must be transmitted to OAL by 3-15-99 or emergency language will be repealed by operation of law on the following day.
48. Amendment adding new definitions of "Controlled Medication," "Controlled Substance," "Distribution" and "Laboratory" and amendment of Note refiled 2-3-99 as an emergency; operative 2-3-99 (Register 99, No. 6). Pursuant to Penal Code section 5058(e), a Certificate of Compliance must be transmitted to OAL by 7-13-99 or emergency language will be repealed by operation of law on the following day.
49. Certificate of Compliance as to 11-13-98 order transmitted to OAL 2-10-99 and filed 3-8-99 (Register 99, No. 11).
50. Certificate of Compliance as to 2-3-99 order transmitted to OAL 5-12-99 and filed 6-24-99 (Register 99, No. 26).
51. Amendment filed 3-27-2000 as an emergency; operative 3-27-2000 (Register 2000, No. 13). Pursuant to Penal Code section 5058(e), a Certificate of Compliance must be transmitted to OAL by 9-5-2000 or emergency language will be repealed by operation of law on the following day.
52. Amendment of definition of "Chronological History" filed 8-28-2000; operative 9-27-2000 (Register 2000, No. 35).
53. Certificate of Compliance as to 3-27-2000 order transmitted to OAL 9-5-2000; disapproval and order of repeal and deletion reinstating section as it existed prior to emergency amendment by operation of Government Code 11346.1(f) filed 10-18-2000 (Register 2000, No. 42).
54. Amendment filed 10-19-2000 deemed an emergency pursuant to Penal Code section 5058(e); operative 10-19-2000 (Register 2000, No. 42). Pursuant to Penal Code section 5058(e), a Certificate of Compliance must be transmitted to OAL by 3-27-2001 or emergency language will be repealed by operation of law on the following day.
55. Amendment adding definition of "General Chrono" filed 11-16-2000; operative 12-16-2000 (Register 2000, No. 46).
56. Certificate of Compliance as to 10-19-2000 order, including further amendment of definitions of "Execution Type Murder," "High Notoriety" and "Public Interest Case," transmitted to OAL 3-27-2001 and filed 5-3-2001 (Register 2001, No. 18).
57. Amendment of definitions of "Firm" and "Small Business Firm" and amendment of Note filed 7-12-2002; operative 8-11-2002 (Register 2002, No. 28).
58. Amendment adding definition of "Street gang" and amendment of Note filed 8-27-2002 as an emergency; operative 8-27-2002 (Register 2002, No. 35). Pursuant to Penal Code section 5058.3 a Certificate of Compliance must be transmitted to OAL by 2-4-2003 or emergency language will be repealed by operation of law on the following day.
59. Certificate of Compliance as to 8-27-2002 order transmitted to OAL 1-21-2003 and filed 3-6-2003 (Register 2003, No. 10).
60. Amendment adding definitions of "Program failure" and "Significant work related disciplinary history" filed 1-9-2004 as an emergency; operative 1-9-2004 (Register 2004, No. 2). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 6-17-2004 or emergency language will be repealed by operation of law on the following day.
61. Amendment adding definitions of "Program failure" and "Significant work related disciplinary history" refiled 6-17-2004 as an emergency; operative 6-17-2004 (Register 2004, No. 25). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 11-24-2004 or emergency language will be repealed by operation of law on the following day.
62. Certificate of Compliance as to 6-17-2004 order transmitted to OAL 11-16-2004 and filed 12-29-2004 (Register 2004, No. 53).

TITLE 15

DEPARTMENT OF CORRECTIONS AND REHABILITATION

§ 3000

63. New definition of "Religious Review Committee (RRC)" filed 1-17-2006 as an emergency; operative 1-17-2006 (Register 2006, No. 3). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 6-26-2006 or emergency language will be repealed by operation of law on the following day.
64. Amendment of definition of "Program failure" filed 6-9-2006; operative 7-9-2006 (Register 2006, No. 23).
65. Certificate of Compliance as to 1-17-2006 order transmitted to OAL 6-22-2006 and filed 7-27-2006 (Register 2006, No. 30).
66. Change without regulatory effect amending division heading and chapter heading filed 12-4-2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 49).
67. New definitions of "Indecent Exposure" and "Sexual Disorderly Conduct" and amendment of Note filed 2-23-2007 as an emergency; operative 2-23-2007 (Register 2007, No. 8). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 8-2-2007 or emergency language will be repealed by operation of law on the following day.
68. Certificate of Compliance as to 2-23-2007 order transmitted to OAL 7-27-2007 and filed 9-5-2007 (Register 2007, No. 36).
69. New definitions of "Non-serious offender" and "Non-violent offender" filed 10-1-2007 as an emergency; operative 10-1-2007 (Register 2007, No. 40). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 3-10-2008 or emergency language will be repealed by operation of law on the following day.
70. Amendment of definition of "Immediate Family Members" and amendment of Note filed 10-16-2007; operative 11-15-2007 (Register 2007, No. 42).
71. New definitions of "Non-serious offender" and "Non-violent offender" refiled 2-25-2008 as an emergency; operative 2-25-2008 (Register 2008, No. 9). A Certificate of Compliance must be transmitted to OAL by 5-26-2008 or emergency language will be repealed by operation of law on the following day.
72. Reinstatement of section as it existed prior to 10-1-2007 emergency amendment by operation of Government Code section 11346.1(f) (Register 2008, No. 22).
73. New definitions of "Behavior Management Unit" and "Disruptive Behavior" filed 7-8-2008 as an emergency; operative 7-8-2008 (Register 2008, No. 28). Pursuant to Penal Code section 5058.3(a)(1), a Certificate of Compliance must be transmitted to OAL by 12-15-2008 or emergency language will be repealed by operation of law on the following day.
74. Amendment filed 8-4-2008; operative 8-4-2008 pursuant to Government Code section 11343.4 (Register 2008, No. 32).
75. Repealer of definition of "Media representative" filed 8-29-2008; operative 9-28-2008 (Register 2008, No. 35).
76. New definition of "California Out-of-State Correctional Facility" and amendment of Note filed 10-30-2008 as an emergency; operative 10-30-2008 (Register 2008, No. 44). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 4-8-2009 or emergency language will be repealed by operation of law on the following day.
77. Amendment filed 12-9-2008; operative 1-8-2009 (Register 2008, No. 50).
78. New definitions of "Behavior Management Unit" and "Disruptive Behavior" refiled 12-15-2008 as an emergency; operative 12-15-2008 (Register 2008, No. 51). Pursuant to Penal Code section 5058.3(a)(1), a Certificate of Compliance must be transmitted to OAL by 3-16-2009 or emergency language will be repealed by operation of law on the following day.
79. New definitions of "Senate Bill (SB) 618 Participant" and "Senate Bill (SB) 618 Program" and amendment of Note filed 2-5-2009 as an emergency; operative 2-5-2009 (Register 2009, No. 6). This filing contains a certification that the operational needs of the Department required filing of these regulations on an emergency basis and were deemed an emergency pursuant to Penal Code section 5058.3. A Certificate of Compliance must be transmitted to OAL by 7-15-2009 or emergency language will be repealed by operation of law on the following day.
80. Certificate of Compliance as to 12-15-2008 order transmitted to OAL 2-23-2009 and filed 4-2-2009 (Register 2009, No. 14).
81. Certificate of Compliance as to 10-30-2008 order transmitted to OAL 4-1-2009 and filed 5-12-2009 (Register 2009, No. 20).
82. Certificate of Compliance as to 2-5-2009 order transmitted to OAL 6-25-2009 and filed 7-28-2009 (Register 2009, No. 31).
83. New definition of "Sexual Activity" filed 10-6-2009; operative 10-6-2009 pursuant to Government Code section 11343.4 (Register 2009, No. 41).
84. New definition of "Transitional Housing Unit" filed 12-29-2009; operative 1-28-2010 (Register 2010, No. 1).
85. New definition of "Non-Revocable Parole," amendment of definition of "Parolee" and amendment of Note filed 1-25-2010 as an emergency pursuant to Penal Code section 5058.3(a)(2); operative 1-25-2010 (Register 2010, No. 5). Pursuant to Penal Code section 5058.3(c), a Certificate of Compliance must be transmitted to OAL by 7-6-2010 or emergency language will be repealed by operation of law on the following day.
86. Certificate of Compliance as to 1-25-2010 order transmitted to OAL 6-17-2010 and filed 7-13-2010 (Register 2010, No. 29).
87. New definitions of "Administrative Officer of the Day," "Facility," "Great Bodily Harm" and "Institution" and amendment of definition of "Serious Bodily Injury" and Note filed 8-19-2010; operative 8-19-2010 pursuant to Government Code section 11343.4 (Register 2010, No. 34).
88. Repealer of definition of "Appeal Form" filed 12-13-2010 as an emergency; operative 1-28-2011 (Register 2010, No. 51). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 7-7-2011 or emergency language will be repealed by operation of law on the following day.
89. New definition of "Medical Parolee" and amendment of Note filed 4-29-2011 as an emergency pursuant to Penal Code section 5058.3(a)(2); operative 4-29-2011 (Register 2011, No. 17). Pursuant to Penal Code section 5058.3(a)(1), a Certificate of Compliance must be transmitted to OAL by 10-6-2011 or emergency language will be repealed by operation of law on the following day.
90. Repealer and new definition of "Lockdown" and new definition of "Modified Program" filed 6-14-2011; operative 7-14-2011 (Register 2011, No. 24).
91. New definitions of "Released on Parole," "Residential Facility," "Single Family Dwelling" and "Transient Sex Offender" and amendment of Note filed 6-15-2011 as an emergency; operative 6-15-2011 (Register 2011, No. 24). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 11-22-2011 or emergency language will be repealed by operation of law on the following day.
92. Certificate of Compliance as to 12-13-2010 order transmitted to OAL 6-15-2011 and filed 7-28-2011 (Register 2011, No. 30).
93. Change without regulatory effect amending definition of "Modified Program" filed 8-3-2011 pursuant to section 100, title 1, California Code of Regulations (Register 2011, No. 31).
94. New definitions of "Alternative Custody Program" and "Alternative Custody Program Participant" and amendment of definitions of "Case Conference Review" and "Face-to-Face Contact" and Note filed 9-27-2011 as an emergency; operative 9-27-2011 (Register 2011, No. 39). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 3-5-2012 or emergency language will be repealed by operation of law on the following day.
95. Certificate of Compliance as to 4-29-2011 order transmitted to OAL 10-5-2011 and filed 11-10-2011 (Register 2011, No. 45).
96. Reinstatement of section as it existed prior to 6-15-2011 emergency amendment by operation of Government Code section 11346.1(f) (Register 2011, No. 48).
97. New definitions of "Released on Parole," "Residential Facility," "Single Family Dwelling" and "Transient Sex Offender" and amendment of Note refiled 12-1-2011 as an emergency; operative 12-1-2011 (Register 2011, No. 48). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 2-29-2012 or emergency language will be repealed by operation of law on the following day.
98. Amendment of definition of "Dangerous Contraband," new definition of "Possession" and amendment of Note filed 12-9-2011 as an emergency; operative 12-9-2011 (Register 2011, No. 49). Pursuant

- to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 5-17-2012 or emergency language will be repealed by operation of law on the following day.
99. Certificate of Compliance as to 9-27-2011 order transmitted to OAL 2-3-2012; Certificate of Compliance withdrawn 3-19-2012 (Register 2012, No. 12).
 100. New definitions of “Alternative Custody Program” and “Alternative Custody Program Participant” and amendment of definitions of “Case Conference Review” and “Face-to-Face Contact” and Note refiled 3-19-2012 as an emergency; operative 3-19-2012 (Register 2012, No. 12). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 6-18-2012 or emergency language will be repealed by operation of law on the following day.
 101. Certificate of Compliance as to 12-1-2011 order transmitted to OAL 2-27-2012 and filed 4-2-2012 (Register 2012, No. 14).
 102. New definitions of “Automated Needs Assessment Tool” and “Crimogenic Need” and amendment of Note filed 5-10-2012 as an emergency; operative 5-10-2012 (Register 2012, No. 19). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 10-17-2012 or emergency language will be repealed by operation of law on the following day.
 103. Certificate of Compliance as to 12-9-2011 order, including further amendment of definition of “Possession,” transmitted to OAL 5-3-2012 and filed 6-6-2012 (Register 2012, No. 23).
 104. New definition of “Postrelease Community Supervision” filed 6-26-2012 as an emergency; operative 6-26-2012 (Register 2012, No. 26). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 12-3-2012 or emergency language will be repealed by operation of law on the following day.
 105. Repealer of definitions of “Designated Level II Housing,” “Execution Type Murder,” “High Notoriety,” “Management Concern,” “Multiple Murders” and “Unusual Violence,” amendment of definitions of “Force,” “Life Prisoner” and “Public Interest Case” and new definitions of “Non-secure Facility” and “Security Concern” filed 6-26-2012 as an emergency; operative 7-1-2012 (Register 2012, No. 26). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 12-10-2012 or emergency language will be repealed by operation of law on the following day.
 106. Reinstatement of section as it existed prior to 3-19-2012 emergency amendment by operation of Government Code section 11346.1(f) (Register 2012, No. 28).
 107. New definitions of “Alternative Custody Program (ACP)” and “Alternative Custody Program Participant,” amendment changing definition of “Case Conference” to “Case Conference Review” (with further revisions), amendment of definition of “Face-to-Face Contact” and amendment of Note filed 9-13-2012 as an emergency; operative 9-13-2012 (Register 2012, No. 37). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 2-20-2013 or emergency language will be repealed by operation of law on the following day.
 108. New definitions of “Automated Needs Assessment Tool” and “Crimogenic Need” and amendment of Note refiled 10-17-2012 as an emergency; operative 10-17-2012 (Register 2012, No. 42). A Certificate of Compliance must be transmitted to OAL by 1-15-2013 or emergency language will be repealed by operation of law on the following day.
 109. Editorial correction of History 108 providing corrected Certificate of Compliance date (Register 2012, No. 44).
 110. Certificate of Compliance as to 6-26-2012 order referenced in History 104 transmitted to OAL 11-5-2012 and filed 12-20-2012 (Register 2012, No. 51).
 111. Editorial correction of History 110 (Register 2013, No. 3).
 112. Certificate of Compliance as to 6-26-2012 order referenced in History 105 transmitted to OAL 12-5-2012 and filed 1-17-2013 (Register 2013, No. 3).
 113. Amendment replacing and revising former definition of “Religious Artifact” with new definition of “Religious Item” filed 2-21-2013 as an emergency; operative 2-21-2013 (Register 2013, No. 8). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 7-31-2013 or emergency language will be repealed by operation of law on the following day.
 114. Certificate of Compliance as to 10-17-2012 order transmitted to OAL 1-15-2013 and filed 2-25-2013 (Register 2013, No. 9).
 115. Certificate of Compliance as to 9-13-2012 order transmitted to OAL 1-11-2013 and filed 2-25-2013 (Register 2013, No. 9).
 116. Change without regulatory effect adding definition of “Secretary” and amending Note filed 3-11-2013 pursuant to section 100, title 1, California Code of Regulations (Register 2013, No. 11).
 117. Amendment replacing and revising former definition of “Religious Artifact” with new definition of “Religious Item” refiled 7-29-2013 as an emergency; operative 7-29-2013 (Register 2013, No. 31). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 10-28-2013 or emergency language will be repealed by operation of law on the following day.
 118. New definitions of “Cognitive Behavioral Therapy,” “Reentry Hubs” and “Transitions Programs” and amendment of definition of “Senate Bill 618 Program” filed 10-29-2013 as an emergency; operative 10-29-2013 (Register 2013, No. 44). A Certificate of Compliance must be transmitted to OAL by 4-7-2014 or emergency language will be repealed by operation of law on the following day.
 119. Certificate of Compliance as to 7-29-2013 order transmitted to OAL 10-24-2013 and filed 12-9-2013 (Register 2013, No. 50).
 120. Change without regulatory effect amending definitions of “Direct and Constant Supervision” and “Interstate Unit” filed 1-8-2014 pursuant to section 100, title 1, California Code of Regulations (Register 2014, No. 2).
 121. New definition of “Intake Control Unit (ICU)” filed 1-23-2014; operative 1-23-2014 pursuant to Government Code section 11343.4(b)(3) (Register 2014, No. 4).
 122. Amendment of definition of “Administrative Officer of the Day” and new definitions of “California Law Enforcement Telecommunications System,” “CalParole,” “Case Conference,” “Parole Administrator” and “Parole Violation Disposition Tracking System” filed 2-6-2014 as an emergency; operative 2-6-2014 (Register 2014, No. 6). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 7-16-2014 or emergency language will be repealed by operation of law on the following day.
 123. Certificate of Compliance as to 10-29-2013 order, including repealer of definition of “Cognitive Behavioral Therapy” and new definition of “Cognitive Behavioral Treatment,” transmitted to OAL 4-4-2014 and filed 5-14-2014; amendments effective 5-14-2014 pursuant to Government Code section 11343.4(b)(3) (Register 2014, No. 20).
 124. New definition of “Strategic Offender Management System” filed 6-2-2014; operative 6-2-2014 pursuant to Government Code section 11343.4(b)(3) (Register 2014, No. 23).
 125. New definition of “Urinalysis Testing” filed 7-17-2014 as an emergency; operative 7-17-2014 (Register 2014, No. 29). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 12-24-2014 or emergency language will be repealed by operation of law on the following day.
 126. Certificate of Compliance as to 2-6-2014 order transmitted to OAL 7-16-2014 and filed 8-27-2014 (Register 2014, No. 35).
 127. New definitions of “Air Scan Search,” “Canine,” “Canine Handler” and “Positive Canine Alert” filed 10-8-2014 as an emergency; operative 10-8-2014 (Register 2014, No. 41). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 3-17-2015 or emergency language will be repealed by operation of law on the following day.
 128. Amendment filed 10-17-2014; operative 10-17-2014 pursuant to Government Code section 11343.4(b)(3) (Register 2014, No. 42).
 129. Certificate of Compliance as to 7-17-2014 order transmitted to OAL 11-7-2014 and filed 12-22-2014 (Register 2014, No. 52).
 130. New definitions of “Air Scan Search,” “Canine,” “Canine Handler” and “Positive Canine Alert” refiled 3-17-2015 as an emergency; operative 3-17-2015 (Register 2015, No. 12). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 6-15-2015 or emergency language will be repealed by operation of law on the following day.

TITLE 15

DEPARTMENT OF CORRECTIONS AND REHABILITATION

§ 3000.5

131. New definitions of "Classification Staff Representative (CSR)," "Clean Conduct Credit," "Minimum Eligible Release Date (MERD)" and "Same and Similar Behavior" filed 6-1-2015 as an emergency; operative 6-1-2015 (Register 2015, No. 23). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 11-9-2015 or emergency language will be repealed by operation of law on the following day.
132. Amendment of definition of "Serious bodily injury (SBI)" and amendment of Note filed 6-17-2015 as an emergency; operative 6-17-2015 (Register 2015, No. 25). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 11-24-2015 or emergency language will be repealed by operation of law on the following day.
133. Certificate of Compliance as to 3-17-2015 order, including further amendment of definition of "Canine" and Note, transmitted to OAL 6-15-2015 and filed 7-27-2015; amendments effective 7-27-2015 pursuant to Government Code section 11343.4(b)(3) (Register 2015, No. 31).
134. Certificate of Compliance as to 6-1-2015 order transmitted to OAL 10-19-2015 and filed 12-3-2015 (Register 2015, No. 49).
135. Certificate of Compliance as to 6-17-2015 order transmitted to OAL 11-17-2015 and filed 12-30-2015 (Register 2016, No. 1).
136. New definition of "Long Term Offender Program" filed 2-18-2016 as an emergency; operative 2-18-2016 (Register 2016, No. 8). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 7-27-2016 or emergency language will be repealed by operation of law on the following day.
137. New definition of "Security Module" filed 3-10-2016; operative 3-10-2016 pursuant to Government Code section 11343.4(b)(3) (Register 2016, No. 11).
138. Amendment of definition of "Alternative Custody Program (ACP)" and amendment of Note filed 3-29-2016 as an emergency; operative 3-29-2016 (Register 2016, No. 14). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 9-6-2016 or emergency language will be repealed by operation of law on the following day.
139. Amendment of definition of "Modified Program" and amendment of Note filed 4-28-2016; operative 4-28-2016 pursuant to Government Code section 11343.4(b)(3) (Register 2016, No. 18).
140. New definitions of "Outdoor Religious/Spiritual Grounds" and "Statewide Religious Review Committee (SRRC)" and renaming and amendment of former definition of "Sweat Lodge" as "Native American Sweat Lodge Grounds" filed 5-11-2016; operative 7-1-2016 (Register 2016, No. 20).
141. Amendment of definition of "Disciplinary Free" and new definition of "Electronic Records Management Systems" filed 6-2-2016 as an emergency; operative 6-2-2016 (Register 2016, No. 23). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 11-9-2016 or emergency language will be repealed by operation of law on the following day.
142. Amendment of definition of "Chaplain" and amendment of Note filed 6-29-2016 as an emergency; operative 6-29-2016 (Register 2016, No. 27). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 12-6-2016 or emergency language will be repealed by operation of law on the following day.
143. Amendment of definition of "Dangerous Contraband" filed 8-17-2016; operative 8-17-2016 pursuant to Government Code section 11343.4(b)(3) (Register 2016, No. 34).
144. Certificate of Compliance as to 2-18-2016 order transmitted to OAL 7-26-2016 and filed 9-6-2016 (Register 2016, No. 37).
145. Certificate of Compliance as to 3-29-2016 order transmitted to OAL 9-6-2016 and filed 10-11-2016 (Register 2016, No. 42).
146. Certificate of Compliance as to 6-2-2016 order, including amendment of definitions of "Electronic Records Management System" and "Strategic Offender Management System," transmitted to OAL 11-7-2016 and filed 12-22-2016; amendments effective 12-22-2016 pursuant to Government Code section 11343.4(b)(3) (Register 2016, No. 52).
147. Certificate of Compliance as to 6-29-2016 order transmitted to OAL 11-17-2016 and filed 1-3-2017 (Register 2017, No. 1).
148. Amendment of definitions of "Classification Staff Representative (CSR)" and "Non-secure Facility" and new definitions of "Lethal electrified fence," "Secure Level I facility" and "Totally disabled" filed 2-9-2017 as an emergency; operative 2-20-2017 (Register 2017, No. 6). A Certificate of Compliance must be transmitted to OAL by 7-31-2017 or emergency language will be repealed by operation of law on the following day.
149. New definitions of "Gender Dysphoria," "Gender Identity" and "Transgender" and amendment of Note filed 4-17-2017 as an emergency; operative 4-28-2017 (Register 2017, No. 16). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 10-5-2017 or emergency language will be repealed by operation of law on the following day.
150. New definitions of "Notice Agent/Court Agent," "Remedial Sanction" and "Technical Violation" filed 7-12-2017; operative 10-1-2017 (Register 2017, No. 28).
151. Certificate of Compliance as to 2-9-2017 order transmitted to OAL 7-12-2017 and filed 8-23-2017 (Register 2017, No. 34).
152. New definitions of "Gender Dysphoria," "Gender Identity" and "Transgender" and amendment of Note refiled 10-4-2017 as an emergency; operative 10-6-2017 (Register 2017, No. 40). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 1-4-2018 or emergency language will be repealed by operation of law on the following day.
153. New definitions of "Administrative Security Housing Unit (SHU) Term," "Debrief Processing Unit (DPU)" and "Restricted Custody General Population (RCGP)," amendment of definitions of "Affiliate," "Confirmed Security Threat Group (STG) Behavior," "Prison Gang," "Security Threat Group (STG) Associate," "Step Down Program (SDP)" and "Transitional Housing Unit" and repealer of definitions of "Behavior Management Unit," "Inactive Monitored Status Affiliate," "Inactive Status Affiliate," "Monitored Status Affiliate," "Step Down Program, Step 1 and 2 SHU," "Step Down Program, Step 3 and 4 SHU" and "Step Down Program, Step 5" filed 10-9-2017 as an emergency; operative 10-9-2017 (Register 2017, No. 41). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 3-19-2018 or emergency language will be repealed by operation of law on the following day.
154. New definitions of "Gender Dysphoria," "Gender Identity" and "Transgender" and amendment of Note refiled 1-2-2018 as an emergency; operative 1-5-2018 (Register 2018, No. 1). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 4-5-2018 or emergency language will be repealed by operation of law on the following day.
155. Editorial correction deleting duplicate definition of "Security Threat Group (STG) Associate" and restoring inadvertently omitted definition of "Security Threat Group (STG)" (Register 2018, No. 9).
156. New definitions of "Administrative Security Housing Unit (SHU) Term," "Debrief Processing Unit (DPU)" and "Restricted Custody General Population (RCGP)," amendment of definitions of "Affiliate," "Confirmed Security Threat Group (STG) Behavior," "Prison Gang," "Security Threat Group (STG) Associate," "Step Down Program (SDP)" and "Transitional Housing Unit" and repealer of definitions of "Behavior Management Unit," "Inactive Status Affiliate," "Monitored Status Affiliate," "Step Down Program, Step 1 and 2 SHU," "Step Down Program, Step 3 and 4 SHU" and "Step Down Program, Step 5" refiled 3-5-2018 as an emergency; operative 3-19-2018 (Register 2018, No. 10). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 8-27-2018 or emergency language will be repealed by operation of law on the following day.
157. Certificate of Compliance as to 1-2-2018 order transmitted to OAL 4-4-2018 and filed 5-15-2018 (Register 2018, No. 20).

3000.5. Rules of Construction.

The following rules of construction apply to these regulations, except where otherwise noted:

(a) The enumeration of some criteria for the making of discretionary decisions does not prohibit the application of other criteria reasonably related to the decision being made.

(b) The order in which criteria are listed does not indicate their relative weight or importance.

TITLE 15

DEPARTMENT OF CORRECTIONS AND REHABILITATION

§ 3044

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.

HISTORY:

1. Renumbering of former section 3043.6 to section 3043.8 filed 4-13-2017 as an emergency; operative 4-13-2017 (Register 2017, No. 15). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 9-20-2017 or emergency language will be repealed by operation of law on the following day.
2. Renumbering of former section 3043.6 to section 3043.8 refiled 9-19-2017 as an emergency; operative 9-21-2017 (Register 2017, No. 38). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 12-20-2017 or emergency language will be repealed by operation of law on the following day.
3. Amendment of subsection (e)(2) filed 10-9-2017 as an emergency; operative 10-9-2017 (Register 2017, No. 41). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 3-19-2018 or emergency language will be repealed by operation of law on the following day.
4. Renumbering of former section 3043.6 to section 3043.8 refiled 12-18-2017 as an emergency; operative 12-21-2017 (Register 2017, No. 51). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 3-21-2018 or emergency language will be repealed by operation of law on the following day.
5. Amendment of subsection (e)(2) refiled 3-5-2018 as an emergency; operative 3-19-2018 (Register 2018, No. 10). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 8-27-2018 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 12-18-2017 order, including amendment of subsection (a)(4), transmitted to OAL 3-20-2018 and filed 5-1-2018; amendments operative 5-1-2018 pursuant to Government Code section 11343.4(b)(3) (Register 2018, No. 18).

3044. Inmate Work Groups and Privilege Groups.

- (a) Full-time and half-time defined.
 - (1) Full-time work or training assignments normally mean eight hours per day on a five day per week basis, exclusive of meals.
 - (2) Half-time work or training assignments normally mean four hours per day on a five day per week basis, exclusive of meals.
- (b) Consistent with the provisions of section 3375, all assignments or re-assignments to a work group shall be approved by a classification committee.
 - (1) Work Group A-1 (Full-Time Assignment). An inmate willing and able to perform an assignment on a full-time basis shall be assigned to Work Group A-1, except when the inmate qualifies for the assignment of Work Group F or Work Group M pursuant to sections 3044(b)(7) or 3044(b)(8). The work day shall not be less than 6.5 hours of work participation and the work week no less than 32 hours of work participation, as designated by assignment. Those programs requiring an inmate to participate during other than the normal schedule of eight-hours-per-day, five-days-per-week (e.g., 10-hours-per-day, four-days-per-week) or programs that are scheduled for seven-days-per-week, requiring inmate attendance in shifts (e.g., three days of 10 hours and one day of five hours) shall be designated as "special assignments" and require departmental approval prior to implementation. "Special assignment" shall be entered on the inmate's timekeeping log by the staff supervisor.
 - (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).

(B) Any inmate assigned to a combination of half-time work assignment and any rehabilitative program as described in section 3044(b)(1)(A), 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).

(C) A full-time college program may be combined with a half-time work or career technical education program equating to a full-time assignment. The college program shall consist of twelve units in credit courses only leading to an associate's degree in two years or a bachelor's degree in four years.

(D) Any inmate diagnosed by a physician or mental health clinician as totally disabled and therefore incapable of performing an assignment, shall remain assigned to Work Group A-1 throughout the duration of their total disability, unless the inmate is assigned to Work Group C, Work Group D-1, Work Group D-2, or Work Group M in accordance with sections 3044(b)(4), 3044(b)(5), 3044(b)(6), or 3044(b)(8).

(E) Any inmate diagnosed by a physician or mental health clinician as partially disabled shall be assigned to an assignment within the physical and mental capability of the inmate as determined by the physician or mental health clinician, unless changed by disciplinary action.

(2) Work Group A-2 (Involuntarily Unassigned). An inmate willing but unable to perform in an assignment shall be assigned to Work Group A-2, if the inmate does not qualify for assignment to Work Group M pursuant to section 3044(b)(8) and either of the following is true:

(A) The inmate is placed on a waiting list pending availability of an assignment.

(B) The unassigned inmate is awaiting adverse transfer to another institution.

(3) Work Group B (Half-Time Assignment). An inmate willing and able to perform an assignment on a half-time basis shall be assigned to Work Group B, except when the inmate qualifies for the assignment of Work Group M pursuant to section 3044(b)(8). Half-time programs shall normally consist of an assignment of four hours per workday, excluding meals, five-days-per-week, or full-time enrollment in college consisting of twelve units in credit courses leading to an associate's degree or bachelor's degree. The work day shall be no less than three hours and the work week no less than fifteen hours.

(4) Work Group C (Disciplinary Unassigned; Zero Credit).

(A) Any inmate who twice refuses to accept assigned housing, who refuses to accept or perform in an assignment, or who is deemed a program failure as defined in section 3000 by a classification committee shall be assigned to Work Group C for a period not to exceed the number of disciplinary credits forfeited due to the serious disciplinary infraction(s) or 180 days, whichever is less, except when the inmate qualifies for assignment to Work Group D-2 in accordance with section 3044(b)(6)(C).

(B) An inmate assigned to this work group shall not be awarded Good Conduct Credit, as described in section 3043.2, for a period not to exceed the number of disciplinary credits forfeited or 180 days, whichever is less, and shall revert to his or her previous work group upon completion of the credit forfeiture, unless the inmate no longer qualifies for assignment to Work Group F or Work Group M due to the totality of their case factors. In such exceptional circumstances, the inmate shall be assigned to another work group in accordance with this section. The inmate shall also be referred to a classification committee for placement on an appropriate waiting list.

§ 3044

DEPARTMENT OF CORRECTIONS AND REHABILITATION

TITLE 15

(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).

(A) Unless the exceptional criteria specified in section 3044(b)(6)(B) are met, an inmate serving an imposed SHU term pursuant to section 3341.9(e) in segregated housing shall be assigned to Work Group D-2, effective the date of the Rules Violation Report, for a period not to exceed the number of whole-day credits forfeited for the rule violation or 180 days, whichever is less, up to the Minimum Eligible Release Date or the date the Institution Classification Committee suspends the remainder of the SHU term. Following completion of the period of credit forfeiture, the inmate shall be re-evaluated by a classification committee for assignment to another work group.

(B) An inmate serving an imposed SHU term pursuant to section 3341.9(e) in segregated housing due to a guilty finding for a Division A-1 offense, as designated in section 3323(b), and which involved serious bodily injury on a non-prisoner, shall be assigned to Work Group D-2, effective the date of the Rules Violation Report, for a period not to exceed the number of whole-day credits forfeited for the rule violation or 360 days, whichever is less, up to the Minimum Eligible Release Date or the date the Institution Classification Committee suspends the remainder of the SHU term. Following completion of the period of credit forfeiture, the inmate shall be re-evaluated by a classification committee for assignment to another work group.

(C) An inmate in ASU, SHU, PSU, or other segregated housing, who is deemed a program failure as defined in section 3000, may be assigned Work Group D-2 for non-SHU assessable Rules Violation Report(s) by a classification committee for a period not to exceed the number of credits forfeited for the rules violation(s) or 180 days, whichever is less. An inmate assigned to Work Group C at the time of placement in ASU, SHU, PSU, or other segregated housing, or who refuses to accept or perform work assignments, shall be assigned Work Group D-2. An inmate released from ASU, SHU, PSU, or other segregated housing, may be assigned Work Group C by a classification committee, not to exceed the remaining number of disciplinary credits forfeited due to the serious disciplinary infraction(s) or 180 days, whichever is less.

(D) If the administrative finding of misconduct is overturned or if the inmate is criminally prosecuted for the misconduct and is found not guilty, Good Conduct Credit shall be restored.

(7) Work Group F (Minimum B Custody and Firefighting or Non-Firefighting Camp Placement). Assignment to Work Group F awards Good Conduct Credit pursuant to sections 3043.2(b)(4)(B), 3043.2(b)(5)(A), and 3043.2(b)(5)(B).

(A) An inmate assigned to Minimum B Custody who has successfully completed the requisite physical fitness training and firefighting training to be assigned as a firefighter to a Department

of Forestry and Fire Protection fire camp or as a firefighter at a Department of Corrections and Rehabilitation firehouse shall be assigned to Work Group F.

(B) An inmate assigned to Minimum B Custody who is placed in a Department of Forestry and Fire Protection fire camp for assignment to a non-firefighter position shall be assigned to Work Group F.

(C) An inmate placed in Work Group F who is 1) found guilty of a serious rule violation as defined in sections 3323(b), 3323(c), or 3323(d), 2) found guilty of a rule violation involving use or possession of any unauthorized communication device or of any narcotic, drug, drug paraphernalia, controlled substance, alcohol, or other intoxicant, as defined in sections 3323(e), 3323(f), 3323(g), or 3323(h), 3) placed in a zero-credit work group pursuant to sections 3044(b)(4) or 3044(b)(6), or 4) otherwise removed from this assignment due to safety or security considerations, shall be assigned to another work group consistent with the remaining provisions of this section and shall be ineligible to receive Good Conduct Credit pursuant to sections 3043.2(b)(4)(B), 3043.2(b)(5)(A), or 3043.2(b)(5)(B). An inmate who has been removed from this assignment under the circumstances described above may be re-assigned to Work Group F, after an appropriate period of time, by a classification committee.

(D) An inmate assigned to Work Group F who 1) is temporarily placed in an ASU or other segregated housing placement unit, 2) designated by the Institution Classification Committee as non-disciplinary segregation pursuant to section 3335(a), and 3) who otherwise remains eligible for continued assignment to Work Group F pursuant to sections 3044(b)(7)(A) or 3044(b)(7)(B), shall continue to be assigned Work Group F for the duration of his or her non-disciplinary segregation.

(E) An inmate initially assigned to Work Group D-1 by the Institution Classification Committee due to placement in ASU, SHU, PSU, or other segregated housing unit pursuant to section 3044(b)(5) and who 1) was not designated for non-disciplinary segregation by the Institution Classification Committee, 2) otherwise eligible for the assignment to Work Group F pursuant to sections 3044(b)(7)(A) or 3044(b)(7)(B) during the period of segregated housing, and 3) was not found guilty of the serious rule violation which was the reason for ASU or other segregated housing placement, shall be made whole by retroactive assignment to Work Group F beginning with the effective date that Work Group D-1 was originally imposed and for the same number of days that he or she was assigned to Work Group D-1.

(F) An inmate assigned to Work Group F pursuant to section 3044(b)(7) for a cumulative period of twelve months or more on his or her current term of incarceration shall continue to earn Good Conduct Credit pursuant to sections 3043.2(b)(4)(B), 3043.2(b)(5)(A), or 3043.2(b)(5)(B), upon transfer to an alternative custody setting as defined in section 3043(d).

(G) An inmate may be assigned Minimum B Custody and Work Group F, if the inmate meets the criteria noted above and all of the following are true:

1. The inmate is wanted for a felony by an out-of-state law enforcement agency (other than a Federal agency).
2. The agency does not have a detainer placed with the department for the felony.
3. The inmate's central file documents that the agency communicated to the department that they will not extradite the inmate for the purpose of prosecution of the felony.
4. The totality of the inmate's remaining case factors does not preclude the assignment of Minimum B Custody.

TITLE 15

DEPARTMENT OF CORRECTIONS AND REHABILITATION

§ 3044

(8) Work Group M (Minimum Custody or otherwise eligible for Minimum Custody). Assignment to Work Group M awards Good Conduct Credit pursuant to section 3043.2(b)(5)(A).

(A) Effective January 1, 2018, an inmate assigned to Minimum A Custody or Minimum B Custody who does not qualify for assignment to Work Group F pursuant to section 3044(b)(7) shall be assigned to Work Group M. Work Group M may be assigned retroactively to May 1, 2017. However, Good Conduct Credit awarded pursuant to section 3043.2(b)(5)(A) shall be limited in accordance with section 3043(c).

(B) Effective January 1, 2018, an inmate otherwise eligible for assignment to Minimum A Custody or Minimum B Custody whose eligibility for such assignment is limited solely due to their 1) placement in the Mental Health Services Delivery System at the Enhanced Outpatient level of care or higher level and/ or 2) medical or mental health status which requires additional clinical and custodial supervision as determined by the Institutional Classification Committee, shall be assigned to Work Group M. Work Group M may be assigned retroactively to May 1, 2017. However, Good Conduct Credit awarded consistent with section 3043.2(b)(5)(A) shall be limited in accordance with section 3043(c).

(C) Effective January 1, 2018, an inmate may be assigned Minimum A or Minimum B Custody and/ or Work Group M, which may be applied retroactively to May 1, 2017, if the inmate meets the criteria noted above and all of the following, are true:

1. The inmate is wanted for a felony by an out-of-state law enforcement agency (other than a Federal agency).

2. The agency does not have a detainer placed with the department for the felony.

3. The inmate's central file documents that the agency communicated to the department that they will not extradite the inmate for the purpose of prosecution of the felony.

4. The totality of the inmate's remaining case factors does not preclude the assignment of Minimum A and Minimum B Custody or the inmate is otherwise eligible for assignment to Minimum A or Minimum B Custody as described in section 3044(b)(8)(B).

(D) An inmate assigned to Work Group M who is 1) found guilty of a serious rule violation as defined in sections 3323(b), 3323(c), or 3323(d), 2) found guilty of a rule violation involving use or possession of any unauthorized communication device or of any narcotic, drug, drug paraphernalia, controlled substance, alcohol, or other intoxicant, as defined in sections 3323(e), 3323(f), 3323(g), or 3323(h), 3) placed in a zero-credit work group pursuant to sections 3044(b)(4) or 3044(b)(6), or 4) otherwise removed from this assignment due to safety or security considerations, shall be re-assigned to another work group consistent with the remaining provisions of this section and shall be ineligible to receive Good Conduct Credit pursuant to sections 3043.2(b)(4)(B), 3043.2(b)(5)(A), or 3043.2(b)(5)(B). An inmate who has been removed from this assignment under the circumstances described above may be assigned to Work Group M again, after an appropriate period of time, by a classification committee.

(E) An inmate eligible for initial assignment to Work Group M or who is assigned to Work Group M who 1) is temporarily placed in an ASU or other segregated housing placement unit, 2) designated by the Institution Classification Committee as non-disciplinary segregation pursuant to section 3335(a), and 3) who otherwise remains eligible for initial or continued assignment to Work Group M pursuant to sections 3044(b)(8)(A) or 3044(b)(8)(B), shall be assigned Work Group M for the duration of his or her non-disciplinary segregation.

(F) An inmate initially assigned to Work Group D-1 by the Institution Classification Committee due to placement in ASU, SHU, PSU, or other segregated housing unit pursuant to section

3044(b)(5) and who 1) was not designated for non-disciplinary segregation by the Institution Classification Committee, 2) was otherwise eligible for the assignment to Work Group M pursuant to sections 3044(b)(8)(A) or 3044(b)(8)(B) during the period of segregated housing, and 3) was not found guilty of the serious rule violation which was the reason for ASU or other segregated housing placement, shall be made whole by retroactive assignment to Work Group M beginning with the effective date that Work Group D-1 was originally imposed and for the same number of days he or she was assigned to Work Group D-1.

(G) Except when otherwise precluded by this section, an inmate 1) who undergoes reception center processing with a permanent disability that impacts placement or who is receiving dialysis treatment, 2) who, as determined by a classification committee, experienced an extended stay in the reception center beyond 60 days solely due to the disability, and 3) qualifies for the assignment of Work Group M pursuant to this section, shall be assigned Work Group M effective the 61st day of the stay at the reception center. Work Group M may be assigned retroactively to May 1, 2017. However, Good Conduct Credit awarded consistent with section 3043.2(b)(5)(A) shall be limited in accordance with section 3043(c).

(9) Work Group U (Unclassified). An inmate undergoing reception center processing shall be assigned to Work Group U from the date of their reception until classified at their assigned institution, except when the inmate is assigned Work Group M by a classification committee prior to the completion of reception center processing in accordance with section 3044(b)(8)(G).

(c) Privileges. Privileges for each work group shall be those privileges earned by the inmate. Inmate privileges are administratively authorized activities and benefits required of the secretary, by statute, case law, governmental regulations, or executive orders. Inmate privileges shall be governed by an inmate's behavior, custody classification and assignment. A formal request or application for privileges is not required unless specified otherwise in this section. Institutions may provide additional incentives for each privilege group, subject to availability of resources and constraints imposed by security needs.

(1) To qualify for privileges generally granted by this section, an inmate shall comply with rules and procedures and participate in assigned activities.

(2) Privileges available to a work group may be denied, modified, or temporarily suspended by a hearing official at a disciplinary hearing upon a finding of an inmate's guilt for a disciplinary offense as described in sections 3314 and 3315 of these regulations or by a classification committee action changing the inmate's custody classification, work group, privilege group, or institution placement.

(3) Disciplinary action denying, modifying, or suspending a privilege for which an inmate would otherwise be eligible shall be for a specified period not to exceed 30 days for an administrative rule violation or 90 days for a serious rule violation.

(4) A permanent change of an inmate's privilege group shall be made only by classification committee action under provisions of section 3375. Disciplinary or classification committee action changing an inmate's privileges or privilege group shall not automatically affect the inmate's work group classification.

(5) No inmate or group of inmates shall be granted privileges not equally available to other inmates of the same custody classification and assignment who would otherwise be eligible for the same privileges.

(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:

§ 3044

DEPARTMENT OF CORRECTIONS AND REHABILITATION

TITLE 15

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).

(7) An inmate in a reentry program assignment shall be eligible for available privileges subject to participating in assignment programs and shall not require a privilege group designation.

(8) An inmate's privileges shall be conditioned upon each of the following:

(A) The inmate's compliance with procedures governing those privileges.

(B) The inmate's continued eligibility.

(C) The inmate's good conduct and satisfactory participation in an assignment.

(9) Inmates returned to custody from parole may be eligible to receive privileges based upon their satisfactory participation in an assignment.

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

(d) Privilege Group A:

(1) Criteria:

(A) Full-time assignment as defined in section 3044(a).

(B) An inmate diagnosed by a physician or mental health clinician as totally disabled shall remain in Privilege Group A, unless changed by disciplinary action.

(C) An inmate designated by a physician or mental health clinician as partially disabled pursuant to section 3044(b)(1)(E) shall remain in Privilege Group A, unless changed by disciplinary action.

(2) Privileges for Privilege Group A are as follows:

(A) Family visits limited only by the institution/facility resources, security policy, section 3177(b), or other law.

(B) Visits during non-work/training hours, limited only by availability of space within facility visiting hours, or during work hours when extraordinary circumstances exist as defined in section 3045.2(d)(2). NDS inmates in Privilege Group A are restricted to non-contact visits consistent with those afforded to other inmates in ASU.

(C) Maximum monthly canteen draw as authorized by the secretary.

(D) Telephone access during the inmate's non-work/training hours limited only by institution/facility telephone capabilities. Inmates identified as NDS are permitted one personal telephone access per week under normal operating conditions.

(E) Access to yard, recreation and entertainment activities during the inmate's non-working/training hours and limited only by security needs.

(F) Excused time off as described in section 3045.2.

(G) The receipt of four inmate packages, 30 pounds maximum weight each, per year. Inmates may also receive special purchases, as provided in subsections 3190(j) and (k).

(e) Privilege Group B:

(1) Criteria, any of the following:

(A) Half-time assignment as defined in section 3044(a) or involuntarily unassigned as defined in section 3044(b).

(B) A hearing official may temporarily place an inmate into the group as a disposition pursuant to section 3314 or 3315.

(2) Privileges for Privilege Group B are as follows:

(A) One family visit each six months, unless limited by section 3177(b) or other law.

(B) Visits during non-work/training hours, limited only by availability of space within facility visiting hours, or during work hours when extraordinary circumstances exist, as defined in section 3045.2(d)(2). NDS inmates in Privilege Group B are restricted to non-contact visits consistent with those afforded to other inmates in ASU.

(C) Seventy-five percent (75%) of the maximum monthly canteen draw as authorized by the secretary.

(D) One personal telephone access period per month under normal operating conditions.

(E) Access to yard, recreation, and entertainment activities during the inmate's non-working/training hours and limited only by institution/facility security needs.

(F) Excused time off as described in section 3045.2.

(G) The receipt of four inmate packages, 30 pounds maximum weight each, per year. Inmates may also receive special purchases, as provided in subsections 3190(j) and (k).

(f) Privilege Group C:

(1) Criteria, any of the following:

(A) The inmate who twice refuses to accept assigned housing, or who refuses to accept or perform in an assignment, or who is deemed a program failure as defined in section 3000.

(B) A hearing official may temporarily place an inmate into the group as a disposition pursuant to section 3314 or 3315.

(C) A classification committee action pursuant to section 3375 places the inmate into the group. An inmate placed into Privilege Group C by a classification committee action may apply to be removed from that privilege group no earlier than 30 days from the date of placement. Subsequent to the mandatory 30 days placement on Privilege Group C, if the inmate submits a written request for removal, a hearing shall be scheduled within 30 days of receipt of the written request to consider removal from Privilege Group C.

(2) Privileges and non-privileges for Privilege Group C are as follows:

(A) No family visits.

(B) One-fourth the maximum monthly canteen draw as authorized by the secretary.

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

(D) Yard access limited by local institution/facility security needs. No access to any other recreational or entertainment activities.

(E) No inmate packages. Inmates may receive special purchases, as provided in subsections 3190(j) and (k).

(g) Privilege Group D:

(1) Criteria: Any inmate, with the exception of validated STG affiliates participating in the SDP 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.

(2) Any inmate removed from the general population due to disciplinary or administrative reasons, shall forfeit their privileges within their general population privilege group pending review by a classification committee.

(3) Privileges and non-privileges for Privilege Group D, other than those listed above, are as follows:

(A) No family visits.

TITLE 15

DEPARTMENT OF CORRECTIONS AND REHABILITATION

§ 3044

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

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

(D) Yard access limited by local institution/facility security needs. No access to any other recreational or entertainment activities.

(E) The receipt of one inmate package, 30 pounds maximum weight each, per year. Inmates shall be eligible to acquire an inmate package after completion of one year of Privilege Group D assignment. Inmates may also receive special purchases, as provided in subsections 3190(j) and (k).

(h) Privilege Group U:

(1) Criteria: Reception center inmates under processing.

(2) Privileges and non-privileges for Privilege Group U are:

(A) No family visits.

(B) Canteen Purchases. One-half of the maximum monthly canteen draw as authorized by the secretary.

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

(D) Yard access, recreation, and entertainment limited by local institution/facility security needs.

(E) Excused time off as described in section 3045.2.

(F) No inmate packages. Inmates may receive special purchases, as provided in subsections 3190(j) and (k).

(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.

(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).

(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).

(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.

(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.

(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.

§ 3044

DEPARTMENT OF CORRECTIONS AND REHABILITATION

TITLE 15

- (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).

HISTORY:

1. Change without regulatory effect of subsection (c)(1) and NOTE pursuant to section 100, title 1, California Code of Regulations filed 12-28-89 (Register 90, No. 1). For prior history, see Register 88, No. 50.
2. Relocation of (a) to section 3045, amendment of redesignated (c)(4)-(f), new subsections (c)(8)-(9) and (i) and subsection renumbering filed 12-20-91 as an emergency; operative 12-20-91 (Register 92, No. 4). A Certificate of Compliance must be transmitted to OAL 4-20-92 or emergency language will be repealed by operation of law on the following day.
3. Editorial correction of printing errors (Register 92, No. 4).
4. Editorial correction of printing error in subsection (b)(1) (Register 92, No. 5).
5. Certificate of Compliance as to 12-20-91 order transmitted to OAL 4-20-92 and filed 5-28-92 (Register 92, No. 24).
6. Amendment of subsections (d)(3)(A) and (e)(3)(A) filed 2-27-95 as an emergency; operative 5-30-95 (Register 95, No. 9). A Certificate of Compliance must be transmitted to OAL by 11-6-95 or emergency language will be repealed by operation of law on the following day.
7. New subsections (f)(3)(H), (g)(4)(H) and (h)(3)(H) and amendment of Note filed 6-30-95 as an emergency; operative 7-1-95 (Register 95, No. 26). A Certificate of Compliance must be transmitted to OAL by 12-7-95 or emergency language will be repealed by operation of law on the following day.
8. Amendment of subsections (d)(3)(A) and (e)(3)(A) refiled 11-7-95 as an emergency; operative 11-6-95 (Register 95, No. 45). A Certificate of Compliance must be transmitted to OAL by 4-14-96 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 6-30-95 order transmitted to OAL 11-22-95 and filed 1-8-96 (Register 96, No. 2).
10. Editorial correction of History 8 (Register 96, No. 21).
11. Reinstatement of subsections (d)(3)(A) and (e)(3)(A) as they existed prior to emergency amendment filed 5-30-95 pursuant to Government Code section 11349.6(d) (Register 96, No. 21).
12. Amendment of subsections (d)(3)(A) and (e)(3)(A) filed 6-7-96 as an emergency; operative 6-7-96 (Register 96, No. 23). A Certificate of Compliance must be transmitted to OAL by 10-7-96 or emergency language will be repealed by operation of law on the following day.
13. Change without regulatory effect amending subsection (e)(2) filed 7-16-96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 29).
14. Certificate of Compliance as to 6-7-96 order transmitted to OAL 10-3-96 and filed 11-18-96 (Register 96, No. 47).
15. Repealer of subsections (f)(3)(H), (g)(4)(H) and (h)(3)(H) and amendment of Note filed 1-2-98 as an emergency; operative 1-2-98 (Register 98, No. 1). Pursuant to Penal Code section 5058(e), a Certificate of Compliance must be transmitted to OAL by 6-11-98 or emergency language will be repealed by operation of law on the following day.
16. Certificate of Compliance as to 1-2-98 order transmitted to OAL 6-9-98 and filed 7-21-98 (Register 98, No. 30).
17. Repealer of printed inmate time card, new subsection (b)(1), subsection renumbering and amendment of Note filed 10-23-2003 as an emergency; operative 10-23-2003 (Register 2003, No. 43). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 4-1-2004 or emergency language will be repealed by operation of law on the following day.
18. Change without regulatory effect amending subsections (d)(3)(A) and (e)(3)(A) filed 12-1-2003 pursuant to section 100, title 1, California Code of Regulations (Register 2003, No. 49).
19. Amendment of section and Note filed 12-30-2003 as an emergency; operative 1-1-2004 (Register 2004, No. 1). Pursuant to Penal Code section 5058.3(a)(1), a Certificate of Compliance must be transmitted to OAL by 6-9-2004 or emergency language will be repealed by operation of law on the following day.
20. Amendment filed 1-9-2004 as an emergency; operative 1-9-2004 (Register 2004, No. 2). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 6-17-2004 or emergency language will be repealed by operation of law on the following day.
21. Certificate of Compliance as to 10-23-2003 order transmitted to OAL 3-19-2004 and filed 5-3-2004 (Register 2004, No. 19).
22. Withdrawal and repeal of 12-30-2003 amendments filed 5-27-2004 as an emergency; operative 5-27-2004 (Register 2004, No. 22). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 9-24-2004 or emergency language will be repealed by operation of law on the following day.
23. Amendment of section and Note, including relocation of former subsection 3044(g)(4)(G) to new section 3190(i)(3), filed 5-27-2004 as an emergency; operative 5-27-2004 (Register 2004, No. 22). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 11-3-2004 or emergency language will be repealed by operation of law on the following day.
24. Amendment of section, including further amendments, refiled 6-17-2004 as an emergency; operative 6-17-2004 (Register 2004, No. 25). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 11-24-2004 or emergency language will be repealed by operation of law on the following day.
25. Certificate of Compliance as to 5-27-2004 order transmitted to OAL 10-28-2004 and filed 12-14-2004 (Register 2004, No. 51).
26. Certificate of Compliance as to 6-17-2004 order, including further amendment of subsection (b)(5)(B), transmitted to OAL 11-16-2004 and filed 12-29-2004 (Register 2004, No. 53).
27. Amendment filed 6-9-2006; operative 7-9-2006 (Register 2006, No. 23).
28. Amendment of section and Note filed 1-25-2010 as an emergency; operative 1-25-2010 (Register 2010, No. 5). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 7-6-2010 or emergency language will be repealed by operation of law on the following day.

TITLE 15

DEPARTMENT OF CORRECTIONS AND REHABILITATION

§ 3045

29. Certificate of Compliance as to 1-25-2010 order transmitted to OAL 6-23-2010 and filed 8-4-2010 (Register 2010, No. 32).
30. Amendment of subsections (b)(5)(A) and (b)(7), new subsection (b)(7)(C), subsection relettering and amendment of subsection (d)(2) filed 12-20-2011; operative 1-19-2012 (Register 2011, No. 51).
31. Repealer of subsection (c)(6)(B), amendment of subsection (c)(8)(B), repealer of subsections (d)(2), (e)(2), (f)(2), (g)(2) and (h)(2), subsection renumbering, amendment of newly designated subsection (g)(2) and repealer of subsection (i) filed 10-22-2012; operative 11-21-2012 (Register 2012, No. 43).
32. New subsection (b)(6)(D) and amendment of subsections (c)(6)(A), (d)(2)(B), (d)(2)(D), (e)(2)(B), (e)(2)(D) and (g)(1) filed 9-24-2013 as an emergency; operative 9-24-2013 (Register 2013, No. 39). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 3-3-2014 or emergency language will be repealed by operation of law on the following day.
33. Amendment of subsections (b)(2)(A), (b)(2)(C) and (c)(7) filed 10-29-2013 as an emergency; operative 10-29-2013 (Register 2013, No. 44). A Certificate of Compliance must be transmitted to OAL by 4-7-2014 or emergency language will be repealed by operation of law on the following day.
34. Amendment of subsections (d)(2)(G), (e)(2)(G), (f)(2)(E), (g)(3)(E) and (h)(2)(F) filed 1-8-2014 as an emergency; operative 1-8-2014 (Register 2014, No. 2). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 6-17-2014 or emergency language will be repealed by operation of law on the following day.
35. Certificate of Compliance as to 9-24-2013 order transmitted to OAL 2-20-2014 and filed 3-24-2014 (Register 2014, No. 13).
36. Certificate of Compliance as to 10-29-2013 order, including amendment of subsection (b)(2)(A), transmitted to OAL 4-4-2014 and filed 5-14-2014; amendments effective 5-14-2014 pursuant to Government Code section 11343.4(b)(3) (Register 2014, No. 20).
37. Certificate of Compliance as to 1-8-2014 order transmitted to OAL 6-16-2014 and filed 7-22-2014 (Register 2014, No. 30).
38. Amendment filed 10-17-2014; operative 10-17-2014 pursuant to Government Code section 11343.4(b)(3) (Register 2014, No. 42).
39. Amendment of subsections (b)(5)(A) and (f)(1)(A) filed 6-1-2015 as an emergency; operative 6-1-2015 (Register 2015, No. 23). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 11-9-2015 or emergency language will be repealed by operation of law on the following day.23. Amendment of subsection (c)(5) filed 7-31-2015; operative 10-1-2015 (Register 2015, No. 31).
40. Amendment of subsections (b)(2)(A)–(B) filed 7-31-2015; operative 7-31-2015 pursuant to Government Code section 11343.4(b)(3) (Register 2015, No. 31).
41. Certificate of Compliance as to 6-1-2015 order transmitted to OAL 10-19-2015 and filed 12-3-2015 (Register 2015, No. 49).
42. Repealer and new subsections (a)–(b)(8) and amendment of Note filed 4-13-2017 as an emergency; operative 4-13-2017 (Register 2017, No. 15). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 9-20-2017 or emergency language will be repealed by operation of law on the following day.
43. Repealer and new subsections (a)–(b)(8) and amendment of Note refiled 9-19-2017 as an emergency; operative 9-21-2017 (Register 2017, No. 38). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 12-20-2017 or emergency language will be repealed by operation of law on the following day.
44. Amendment filed 10-9-2017 as an emergency; operative 10-9-2017 (Register 2017, No. 41). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 3-19-2018 or emergency language will be repealed by operation of law on the following day.
45. Repealer and new section and amendment of Note refiled 12-18-2017 as an emergency; operative 12-21-2017 (Register 2017, No. 51). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 3-21-2018 or emergency language will be repealed by operation of law on the following day.
46. Amendment of section heading and section filed 12-29-2017 as an emergency; operative 1-1-2018 (Register 2017, No. 52). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 6-11-2018 or emergency language will be repealed by operation of law on the following day.
47. Refiling of 10-9-2017 amendments on 3-5-2018 as an emergency; operative 3-19-2018 (Register 2018, No. 10). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 8-27-2018 or emergency language will be repealed by operation of law on the following day.
48. Certificate of Compliance as to 12-18-2017 order transmitted to OAL 3-20-2018 and filed 5-1-2018 (Register 2018, No. 18).

3045. Timekeeping and Reporting.

(a) Inmate timekeeping logs. The attendance and/or participation of each assigned inmate shall be recorded on an approved timekeeping log. If the assignment began or ended during the reporting month, the date(s) of such activity shall be recorded on the timekeeping log. Only the symbols designated on the timekeeping log shall be used to document the inmate's attendance. The symbol(s) and applicable hours for each day shall be recorded in the space corresponding to the calendar day. This log shall be the reference for resolving complaints or appeals and shall be retained at a secure location designated by the facility management for a period of 4 years from the date of completion.

(1) Staff shall record the work or training time and absences of each inmate assigned to their supervision as they occur. At intervals designated by the institution head, the supervisor shall:

(A) Enter the totals, hours worked and ETO hours used in the designated columns of timekeeping log.

(B) Sign the log to authenticate the information.

(C) Forward the log to the division head for review and approval.

(2) Mismanagement or falsification of an inmate timekeeping log may result in adverse action and/or prosecution.

(b) Security of timekeeping logs. Inmates shall not have unauthorized access to any timekeeping logs.

NOTE: Authority cited: Sections 2700, 2701 and 5058, Penal Code. Reference: Sections 2932, 2933, 2933.05, 2933.6, 2935, 5005, 5054 and 5068, Penal Code; and *In re Monigold*, 205 Cal. App. 3d 1224.

HISTORY:

1. New section filed 8-18-78; effective thirtieth day thereafter (Register 78, No. 33).

2. Repealer and new section filed 2-16-83; effective thirtieth day thereafter (Register 83, No. 8).

3. Amendment of subsection (c), repealer and new subsection (e) and new subsection (i) filed 8-7-87 as an emergency; operative 8-7-87 (Register 87, No. 34). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 12-7-87.

4. Certificate of Compliance as to 8-7-87 order transmitted to OAL 12-4-87; disapproved by OAL (Register 88, No. 16).

5. Amendment of subsection (c), repealer and new subsection (e) and new subsection (i) filed 1-4-88 as an emergency; operative 1-4-88 (Register 88, No. 16). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 5-3-88.

6. Certificate of Compliance as to 1-4-88 order transmitted to OAL 5-3-88; disapproved by OAL (Register 88, No. 24).

7. Amendment of subsection (c), repealer and new subsection (e) and new subsection (i) filed 6-2-88 as an emergency; operative 6-2-88 (Register 88, No. 24). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 9-30-88.

8. Certificate of Compliance including amendment transmitted to OAL 9-26-88 and filed 10-26-88 (Register 88, No. 50).

9. Renumbering and amendment of former section 3045 to section 3045.2, relocation and amendment of former section 3044(a) and

§ 3376.1

DEPARTMENT OF CORRECTIONS AND REHABILITATION

TITLE 15

24. Certificate of Compliance as to 6-2-2016 order transmitted to OAL 11-7-2016 and filed 12-22-2016 (Register 2016, No. 52).

3376.1. Departmental Review Board.

The Departmental Review Board (DRB) provides the Secretary's final review of classification issues which are referred by an institution head for a resolution or decision at the headquarters level. The DRB decision serves as the Secretary's level decision which is not appealable and concludes the inmate/parolee's departmental administrative remedy of such issues.

(a) Composition of the DRB:

(1) The director or deputy director of the Division of Adult Institutions (chairperson).

(2) The director or deputy director of the Division of Adult Parole Operations.

(3) The chief of classification services (shall abstain on DRB issues resulting from a difference of opinion between an institution head and the chief of classification services).

(4) The chief of health services.

(b) Two members shall constitute a quorum.

(c) The DRB shall meet at the call of the chairperson.

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

(1) An institution head is unable to resolve a difference of opinion with the chief of classification services.

(2) An institution head believes a clarification of departmental policy of statewide importance is required.

(3) An institution head believes a DRB level decision for placement of an inmate is required because of an unusual threat to the safety of persons or public interest in the case; e.g., commuted or modified death sentence.

(4) A difference between a Board of Parole Hearing's program placement order and the department's policies cannot be resolved.

(5) An out-of-state or federal prison placement is recommended by the institution classification committee for a Western Interstate Corrections Compact (WICC), PC Section 11190, an Interstate Corrections Compact (ICC), PC Section 11189, or a Federal Placement, PC Section 2911. A California Out-of-State Correctional Facility (COCF) transfer shall not require a DRB review or institution classification committee action.

(6) Meritorious credit is recommended by an institution classification committee to reduce an inmate's period of confinement pursuant to Penal Code Section 2935.

(7) The inmate's current placement was ordered by the DRB and there is no documentation in the inmate's central file to indicate that the DRB has relinquished responsibility for the inmate's placement.

(8) An inmate has completed Steps 1-4 of the Step Down Program and the institution head believes a transfer to an alternate Level IV institution or out-of-level placement is warranted, the institution head will refer the case to the DRB for decision.

(9) The UCC has recommended that an inmate be validated as a STG-I member, the ICC shall ensure there is sufficient evidence to warrant validation at the level of member. ICC will review the validation documents and all other case factors in their determination of appropriate housing. Any disagreement by the ICC with a STG I member's validation and/or placement into the SDP shall be referred to the DRB for resolution.

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

(e) Decisions of the DRB shall be in writing and implemented within 30 calendar days after the decision is made.

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.

HISTORY:

1. New section filed 1-16-92; operative 2-17-92 (Register 92, No. 13).

2. Amendment of subsection (d)(3) and Note filed 8-30-99 as an emergency; operative 8-30-99 (Register 99, No. 36). Pursuant to Penal Code section 5058(e), a Certificate of Compliance must be transmitted to OAL by 2-8-2000 or emergency language will be repealed by operation of law on the following day.

3. Certificate of Compliance as to 8-30-99 order transmitted to OAL 2-7-2000 and filed 3-21-2000 (Register 2000, No. 12).

4. Amendment of subsection (d)(5) and amendment of Note filed 10-30-2008 as an emergency; operative 10-30-2008 (Register 2008, No. 44). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 4-8-2009 or emergency language will be repealed by operation of law on the following day.

5. Amendment of first paragraph and subsections (a)(1)–(2) and (d)(4) filed 12-9-2008; operative 1-8-2009 (Register 2008, No. 50).

6. Certificate of Compliance as to 10-30-2008 order transmitted to OAL 4-1-2009 and filed 5-12-2009 (Register 2009, No. 20).

7. Change without regulatory effect amending subsection (a)(1) filed 1-8-2014 pursuant to section 100, title 1, California Code of Regulations (Register 2014, No. 2).

8. Amendment of subsection (d)(3) and new subsections (d)(8)–(10) filed 10-17-2014; operative 10-17-2014 pursuant to Government Code section 11343.4(b)(3) (Register 2014, No. 42).

3377. Facility Security Levels.

Each camp, facility, or area of a facility complex shall be designated at a security level based on its physical security and housing capability. Reception centers are not facilities of assignment and are exempt from the security level designations except for the assignment of permanent work crew inmates. The security levels are:

(a) Level I facilities and camps consist primarily of open dormitories with a low security perimeter.

(b) Level II facilities consist primarily of open dormitories with a secure perimeter, which may include armed coverage.

(c) Level III facilities primarily have a secure perimeter with armed coverage and housing units with cells adjacent to exterior walls.

(d) Level IV facilities have a secure perimeter with internal and external armed coverage and housing units described in section 3377(c), or cell block housing with cells non-adjacent to exterior walls. A Level IV 180-design facility utilizes housing units comprised of two wings; each wing is partitioned into three self-contained "pods", each "pod" has its own dayroom and control room. Each wing is linked by a dining facility and ancillary functions. The design of the housing unit allows a 180 degree view of all cells and dayrooms from the control room. A Level IV 270-design facility utilizes housing units comprised of three connected sections and one dayroom. Portions of first and third sections extend back behind the blind side of the control room. The design of the housing unit places cells within a 270 degree circumference of a circle with the control room in the center of the circle.

NOTE: Authority cited: Sections 5058 and 5058.3, Penal Code. Reference: Sections 5054 and 5068, Penal Code.

Barclays Official California Code of Regulations Currentness
Title 15. Crime Prevention and Corrections
Division 3. Adult Institutions, Programs and Parole
Chapter 1. Rules and Regulations of Adult Operations and Programs
Subchapter 4. General Institution Regulations
Article 10. Classification (Refs & Annos)

15 CCR § 3378.9

§ 3378.9. Restricted Custody General Population.

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](#).

HISTORY

1. New section filed 10-9-2017 as an emergency; operative 10-9-2017 (Register 2017, No. 41). Pursuant to [Penal Code section 5058.3](#), a Certificate of Compliance must be transmitted to OAL by 3-19-2018 or emergency language will be repealed by operation of law on the following day.

2. New section refiled 3-5-2018 as an emergency; operative 3-19-2018 (Register 2018, No. 10). Pursuant to [Penal Code section 5058.3](#), a Certificate of Compliance must be transmitted to OAL by 8-27-2018 or emergency language will be repealed by operation of law on the following day.

3. Certificate of Compliance as to 3-5-2018 order, including amendment of subsections (b) and (h), transmitted to OAL 8-21-2018 and filed 10-3-2018; amendments effective 10-3-2018 pursuant to [Government Code section 11343.4\(b\)\(3\)](#) (Register 2018, No. 40).

This database is current through 3/1/19 Register 2019, No. 9

15 CCR § 3378.9, 15 CA ADC § 3378.9

End of Document

© 2019 Thomson Reuters. No claim to original U.S. Government Works.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Form 8. Certificate of Compliance for Briefs

Instructions for this form: <http://www.ca9.uscourts.gov/forms/form08instructions.pdf>

9th Cir. Case Number(s)

I am the attorney or self-represented party.

This brief contains words, excluding the items exempted

by Fed. R. App. P. 32(f). The brief's type size and typeface comply with Fed. R. App. P. 32(a)(5) and (6).

I certify that this brief (*select only one*):

- complies with the word limit of Cir. R. 32-1.
- is a **cross-appeal** brief and complies with the word limit of Cir. R. 28.1-1.
- is an **amicus** brief and complies with the word limit of Fed. R. App. P. 29(a)(5), Cir. R. 29-2(c)(2), or Cir. R. 29-2(c)(3).
- is for a **death penalty** case and complies with the word limit of Cir. R. 32-4.
- complies with the longer length limit permitted by Cir. R. 32-2(b) because (*select only one*):
 - it is a joint brief submitted by separately represented parties;
 - a party or parties are filing a single brief in response to multiple briefs; or
 - a party or parties are filing a single brief in response to a longer joint brief.
- complies with the length limit designated by court order dated
- is accompanied by a motion to file a longer brief pursuant to Cir. R. 32-2(a).

Signature

Date

(use "s/[typed name]" to sign electronically-filed documents)

Feedback or questions about this form? Email us at forms@ca9.uscourts.gov

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Form 15. Certificate of Service for Electronic Filing

Instructions for this form: <http://www.ca9.uscourts.gov/forms/form15instructions.pdf>

9th Cir. Case Number(s)

I hereby certify that I electronically filed the foregoing/attached document(s) on this date with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit using the Appellate Electronic Filing system.

Service on Case Participants Who Are Registered for Electronic Filing:

I certify that I served the foregoing/attached document(s) via email to all registered case participants on this date because it is a sealed filing or is submitted as an original petition or other original proceeding and therefore cannot be served via the Appellate Electronic Filing system.

Service on Case Participants Who Are NOT Registered for Electronic Filing:

I certify that I served the foregoing/attached document(s) on this date by hand delivery, mail, third party commercial carrier for delivery within 3 calendar days, or, having obtained prior consent, by email to the following unregistered case participants (*list each name and mailing/email address*):

Description of Document(s) (*required for all documents*):

DEFENDANTS-APPELLANTS' OPENING BRIEF with Addendum

Signature

Date

(use "s/[typed name]" to sign electronically-filed documents)

Feedback or questions about this form? Email us at forms@ca9.uscourts.gov